

EXAMINING THE NEED FOR NEW FEDERAL JUDGES

HEARING BEFORE THE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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CONTENTS

JUNE 21, 2018

OPENING STATEMENTS

	Page
The Honorable Darrell Issa, California, Chairman, Subcommittee on Courts, Intellectual Property, and the Internet, Committee on the Judiciary	1
The Honorable Jerrold Nadler, New York, Ranking Member, Committee on the Judiciary	2
The Honorable Henry C. "Hank" Johnson Jr., Georgia, Ranking Member, Subcommittee Courts, Intellectual Property, and the Internet, Committee on the Judiciary	4
The Honorable Steve Chabot, Ohio, Subcommittee on Courts, Intellectual Property, and the Internet, Committee on the Judiciary	5

WITNESSES

The Honorable Judge Lawrence Stengel, Chair of the Committee on Judicial Resources of the Judicial Conference of the United States Oral Statement	7
The Honorable Judge Mauskopf, Chair of the Subcommittee on Judicial Statistics Oral Statement	8
The Honorable Judge Dana Sabraw, District Judge of the Southern District of California Oral Statement	10
Mr. Samuel Kahn, Chairman and CEO, Kent Holdings and Affiliates Oral Statement	11

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THURSDAY, JUNE 21, 2018

HOUSE OF REPRESENTATIVES,

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY
AND THE INTERNET

Washington, DC

The committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Darrell Issa [chairman of the subcommittee] presiding.

Present: Representatives Issa, Chabot, Labrador, DeSantis, Johnson of Georgia, Nadler, Deutch, Bass, Lieu, Schneider, Cicilline, and Jayapal.

Staff Present: Joe Keeley, Counsel; Haley LaTourette, Clerk; Jason Everett, Minority Deputy Chief Counsel; Susan Jensen, Minority Senior Counsel; David Greengrass, Minority Senior Counsel; and Veronica Eligan, Minority Professional Staff Member.

Mr. ISSA. After a short delay, I call the committee to order. The Subcommittee on Courts, Intellectual Property, and the Internet will now come to order. Without objection the chair is authorized to declare recesses of the subcommittee at any time, and with votes expected around 11:30, that is likely to happen.

We today are examining new judges needed for the Federal circuit and other items that may come up in questioning. I now recognize myself for an opening statement.

This is one of the most important things that Congress does, is determine how many lifetime appointments are necessary to meet the requirements of the Federal court as given by the American people. Many of those requirements come from direct addresses to the Federal court under uniquely Federal requirements, such as patent or immigration; and in the Southern District of California we are particularly familiar with both. But many also come from a growing tendency for States to recognize that they can save money, be very efficient, by using every trick in the book to get something into the Federal court.

This, oddly enough, sometimes goes in reverse when it is more favorable to be in State court, but we have seen a growing docket of items that could be tried in State court but are tried in Federal court. These tend to be often criminal, and as a result, they take priority. Notwithstanding how we get where we are, today the Federal court system is backed up. It is backed up not because of an inherent inefficiency, but because of a growing caseload.

This is particularly true with the latest request for my home State and its Ninth Circuit, with 21 requested judges at the district court level and five more for what is already, by a factor of two, the largest appellate court in the Nation, we are at a crisis point. We must have the judges to take care of the caseload; we must find ways to make sure that justice, as it has been historically known, is kept. As so often has been said, justice delayed is justice denied. We cannot have that.

At the same time, at least in the Ninth Circuit, we are acutely aware that the term “full en banc” simply does not mean anything. You will get a mini group of judges; the judges are unpredictable, and they represent already about a third of the judges that are in the full court, and that will continue to be that way until some change is found.

So, today, in addition to the request for judges and the merit and other questions back and forth, it is our goal to also talk about the efficiency of courts at the district level and the efficiency of courts at the appellate level, and ask our distinguished panel of judges and practitioner for their suggestions, if known, of areas in which we could mitigate the inevitable need for more judges.

Notwithstanding that, this is one of those rare bipartisan or even nonpartisan hearings, with the possible exception of a tweet from the President which will certainly loom over this hearing today. And with that, I would like to recognize the ranking member for his opening statement.

Mr. JOHNSON of Georgia. I am going to yield to—

Mr. ISSA. The ranking member of the full committee will now be recognized.

Mr. NADLER. Thank you very much, Mr. Chairman. Mr. Chairman, access to justice is not just a political slogan; it is a constitutional guarantee. But in some Federal judicial districts this promise meets the reality of an overburdened and understaffed court that cannot keep up with a burgeoning caseload. As a result, cases can be delayed or rushed, and justice may be shortchanged.

To help address this problem, every 2 years the Judicial Conference of the United States analyzes the workload and the resources of all U.S. courts of appeal and U.S. district courts and recommends to Congress new judgeships to ease the burden of courts that are stretched too thin. In March 2017, the Judicial Conference recommended the creation of five new judgeships in the Ninth Circuit Court of Appeals and 52 new judgeships in 23 district courts throughout the country.

I appreciate the thoughtful analysis conducted by the Judicial Conference, and we should consider its recommendations carefully. I cannot help but note, however, the context in which this hearing occurs. It just so happens that we have a Republican Senate busily confirming a Republican President’s judges at a historic rate, some of them, I might add, with dubious qualifications and many with alarming views. I certainly hope the purpose of this hearing truly is to assist overburdened courts, and that it is not in fact intended to lay a foundation for assisting President Trump in carrying out his plan to pack the courts with ideologically extreme judges.

We should remember that it was only 5 years ago that the full Judiciary Committee held a hearing titled “Are More Federal

Judges Always the Answer?” The hearing was meant to call attention to the supposedly outrageous fact that President Obama had nominated judges to fill the existing vacancies on the D.C. Circuit. Those were not new judgeships that he hoped to create. He simply nominated candidates to fill existing vacancies on what is generally considered the most important court in the country besides the Supreme Court.

But Republicans cried foul and declared that the President was attempting to pack the court. They also noted that each new judgeship could cost as much as a million dollars a year to support, which they consider an unwise use of resources. They sang a different tune, however, in 2002, when President George Bush was in office. The Constitution Subcommittee then held a hearing called “A Judiciary Diminished as Justice Denied: The Constitution, the Senate, and the Vacancy Crisis in the Federal Judiciary.”

The Democratic Senate, they argued, was creating a judicial crisis because it was not confirming President Bush’s nominees quickly enough; but they hardly seemed to complain during the final 2 years of the Obama presidency when Senate Republicans confirmed the fewest judges since 1952, leaving over 100 vacancies unfilled for President Trump to then fill.

And when Justice Scalia passed away, Republicans cheered the Senate’s refusal even to schedule a hearing on President Obama’s nomination of Judge Merrick Garland. It did not seem to trouble them at all that a seat on the highest court in the land remained vacant for more than a year, because it paved the way eventually for Justice Gorsuch to be confirmed.

I provide all this history not to take anything away from the Judicial Conference or its nonpartisan and highly professional recommendations, but it is worth noting that there is another set of judgeship recommendations floating around conservative circles right now. This one was developed by Steven Calabresi, a founder of the Federalist Society, whose plan would add 61 new Federal appellate circuit court judges, a 36 percent increase, and 200 new district court judges, almost 30 percent more than the current figure.

Unlike the Judicial Conference, which conducted a careful study of the needs throughout the judicial system, Professor Calabresi’s proposal, he makes clear, was developed in part to “undo President Obama’s judicial legacy.” In fact, President Trump is already hard at work on radically reshaping the Federal judiciary. Never before have we seen a President essentially outsource the process of selecting judicial nominees to ideologically driven organizations like the Federalist Society and the Heritage Foundation.

As a result, we have seen a host of troubling nominations. More than one has been unable or unwilling to answer whether *Brown v. Board of Education* was correctly decided; one nominee said the transgender children were part of “Satan’s plan;” and several nominees have been rated flatly unqualified by the American Bar Association. Unfortunately, that has not stopped the Senate from confirming the President’s nominees at a historic pace.

We should of course consider the merits of the Judicial Conference’s proposals regardless of who holds the levers of power at any given time. With the understanding that this hearing is not a

pretext for any larger goals, I look forward to hearing from our witnesses, and I yield back the balance of my time.

Mr. ISSA. The gentleman yields back. And with that, I would like to go to the ranking member of the subcommittee for his opening statement. Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. This hearing gives us an opportunity to examine whether there is a need for additional Federal judgeships. The United States legal system is the envy of the world; our legal system has historically provided fair, timely, and expert adjudication of civil disputes and criminal prosecutions for hundreds of years. There are, however, a number of challenges facing our Federal legal system that must be addressed if it is to maintain the standard of service our citizens expect and deserve.

One of these challenges is an overworked judiciary. As a former magistrate judge, I continue to support restoring judicial compensation to appropriate levels and efforts to add judges where needed. Every other year, the Judicial Conference provides updated recommendations to Congress about the number of authorized judgeships needed to meet the needs of the American judicial system. Federal district court judges are appointed under Article III of the Constitution and are nominated by the President, confirmed by the Senate, and serve lifetime appointments upon good behavior.

In March 2017, the Judicial Conference recommended to Congress to create five permanent Article III judgeships in the courts of appeals and 52 permanent Article III judgeships. The Judicial Conference also recommended the conversion to permanent status of eight temporary judgeships in the district courts. In addition, the Judicial Conference recommended to Congress and the President that they not fill the next judgeship vacancy on the U.S. Court of Appeals for the Tenth Circuit and in the District Court of Wyoming, based on consistently low filings in both courts.

