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RETIREMENT OF JUSTICES AND JUDGES

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HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 1508 and H.R. 12911

TO IMPROVE JUDICIAL MACHINERY BY AMENDING
PROVISIONS OF LAW RELATING TO THE RETIREMENT
OF JUSTICES AND JUDGES OF THE UNITED STATES

MARCH 3, 1970

Serial No. 16

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S. 1508

RELATING TO THE RETIREMENT OF JUSTICES AND
JUDGES OF THE UNITED STATES

TUESDAY, MARCH 3, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Edwards (of Calif.), McCulloch, MacGregor, McClory, Railsback, Poff, and Hutchinson.

Staff members present: Benjamin L. Zelenko, general counsel, and Thomas E. Mooney, associate counsel.

THE CHAIRMAN. The committee will come to order.

The subject of hearings this morning is legislation to amend the judicial code to liberalize retirement of justices and judges of the United States. S. 1508 and a companion bill which I sponsored, H.R. 12911, which are the subject of these hearings, will be placed in the record at this point.

(The documents referred to follow:)

[S. 1508, 91st Cong., first sess.]

AN ACT To improve judicial machinery by amending provisions of law relating to the retirement of justices and judges of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 371 (b) of title 28, United States Code, is amended by inserting immediately before the period at the end of the first sentence the following: “, or at any age after serving at least twenty years continuously or otherwise.”

(b) The first paragraph of section 373 of title 28, United States Code, is amended by inserting immediately after the last comma therein the following: “or at any age after serving at least twenty years continuously or otherwise.”

Passed the Senate October 29, 1969.

Attest:

FRANCIS R. VALEO,
Secretary.

[H.R. 12911, 91st Cong., first sess.]

A BILL To improve judicial machinery by amending provisions of law relating to the retirement of justices and judges of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 371 (b) of title 28, United States Code, is amended by inserting immediately before the period at the end of the first sentence the following: “, or at any age after serving at least twenty years continuously or otherwise.”

The CHAIRMAN. S. 1508, as passed by the other body, extends retirement benefits to Federal judges after 20 years of service irrespective of their age. The Judicial Conference of the United States at its October 1969 meeting approved the principle of legislation to provide judicial retirement after 20 years of service providing the retiring judge has reached the age of 60 years.

The Chair has received a communication dated February 10 from the Chief Justice of the United States and a letter dated February 13 from the Director of the Federal Judicial Center (former Associate Justice Tom Clark) recommending enactment of legislation on this subject embodying the principles adopted by the Judicial Conference. These letters will be placed in the record at this point.

(The documents referred to follow :)

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., February 10, 1970.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At its fall meeting in October 1969 the Judicial Conference of the United States voted its unanimous approval of legislation which would amend section 371(b) of title 28, United States Code, by providing that Federal judges may retire at age 60 after serving at least 20 years. This action was taken after the matter had been thoroughly studied by the Conference's Committee on Court Administration and was pursuant to its recommendation. At the time the Conference was cognizant, too, of the American Bar Foundation study on the Federal courts which recommended in its final report that Federal judges be permitted retirement after 15 years of service irrespective of age. This Bar Foundation study was the genesis of S. 1508, 91st Congress, which would amend title 28, section 371(b), in accordance with the study's recommendation.

The considerations which moved the Judicial Conference and its committee in recommending retirement at age 60 after at least 20 years' service were many. First of all, it should be understood that the word "retirement" as used in section 371(b) does not mean "retirement" in the usually accepted sense. If a judge elects to "retire" under section 371(b), he remains a judge and continues to serve. Retirement means only that after 20 years the amount of work expected from the judge will be reduced. There are a great variety of important judicial and quasi-judicial duties which can be performed by such judges. Specifically, such a judge will be available for assignments in circuits and districts in addition to his own where the condition of the calendar requires additional temporary help. Increasingly we have used and I contemplate expanded use of senior judges as special masters in complex litigation invoking the original jurisdiction of the Supreme Court. Such judges are also useful in helping to train newly appointed judges. Seminars for this purpose have been conducted for the past few years. We hope in the immediate future to increase their number and the scope of the training. In this way we hope to get maximum use out of a judge who feels that he has served his time as a full-time judge and wants a slight respite from a full schedule and some diversity in his judicial activity. In this way, too, we hope to reduce the number of judges applying for retirement based on disability. Even where a case cannot be made out for full disability under title 28, section 372, after 20 years many judges do slow down for one reason or another and suffer under the heavy and ever increasingly heavier burden of the calendar of cases. The proposed legislation would give an option to judges who qualify to continue in very useful service and thus avoid seeking full retirement for disability.

A 1968 Report of the American Bar Foundation concluded:

3. Stronger incentives should be provided for acceptance of senior status by circuit judges eligible to do so. A minimum liberalization of eligibility should provide that judges could go on senior status at age 65 if they have served for 10 years. It would be justifiable to go further, and provide that a judge could go on senior status upon 15 years service (regardless of age) or at age 65 (regardless of years of service). Senior Judges provide a useful source of additional skilled manpower.

4. A "pool" of additional circuit judgeships, perhaps five or six in number, should be created to supply additional manpower where it is most needed. These judges could be based in the Federal Judicial Center in Washington, D.C. With modern transportation and administrative methods, this device could permit deployment of additional judicial manpower without enlarging the permanent complement of judges on the bench of any circuit.

I believe that passage of this proposed legislation, now embodied in H.R. 12911, would be in the interest of sound administration, particularly to provide a reservoir of experienced and trained men for special tasks in which long judicial experience is invaluable. I am confident, too, that it would have a direct tendency to increase the efficiency of the Federal judiciary. As the judicial officer primarily charged by the Congress with responsibility for the overall administration of the Federal courts, I strongly recommend favorable action on H.R. 12911.

Cordially,

WARREN E. BURGER.

