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NOMINATION OF JUDGE ROBERT E. QUINN

HEARING BEFORE THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

NOMINATION OF JUDGE ROBERT EMMETT QUINN, OF
RHODE ISLAND, FOR REAPPOINTMENT AS A JUDGE OF
THE UNITED STATES COURT OF MILITARY APPEALS

MAY 12, 1966

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NOMINATION OF JUDGE ROBERT EMMETT QUINN FOR REAPPOINTMENT AS A JUDGE OF THE U.S. COURT OF MILITARY APPEALS

THURSDAY, MAY 12, 1966

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to call, at 10:35 a.m., in room 212, Old Senate Office Building, Senator Richard B. Russell (chairman) presiding.

Present: Senators Russell, Stennis, Cannon, Young of Ohio, Saltonstall, Smith, and Thurmond.

Also present: William H. Darden, chief of staff; T. Edward Braswell and Gordon A. Nease, professional staff members; Charles B. Kirbow, chief clerk; Herbert S. Atkinson, assistant chief clerk.

NOMINATION OF JUDGE QUINN

Chairman RUSSELL. The committee will come to order. At the last meeting of the committee, the nomination of Robert Emmett Quinn of Rhode Island for reappointment as a Judge of the U.S. Court of Military Appeals for a term of 15 years came before the committee. We have had some additions to the committee since Judge Quinn's original appointment. Some of the members have not had an opportunity to examine Judge Quinn or to meet him and know him, and the matter was, therefore, carried over until today to have a hearing. Ordinarily, we do not hear those who are up for reappointment.

Judge, will you be good enough to take a seat at the end of the table? I have been asked by both the Senators from Rhode Island, Senators Pastore and Pell, to inform the committee of their high regard for Judge Quinn, and the fact that they urge prompt and favorable action on this nomination.

I also will ask to have printed in the record a brief résumé of Judge Quinn's life and services.

(The nomination reference and résumé referred to follow:)

NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
April 28, 1966.

Ordered, That the following nomination be referred to the Committee on Armed Services:

Robert Emmett Quinn, of Rhode Island, to be a judge of the Court of Military Appeals for the term of fifteen years expiring May 1, 1981. (Reappointment.)

Robert Emmett Quinn, chief judge; born in Phenix, R.I., April 2, 1894; son of Charles and Mary Ann (McCabe) Quinn; A. B., Brown University, 1915; LL.B., Harvard, 1918; married Mary Carter, August 3, 1923; children, Norma Marie, Robert Carter, Pauline Fulton, Cameron Peter, and Penelope Dorr; admitted to Rhode Island bar and practicing attorney at Providence, R.I., since 1917; member United States Diplomatic Intelligence Service in England and France, 1917-19; member, Rhode Island senate, 1923-25 and 1929-33; lieutenant governor, State of Rhode Island, 1933-36; Governor, State of Rhode Island 1937-39; judge, Rhode Island Superior Court commencing May 1, 1941; legal officer, First Naval District, 1942-45; captain, United States Naval Reserve since February 1942; commanding officer, Naval Reserve Volunteer Legal Unit of Rhode Island, 1947-50; president, Kent County Bar Association; member, American and Rhode Island Bar Associations; member, Phi Kappa; member, Brown, Harvard, Wannamoisett, Turks Head, West Warwick Country and Army and Navy Clubs; nominated by President Truman to chief judge of the United States Court of Military Appeals May 22, 1951, for the term expiring May 1, 1966, confirmed by Senate June 19, 1951, and took oath of office June 20, 1951, under commission of President Truman dated June 20, 1951; Democrat; Roman Catholic.

Chairman RUSSELL. Judge, we are glad to have you here.

STATEMENT OF JUDGE ROBERT E. QUINN, NOMINEE, OF RHODE ISLAND, FOR REAPPOINTMENT AS A JUDGE OF THE U.S. COURT OF MILITARY APPEALS

Judge QUINN. Thank you, Senator.

Chairman RUSSELL. It has been some time since we first saw you at this table.

Judge QUINN. It has been a long time.

Chairman RUSSELL. Does any member of the committee have any questions to pose to Judge Quinn?

Senator Saltonstall?

Senator SALTONSTALL. Judge, you have been a member of this court with Judge Ferguson, and Judge Kilday, our former Congressman from Texas. You have been a member since its inception.

Judge QUINN. Yes; that is right, Senator.

Senator SALTONSTALL. And you would like to continue?

Judge QUINN. Yes. I would be glad to, if the committee would like to have me. The President appointed me; and I would be glad to serve at least for a few years, as long as the law will let me.

Senator SALTONSTALL. And you are in physical and mental health, in your own opinion, to continue this work?

Judge QUINN. Yes; I think so, Senator Saltonstall.

Senator SALTONSTALL. And you like the service with your colleagues, Ferguson and Kilday?

Judge QUINN. Yes; I enjoy my service with them very much. They are both very fine men.

Senator SALTONSTALL. Mr. Chairman, I have no further questions except to have you note, as undoubtedly you already have, that Judge Quinn is another Harvard man.

Judge QUINN. Don't hold that against me.