The Judicial Conference's recommendations are based on a comprehensive analysis of the workload of Federal judges, which takes into consideration not only the number but also the nature and complexity of the cases before the various courts. The number of Federal judges has an impact on the speed of Federal cases heard. The last time there was a major increase in judges was in 1990, when 61 new permanent judgeships were authorized.

Since 1990, appeals filings have grown 40 percent, and district court filings have grown 38 percent. While we may need additional judges, we must also make sure that the individuals nominated are qualified. I have been alarmed by some of the appointments that President Trump has made for new judges, and I continue to believe that if my Senate Republican colleagues were concerned about efforts for new judges to manage caseloads, they could have helped address that concern by confirming Merrick Garland promptly, and President Obama's other outstanding nominees who were left on the table.

I am particularly interested to hear the witnesses discuss which areas of the country need more judges and how an increase in judgeships would impact the judiciary and also the lives of everyday Americans. The Judicial Conference has recommended one ad-

ditional permanent judge for the United States District Court for the Northern District of Georgia, which is my home circuit.

I have always supported highly qualified candidates to the Federal bench, particularly in the Northern District of Georgia. The district is currently allotted 11 judgeships. As I stated earlier, I support efforts for additional Federal judges where needed. I thank the chairman for holding this hearing, and I yield back the balance of my time.

Mr. ISSA. Thank you. The gentleman from Ohio will provide the majority chairman's statement and excerpts of his own.

Mr. CHABOT. Thank you very much, Mr. Chairman. I had not really planned on making any remarks, but I will be very brief in light of a couple of comments that I heard from my dear friends on the other side of the aisle. One, the reference to how alarming that this President's nominees have been in some cases. I have to say, as a relatively conservative guy myself, I found it kind of alarming some of the nominations by the previous administration, so it oftentimes depends on who is—I am not sure what that—somebody does not like what it being said here.

Mr. ISSA. Who says the Russians do not listen?

Mr. CHABOT. But relative to whether something is alarming or not I think oftentimes depends on whose ox is being gored. And so, the fact that a number of the nominees tend to be a bit more conservative this time around than last time around is probably not surprising, but I do not think it is necessarily alarming.

And I certainly do not think it is—it was mentioned that it is either unprecedented or never happened before, the so-called outsourcing of the nominees to such conservative organizations as Heritage, for example. I would make the point that I think many in the Obama administration and previous more liberal administrations tended to get a lot of their nominees from organizations which were on the left. So, I do not think there is anything unprecedented or alarming or surprising about that.

And I would just finally conclude, The Bar Association was mentioned, and the fact that some of these folks that the Trump administration has nominated for Federal judicial positions have not been approved by the Bar Association, are not held in high repute. I would just note that I practiced law for almost 2 decades before coming to Congress about 22 years ago and had been a longtime member of the American Bar Association, paid the dues every year, even though I was just a sole practitioner—it was \$250 at that time; it was a fair amount of money when you are a sole practitioner—and used to like to get their magazine, et cetera, until they decided that they just had to take a point of view on the life issue.

And I happen to be pro-life, and they happened to decide that, on behalf of all the lawyers in this country, they decided that the pro-choice point of view was the only position that was appropriate; and I did not pay my dues after that. And once in a while, I would stop by the library and read the publication for free, but I was not going to pay my dues any more to the Bar Association.

So, oftentimes it just sort of depends on, as I say, whose ox is being gored, but that our Federal judiciary, whichever side of the aisle one finds himself here, I think we all agree that that we do need quality people on the Federal benches, whether it is at the

district court or circuit court; certainly, at the U.S. Supreme Court level.

So, I know we have a very distinguished panel here in front of us this morning and look forward to hearing their testimony. I might add that I also am chairman of the House Small Business Committee, and we have one of my subcommittee hearings going on, so I do intend to stick around for all the testimony, I hope, but I do have to get over there. And I want to thank the gentleman for the way he has run this this committee over the years, and I yield back my time.

Mr. ISSA. I thank the gentleman. We now move forward with the most important part of this for most witnesses, and an unusual part for our witnesses today. And that is, pursuant to the rules of the committee, would you please all rise to take the oath?

Raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

Today, our distinguished panel of witnesses include Judge Lawrence Stengel, the chair of the Committee on Judicial Resources of the Judicial Conference of the United States; as such, the man who brought us here today.

Judge Mauskopf is chair of the Subcommittee on Judicial Statistics, which sounds like you brought us here also.

Judge Dana Sabraw is the district judge of the Southern District of California and I think he is apparent to run that district, as I understand it, if you choose not to retire, which at your young age you should. And with all fairness, the judge and I go back to his days as a practitioner before he went to the State and then the Federal bench, so it is truly an honor to have somebody with so many years' experience that I have gotten to watch.

And lastly, we have Mr. Samuel Kahn. He is chairman and CEO of Kent Holdings and Affiliates. He is a practitioner of great length and is here because I felt that, in addition to three judges saying we need more judges, it would be nice to have somebody who could talk about the delays before the court caused by not having enough judges.

As you probably know from watching CSPAN, your written statements will be included in their entirety, and so we ask you to spend as much time as you want, within 5 minutes, saying whatever would revise and extend those statements. Judge Stengel.

STATEMENTS OF LAWRENCE F. STENGEL, CHAIR, COMMITTEE ON JUDICIAL RESOURCES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES; ROSLYNN MAUSKOPF, CHAIR, SUBCOMMITTEE ON JUDICIAL STATISTICS; DANA M. SABRAW, UNITED STATES DISTRICT JUDGE, SOUTHERN DISTRICT OF CALIFORNIA; AND SAMUEL J. KAHN, CHAIRMAN/CEO, KENT HOLDINGS AND AFFILIATES.

STATEMENT OF LAWRENCE F. STENGEL

Judge STENGEL. Chairman Issa and Ranking Member Johnson and members of the subcommittee, I am Lawrence Stengel. I am the chief judge of the United States District Court for the Eastern District of Pennsylvania, and I serve as chair of the Judicial Conference Committee on Judicial Resources. I am pleased to be joined this morning by Judge Mauskopf and Judge Sabraw and by Mr. Khan.

First of all, let me thank you for your invitation for us to appear today to discuss the Article III judgeship needs of the Federal judiciary. The Judicial Resources Committee of the Judicial Conference is responsible for all issues of human resource administration, including the need for Article III judges in the U.S. courts of appeals and the district courts. Our testimony today has three purposes.

The first is to identify for you the judgeship needs of the district and appellate courts; secondly, to explain the process by which the Conference determines those needs; and third, to assist Congress in understanding the implications of the judiciary being understaffed. I will address our judgeship request and the justification for that request, Judge Mauskopf will address in more detail our process, and Judge Sabraw will be able to provide details of how a district with judgeship needs is affected and the consequences of unmet judgeship requirements.

Every other year, the Judicial Conference conducts a survey of the judgeship needs of the courts of appeals and the district courts. The latest survey, which was completed in March of 2017, resulted in a recommendation to Congress to establish five new judgeships in one court of appeals and 52 new judgeships in 23 district courts. The Conference also recommended that eight existing temporary district court judgeships be converted to permanent status.

The last comprehensive judgeship bill for the U.S. courts of appeals and the district courts was enacted in 1990. Similar or smaller targeted bills were considered between 1999 and 2003, when Congress created 34 additional judgeships in the district courts. Prior to 1990, Congress was fairly regular in addressing increasing caseloads and the judiciary's needs; for example, judgeship bills were enacted in 1966, in 1970, 1978, and again in 1984. It has now been 15 years since the last judgeships were established.

From 1990 to the end of fiscal year 2016, when we were conducting our resource needs survey, filings in the courts of appeals had grown by 40 percent, while district court case filings had risen by 38 percent. As discussed in our written testimony, for district courts we initially apply a standard of 430 weighted filings per judgeship to gauge the impact of the workload on a district.

For the 27 district courts where the Conference is recommending additional judgeships or conversion of existing temporary judge-

ships, weighted filings average 577 per judgeship, and 20 courts have caseloads above 500 weighted filings, eight above 600, six above 700, and one with more than 1,000 weighted filings. These are well beyond our standard of 430 weighted filings for considering new judgeships.

The lack of additional judgeships, combined with the growth in caseload, has created enormous difficulties for many courts across the Nation, but it has reached urgent levels in five district courts that are struggling with extraordinarily high and sustained workloads. The severity of the conditions in the Eastern District of California, the District of Delaware, the Southern District of Florida, the Southern District of Indiana, and the Western District of Texas require immediate action, in our view. The Judicial Conference urges Congress to establish new judgeships in these districts as soon as possible.

The Judicial Conference recommendation, which addresses our total needs, has not yet been introduced in the current Congress as a comprehensive judgeship bill. However, smaller individual judgeship bills have been introduced. Our written testimony identifies those bills, and we appreciate the interest of Congress as expressed in those measures. The Judicial Conference is grateful for congressional action to extend temporary judgeships and is supportive of legislation similar to bills introduced in the last Congress and currently pending in the Senate to convert temporary judgeships to permanent status.

As we review our needs, the Judicial Conference does not recommend or wish indefinite growth in judgeships. Our request has been thoroughly reviewed, is based on a careful analysis of qualitative and quantitative information, and recognizes that the growth in the judiciary must be carefully limited and planned and be fully justified. Thank you for the opportunity to appear today, and thank you for your continued support of the Federal judiciary. I will be happy to respond to your questions.

[The prepared statement of Judge Stengel follows:] <https://docs.house.gov/meetings/JU/JU03/20180621/108453/HHRG-115-JU03-Wstate-StengalL-20180621.pdf>

Mr. ISSA. And that will wait. Judge Mauskopf.