THE FEDERAL JUDICIAL CENTER,

DOLLEY MADISON HOUSE,

Washington, D.C., February 13, 1970.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN CELLER: Pursuant to your request, I write concerning S. 1508 which has to do with the retirement of Federal judges.

As the bill is presently written it would permit an active judge to elect to go on senior status if he has served in the Federal judiciary for 20 years. It might be wise that this be amended to also require the judge to have obtained the age of 60 years.

As you will remember, the American Bar Association Committee on Accommodating the Workloads of the U.S. Courts of Appeals of which Bernard G. Segal was chairman, recommended that a judge be permitted to go on senior status upon completing 15 years of service regardless of age, or at age 65 regardless of service. I believe these recommendations are realistic and that the best interest of the Federal judicial system would be served by enlarging the right to retirement. However, as I indicated above, I believe the provisions of S. 1508 together with the 60 year of age requirement would be quite sufficient.

I am therefore pleased to endorse S. 1508 as indicated and I trust that your committee will, after study, give the same favorable recommendation.

With high esteem and best wishes, I am

Sincerely yours,

TOM C. CLARK, *Director.*

The CHAIRMAN. Our first witness this morning is the Honorable William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel.

Mr. Assistant Attorney General, we would be glad to hear from you.

Mr. McCULLOCH. Mr. Chairman?

The CHAIRMAN. Mr. McCulloch?

Mr. McCULLOCH. With the permission of the Chair, I have a rather lengthy statement that I would be pleased to have, at this point, inserted in the record. It will be helpful to the committee throughout these hearings.

The CHAIRMAN. Without objection, it will be placed in the record.
(The document referred to follows:)

STATEMENT OF HON. WILLIAM M. McCULLOCH, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, today we begin one day of public hearings on S. 1508, retirement of Federal judges. Hearings were not held on this particular bill, except as one of a dozen or so bills pending before a Senate Subcommittee on the Improvements in Judicial Machinery. On June 2 and 4, 1969, the Senate subcommittee conducted hearings on the Judicial Reform Act—S. 1506 and contained in that package was

a section pertaining to Federal judge retirement. In other words, judge retirement received very little attention in the course of these hearings. On October 29, 1969,

The resignation and retirement provisions for Federal judges are embraced in sections 371, 372 and 373, title 28, United States Code, section 371(a) provides that any judge of the United States appointed to hold office during good behavior, who attains the age of 70 years and has served at least 10 years continuously or otherwise, may resign and during the remainder of his lifetime "shall * * * receive the salary which he was receiving when he resigned." The judge who resigns will continue to receive as a pension the salary he was receiving at the time of his resignation for the rest of his life, but would not receive any increases in pension when Congress authorizes increases in judicial salaries thereafter. The pension of the resigned judge is not protected by the Constitution.² He can practice law if he wishes, since the provisions of section 454, title 28, United States Code, do not apply to him,³ or pursue any other gainful occupation. S. 1508 does not amend section 371(a).

Section 371(b), United States Code is the subsection most frequently used by judges desiring to take retired or senior judge status. This subsection provides that any Article III judge "may retain his office, but retire from regular active service" at the age of 70 if he has served 10 years continuously or otherwise, or may retire from regular active service if he has attained the age of 65 years after 15 years of service performed continuously or otherwise, and thereafter shall "continue to receive the salary of the office." The main thrust here is that the judge who retires under section 371(b) is still a judge. That is, he would retain his judge status, although retired and would be subject to the prohibitions of the Federal code relating to Federal judges. For example, a judge retired under section 371(b) could not practice law.⁴

The judge, under section 371(b), remains a judge and his salary is constitutionally protected. This should be distinguished from a judge eligible to resign at age 70⁵ with 10 years of service because a resigned judge is no longer a judge, his salary is not protected by the Constitution,⁶ he may pursue other occupations including the practice of law, and he is no longer subject to case assignments. A retired judge, on the other hand, under 371(b) is still a judge and may do such work as he pleases to do which the Chief Justice of the United States, the Chief Judge of his circuit, or the Judicial Council of his circuit may assign or designate him to perform.

It is this section, 371(b), that is mainly affected by S. 1508. The first section of S. 1508 amends section 371(b) to provide that a judge or justice of the United States may retire with the salary of his office after 20 years of service, continuously or otherwise, regardless of his age.

The phrase "judge of the United States" is defined in section 451 of title 28, United States Code, and includes judges of the court of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, customs court and any other court created by act of Congress, the judges of which are entitled to hold office during good behavior.⁷

Section (b) of S. 1508 was added in Senate subcommittee and is not contained in Mr. Celler's bill, H.R. 12911.⁸ The purpose of this provision is to provide the judges of the district courts for the territories and possessions of the United States with retirement benefits similar to those provided to the justices and judges of the United States under the provision of the first section of the bill. This section of S. 1508 amends the first paragraph of section 373 of title 38, United States Code, to provide that a judge of the U.S. District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands may resign after 20 years of service regardless of age and continue during the remainder of his life to receive the salary he received when he relinquished office.

¹ See Congressional Record, Oct. 28, 1969, pp. S.13368-S.13372, and Oct. 29, 1969, pp. S.13389-S.13390 and S.13396.

² *Booth v. United States*, 291 U.S. 339, 348-50 (1934).

³ Sec. 454 provides: "Any justice or judges appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."

⁴ Sec. 454, title 28, United States Code.

⁵ Sec. 371(a), title 28, United States Code. (S. 1508 does not amend this subsection.)

⁶ He continues to receive the salary at which he retired.

⁷ As of June 30, 1969, there were 97 circuit judges, 341 district judges, 21 special court judges, for a total of 459.

⁸ See attached agenda of bills pending before the Judiciary Committee related to Federal judge retirement.