Chairman RUSSELL. We will see if we can find any mitigating circumstances, Judge.

Senator Stennis, do you have any questions?

Senator STENNIS. I would just like to know something about the volume of work of the court. I believe you were one of the first appointees, were you not?

Judge QUINN. That is right, Senator.

Senator STENNIS. How many cases do you handle a month; do you know approximately?

Judge QUINN. At the present time about 70. Our peak load was about 220 a month in 1954 and 1955. The volume is down now to about 70 cases a month.

Senator STENNIS. How in the world could you handle that many cases a month, Judge?

Judge QUINN. It was pretty hard work. We wrote 359 opinions in 1 year, a three-man court, which was rather a strenuous job, but we did it. We disposed of approximately 20,000 cases over the course of the last 15 years.

Senator STENNIS. Do you have arguments on most of these cases?

Judge QUINN. On all of them.

Senator STENNIS. Oral arguments?

Judge QUINN. Oral arguments on all cases that are granted. Of course, many cases are denied, you know, that come to us, Senator. In other words, we examine the record, and unless we find just cause we deny the petition.

Senator STENNIS. But all those that you take up on the merits are argued before you?

Judge QUINN. They are all briefed and argued and opinions are written.

Senator STENNIS. That is all I have.

Chairman RUSSELL. Senator Cannon?

Senator CANNON. Judge, of these 70 a month that are running now, how many are actually argued before the court.

Judge QUINN. I would say approximately 15, Senator.

Senator CANNON. Is that about the usual proportion? For example, would it be about that same percentage if you had 100 cases?

Judge QUINN. No; it would probably be 20. We grant perhaps somewhere between 15 and 20 percent of the petitions.

Senator CANNON. Is there any backlog?

Judge QUINN. No backlog.

Senator CANNON. On the cases now?

Judge QUINN. One case left undecided.

Senator CANNON. And has the caseload consistently gone down for the past 2 or 3 years, or 3 or 4 years?

Judge QUINN. I might say for the last 3 years it has remained about the same, and probably would now go up, with the Vietnam situation.

Senator CANNON. That was going to be my next question. Have you had any indication of a rise of the caseload since Vietnam started?

Judge QUINN. We have some cases coming in from Vietnam, but not very many, but I would think by the fall of this year there would be some increase.

Senator CANNON. And the court actually reviews these cases from a legal standpoint rather than other questions involved, is that correct?

Judge QUINN. We pass only on questions of law.

Senator CANNON. In a normal peacetime activity, is it your view that there would be a very heavy caseload?

Judge QUINN. I would think it might run about 70 to 80 cases a month as long as the Military Establishment remained at 2.6 million or 2.7 or 2.8. Of course, it is increasing now.

Senator CANNON. Have you established a fairly large body of case law now as precedents?

Judge QUINN. Fifteen printed volumes with the sixteenth coming out, perhaps within another month.

Senator CANNON. Thank you very much, Mr. Chairman.

Chairman RUSSELL. Senator Smith.

Senator SMITH. I haven't any questions, Mr. Chairman.

Chairman RUSSELL. Senator Young.

Senator YOUNG. Yes, I have a few questions. By the way, I want to state that Senator Pastore has spoken to me and he, of course, thinks very highly of his predecessor as Governor, his friend. Senator Pell also spoke to me and he thinks very highly of Judge Quinn and hopes he will be confirmed as judge.

Judge QUINN. Thank you, Senator.

Senator YOUNG. There are three judges on this court, are there not?

Judge QUINN. Yes, sir.

Senator YOUNG. And you are the presiding judge?

Judge QUINN. Yes, sir.

Senator YOUNG. Your formal meetings are in Washington, are they not?

Judge QUINN. Yes, all our meetings are in Washington.

Senator YOUNG. How many were held, for instance, last month?

Judge QUINN. I would say, five. You mean days when we are actually sitting on the court hearing cases?

Senator YOUNG. Yes, the three of you.

Judge QUINN. Yes, there are always three of us there if we are able to be there.

Senator YOUNG. Now of the approximately 70 cases that come before your court each month during recent months, I take it that only about one in five is set down for hearing.

Judge QUINN. That is correct.

Senator YOUNG. Of the 70, do you distribute them with your associates?

Judge QUINN. Every judge goes over every record, Senator Young.

Senator YOUNG. Do you then submit your views by communication to your associates?

Judge QUINN. I write my action on a sheet, and it goes to each judge, and they write their action and it comes back to me. It goes to each of the judges, and they all pass on every record.

Senator YOUNG. And then the procedure is, say, that 1 out of 5 or 1 out of 6 is set down for oral argument?

Judge QUINN. Yes, sir.

Senator YOUNG. There are no witnesses heard, but the claimant or his attorney may come before you?

Judge QUINN. Yes.

Senator YOUNG. Is that always the situation?

Judge QUINN. We have only heard witnesses once in the 15 years of the existence of the court. It was on a contention that counsel didn't properly represent the accused, and he was brought in and examined by the court. That is the only instance in which we have taken testimony.

Senator YOUNG. And, of course, following the Korean war, for a number of years you were exceedingly busy.