STATEMENT OF ROSLYNN MAUSKOPF

Judge MAUSKOPF. Thank you, Chairman Issa, Ranking Member Johnson, and members of the subcommittee. I am Judge Roslynn Mauskopf, sitting on the United States District Court for the Eastern District of New York, and I am also chair of the Judiciary Subcommittee on Judicial Statistics. I appreciate the opportunity today to discuss the process by which we determine Article III judgeship needs of the Federal judiciary.

Our joint written statement, along with the attachments to that testimony, provide a thorough description of our process and results. But I think it would be useful to the subcommittee and to the Judiciary Committee as a whole to provide some highlights of how we reached our recommendation for 57 new judgeships and the conversion of eight temporary judgeships to permanent status.

In developing those recommendations for consideration by Congress, the Judicial Conference, through its committee structure,

uses a formal process to review and evaluate Article III judgeship needs. Every other year, the Judicial Conference conducts a survey of the judgeship needs of the U.S. courts of appeals and the U.S. district courts. The latest survey was completed in March of 2017.

Before a judgeship recommendation is transmitted to Congress, it undergoes careful consideration under a multilevel process. The six-step review process begins with the individual court reviewing its needs and making a request. The subcommittee I chair then conducts a preliminary review. Once this review is complete, the subcommittee's recommendation and the court's initial request are forwarded to the judicial council of the circuit in which the court is located.

Upon completion of the circuit counsel's review, the Subcommittee on Judicial Statistics conducts a final review of the request. The subcommittee then submits the recommendation to the full Committee on Judicial Resources, and finally, the Judicial Conference of the United States considers the full committee's final product. For the 2017 survey, the courts requested 66 additional permanent judgeships and the conversion of nine temporary judgeships to permanent; our review procedure reduced the number of recommended additional judgeships to 57, and conversions to eight.

The recommendations developed through this review process are based in large part on standards related to the caseloads of the courts. They represent the caseload at which the Conference may begin to consider requests for additional judgeships; the starting point in the process, not the endpoint. The caseload standards used by the Judicial Conference are expressed as filings per authorized Article III judgeship, which, importantly, assumes that all vacancies on the court are filled.

For appellate courts, we use a standard of 500 adjusted filings per panel as a starting point. For district courts, we initially apply a standard of 430 weighted filings per judgeship to gauge the impact on the district, and in smaller courts we use a standard of 500 weighted filings per judgeship. Weighted filings are used as a means of accounting for the varying complexity of different types of civil and criminal filings and real differences in the time required for judges to resolve various types of civil and criminal actions.

Rather than counting each case as a single case, weights are applied based on the nature of the cases. The total for weighted filings per judgeship is the sum of all weights assigned to the civil cases and criminal defendants, divided by the number of authorized judgeships. In 2016, the Judicial Conference approved updated case weights for the district courts.

Caseload statistics alone are not fully indicative of each court's needs. Other court-specific information is considered to arrive at a sound measurement of each court's judgeship needs, and this would include factors such as the number of senior judges available to a specific court; available magistrate judge resources and the use of visiting judges; geographic factors; unusual caseload complexity; temporary caseload increases; and other factors noted by the courts.

In conclusion, over the last 25 years the Judicial Conference has developed, adjusted, and refined the process for evaluating and rec-

ommending judgeship needs in response to both judiciary and congressional concerns. Using an objective standard as a starting point and considering other court-specific factors allows us to develop recommendations that are carefully reviewed in a multistep process.

This ensures that the recommendations of the Judicial Conference are limited to the number of new judgeships that are necessary to exercise Federal court jurisdiction. Once again, I thank the subcommittee for the opportunity to appear today and would be happy to answer any questions.

[The prepared statement of Judge Mauskopf follows:] <https://docs.house.gov/meetings/JU/JU03/20180621/108453/HHRG-115-JU03-Wstate-MausopkR-20180621.pdf>

Mr. ISSA. Thank you. Judge Sabraw. This is a large courtroom, so we recommend the mic.

STATEMENT OF DANA M. SABRAW

Judge SABRAW. Well, good morning, Chairman and Ranking Member Johnson, members of the committee. I am Judge Dana Sabraw from the Southern District of California. I am particularly delighted to be here at Chairman Issa's request and to speak to the issues of additional judgeships.

I would like to start by giving an overview of the national trends as reflected in our caseload statistics, which reflect an increasing demand on the judiciary since the last judgeship bill was enacted in 2003. I also know the chairman is particularly interested in the situation in California, and I am delighted to speak to that issue as well.

Federal court management statistics since 2003, the last judgeship bill, to March 31, 2018, showed the number of total cases filed in the Nation has risen by 15 and a half percent. In California, where we have 10 percent of the Nation's caseload, we have seen an increase of 13 and a half percent in case filings since that period of time.

In my own district, in the Southern District of California, we have seen an increase of 21 percent, and we have seen weighted filings increase by 33 percent since 2003. Based on the most recent data, we also expect weighted filings in the Southern District of California to increase, which will of course make the additional need for judgeships even greater.

The effect of this kind of increase in caseload is profound. Increasing caseload leads to significant delays in the consideration of caseloads, particularly with respect to civil cases, often takes years to get through the trial court. In most districts across the Nation it takes about 2 years to adjudicate civil cases from filing to trial. In these impacted districts, we see that cases are taking 3 and 4 years. In particular, in the Eastern District of California, cases are taking 40 months on average to go through trial, and in San Diego cases are taking as long as 36 months, which is far too long.

These delays increase expenses for civil litigants. They also may increase the time criminal defendants are held pending trial. The delays lead to an erosion of trust in the judiciary and to the judicial process itself, and the problem is so severe that potential litigants are even avoiding Federal court altogether.

The workload situation in each of the four California districts is severe. Weighted caseloads are well beyond the national average of 430, and indeed, they exceed 500 in each of the four districts in California. The weighted caseload exceeds 700 in the Eastern District, which is one of the highest in the Nation and has been so for many, many years, and unfortunately, the situation in the Eastern District was made worse when the district lost one of its temporary judgeships in 2004. This contributed to a significant increase in pending cases in that district as well.

One cannot imagine the situation will improve on its own without additional judges. Looking at just one area in particular, immigration enforcement, the increase in caseload has been staggering. In addition, some immigration bills currently pending before Congress would further increase the workload of Federal courts along the border by adding more law enforcement personnel and prosecutors. If Congress authorizes additional immigration enforcement resources to executive branch agencies, it is also critical to add additional judgeships authorized so that it can handle the increased workload which will inevitably flow to those districts.

Considering just the present workload, the Judicial Conference has requested 17 additional judgeships for California, seven in the Central District, five in the Eastern, three in the Southern, and two in the Northern. In addition, the Conference has recommended the conversion of a temporary judgeship in the Central District, but I would add to it that while border States may be the focus of more targeted judgeship legislation, it is important that judgeship be addressed comprehensively across the Nation to address pressing needs throughout the country.

Quite simply, the problem cannot be addressed by just adding magistrate judges or asking visiting judges or senior judges to shoulder the burden. Magistrate judges have limited jurisdiction, and moreover, the Judicial Conference process for determining workload needs of the court fully takes into account the valuable contributions that magistrate judges, senior judges, and visiting judges are already making.

Mr. Chairman, I have only highlighted some of the issues that impact our courts. I would be happy to address any questions that may follow. Thank you.

[The prepared statement of Judge Sabraw follows:] <https://docs.house.gov/meetings/JU/JU03/20180621/108453/HHRG-115-JU03-Wstate-SabrawD-20180621.pdf>

Mr. ISSA. Thank you. I am happy you used exactly 5 minutes, too. Mr. Kahn.

STATEMENT OF SAMUEL KAHN

Mr. KAHN. Thank you, Mr. Chairman and Ranking Member Johnson. I would like to go into a bit of background into how we got here in California.

Since the 2011 adoption of what is known as the Public Safety Realignment or Assembly Bill 109, then Proposition 47, the Safe Neighborhoods and Schools Act, which was adopted in 2014, and the Public Safety and Rehabilitation Act of 2016, known as Proposition 57, California's crime rate has increased several times more than the national average, suffering the highest increases in both

violent and property crime compared to any of the other 10 largest States.

Specifically, in 2015 and 2016 California suffered consecutive-year increases in violent crime for the first time in 25 years. In those 2 years, homicide in California increased by over 15.3 percent; for the Nation as a whole, in 2015 the violent crime rate increased 3 percent, while California's rate increased 2.5 times as much at 7.6 percent. Now, by way of background, all the rates that I am quoting are reported as number of crimes per 100,000 population.

The property crime rate for the Nation as a whole declined 3.4 percent, while California has increased 7.2 percent. That is, California's net change in property crime rate was 10.6 percent greater than the Nation as a whole. Looking at the country's 10 largest States, all nine of the others had decreases in property crime. Georgia, by way of illustration, had the largest decline at 10 percent, while Florida had the smallest at 4.1 percent. California alone had an increase in property crime, and a very substantial one.

The impact of this increase on criminal cases referred to at the Federal courts has been, to say the least, dramatic. Compared to 2014, Federal criminal cases from California in 2015 increased by 161 percent; in 2016, they increased by 135 percent; and in 2017, they increased by 131 percent. And these figures do not include drug prosecutions; and by way of background, 80 percent of the illegal opioids in the Nation pass through our Southern District borders, as Judge Sabraw knows.

So, the question is, why have we experienced such an increase in Federal filings and caseload? Well, California's Public Safety Realignment—again, AB 109—eliminated State prison sentences for any conviction for drug dealing, which are now punished in most cases by county jail sentences of 30 days or less. Proposition 47 converted the possession of illegal drugs in lesser quantities from a felony to a misdemeanor, and as a result, statistics indicate that while addiction rates have increased in California, drug prosecutions have declined, while Federal referrals of drug cases have fluctuated between 1,900 and 2,500 over the past 5 years.