The first paragraph of section 373 is particularly interesting because it allows a judge in a territorial court to resign at age 70 with 10 years of continual service or at age 65 with 15 years of continual service. This is similar to 371(a) which allows a district or a circuit judge to resign at age 70 with 10 years of continual service. However, a district or circuit judge cannot resign until he is at least 70 years old, whereas, under the present law a territorial judge can resign as early as age 65. The Senate passed bill, S. 1508, does not affect 371(a) with reference to the resignation of article III judges; that is, they may resign at age 70 after 10 years service. However, S. 1508 will affect section 373 with regard to the resignation of territorial court judges; they will be permitted to resign after 20 years of continual service regardless of age with full pay and permitted to pursue other employment.

Mr. Chairman, in the interest of developing as complete a record as possible on this subject, I would like to have the following documents reproduced in the record:

1. Senate Report No. 91-449, which is very brief.
2. A list of judges eligible to retire as of July 1, 1970. This list was submitted to the subcommittee by the Administrative Office of U.S. Courts.
3. An agenda of bills pending before the House Judiciary Committee related to federal judge retirement.

BILLS RELATED TO S. 1508

H.R. 12911 (Mr. Celler). To provide for the retirement of U.S. judges at any age after 20 years of continual service.

H.R. 7507 (Messrs. Railsback Anderson of Illinois, Biester, Carter, Fisher, Hastings, Hosmer, Mize, Pirnie, Sebelius, Schwengel, Sikes and Utt). To provide for the mandatory acceptance of senior status at age 70 for judges and justices of the United States.

Related to H.R. 7507 are: H.R. 7739, H.R. 7782, H.R. 8014, H.R. 8939, H.R. 8960.

H.R. 12815 (Mr. Rhodes). To provide for the mandatory retirement of chief judges of circuit and district courts at the age of 66.

H.R. 14231 (Mr. Udall). To change the provisions of section 371 of title 28.

[S. Rept. 91-449, 91st Cong., first sess.]

PROVIDING FOR THE RETIREMENT OF U.S. JUDGES AFTER 20 YEARS OF SERVICE

The Committee on the Judiciary, to which was referred the bill (S. 1508) to amend provisions of law relating to the retirement of justices and judges of the United States, having considered the same, reports favorably thereon, with amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

The bill is amended by adding a new section (b) to its provisions as follows:

"(b) The first paragraph of section 373 of title 28, United States Code, is amended by inserting immediately after the last comma therein the following: "or at any age after serving at least twenty years continuously or otherwise."

PURPOSE OF AMENDMENT

The amendment is designed to provide the judges of the district courts of the territories and possessions with retirement benefits similar to those provided to the justices and judges of the United States under the provisions of the first section of the bill.

PURPOSE OF THE BILL

The purpose of the proposed legislation, as amended, is to provide retirement benefits to Federal judges and justices after 20 years of service regardless of their age.

STATEMENT

Retirement benefits play an increasingly significant role in attracting the most capable people to the most responsible positions. It is important, therefore, to constantly review the benefits available to key government officials, including the members of the judiciary. Although the full pay benefits available to federal

judges upon retirement compare favorably with any retirement system in business, industry or the private practice of law, they are obtainable under existing provisions of law only at age 70 after 10 years of service or at age 65 after 15 years of service. S. 1508 is designed to improve the present retirement system by providing judges with benefits after 20 years of service regardless of age.

S. 1508, however, will not only serve to make the Federal bench more attractive to younger, more vigorous men, but will serve also to increase available judicial manpower. Each time a judge accepts senior judge status and retires, leaving regular active service, a vacancy occurs on his court, a vacancy that can be filled by the appointment of a new regular active service judge. The judge on senior status may continue to perform such judicial duties as he is willing and able to undertake. Almost without exception, those judges who take senior status continue to carry a substantial workload. The "retirement" of a judge thus means a bonus of increased manpower to the retired judge's court, increased manpower that can help alleviate existing backlogs and avoid future ones. Both the retired judge and his newly appointed successor can be employed in the disposing of the business of the court, where before only one could be so employed.

In fact, few aspects of the Federal judicial system have been more beneficial to the country than those which enable judges to retire from active service, and, yet, continue to perform such judicial duties as they are willing and able to undertake. Without the work of the present senior judges, our Federal judicial system would be overwhelmed by its caseload. By providing for retirement after 20 years of service regardless of age, those judges who could take senior judge status under the amendment would be under 65 and fully able to continue to carry a full workload. It is difficult to disagree with the following statement by Albert Branson Maris, himself a great senior judge:

"One of the great benefits of the Federal judicial retirement system is that retired senior judges are available for especially assigned judicial duty and can contribute a very large amount of time to judicial work, thus greatly benefiting the system by assisting in those areas where the caseloads are heaviest. As retired judges get older, of course, they become less able to make this contribution, but judges approaching age 70 are mostly vigorous and able, and to facilitate their retirement will be to add very substantially to judicial manpower in places where it is badly needed.¹

SECTIONAL ANALYSIS

The first section of S. 1508 amends subsection (b) of section 371 of title 28, United States Code, to provide that a judge or justice of the United States may retire with the salary of his office after 20 years of service, continuously or otherwise, regardless of his age.

The phrase "judge of the United States" is defined in section 451 of title 28, United States Code, and includes judges of the courts of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, Customs Court and any other court created by act of Congress, the judges of which are entitled to hold office during good behavior. The phrase "justice of the United States", as defined in section 451, includes the Chief Justice of the United States and the Associate Justices of the Supreme Court.

Section (b) of S. 1508 amends the first paragraph of section 373 of title 28, United States Code, to provide that a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands may resign after 20 years of service regardless of age and continue during the remainder of his life to receive the salary he received when he relinquished office.

Attached hereto, as part of this report, is a list of active Federal judges completing 20 or more years of service during calendar year 1969 who would not be eligible for retirement in 1969 under existing provisions of law.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

¹ Hearings on S. 1506-1516 before Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 91st Cong., first sess. (1969)

TITLE 28, UNITED STATES CODE

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUDGES

§ 371. RESIGNATION OR RETIREMENT FOR AGE

(b) Any justice or judge of the United States appointed to hold office during good behavior may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise, *or at any age after serving at least twenty years continuously or otherwise*. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice of the Senate, a successor to a justice or judge who retires.