Judge QUINN. Yes, we were. In the first 3 or 4 years of the existence of the court, the volume was much greater. It ran as high as

2,250 cases in 1 year, and then, of course, with the diminution of the number of men in the Military Establishment, the volume went down, and then also with the laying down of the precedents, the boards of review now catch the errors on the way up and send them back for rehearing, and so they don't get up to us as they did 6 or 7 or 8 years ago.

Senator YOUNG. Now in recent years there has been this diminution or lag. That has been pretty static, has it?

Judge QUINN. For about 3 years it would run I should say about 70 cases a month, Senator.

Senator YOUNG. And there is argument on one out of five of those approximately?

Judge QUINN. Yes, that is right.

Senator YOUNG. I am assuming that when you have cases set down for hearing, you usually set a number of them for 1 day.

Judge QUINN. Three a day is the usual number.

Senator YOUNG. And you can dispose of them in, I suppose, 3 or 4 hours?

Judge QUINN. About that, yet, and we try to keep our calendar strictly up to date. We have no backlog whatsoever. I think perhaps it would be fair to say we are the only Federal court in the United States that has no backlog.

Senator YOUNG. And if this fighting doesn't end in Vietnam, it is reasonable to expect that in a few years' time there may be more than 70?

Judge QUINN. Yes.

Senator YOUNG. Now it happens, Judge, that I am one of the junior members of this committee, but I am not one of the junior members in age however. I note that you were born in 1894, while I was born in 1889.

Judge QUINN. You are a better man than I am, Senator.

Senator YOUNG. No, I wouldn't say that. But what I am troubled about is this. You are up for reappointment. Of course, a Federal judge, most of them are appointed for good behavior which is construed for life.

Judge QUINN. Yes.

Senator YOUNG. Your term is 15 years. You are 72 years of age now, so that would be 87, and with life expectancy increasing all the time, we can look forward to living longer.

Senator SALTONSTALL. Mr. Chairman, would the Senator permit an interruption?

Senator YOUNG. Yes.

Senator SALTONSTALL. I just wanted to add that we New Englanders live to be a good 90 years old.

Senator YOUNG. I am a New Englander one degree removed, because I was born and reared in the firelands, the Connecticut firelands. I come from Norwalk, named after Norwalk, Conn., and New London, named after New London, Conn.

Senator SALTONSTALL. Judge, I don't think we ought to let him in our class at all, do you on that?

Judge QUINN. He is doing pretty well, Senator, I would say.

Senator YOUNG. Recently I felt well disposed toward an Ohio lawyer for a Federal judgeship; a fine lawyer who is 62 years of age, 62 or 63 years of age. The Attorney General gave me quite an argument on that. He said that was too old, and the White House

also corroborated that. I said to Attorney General Katzenbach, "Sarah Hughes of Texas was 66 when she was appointed, as I understand it." He said, "Well, she was from Texas." And Colonel Mickie of Charlottesville was 65 when he was appointed, but they tell me those are exceptions. I am just disinclined to follow the recommendations of the Attorney General and the recommendations I get from the White House, if they consider a man of 62 or 63 too old, and don't hold that against you and your age.

Now, have you any comment on that? You certainly look vigorous.

Judge QUINN. Well, I can only say that I am 72 years old, going on 50, Senator. That is the only answer I can give you.

Senator SALTONSTALL. That is a good one.

Senator YOUNG. When I was debating Taft, Junior, at the City Club in Cleveland in the 1964 campaign, I said, "By the calendar I am a great deal older, but by my thought and my action I am a half a century younger than he is." They seemed delighted.

Senator SALTONSTALL. Would the Senator permit?

Senator YOUNG. Yes.

Senator SALTONSTALL. You and the judge are in the same category, then.

Senator YOUNG. I think so. Well, I think it is important, Judge, that we had you before us.

Judge QUINN. I am very glad to be here, Senator.

Senator YOUNG. Just like the trial of any lawsuit, it helps to see the witnesses.

Judge QUINN. Certainly.

Senator YOUNG. And hear a man testifying.

Judge QUINN. I am very glad to come, Senator.

Senator YOUNG. I haven't any other questions.

Chairman RUSSELL. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. I want to congratulate you upon your reappointment. I think you have done a fine job and I shall be pleased to support your confirmation.

Judge QUINN. Thank you very much, Senator.

Chairman RUSSELL. Are there any further questions of Judge Quinn? If not, we thank you very much for your presence here this morning, Judge.

Judge QUINN. Thank you very much, Senator. I am very glad to come.

Chairman RUSSELL. The committee will now go into executive session.

Senator YOUNG. By the way, Judge, you and I know some men in their fifties who are older in appearance and in thought and action than you and I.

Judge QUINN. I am a great admirer of yours and I hope you will be around another 15 years, Senator.

Senator YOUNG. Thank you.

(Whereupon at 10:53 a.m., the committee went into executive session.)

(The nomination of Judge Quinn for reappointment as a judge of the United States Court of Military Appeals was subsequently approved by the committee in executive session and confirmed by the Senate on May 16, 1966.)

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