The incentive for county sheriffs and district attorneys to refer cases involving drug dealing to the Federal court system is increasing alarmingly as repeat offenders continue to churn through the State system again and again and are back on the streets a few weeks after initial arrest.

Finally, in several other areas of the law, including environmental, criminal immigration, and utilization of Federal natural resources, California has of course publicly proclaimed its intention to resist both the enforcement of Federal policy and Federal law with petitions for Federal injunctive relief. These cases often take many years to litigate, taxing the resources of the Federal courts.

To cite but one example, the case of *Habeas Corpus Resource Center v. The Department of Justice*, an entirely extralegal 2013 injunction by a Federal district judge in California blocked enforcement of the Antiterrorism and Effective Death Penalty Act, which was signed into law in 1996, wasting 3 years of court time before it was unanimously rejected by the Ninth Circuit in 2016.

We have a fantastic increase in immigration caseload, and as a result—and this has not quite yet hit the statistics—the petitions for habeas corpus are going to be increasing as well, therefore driving more Federal referrals. We also have—I believe that this is something that we have talked about previously, Mr. Chairman—matters involving intellectual property, trademark matters, and the like, both in the Southern District and in the Northern District, that are very complex and take many years to be adjudicated.

The vacancies at both the district court and appellate court levels in the Ninth Circuit are delaying justice for millions of people in its jurisdiction. The current situation is intolerable, actually punishing litigants who suffer the misfortune of not living in one of the other circuit. Thank you.

Mr. ISSA. Thank you. We will now go in order for questioning, and I would recognize the senior member present here today, the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you very much, Mr. Chairman. Thank you for holding this hearing. Judge Stengel, I will begin with you if I can.

Magistrate judges carry a significant part of the judicial workload in many but not all districts. Would you discuss the role that magistrates play in some districts, and why are some districts more willing to delegate the workload to magistrates than others?

Judge STENDEL. The utilization of magistrate judges varies from district to district. I am in the Eastern District of Pennsylvania; our protocol for the use of magistrate judges differs from the district court across the river in New Jersey; we are a little bit different from Delaware. It is fairly individualized. The magistrate judges, historically, conduct settlement conferences; they do trials by consent. In some of the more progressive courts—I will use that term—the magistrate judges are actually on the assignment wheel and take on some of the civil load. That is not in the majority of courts.

When we do our judgeship assessment, we do not count the contributions of the magistrate judges. We look at the workload of the district courts, the weighted caseload per district judge, and then, when we come to a number as to what their weighted caseload is, and then we look at how they involve magistrate judges, how they involve visiting judges, how they involve senior judges in determining whether their request for additional resources is reasonable.

So, you are absolutely right to identify a difference among the districts, and there is a Judicial Conference Magistrate Judge Committee which helps courts with the more effective utilization of their magistrate judges and their work.

Mr. CHABOT. Thank you very much, Judge. You used the word “progressive” courts. I used to consider myself progressive, but then the term got turned around up here and politicized, so I do not use it that much anymore, but I understand what you meant by it.

Judge MAUSKOPF, I will turn to you next. How has the ability for judges to select senior status impacted the judiciary and its workload?

Judge MAUSKOPF. Well, certainly, when one of our colleagues takes senior status that creates a vacancy on the court, so we look

forward to the presidential and congressional prerogative to fill that seat. But senior judges contribute significantly to the work of the Federal district courts. My court is a very good example.

We have 14 senior judges; they carry a caseload equivalent to 10 active judges. So, our senior judges, not just in my court but across the country, continue to be very active in the management and resolution of both criminal and civil cases. We consider the contributions of senior judges in courts before we make our recommendations for permanent judgeships.

Mr. CHABOT. Thank you very much. And I have got not quite 2 minutes left, so I am going to open this question up to anybody that would like to take a stab at it. Are there other changes by the judicial system such as greater use of technology, for example, or changes to procedural rules that could help to reduce the current backlog of cases? And whoever would like to take it, go right ahead. Judge?

Judge MAUSKOPF. I know that many courts have employed robust alternative dispute resolution systems. Our magistrate judges are often involved in settlement discussions. My court in particular has a very large mediation program employing outside practitioners to help mediate cases.

So, I think the Federal judiciary looks at ways to try and expedite the backlog of cases we have, particularly on the civil side. We always do a particularly good job of prioritizing the criminal cases because of the issues at stake there. But we are always looking inward for technology, for other ways to resolve the disputes and to clear the backlogs that we have.

Mr. CHABOT. Thank you very much. I have got a little time left. Judge Stengel, did you want to—

Judge STENGEL. Just to add to that, in some districts, particularly those with patent-heavy caseloads, the district judges have taken to putting time limits on trials. So, they will give the plaintiff 20 hours, they will give the defendant 20 hours, and they stick to those, and they have somebody in the courtroom who runs a clock. That is a case management technique that has been very efficient in those lengthy complex cases.

Mr. CHABOT. Kind of like playing chess.

Judge STENGEL. Yes.

Mr. CHABOT. Maybe a lot longer if we did not put limits on that when you do it. Mr. Chairman, thank you very much. I appreciate it and yield back.

Mr. ISSA. I thank the gentleman, and I do wonder, if you had one claim being adjudicated or 1,000 claims, how you would feel about the same 20 hours. With that, we go to the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. Judge Stengel, did the latest survey of the needs of the U.S. courts of appeals and U.S. district courts completed by the Judicial Conference in March 2017 produce any unexpected findings?

Judge STENGEL. I do not know that the findings were unexpected. We have a tremendous growth in the caseloads in certain courts. We do this process every 2 years, and so we were able to identify trends. But in terms of the caseload in New Jersey, the

caseload in Delaware, and the caseload in certain other districts in California, those continue to grow at a fairly dramatic rate.

There have been some changes in the law that have that have led to that. The TC Heartland decision, which has to do with venue in a patent case, has had an impact on the District of Delaware. The continued growth in multi-district litigation; at this time, about 35 percent of the civil litigation in this country is in the MDL process. States like New Jersey, where a number of the pharmaceutical companies have their principal place of business and are incorporated, get an inordinate number of those cases. So, that is something that we are tracking.

Judge Mauskopf, you may want to comment on the survey process in terms of any surprises.

Judge MAUSKOPF. We have no expectations in the survey process. As Judge Stengel said, we do keep our eye on trends and have a sense of the shifting caseload across the country, but our recommendations are empirically based, based on the data, caseload data, as of the time that we do the recommendations.

Mr. JOHNSON of Georgia. Thank you. Judge Sabraw, what are the implications when the judiciary is understaffed?

Judge SABRAW. Well, I can speak to that. In the Southern District, in particular with Operation Streamline coming, we are the only court on the border that does not currently have Operation Streamline. And so, when—

Mr. JOHNSON of Georgia. Can you explain what Operation Streamline is?

Judge SABRAW. Yes. That will be a result of the zero-tolerance policy and the immigration enforcement; so we are expecting, for example, the U.S. attorney to bring in 75 to 100 cases each day in our court. And so, it will clearly impact the level of resources we can devote to those types of cases.

Mr. JOHNSON of Georgia. These will be misdemeanor cases brought against persons coming across the southern border?

Judge SABRAW. Yes, sir. They will be, under 8 U.S.C. § 1325, misdemeanors, by and large.

Mr. JOHNSON of Georgia. And is it true that in the case of misdemeanants coming before the U.S. district courts that there is a right to have bond set in those cases?

Judge SABRAW. That is absolutely true. They do have a right to a bond determination. It is a different calculation from the felony filing, but they have a right to a bond hearing. Where it impacts—

Mr. JOHNSON of Georgia. They have a right to a bond to be set—

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia [continuing]. For them, is that correct?

Judge SABRAW. Yes, they do. They have a right to a bond determination and to have a bond set, and the impact—

Mr. JOHNSON of Georgia. And that has to be an individualized determination as to the bond; it cannot be, like, a preset bond, but it has to basically be an individualized consideration before the judge sets a bond.

Judge SABRAW. That is exactly right. It has to consider flight risk, danger to the community. There is no presumption of deten-

tion, so bonds are a very important consideration, particularly for low-level offenders like misdemeanants.

I would like to say it does increase the workload for district judges, because what we are seeing is a number of appeals of bonds from the magistrate judges to the district judges, and our district judges in the Southern District are on the wheel for misdemeanor trials. Though we do not have to do that, it is a way to best utilize resources and serve our community.

Mr. JOHNSON of Georgia. So, basically, Operation Streamline has the potential to gum up the workings of the operation of the Southern District of California.

Judge SABRAW. It will have a dramatic impact. We are presently trying to staff the influx of cases that we anticipate. As I mentioned, the U.S. attorney anticipates bringing in as many as 75 to 100 cases per day, so we will—

Mr. JOHNSON of Georgia. Per day?

Judge SABRAW [continuing]. Need additional magistrate judges, additional courtroom space, and, of course, interpreters, CJA attorneys, Federal defenders. It has a court-wide impact for sure.

Mr. JOHNSON of Georgia. Now, what about juveniles? Will juveniles who have been separated from their parents be coming before the district court also?

Judge SABRAW. I do not anticipate that. Most of the juveniles who are separated are processed separately through various statutes. They are held through Office of Refugee Resettlement. Most of them are detained pending removal proceedings. We would only see juvenile offenders if another crime is committed; for example, if they have drugs on their person. In our district it is not uncommon to have a juvenile come across with a backpack of marijuana. Those types of offenders would come into our court, but they are relatively rare.

Mr. JOHNSON of Georgia. I thank you all for your testimony today, and I yield back.