§ 373. JUDGES IN TERRITORIES AND POSSESSIONS

Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, *or at any age after serving at least twenty years continuously or otherwise*, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

PRESENT (ACTIVE) JUDGES COMPLETING 20 OR MORE YEARS OF SERVICE DURING CALENDAR YEAR 1969 AND NOT ELIGIBLE FOR RETIREMENT IN 1969 UNDER EXISTING PROVISIONS OF LAW

Court	Name	Date of birth	Date of oath
2d Circuit	Kaufman, Irving R.	June 24, 1910	Nov. 1, 1949
7th Circuit	Swygert, Luther M.	Feb. 7, 1905	Oct. 20, 1943
10th Circuit	Hill, Delmas C.	Oct. 9, 1906	Oct. 27, 1949
District of Columbia Circuit	Bazelon, David L.	Sept. 3, 1909	Nov. 1, 1949
Do	Tamm, Edward Allen	Apr. 21, 1906	June 28, 1948
Do	Wright, J. Skelly	Jan. 14, 1911	Oct. 26, 1949
Customs court	Ford, Morgan	Sept. 8, 1911	July 28, 1949
Alabama, North	Lynne, Seybourn H.	July 25, 1907	Jan. 9, 1946
Illinois, North	Campbell, William J.	Mar. 19, 1905	Oct. 22, 1940
Massachusetts	Wyzanski, Charles E.	May 27, 1906	Jan. 26, 1942
Missouri, East	Harper, Roy W.	July 26, 1905	Aug. 11, 1947
New York, North	Foley, James T.	July 9, 1910	Feb. 16, 1949
Oregon	Solomon, Gus J.	Aug. 29, 1906	Nov. 14, 1949
Texas, South	Connally, Ben C.	Dec. 28, 1909	Nov. 14, 1949
Wisconsin, East	Tehan, Robert E.	Jan. 7, 1905	June 1, 1949

Judges eligible to retire as of July 1, 1970

Judge, circuit or district	Date eligible to retire
Leonard P. Moore, 2d circuit	July 2, 1968
J. Joseph Smith, 2d circuit	Jan. 25, 1969
William Henry Hastie, 3d circuit	Nov. 17, 1969
Simon E. Sobeloff, 4th circuit	July 20, 1966
Herbert S. Boreman, 4th circuit	Sept. 21, 1967
Albert V. Bryan, 4th circuit	July 23, 1964
Bryan Simpson, 5th circuit	May 30, 1968
Joe McDonald Ingraham, 5th circuit	Aug. 30, 1969
Paul C. Weick, 6th circuit	Aug. 25, 1969
Latham Castle, 7th circuit	Feb. 27, 1970
Luther M. Swygert, 7th circuit	Feb. 7, 1970
Martin D. Van Oosterhout, 8th circuit	Sept. 9, 1969
Stanley N. Barnes, 9th circuit	May 1, 1970
James M. Carter, 9th circuit	Mar. 11, 1969
Alfred P. Murrah, 10th circuit	Oct. 27, 1969
Jean S. Breitenstein, 10th circuit	June 3, 1969
George B. Harris, California, North	Aug. 16, 1966

Judges eligible to retire as of July 1, 1970—Continued

<i>Judge, circuit or district</i>	<i>Date eligible to retire</i>
Albert C. Wollenberg, California, North	June 13, 1970
Edward M. Curran, District of Columbia	May 10, 1968
William A. Bootle, Georgia, middle	June 2, 1969
Fred M. Taylor, Idaho	July 26, 1969
William J. Campbell, Illinois, north	Mar. 19, 1970
J. Sam Perry, Illinois, north	Aug. 28, 1966
Julius J. Hoffman, Illinois, north	July 7, 1965
Mac Swinford, Kentucky, east	Dec. 23, 1964
Herbert W. Christenberry, Louisiana, east	Dec. 30, 1962
Roszel C. Thomsen, Maryland	May 17, 1969
Francis J. W. Ford, Massachusetts	Dec. 23, 1952
Ralph M. Freeman, Michigan east	June 29, 1969
Theodore Levin, Michigan, east	Feb. 18, 1962
Robert Van Pelt, Nebraska	Sept. 9, 1967
Reynier J. Wortendyke, Jr., New Jersey	June 28, 1965
John R. Bartels, New York, east	Aug. 13, 1969
Harold P. Burke, New York, west	June 6, 1960
Sidney Sugarman, New York, south	Sept. 4, 1969
Sylvester J. Ryan, New York, south	Nov. 10, 1962
John F. X. McGohey, New York, south	Jan. 7, 1964
Edward Weinfeld, New York, south	May 14, 1966
Girard E. Kalbfleisch, Ohio, north	Oct. 16, 1969
James C. Connell, Ohio, north	Sept. 20, 1967
Stephen S. Chandler, Oklahoma, west	Sept. 13, 1964
John W. Lord, Jr., Pennsylvania, east	May 28, 1969
Rabe Ferguson Marsh, Pennsylvania, west	Apr. 26, 1970
John L. Miller, Pennsylvania, west	June 18, 1969
Edward William Day, Rhode Island	Nov. 30, 1968
Axel J. Beck, South Dakota	Apr. 1, 1968
Robert L. Taylor, Tennessee, east	Dec. 20, 1964
Allen B. Hannay, Texas, south	Aug. 18, 1957
Willis W. Ritter, Utah	Oct. 25, 1964
A. Sherman Christensen, Utah	June 9, 1970
William J. Lindberg, Washington, west	Dec. 17, 1969
George H. Boldt, Washington, west	Dec. 28, 1968
Robert E. Tehan, Wisconsin, east	Jan. 7, 1970
Ewing T. Kerr, Wyoming	Jan. 21, 1970
James R. Durfee, U.S. Court of Claims	May 2, 1970
Paul P. Rao, U.S. Customs Court	June 15, 1964

¹ To retire upon appointment and qualification of a successor.

STATEMENT OF HON. WILLIAM H. REHNQUIST, ESQ., ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES, DEPARTMENT OF JUSTICE

Mr. REHNQUIST. Mr. Chairman, members of this committee, I welcome this chance to appear before you as a representative of the Department of Justice in support of S. 1508, the judicial retirement bill.

Under existing law, which is set out in 28 U.S.C. 371(b), Federal judges may not retire with pay before the age of 65. S. 1508 would remove this limitation for those judges completing 20 years of service at an earlier date. Upon completion of such period, a judge would be immediately eligible for retirement, regardless of his age.

The elimination of the present bar to retirement by judges under 65 would be desirable for several reasons. The most important of these inheres in the nature of our judicial retirement system.

S. 1508, it must be remembered, deals with retirement, not resignation. The difference is an important one. Resignation involves total

relinquishment by a judge of his position; in retirement, however, the judge remains a member of the judiciary.

The effect of retirement is twofold. The first is that the retired judge becomes a senior judge, in which capacity he may continue his judicial duties to the extent that he is willing and able to do so.

The second is that a vacancy arises which must be filled by the President with the advice and consent of the Senate; in other words, the position formerly held by the retiring judge is deemed vacant despite the fact that the retiring judge remains available, if he desires, to discharge judicial functions. The short of all this is that the judiciary receives needed additional manpower each time that a sitting judge retires and assumes senior judge status.

S. 1508 would make it possible for the first time for judges under 65 to elect senior judge status. It is likely, therefore, that judges availing themselves of the opportunity afforded by S. 1508 would be fully able to carry substantial workloads. Since senior judges can be assigned to those areas where caseloads are heaviest, significant benefits in judicial administration can be expected. The prestigious American Bar Foundation Project Advisory Committee has urged extension of the eligibility requirements for this reason. In its "Report of Recommendations on Accommodating the Workload of the U.S. Courts of Appeals", the committee proposed that stronger incentives be provided for acceptance of senior judge status. The committee commented: "Senior judges provide a useful source of additional skilled manpower."

Another positive feature of S. 1508 is demonstrated by a table prepared for presentation here. I address your attention to table A, which is attached to the back of my testimony, which contains data on 17 presently active judges of our Federal courts.

(The document referred to follows:)

TABLE A

[This table lists those active judges who will have completed 20 or more years of service by the end of 1970. Under S. 1508, each would be eligible for retirement immediately upon completing such service. Under existing law, however, only upon reaching 65 do those listed below become eligible]

Court	Name	Date of birth	Present age	Date of oath	Years of service to date
(1)	(2)	(3)	(4)	(5)	(6)
2d circuit	Kaufman, Irving R.	June 24, 1910	59	Nov. 1, 1949	20
10th circuit	Hill, Delmas C.	Oct. 9, 1906	63	Oct. 27, 1949	20
District of Columbia circuit	Bazelon, David L.	Sept. 3, 1909	60	Nov. 1, 1949	20
Do	Tamm, Edward A.	Apr. 21, 1906	63	June 28, 1948	21
Do	Wright, J. Skelly	Jan. 14, 1911	59	Oct. 26, 1949	20
Court of Customs and Patent Appeals	Worley, Eugene	Oct. 10, 1908	61	Apr. 4, 1950	19
Customs Court	Ford, Morgan	Sept. 8, 1911	58	July 28, 1949	20
Alabama, north	Lynne, Seybourn H.	July 25, 1907	62	Jan. 9, 1946	24
California, north	Carter, Oliver J.	Apr. 7, 1911	58	Oct. 9, 1950	19
Illinois, north	Campbell, William J.	Mar. 19, 1905	64	Oct. 22, 1940	29
Indiana, south	Steckler, William E.	Oct. 18, 1913	56	Apr. 15, 1950	19
Massachusetts	Wyzanski, Charles E.	May 27, 1906	63	Jan. 26, 1942	28
Missouri, east	Harper, Roy W.	July 26, 1905	64	Aug. 11, 1947	22
New York, north	Foley, James T.	July 9, 1910	59	Feb. 16, 1949	21
Oregon	Solomon, Gus J.	Aug. 29, 1906	63	Nov. 14, 1949	20
Pennsylvania, west	Marsh, Rabe Ferguson, Jr.	Apr. 26, 1905	64	June 26, 1950	19
Texas, south	Connally, Ben C.	Dec. 28, 1909	60	Nov. 14, 1949	20

TABLE B

[This table lists those judges referred to in table A who would be affected if a minimum age requirement of 60 were included in the bill. Those listed below would be ineligible for retirement until the date shown in col. 7, despite having completed 20 years of service at an earlier date]

Court	Name	Date of birth	Present age	Date of oath	Years of service to date	Date eligible for retirement (60th birthday)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2d circuit.....	Kaufman, Irving R.....	June 24, 1910	59	Nov. 1, 1949	20	June 24, 1970
District of Columbia circuit.	Wright, J. Skelly.....	Jan. 14, 1911	59	Oct. 26, 1949	20	Jan. 14, 1971
Customs Court.....	Ford, Morgan.....	Sept. 8, 1911	58	July 28, 1949	20	Sept. 8, 1971
California, north.....	Carter, Oliver J.....	Apr. 7, 1911	58	Oct. 9, 1950	19	Apr. 7, 1971
Indiana, south.....	Steckler, William E.....	Oct. 18, 1913	56	Apr. 15, 1950	19	Oct. 18, 1973
New York, north.....	Foley, James T.....	July 9, 1910	59	Feb. 16, 1949	21	July 9, 1970

Mr. REHNQUIST. As columns 5 and 6 of the table indicate, each has completed or will complete during 1970, 20 years of service on the bench. None of these judges, however, is yet 65 and therefore none is qualified for retirement under existing law, despite his long term of service. Judges Campbell and Wyzanski, for example, both of whom were appointed at the age of 35, have served for 29 and 28 years, respectively.