Mr. ISSA. Thank you. Just because I am not familiar with this, and his question was very germane, people who have come unlawfully over the border, it is only a misdemeanor. But when you are giving a consideration to a bond, is there some sort of statistical likelihood, on average, of how many of these people will show up if you grant a bond?

Judge SABRAW. I know that that is heavily debated. I do not have those statistics. I am simply looking as a judge giving an individualized consideration of what flight risks are, what the danger to community is. The statistics I know the Department of Justice and others have, but we do not have those.

Mr. ISSA. Thank you. We now go to the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman, and I want to thank the panel for being here today. Idaho is in urgent need of another Federal judgeship. The last time Idaho received an Article III judgeship was in 1954. The 64-year wait is unprecedented, and it keeps getting longer, obviously.

My concern is not just about the timing. Over the past 6 decades, Idaho's population has nearly tripled. In fact, the U.S. Census recently announced that Idaho is the fastest-growing State in the

country, and in March, Forbes Magazine named Idaho's capital, Boise, the fastest-growing metro area in the United States.

Despite this impressive increase, Idaho still has fewer judgeships than States such as Alaska, Montana, Wyoming, Maine, and South Dakota, all who have smaller populations and/or smaller weighted caseload. Idaho's insufficient number of Article III judges is also surprising in light of the fact that its docket continues to outpace those of other similar communities and courts. Since 2001, criminal filings in Idaho have increased by 163 percent and by 41 percent over the last 3 years alone.

Also, due to the recent announcement of two new U.S. attorneys for Idaho, the number of criminal cases will only increase. Further, despite a national trend of a reduction in civil cases, the number of civil filings in Idaho has remained relatively consistent over the last 10 years. This extremely heavy caseload is currently being managed by three Federal judges, two who are fulltime and one who is in senior status.

The senior judge carries only a 75 percent caseload and obviously could retire any day. In fact, I think the reason he has not retired is because we do not have an additional judge. Once he retires, one of the two remaining judges plans to take senior status with a reduced caseload, leaving only one fulltime Article III judge in the District of Idaho and thereby creating an immediate judicial emergency.

Federal judges from neighboring districts have acted as visiting judges to alleviate the burgeoning caseload in Idaho. In 2017 alone, the District of Idaho engaged the help of 25 visiting judges. Between 2012 and 2017, visiting judges spent over 832 hours away from their own states to hear Federal cases in Idaho. While their temporary assistance is appreciated, it has created uncertainty among litigators, who struggle to prepare cases for these particular judges, about whom they know very little, if anything.

Finally, the burden of Idaho's massive geography is an important factor for the Conference to consider when issuing its decision about a new judgeship. The entire State of Idaho is one district that encompasses over 83,000 square miles and two time zones.

Additionally, the State is subdivided into three divisions, each with their own Federal courthouse. Traveling between these three venues includes stretches of 222 to 458 miles, and air transport is not an option in some of those cases. This is roughly the equivalent to driving between Washington, D.C., Pittsburgh, and Boston. The Federal judges in Idaho spend significant amounts of time traveling between the three courthouses.

I know you are aware of all these things, but I just wanted to emphasize how important the dire need that we have in Idaho is. Judge Stengel, given these facts, what is your response to Idaho's need for a third Article III judgeship?

Judge STENGEL. The Judicial Conference strongly supports an additional permanent judge for the District of Idaho for the reasons you cite. The weighted caseload certainly supports the additional judgeships.

And when I talked earlier about qualitative and quantitative factors, the qualitative factor here that is so profound is the distance that the judges are required to travel among the divisional offices.

You correctly State it is 222 miles and 458 miles, and that is an extraordinary burden on those judges. So, we are well aware of those factors and strongly support the additional permanent judge in Idaho.

Mr. LABRADOR. Thank you. And why has Idaho had to wait longer than any other State for an additional Federal judge?

Judge STENGEL. We do the survey every 2 years. Our recommendation for Idaho I think has been consistent. I cannot speak to why that has not been acted on.

Mr. LABRADOR. As you are looking at your determination, does the Conference consider that justice may not adequately be served when a State has an insufficient number of Federal judges?

Judge STENGEL. There is no question, and that is why it has such an emergent nature, not only in the courts with judicial emergencies, which deals more with vacancies, but in the courts such as your State, where justice delayed is justice denied. And the fact that the resources are less than they need to be is a problem with the administration of justice.

Mr. LABRADOR. As you know, we have some amazing judges in the State, and they are doing the best they can with the resources they have.

Judge STENGEL. Absolutely.

Mr. LABRADOR. I have a bill before this Congress trying to get an additional judgeship, and I hope that we can get that done hopefully before the end of the year. Thank you very much for your time.

Mr. ISSA. Would the gentleman yield?

Mr. LABRADOR. Yes.

Mr. ISSA. Would this presume that you embrace equally the other recommendations of the Judicial Conference in a combined bill that would, among other things, reduce by one the Wyoming judgeship, which apparently is the pay-for for your getting this additional one? Is that envisioned by you that they are not only right in your case, but they are right in all cases?

Mr. LABRADOR. I will support anything that the commission advises and anything that we can get passed through this Congress.

Mr. ISSA. I thank the gentleman. We now go to the gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman. The gentleman from Idaho makes a compelling case for a new Federal judgeship. I commend him for that argument.

Mr. Chairman, when Attorney General Sessions announced the adoption of a zero-tolerance policy for undocumented people crossing the border, any adult believed to have committed any crime, including illegal entry, is, as a result of that, prosecuted for committing a crime.

Now, the scope of that zero-tolerance policy is expansive. It ends prioritizing the prosecution of and deporting those people who are dangerous or pose a serious threat to our national security. It now includes prosecuting not just those deemed a threat, but all people who have committed the misdemeanor by crossing the border illegally for the first time. These people are now being prosecuted in Federal court for a misdemeanor crime; we have talked about that already. If convicted, they are usually provided time served; how-

ever, if the person has illegally crossed the border on prior occasions, they can be sent back to jail to serve more time and are then deported from the United States.

In a June 19th article in The New York Times that I would ask unanimous consent to submit for the record—

Mr. ISSA. Without objection, so ordered.

[The information follows:] <https://docs.house.gov/meetings/JU/JU03/20180621/108453/HHRG-115-JU03-20180621-SD003.pdf>

Mr. DEUTCH [continuing]. It is being reported that the administration's zero-tolerance policy of criminally prosecuting all people crossing the border is flooding our Federal courts, and we have heard some of that this morning. This policy is now forcing Federal judges to prioritize and divert finite resources and time to misdemeanor first-time border crossing cases. While more serious criminal cases, including drug cases, human trafficking cases, and other serious Federal offenses, are pushed further and further down the dockets.

This enormous increase in immigration cases involving illegal border crossings is especially acute along the border. Texas, Arizona, and California have seen Federal courts—Judge Sabraw, you touched on this—overrun with criminal prosecutions of undocumented immigrants. In fact, this article reports that in Tucson the court has already heard 6,519 immigration cases this year. For comparison, during all of last year the Tucson court heard 10,869 immigration cases.

It also reports a study by Syracuse University that found that the zero-tolerance policy has caused Federal criminal prosecutions of undocumented immigrants to increase along the southwest border by 30 percent in April over March. Almost 60 percent of all Federal criminal prosecutions in April were for violations of immigration law.

So, the massive increase in cases has forced the Federal courts to pursue what is referred to, Judge Sabraw, as Operation Streamline, what others have referred to as an “assembly line of justice” approach. I am not sure who gave it that name, the Operation Streamline, because from what we have read the reporting says that immigrants often appear in court in large lines to have their cases quickly disposed of in one plea.

Now, Federal courts have been forced to resort to this form of dispensing justice. The large number of people being prosecuted also is burdening not just the Federal judges but the courtroom staff: Clerks, attorneys, interpreters, marshals, and other security staff, as well as the actual courthouses and the facilities. Many of these people appearing in Federal court are fleeing from their home countries to seek safety in our country; they are fleeing horrific violence and deadly gangs, and this is now how we treat them when they get here: with a jail cell, assembly-line justice, and separation from their children. This is the way we show humanity to those who are fleeing persecution and violence, and it is abhorrent.

The question I have is whether you are concerned that our Federal courts—because we have been forced to resort to this assembly line to dispense with the enormous volume of misdemeanor immigration cases—what their impact is on your ability to hear the cases that really present national security threats. The drug cases

that are not being heard; the human trafficking cases that are not being heard because of this policy. Judge Sabraw, can you comment on that?

Judge SABRAW. It does present a real challenge, because with the flood of misdemeanor cases that come in, as I was mentioning to Ranking Member Johnson, it necessitates the involvement of district judges. So, we are hearing many more bail review hearings; we are also conducting more misdemeanor trials—I have one on calendar a week from today. So, there is no question that it does distract from the district judges' obligations. We can simply—

Mr. DEUTCH. I am sorry, Judge, to interrupt. It distracts from which obligations?

Judge SABRAW. To attend to other cases, felony cases and civil cases.

Mr. DEUTCH. Can I just stop for a minute? Mr. Chairman, there has been a lot of talk over this week about the family separation policy, and we have been told that we need this because we care about security, and we have to take seriously the rule of law. The fact is there are felony cases that are not being heard right now by our Federal judges because those cases are being pushed down the docket so we can hear these misdemeanor cases instead.

I do not understand how it is that that advances our national security when all of these other cases, so many of which directly implicate our national security dangers posed to American citizens, people who have been arrested for felonies, justice is not being served because of this policy. That is a really important point for us to acknowledge, and I greatly appreciate the opportunity to engage on this topic with these judges today, and I yield back the balance of my time.