The CHAIRMAN. If S. 1508 had been adopted some years ago, and if Judge Wyzanski had become a judge at 35, he could have retired at 55.

Mr. REHNQUIST. That is right, Mr. Chairman.

Judge Lynne, appointed at 38, has served for 24 years. Judge Steckler, appointed at 36, will complete his 20 years on the bench this April. Yet, under existing law, he is ineligible for retirement until late 1978.

These facts are illustrative of the position confronting Federal judges appointed at relatively young ages. The Department believes that S. 1508 is both necessary and appropriate to deal with this situation. We should do all we can to encourage the outstanding younger members of the bar to accept Federal judgeships.

S. 1508 is a proper step in that direction. For these reasons, the Department is in agreement with the fundamental objective of S. 1508, which is to eliminate the age 65 requirement for retirement of judges who have 20 years of service on the bench.

Thank you.

The CHAIRMAN. How many judges now sitting could retire in 1970?

Mr. REHNQUIST. The ones who could retire in 1970, Mr. Chairman, are indicated in table A ; 17.

The CHAIRMAN. How many of those are circuit judges and how many district court judges?

Mr. REHNQUIST. There are five circuit court judges, Mr. Chairman, Judges Kaufman, Hill, Bazelon, Tamm, and Wright, and the remaining are either district judges or judges of the Customs Court or Court of Customs and Patent Appeals.

Mr. ZELENKO. Mr. Rehnquist, I understand that the ABA supported the principle of an earlier retirement provision for Federal judges. However, do you know whether that support applied only to circuit court judges or only to district court judges, or both?

Mr. REHNQUIST. The foundation report that I saw, and I am not sure this is what you would call the official ABA position in talking about a pool of senior judges, I think it was dealing primarily in terms of circuit judges.

However, I believe the ABA has in principle endorsed the idea of retirement for both.

Mr. ZELENSKY. Does the Department have any idea what the additional cost would be, if legislation such as this were enacted?

Mr. REHNQUIST. I think we would defer to the Administrative Office of the United States Courts on that.

Mr. ROGERS. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ROGERS. Why should you treat judges any different on retirement than you do other civil service employees in the Federal Government?

Mr. REHNQUIST. Mr. Rogers, I believe that the main argument for this bill, at least as we see it, is not to give the judges a break, but to give the system of judicial administration a break.

For example, if this bill were passed, the judge who has served 20 years and is approximately 60 years of age, who elects to retire, is in all probability going to be very much available for continued service not perhaps on a 5-day a week basis, but for a substantial amount of time every year.

Because he does not have a regular judicial post, he can be assigned to areas where there is very serious court congestion, anywhere in the United States, and experience indicates that these judges welcome this sort of assignment.

I think there is something of an equitable argument in favor of changing the requirements for retirement, that is to say, that the judge is entitled to it. But I think it is a secondary argument.

Granted this would not be treating the judge exactly as other civil service employees. I think the argument there is that a judge who goes on the bench at an early age, say, a judge who goes on at age 35 or 40 as opposed to one who goes on at age 50, is passing up a period of peak earnings in the legal profession that might otherwise be available to him, and—

Mr. ROGERS. He passed that up when he took the Federal judgeship. He recognized that he was going to get a lifetime position, at a certain salary, which has been increased tremendously in the last few years.

Mr. REHNQUIST. There is no doubt that he took it with his eyes open. Certainly you can't justify this bill on the grounds that the man did not know what he was getting into. But I think, even recognizing the fact that he knew what he was doing, there is still something of an equitable argument, but I don't think it is the main basis for urging the bill.

Mr. ROGERS. The reason I bring it up, is because we have many people employed by the Federal Government under civil service.

There is constantly a demand that we lower the age of retirement. There are bills introduced providing, that after a man has worked for the Federal Government for 30 years, he can retire full pay and things of that nature.

But here in the federal judiciary, you would reduce it to 20 years. Other employees may use this as an argument for lowering their retirement requirements to 20 years of service. That is the reason I raise the question.

Mr. REHNQUIST. I think the judiciary retirement system now does not dovetail exactly with civil service.

Mr. ROGERS. I know. We understand that a Federal judge has a job for life as long as he serves with good behavior. We also know that a lot of them are accused of not working at all, or working as little as possible.

What makes you think that if this bill is passed, that they will retire? That is, they will go on inactive status not assigned to any particular court. And what makes you think that they will work any harder after they get on that status than they did before?

Mr. REHNQUIST. I certainly would not want to be in a position of representing that anyone is going to work harder after he gets his retired status than he did before.

Mr. ROGERS. But you did say that they would be available for work.

Mr. REHNQUIST. Yes. But I would go on the assumption that most of our Federal judges are reasonably hard working, diligent individuals. I think that those who elect retirement will very likely continue to work at the job.

I am thinking of Judge Phillips, for example, from your State, who continues to sit on panels all over the country, even though he is long retired.

The CHAIRMAN. Under the Senate bill, there is no minimum age requirement. It simply authorizes retirement after 20 years of service regardless of age. Is that right?

Mr. REHNQUIST. Yes, Mr. Chairman.

The CHAIRMAN. It was the Judicial Conference that made the suggestion that we authorize retirement after 20 years of service providing the judge will have reached 60 years, is that right?

Mr. REHNQUIST. Yes, Mr. Chairman.

The CHAIRMAN. Which do you prefer?

Mr. REHNQUIST. The Department's basic position on that is that we would defer to the Administrative Office.

The CHAIRMAN. You would defer?

Mr. REHNQUIST. Yes.

The CHAIRMAN. Why would the Department of Justice not give an opinion on that?

Mr. REHNQUIST. Simply because I think the Department has not formulated a position. I would be glad to give you my personal opinion. I think I would have to say I did not speak for the Department on this, because the Department has not taken a position—

The CHAIRMAN. For example, if we merely provide for retirement after 20 years' service it is possible for 17 judges to retire. The Department of Justice then would be in the position to suggest the appointment of 17 new judges.