Mr. ISSA. I thank the gentleman—

Mr. DEUTCH. Thank you.

Mr. ISSA [continuing]. For yielding back. The gentlelady from California, is recognized.

Ms. BASS. Thank you, Mr. Chairman. Thank you for having this hearing. And I want to thank the witnesses for coming and taking their time with us this morning. Mr. Kahn, I know that you are the chairman and CEO of Kent Holdings and Affiliates, and I was wondering if you could describe what that company is.

Mr. KAHN. Yes, I would be happy to, Congresswoman. It is a family-owned company that at one point in time was one of the largest privately-owned masterplan community developers in the United States. And it still exists today in various forms and developing property and owning properties throughout California and Nevada.

Ms. BASS. And I know that you have a background, I believe, in criminal justice, and I was wondering if you could talk a little bit about that.

Mr. KAHN. I would be happy to. I am of counsel to one of the largest law schools in San Diego, the Thomas Jefferson School of Law, school acting dean of the school, and chairman emeritus. For the past 15 years, I have served as a trustee of the Criminal Justice Legal Foundation, the only full-time organization in the country to stand side by side with all the United States attorneys and district attorneys of the United States on major criminal matters.

Ms. BASS. You are also a deputy sheriff reserve, right? And then you retired?

Mr. KAHN. Yes, ma'am. I had a 25-year career with the San Diego Sheriff's Office, retiring at the rank of captain.

Ms. BASS. When did you retire?

Mr. KAHN. 1995.

Ms. BASS. 1995. So, AB 109 was in 2005, I believe, and I actually was in the State legislature and was a part of AB 109. And so—

Mr. KAHN. I recall that.

Ms. BASS [continuing]. Wondering if you were aware of why AB 109 was passed, why it was an issue that was passed in California.

Mr. KAHN. I know the highlights of it, but perhaps you could refresh my memory.

Ms. BASS. Well, AB 109 and many of the criminal justice reform propositions that you mentioned was because the courts ordered the State of California to reduce the prison population.

Mr. KAHN. Yes.

Ms. BASS. The courts ordered and took over control, especially the healthcare of prisoners, because we were doing such a poor job as a State. And so, AB 109 was a response to reduce the prison population instead of the courts taking it over. So, several of the reforms that you mentioned—Proposition 47 and some of the others—you know, the verdict is out. There was a report that was published just this month on Proposition 47, and the point of Proposition 47 was one of several measures that were led by communities to do criminal justice reform in California.

And so, there is actually no evidence that violent crime increased as a result of Proposition 47. That is a report that was just released this month. There is some evidence that Proposition 47 impacted property crime and that property crimes have come up. So, when you were describing the crime rate, I mean, both the chairman and I are from the same State, but I did not recognize the State you were describing.

Because, actually, this report that was also released in June of this month says that the California crime rates remain comparable to the low rates observed in the 1960s, even with dramatic reductions in incarceration. So, one of my concerns about some of the ballot measures that we have passed is that we have not passed the appropriate community-based programs to address that population, meaning reentry programs, and so we definitely need to do that. But I would just take issue with what I believed I saw was a relationship between doing criminal justice reform and a rise in crime when that does not really meet with, you know, what reports are coming out about the crime rate in California.

Mr. ISSA. Would the gentlelady yield?

Ms. BASS. So long as I do not lose my time, I will.

Mr. ISSA. Could you stop the clock for a moment? Thank you. Because I have a question. Notwithstanding Mr. Khan's testimony, you are not disputing that the Federal caseload is rising in California, including criminal caseload, right?

Ms. BASS. No, I am not disputing that.

Mr. ISSA. OK, I apologize.

Ms. BASS. Because I do not know. I am not agreeing or disagreeing about that.

Mr. ISSA. OK. Because that was Judge Sabraw's testimony, and I think that the statistics that were given to us, which is the primary reason for today's hearing—and I understand that. We Californians will probably debate AB and SB and whatever forever. But I just wanted to make that clear, because I think that is important. And the gentlelady can continue.

Ms. BASS. OK, so, reclaiming my time, let me be clear: I am not agreeing or disagreeing with that. I do not know that. But what I heard from the witness concerned me, because California is on a trajectory of criminal justice reform that I certainly hope is followed by our Federal Government, and that I think the verdict is out in trying to say that crime has increased, or the caseload has increased because of the criminal justice reforms, and that is the linkage that I felt that I heard from the witness.

Mr. JOHNSON of Georgia. Would the gentlelady yield?

Ms. BASS. Sure.

Mr. JOHNSON of Georgia. Thank you. I agree with the gentlelady. I gleaned from the comments that that was the argument that was being made, and I thought that it was perhaps outside the boundaries of this hearing. I yield back.

Mr. ISSA. All time having expired, we now go to Mr. Cicilline.

Ms. BASS. Thank you, Mr. Chair.

Mr. CICILLINE. Thank you and thank you to our witnesses for being here. I think, you know, all of us are generally inclined to support the recommendations of the Conference as it relates to additional Federal judges.

I do think it is important to understand this request in the context in which we are currently living. And that is, you know, we have a President who has nominated—you know, we all understand Presidents nominate judges that reflect their political views. That is nothing new in America.

But I think what we are seeing in this current administration is the presentation of judicial candidates the lack of qualifications and have views well outside the political norms. For example, one who made a comment that he supported conversion therapy and that transgender children are part of Satan's plan; another nominee who was incapable of articulating the Daubert standard of what a motion in limine even meant; another nominee who led efforts to bar local governments from taking down Confederate monuments; another nominee who during her confirmation hearing refused to say whether the *Brown v. Board of Education* was properly decided.

So, I think those of us that are interested in responding to this demand always worry that this is not a normal moment, and some of the greatest concerns that many of us have are these lifetime appointments by this administration and the impact they will have on our country and on the society in which we live. And so, if you sense some hesitation, I hope you recognize that is the context.

The second point I want to make is a point you made, Judge Sabraw, that this new influx of immigration cases is, just by definition, crowding the docket so that serious criminal cases—things like robberies of financial institutions; crimes of violence; drug trafficking; human trafficking; terrorism cases; hate crimes—are taking a lesser priority than these immigration cases.

And in fact, the American Immigration Council reported very recently that violations of 8 U.S.C. § 1325 and 1326, the entering the United States without documentation, have become the most Federally prosecuted offenses, consisting of almost half of the prosecutions in Federal court. Now, Attorney General Sessions in 2017 instructed Federal prosecutors to make entry-related prosecutions a high priority nationwide, and in April of this year he doubled down on this and issued a zero-tolerance policy that required each United States attorney's office to prosecute all DHS referrals of illegal entry. So, this problem is only going to compound itself under the zero-tolerance policy. And when you look at the determination this administration has made of prosecuting every single one of these cases and giving them a priority, my question is, what will that impact be, and is that reflected in the recommendations that the conference is making? Because this is all happening now.

Has anyone looked at if these immigrations bills passed that have been proposed that we are going to vote on today, and there is zero-tolerance policy continues, I did notice that the places where you are asking for the greatest growth in Federal judges happens to be in the border States, which I am sure is not just a coincidence. So, I would like anyone who is willing to speak on what the impact is of this policy of charging every single person, even those seeking asylum, with illegal entry now becoming the highest reason for Federal prosecutions, the greatest number of cases, almost half the Federal docket, and it is going to explode even more? What will be the impact that?

Both on your operations in the court, but also what is the impact on our country when you have to have half your docket or more of people who are fleeing violence from Honduras or El Salvador, fleeing to protect their lives, and that has to take priority over someone who has committed a violent crime or drug trafficking in communities where our constituents live?

Judge STENGEL. I think the—

Mr. CICILLINE. Judge—

Judge STENGEL. Sorry.

Mr. CICILLINE. No, I would love to hear from all three of you.

Judge STENGEL. I think the answer to your specific last question is, has the recommendation taken into account the recent policies by the administration? And the answer to that would be no. The assessment of the workload that we made was completed about 2 years ago.

It is no coincidence, though, that there are recommendations for judgeships in a number of the border courts, because that has been a significant issue with the judiciary's workload for many years. And those have been unique among the judiciary. The workload in Southern California, Arizona, western Texas is very different from the caseload in the Eastern District of Pennsylvania or Ohio or other States or districts not near the border.

Our judgeship recommendation takes a comprehensive look at addressing judgeship needs throughout the Nation, but clearly the immigration cases have for a number of years been a source of concern and a reason for our recommendation that the border States have additional judgeships.

Mr. CICILLINE. Could I just ask each of the panelists, does anyone disagree with the assertion that this policy of requiring prosecution and making it a high priority means that those other crimes that I have described will take less of a priority or will crowd out some part of the docket in a meaningful way? Judge Sabraw, do you have—

Mr. ISSA. All the judges may answer briefly.

Judge MAUSKOPF. I think in some courts it may. I think it will definitely create a burden for every court that has an influx of these cases. And it will be up to the courts to determine whether there are efficiencies that can be employed to address these concerns or how best to effect it, and in many cases, it may affect the prioritization of cases.

Judge SABRAW. The priority of district judges is with felonies first, and in the Southern District our felony filings have grown enormously: 62 percent in the last year. It is the felonies that can displace our ability to get to civil cases, which causes delay.

To be clear, the zero-tolerance policy has an impact on the court, but it most dramatically impacts magistrate judges, because that is peculiarly within their jurisdiction. Where it occupies some of the district judge resources is, as a court, we would then begin to hear more and more appeals at the magistrate judge level for bond determination, and as a court our district judges have agreed to be on the wheel to hear misdemeanor trials.

So, it does use additional judicial resources; there is no question. But I do want to be clear that our priority has always been with the adjudication of felony cases.

Mr. CICILLINE. Thank you. Thank you, Mr. Chairman.

Mr. ISSA. Thank you. And following up, because I think, the gentleman's question is a good one, you have an experience in your court with very large amounts of prosecutions, particularly after the Carol Lam replacement and the new policies during the Bush administration, where I think you were you were a little junior on the totem pole back then. You want to go through what efficiencies you have been able to find in the Southern District of California?

Judge SABRAW. Well, we are a patent pilot court, thanks to the chairman, and—

Mr. ISSA. Well, thank Chief Judge Moskowitz for that.

Judge SABRAW. Yes, absolutely. And as part of that process, we have engaged in determining how best we can process civil cases, for example. So, we use our magistrate judges for great resources; they handle settlement conferences and all of the discovery-related matters. We are active in case management on civil cases, so we try to set firm deadlines, including trial times, as Judge Stengel mentioned. When we adjudicate civil cases, we routinely set time limits. So, we believe we are as efficient as we can be in handling civil cases and processing them as quickly as possible.

Mr. ISSA. When Carol Lam was fired during the Bush administration for not prosecuting, for actually having, I guess, an infinite tolerance nearly for not the undocumented but particularly the coyotes, the caseload was reversed under the new U.S. attorney, and you then had a large amount, particularly of traffickers and to a lesser extent people coming across.

My understanding is in San Diego you “gang,” if you will, those cases. One judge gets a long day of those cases, and a U.S. attorney gets a long day. Can you go through that process to the best, you know, put it into the record?

Judge SABRAW. What is happening presently is in a state of flux. We are working with the U.S. attorney’s office to establish the Operation Streamline process. We are the only border court of the five that does not currently have Operation Streamline, so we are using Arizona as a good example, because it is within the Ninth Circuit, and there is good circuit court case law as to what we can and cannot do.

We cannot engage in mass shackling; we have to have a full and robust Rule 11 plea colloquy with each of the persons appearing. That imposes limitations on our ability to handle large numbers of cases. Arizona, for example, caps out its processing at 75 per day—

Mr. ISSA. Per judge?

Judge SABRAW. Per magistrate judge. They dedicate one magistrate judge to one courtroom, and they do 75 misdemeanor cases per day. We likely will model parts of our system after the Arizona system. It will occupy one, perhaps two magistrate judges per day, one or two courtrooms per day, and then, as I mentioned, the shift in the workload for district judges is the amount of appeals and misdemeanor trials that will come from the influx of 75 to 100 misdemeanors.

Mr. ISSA. I am going to break in and ask Mr. Cicilline for a follow-up. So, if I understand the process both in Arizona and as it will be in San Diego and other areas, the initial front end of the processing—the decision that there is zero tolerance; that everyone who breaks the law is held accountable to either plead guilty and leave or plead innocent and go through a process, first with the magistrate, and if they really want to, with an Article III judge—the front end of the process is pretty efficient.

You can plead out and be gone very quickly, but there is a record rather than simply a removal with no records so that somebody coming in six, seven, eight times technically has never been convicted of a misdemeanor. That is the difference that this 75 a day in front of a magistrate creates. Is that correct?

Judge SABRAW. Yes, it is front-loaded, by and large. Most of the misdemeanants will enter a guilty plea and be sentenced and then serve 15 to 45 days.

Mr. ISSA. Or just they are already gone that long; they are out.

Judge SABRAW. Yes, it could be a time served sentence. Some of the defendants may elect not to plead guilty, and there the U.S. attorney has the ability in certain cases, depending on criminal history and number of prior illegal entries, that they can then charge a felony, the so-called FLIP cases.

Mr. ISSA. I do not want to deal with the zero tolerance, but I do want to deal with the process, if you will, because I think that is where there is an important question that lead to zero tolerance. If you have a zero tolerance, and people continue to come across the border, eventually, these are not misdemeanors but rather repeat offenders who are charged with felonies. Is that correct?

Judge SABRAW. Yes.

Mr. ISSA. So, if you do not have zero tolerance, you never get to the felony, and you end up with people who are not dissuaded from continuing to come over the border until they get away with it, basically. Correct?

Judge SABRAW. Well, I am not in a position to comment on the charging decision. It is my understanding that if a person has a number of prior illegal entries and no prior criminal history that they may be charged on a felony count. I am not certain of that, but there are many nuances in that regard.

Mr. ISSA. Sure, but you have certainly seen cases where somebody is habitual and is being charged with a felony, is that correct?

Judge SABRAW. From my understanding, the government in the past has focused on recidivist offenders, those with underlying criminal history, or those who are committing a felony in addition to illegal entry, like smuggling drugs.

Mr. ISSA. Smuggling drugs or the actual coyote activities of bringing people across.

Judge SABRAW. Yes.

Mr. ISSA. Mr. Cicilline, did you have a follow-up?

Mr. CICILLINE. Yeah, I just want to make one point. This front-ended position, which I think you are questioning, Mr. Chairman, suggests it was sort of a routine or efficient process. I want to just underscore the entry of a guilty plea or a plea of any kind and the advisement of rights, particularly with the use of a translator—this is a labor-intensive process that has to be done well and cannot be done in large groups. And having practiced criminal law for many, many years, the initial appearance, the bond determination, and the plea is a time-intensive process that for 75 or 100 people is an enormous devotion of resources. So, I wanted to make that known.

Mr. ISSA. And I will give you additional time. But the reason I asked the question the way I did is that policies change from time to time. My question, and the nature of this hearing, is making the case for the need for 66 additional judgeships. And so, that is why the question is, how much time does it take, and where are the efficiencies?

And that is why when Judge Sabraw answered that the vast majority of this goes to magistrates, I think for Judge Stengel that means that there was not a lot loaded into it for the front end. Only for those who then obviously want to be in front of an Article III judge, which is part of his calculation and I think part of your statistics. But you do have one more follow-up.

Mr. CICILLINE. Yeah, the second point I wanted to make is, you know, early this morning on this very subject we had an official statement from the President of the United States by way of Twitter, which is a statement of the President—

Mr. ISSA. Without objection, that statement will be placed in the record.

Mr. CICILLINE. No, I would like to place it in the record. “We should not be hiring judges by the thousands, as our ridiculous immigration law demands. We should be changing our laws, building the wall, hire border agents and ICE, and not let people come into our country based on a legal phrase that they are told to say as their password.” Of course, everyone is free to interpret that in any way you want, but I thought it should be part of the record.

Mr. ISSA. And without objection, it will be part of the record.

[The information follows:] <https://docs.house.gov/meetings/JU/JU03/20180621/108453/HHRG-115-JU03-20180621-SD002.pdf>

Mr. ISSA. Mr. Johnson, you had one final follow-up.

Mr. JOHNSON of Georgia. Thank you, Judge Sabraw. So, Ninth Circuit practice is 75 cases per day per magistrate under Operation Streamline.

Judge SABRAW. That is the Arizona district court practice.

Mr. JOHNSON of Georgia. Which probably the Southern District of California will adopt?

Judge SABRAW. We are looking at that issue.

Mr. JOHNSON of Georgia. An average magistrate works, what? About eight hours a day?

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia. Including lunch for the hour?

Judge SABRAW. It depends on their duties.

Mr. ISSA. The hardworking magistrates in the Southern District would probably say they work far beyond that.

Mr. JOHNSON of Georgia. Well, I think, just taking it from the standpoint of eight hours a day, 75 cases per judge per day, that equals about 6 minutes per case. And for a misdemeanor coming before the magistrate for a determination as to whether or not they are going to plead guilty or not guilty, an arraignment hearing is basically what it is going to be. Correct?

Judge SABRAW. Yes, it could include an arraignment, an advisal with respect to a Rule 11 plea colloquy.

Mr. JOHNSON of Georgia. And so, in other words, you advise them of the charge; the nature of the charge; the sentence or the range of punishment that could be imposed if they plead guilty; you find out whether or not they can understand the proceedings, and if not, you have to offer an interpreter. Is that not correct?

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia. And then, once the interpreter is in place, and they understand that what they are accused of and the range of punishment, they have to be advised of their right to counsel, is that not correct?

Judge SABRAW. Yes. The process contemplates many of our CJA attorneys and Federal defenders who are Spanish speakers, and it allots a period of time early in the morning for those attorneys to meet and counsel their clients prior to being brought into court. So, the court session often occurs much later in the morning or first thing in the afternoon.

Mr. JOHNSON of Georgia. So, these misdemeanants will have already spoken to lawyers before they get to the magistrate judge for their arraignment?

Judge SABRAW. It depends on the court, but that is the system that we are contemplating.

Mr. JOHNSON of Georgia. Are you going to have to ramp up on your public defenders?

Judge SABRAW. Absolutely do.

Mr. JOHNSON of Georgia. Do you know whether or not funding is in place for that?

Judge SABRAW. There presently is, but we are in discussions now with Federal defenders and CJA panel attorneys to staff this influx.

Mr. JOHNSON of Georgia. In addition to being advised of the charges against them, the range of punishment, the consequences of a plea of guilty or not guilty, they also have a right to a trial in the case. Is that not correct?

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia. They have a right to a trial by jury.

Judge SABRAW. Not on misdemeanors. It would be a bench trial.

Mr. JOHNSON of Georgia. Not on a misdemeanor? OK. And they have a right to a bench trial, which would mean witnesses would have to be brought in to testify against them to make the case as to whether or not they illegally entered the country or not. Is that not correct?

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia. And the person, during their arraignment, has to be advised that if they cannot afford an attorney an attorney must be appointed or can be appointed to represent them if they so request.

Judge SABRAW. They are counseled by their attorney, and they are admonished by the court.