Certainly that is a question of considerable importance to the Department of Justice.

Mr. REHNQUIST. I don't think the Department would be motivated just by its desire to recommend the maximum.

The CHAIRMAN. I don't say it would be motivated. But I stress that to show the importance of the question of minimum age——

Mr. REHNQUIST. As I say, I am more than willing to give you my personal opinion as to the merits of the 60-year provision. I simply have not been authorized to speak for the Department on the point.

The CHAIRMAN. Examine what would happen if you do not have any age specified. In other words, if a judge were appointed at 30, it is possible that there have been judges appointed at 30, he could retire at 50. If he is appointed when he is 32, he could retire at 52. If he was appointed at 35, he could retire at 55.

That is a rather young age to retire a judge.

Mr. REHNQUIST. Yes; it is.

The CHAIRMAN. It is possible under the Senate provisions.

Mr. REHNQUIST. I think the examples of judges appointed in their 30's are extremely rare. The youngest one I know of is Judge Murrah, serving on the Tenth Circuit.

The CHAIRMAN. But when we legislate, we have to consider the possibilities.

Mr. REHNQUIST. My personal opinion is that the insertion of the 60-year provision would be perfectly rational and sensible and would make the bill dovetail with the existing retirement provisions. But I can't honestly say I speak for the Department.

The CHAIRMAN. In industry and banking, as I understand it, chairmen of boards and presidents usually retire at 65. It is possible here under the Senate bill for a judge to retire when he is far younger than 65.

It strikes me that a judge reaches greater heights of power and wisdom after 55, even after 60.

Mr. REHNQUIST. I might observe that I think if our statistics are correct, the number of eligible judges who will opt for retirement say at age 60 after 20 years' service will not be a large percentage. Of those judges who have turned 65 and are eligible to retire, something like only 25 percent have chosen to do so.

The CHAIRMAN. Maybe I have a self-interest in what I am going to say. We hear so much about the importance of youth over age. Certainly when it comes to the judiciary we cannot disregard experience and length of tenure, and so forth, with reference to the accumulation of greater wisdom, and better perspective.

In that connection, I am reminded, if you will forgive me for repeating this, of the words of Longfellow upon his graduation, I think, from Amherst College.

He had this to say as to age:

But why, you ask me, should this tale be told, to men grown old, or who are growing old? It is too late! Ah, nothing is too late, til the tired heart shall cease to palpitate.

Cato learned Greek at 80; Sophocles wrote his *Grand Oedipus*, and Simonides bore off the prize of verse from his compeers, when each had numbered more than fourscore years, and Theophrastus, at fourscore and ten, had but begun his "*Characters of Men*."

Chaucer, at Woodstock with the nightingales, at 60 wrote the "*Canterbury Tales*"; Goethe at Weimar, toiling to the last, completed *Faust* when 80 years were past.

Mr. RAILSBACK. Mr. Chairman, if you will yield?

The CHAIRMAN. I will yield.

Mr. RAILSBACK. I want to say that I would personally put you in with Sophocles and also Mr. McCulloch. But I think that Mr. Rehnquist should know that there are some Members, at least this Member, who feels that maybe what we should consider doing in the light of your testimony, is some kind of a mandatory retirement age, say at age 70, and permit judges if they do have the wisdom of the chairman and some other people, to continue their services under retired status.

I think there are many of us that feel there are too many judges that have not elected to become eligible for retirement. In other words, have not exercised the option to retire.

Do you want to comment on that?

Mr. REHNQUIST. Yes. Mr. Railsback. Mandatory retirement of a judge obviously raises a more difficult problem than does the option of voluntary retirement.

Certainly, I know you are not the only one who feels that perhaps there are occasional examples of judges who should have retired before they did. You know, even with the Supreme Court, the stories are—

Mr. RAILSBACK. Seventy percent of the American people or more like 90 percent of the American people would agree if that question was put to them, that is, should Supreme Court justices be retired at age 70? I bet 90 percent of the American people would agree with that.

Mr. REHNQUIST. Yet, if we had forced that, you would have compelled the retirement, say, of Justice Brandeis when he had 10 years, 10 good years, ahead of him and Justice Holmes.

Mr. RAILSBACK. If they have all of the abilities, which they do have, they could be designated to continue their service just like a senior judge now can.

Mr. REHNQUIST. I think that is workable when you have, say, a court of appeals that sits in panels of three, or a district court, but I think on the Supreme Court, which sits en banc all the time, the idea of a utility infielder does not fit in too well.

He would have to sit on lower courts, I think.

The CHAIRMAN. Mr. McCulloch.

Mr. McCULLOCH. I should like, if our colleague has no objection, to make this observation. While I have not studied the problem that he raises, by the exact words that he used, I think it amounts to mandatory retirement which raises, in my opinion, serious constitutional questions, with regard to article III, section 1 of our Constitution. I am not asking you for your opinion. But that is my opinion.

I should like to know if you have the statistical data on how many U.S. district judges have reached the retirement age and have not retired?

Mr. REHNQUIST. As of the present time, there are 28 district judges, according to our figures, who have reached the retirement age but have not elected to retire.

Mr. RAILSBACK. Then the next question is how many judges who have reached retirement age in the U.S. district courts have retired?

Mr. REHNQUIST. Mr. McCulloch, we have the figure that there are now 106 senior judges of all varieties in the United States. That would

include other judges as well as district judges. Specifically, there are 38 senior circuit judges, 63 senior district judges, and five senior judges of the Customs Court and Court of Claims.

The Administrative Office may very well have more detailed figures than we have.

Mr. RAILSBACK. I would be glad if you would furnish those figures, because that information will help me, at least, to arrive at some conclusions that I have not yet arrived at.

Mr. REHNQUIST. We will be happy to furnish them.

(The information requested may be found at p. 38.)

Mr. McCULLOCH. Another question is do you have the record or can you get the record of the number of retired judges in the trial courts, U.S. district court, who have continued to carry a substantial workload and how many days per year they give to their work while in retirement?