Mr. JOHNSON of Georgia. So, if all of these misdemeanants charged with illegally entering the country choose to go to trial, then the magistrate would have to transfer the case to the district court for trial?

Judge SABRAW. That would depend on the court. Misdemeanors can be exclusively handled by magistrate judges, so in some districts the magistrate judges do all of this work. In our district we are a very collaborative group, and our district judges have agreed to be on the wheel to handle misdemeanor trials.

Mr. JOHNSON of Georgia. And then, after a trial, if the person accused is found guilty, they have a right to appeal a conviction of a misdemeanor, is that correct?

Judge SABRAW. Yes.

Mr. JOHNSON of Georgia. And then, while they are appealing the conviction, is there a right to bond for a misdemeanant convicted of a misdemeanor?

Judge SABRAW. There can be, yes. That is a consideration that is available in all cases, including felonies.

Mr. JOHNSON of Georgia. OK. Thank you.

Mr. ISSA. Thank you. Now, I am going to ask the question we have all been waiting for. Judge Sabraw, we have a wall in San Diego. If we build the wall, do we not in fact reduce the amount of people who are in the country because they are apprehended outside the country? In other words, one of the virtues of the wall is in fact to allow the Border Patrol to do their job, notwithstanding people who claim asylum and so on. But for people who are coming over, particularly in our region, the wall in fact provides some of that situation in which you do not have to hear the cases. Is that not true? As a San Diegan?

Judge SABRAW. I would not be able to speak to that. I do not know. I am simply there as a judge to adjudicate the cases that come before me.

Mr. ISSA. Well, the President did tweet out today, "Build the wall." I have been down to the border, and I would hope that all the Federal judges would take the opportunity to see the work that is done at the border, at least for purpose of civil rights, and recognize that the three-fence system does in fact dissuade people from getting over the border.

A couple of quick questions in closing. We went through this whole question of bond, but people who enter the country illegally have no attachment to the United States by definition in most cases. In other words, the people you see in your court, and the magistrates see, they are not in fact connected in the United States.

They do not typically have a business; they do not typically have a home; they do not typically have other things which would cause them to meet the normal criteria to be entitled to be not a flight risk. Are those not some of the criteria you have to work with? Any of the judges.

Judge SABRAW. That is exactly right. Those are flight risk characteristics you look to.

Mr. ISSA. And the statistics that are available from the Department of Justice will be placed in the record if there is no objection, because I believe that they are telling that the reality is if you release these people, they thank you very much for the opportunity to accomplish what they came to accomplish, and you do not see them again, because the only penalty if they get caught is the same penalty that you were going to deliver to them anyway, which was removal.

Mr. ISSA. I want to go into one final area very briefly, because we are going to put some proposed legislation out to deal with your requests for 66 judges. What we find, of course, is 17 will be in California and the rest of the Ninth Circuit, and five will be appellates of the Ninth Circuit. So, the greatest single area happens to come to the largest court.

Currently, there are over 30 judges on the Ninth Circuit. As a matter of fact, I think there is going to be right close to 40 if we add these five additional appellate judges. So, Judge Stengel, in your circuit, how many judges are on your appellate court?

Judge STENGEL. We have, I believe, 14 judgeships en banc.

Mr. ISSA. Fourteen? And they meet en banc infrequently, but they do meet en banc.

Judge STENGEL. Several times a year.

Mr. ISSA. And, Judge Mauskopf, how many are on yours?

Judge MAUSKOPF. I do not know the exact number, I am sorry to say.

Mr. ISSA. But you have seen your cases go before both a three-judge panel and an en banc?

Judge MAUSKOPF. Yes.

Mr. ISSA. And, Judge Sabraw, do you have any similar history in the Ninth Circuit?

Judge SABRAW. We have 29 active spots, and the request, of course, is for five additional.

Mr. ISSA. Active spots? I think there are 33 authorized, though, are there not? I think there are vacancies.

Judge SABRAW. My colleagues can correct me, but I thought there were 29 active.

Mr. ISSA. But the reality is that they do not do full en bancs. They have never done—during your now-long tenure as a Federal judge—29 judges meeting to consider a case. So, there is no such thing as full en banc in the Ninth Circuit.

Judge SABRAW. It is an 11-person panel.

Mr. ISSA. So, you get a mini self-selected, who is available, who wants to take these cases, with no particular flavor being definable as the decision of the Ninth Circuit, correct?

Judge SABRAW. My understanding is it is a random computer-drawn allotment of 11 judges.

Mr. ISSA. OK. So you get random justice in the Ninth Circuit.

Judge SABRAW. Well, I think the computer simply identifies 11, and they may be situated anywhere within the Ninth Circuit.

Mr. ISSA. During the post-retirement tenure of Byron White, Justice White, he did a commission that suggested breaking administratively the Ninth Circuit into functional subsystems, each of which would be able to have en banc with its then-9 or -10 judges.

And I would like each of you to comment on whether, assuming that we do not break up the Ninth Circuit, as there are bills to do, but rather administratively create in this case—Justice White's thoughts—three divisions, each of which would be about 11 or 12 judges. Could I get your opinions on whether you think that would be an improvement over the randomization of a very large circuit today?

Judge STENGEL. I do not know if that would be in improvement as a matter of judicial administration. We can speak only to the caseload demand and the need for judgeships. However those would be split up, if there was to be some legislation, we would support the needed resources which have been demonstrated by our study throughout the Ninth Circuit. And certainly, those could be split up if the Congress would choose to do something.

Mr. ISSA. And I want to follow up briefly, because you have studied the utilization of resources.

Judge STENGEL. Yes.

Mr. ISSA. The Ninth Circuit, after the additional five judges, will be larger by a factor of two than any other court. In the case of each of your two circuits, would you support combining your circuit with some other circuit to get the same efficiency the Ninth Circuit has, which is the alternative to dividing it?

Judge STENGEL. I am afraid that may be above my pay grade.

Mr. ISSA. But from an efficiency standpoint, is there some magical efficiency that the Ninth Circuit gets that your circuits do not?

Judge STENGEL. I am not aware of any.

Mr. ISSA. So, the idea of "bigger is better" does not particularly play in the Eastern District.

Judge STENGEL. Well, in the Third Circuit—

Mr. ISSA. The Third Circuit, right.

Judge STENGEL [continuing]. Certainly, the processing of cases is different circuit to circuit. The 11th circuit, for example, has some unique case management approaches.

Mr. ISSA. But I am talking about the—it is really the efficiency of the appellate level in addition to. Obviously, the Ninth Circuit has a lot more judges to move around.

Judge STENGEL. Right.

Mr. ISSA. That is one of the benefits that they talk about. And I will close, because we are going to go vote, and I do not want to keep you. And the gentleman has a couple of very short points. If you would respond for the record on if you see any efficiencies in combining adjacent circuits to be more like the Ninth Circuit versus some sort of administrative breaking up of the Ninth Circuit to enjoy the same sort of en bancs as your two circuits enjoy, I would appreciate it. And Judge Sabraw, you live with it, so any comments you have would be fine.

Judge SABRAW. Well, I am not on the Judicial Resources Committee, so I do not have the numbers.

Mr. ISSA. I am not forcing you to answer, though.

Judge SABRAW. All I would say is that I think the efficiencies are the same circuit-wide. What the Judicial Resources Committee is doing is simply looking at adjusted filings in the circuit court and then empirically assigning a number of judgeships that are needed. Whether Congress elects to split or divide circuits is within your prerogative.

Mr. ISSA. And so, 1 minute, because we have 3 minutes left on the clock across the dome.

Mr. JOHNSON of Georgia. Thank you. Yes. Judge Sabraw, with the 6 minutes per case that a magistrate would get to spend with a misdemeanor accused of coming across the border—75 in one day. So, assuming 8 hours a day, about 6 minutes per case, and arraigning that misdemeanor, advising them of their rights, the nature of the charges, punishment that could happen—you also have to consider a bond within that 6 minutes, too. Is that not correct?

Judge SABRAW. What the system contemplates is that the attorneys play a very active role at the beginning, which is critical, and they advise their clients of all of their rights and the consequences.

Mr. JOHNSON of Georgia. If there are no attorneys involved, though, then you are just dealing with a pro se litigant. And that may in fact happen frequently, do you think?

Judge SABRAW. In our district it would not. All of the pro se criminal defendants are entitled to counsel, so they are well counseled by Federal defenders and CJA attorneys.

Mr. JOHNSON of Georgia. And there is a possibility that there could be an agreement as to bond for the person accused, and if no agreement, then the magistrate would have to consider whether or not to grant bond or not.

Judge SABRAW. The vast majority of cases will resolve in a misdemeanor disposition, so bond is not considered in that respect, because the defendant has elected to plead guilty, but for those who want to stand on their constitutional rights, then they may press the bond issue.

Mr. JOHNSON of Georgia. One last question.

Mr. ISSA. The gentleman will have to be extremely brief, even if he runs fast.

Mr. JOHNSON of Georgia. I mean, a person coming across the border, just because they are coming across the border does not mean that they do not have ties to the community.

Judge SABRAW. It does not. Many of them do.

Mr. JOHNSON of Georgia. Yes. Thank you.

Mr. ISSA. Thank you. I want to thank our guests for their patience and their brevity, which allows you to enjoy your lunch. The only thing I will say in passing is if any of you would like to enjoy a lunch at the members' dining room, I am happy to sponsor it. My staff will take you over there. If you have better plans, then I thank you for your service both to our country and to the Congress.

Mr. JOHNSON of Georgia. Am I included, Mr. Chairman?

Mr. ISSA. Sure, you have got an account there. We stand adjourned.

[Whereupon, at 11:59 a.m., the subcommittee was adjourned.]