I would be very glad to have that. It is most important, I assure you. You may have heard me use the name of Judge Lester Cecil. He was born and reared in my county and, as I recall, was the first U.S. district judge appointed by President Eisenhower after he became President.

He was named to the U.S. District Court for the Southern District of Ohio, western division, after having been a common pleas judge for 12 or more years in the court of general jurisdiction in the State of Ohio. He is an able, capable, wise judge, and in due course, he was promoted, which met with my approval, to the sixth circuit court of appeals. I think judges, if they have ability, and if they are industrious, ought to be promoted just like other people in and out of the Government service. The U.S. Court of Appeals for the Sixth Circuit comprises some of our largest cities, for example, there is Detroit, Toledo, Grand Rapids, Cleveland, Youngstown and Akron, Columbus, Cincinnati, and Dayton, and on down through Kentucky and Tennessee.

When Judge Cecil reached retirement age, as I recall, he retired as a judge of the U.S. court of appeals. But for at least 4 years thereafter, he carried a full caseload in the U.S. court of appeals.

If we had some judges who were devoted to duty and would participate after they have retired, let's say after age 60, it would help the manpower shortages in this country and would give active working judges the wisdom, about which our chairman so ably speaks.

And that, my colleagues, is the reason why I sought this particular information. I hope you can put together for us some estimates, if not an exact number, of workdays that these retired judges have served both at the district level and at the court of appeals level.

Mr. REHNQUIST. We will work with the Administrative Office to see that you get that, Mr. McCulloch.

(The information requested is set forth at pp. 30-34.)

Mr. McCULLOCH. I understand from what you said to the chairman you were not in a position to give an estimate of the cost of this legislation?

Mr. REHNQUIST. That is right.

Mr. McCULLOCH. What would you guess the increased number of salaries alone would cost for the very first year?

Mr. REHNQUIST. In order to even intelligently guess, you have to hypothesize as to how many of the 17 judges to whom this option becomes available, would take it. As I say, our figures on the ones who have become 65 show that only 25 percent of them have taken the opportunity to retire.

This leads me to think that less than 25 percent of those who become 60 would take the opportunity.

But it is such a wild kind of calculation that I just don't feel qualified to even guess it.

Mr. McCULLOCH. I won't press you further. But I have some statistics here that show that as many as 56 judges will be entitled to retirement as of July, 1970, if this legislation passed.

Is that correct?

Mr. REHNQUIST. No, Mr. McCulloch, I feel certain that that is not correct.

Mr. RAILSBACK. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. RAILSBACK. Let me just site these figures.

I think if they are incorrect, you can correct them. But I have here that there are approximately 341 Federal district judges and 97 Federal circuit judges. Of this total of 438 Federal judges there are some 56 who are now, or will be as of July 1, 1970, eligible for retirement, nearly 14 percent.

In addition, if Senate bill 1508 is passed, there are 14 other judges who would thus be eligible for retirement. Thus a total of 70 out of approximately 438 judges would be eligible for retirement now and under Senate bill 1508, nearly 17 percent.

These are the figures that were given to me and I am not absolutely certain they are accurate.

Mr. REHNQUIST. That sounds like a ball park accurate estimate to me.

Mr. McCULLOCH. I should like to thank the gentleman for his contribution. That gives me at least an idea of what this would cost.

Mr. REHNQUIST. Of course, the cost that would be added by this bill would be only those of the 17 who would be made eligible by this bill who chose to retire. But the 56—

Mr. McCULLOCH. Seventeen?

Mr. REHNQUIST. Seventeen is our figure. The balance of the 70 is eligible under existing law. Their cost is there whether this bill passes or not.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I don't think I have any questions, Mr. Chairman. I assume that there is interest on the part of some of the judges in this, and that we are responding in part to their desire, which is somehow expressed, that some of these judges would take advantage of these provisions.

We are not doing this just as a formal action, but rather as a practical means of allowing some of these judges to take advantage of these provisions.

Do you have such a communication?

Mr. REHNQUIST. Certainly I agree it would be pointless to pass a bill that would extend an option to people none of whom wanted it. So I am certain that there are some who would seek to come under it.

I have not individually discussed with any of the ones eligible whether or not they would want it. I have spoken with Judge McGowan and Judge Robb with the U.S. Court of Appeals for the District of Columbia Circuit, and they have indicated to me that Judge Bazelon has expressed an interest in retiring if the bill is passed.

There may very well be others located in other parts of the country whom I simply don't know about because I happen to be here.

The CHAIRMAN. Other than Judge Bazelon, whom you have mentioned, who expressed his wishes indirectly through others, are there any other judges who have expressed a desire to have this bill passed?

Mr. REHNQUIST. I don't now know of any, Mr. Chairman.

Mr. EDWARDS of California. Will the chairman yield at this point?

The CHAIRMAN. Yes.

Mr. EDWARDS of California. How many judges now could retire if they so chose under existing law?

I believe you have provided that figure.

Mr. REHNQUIST. Mr. Railsback's figures were in the mid 50's as I recall. That is not precise.

Mr. EDWARDS of California. These judges have elected not to retire at this point in their careers. Is that right?

Mr. REHNQUIST. There we do have a somewhat more accurate or more precise figure of judges who continue active past their retirement eligibility date.

Mr. EDWARDS of California. With these 17 judges who would become eligible under this new legislation, why would not the same proportion apply?

A substantial number of the 17 judges would undoubtedly elect not to retire because we have others who have elected not to retire.

Mr. REHNQUIST. I think you are absolutely right.

Mr. RAILSBACK. Would the gentleman yield?

Mr. EDWARDS of California. Yes; I will.

Mr. RAILSBACK. It would seem to me that you raise a good point and probably a larger percentage would not elect to retire because they are younger.

That is what we are trying to do, permit younger judges that have 20 years continuous service to be eligible here. But I think the percentage would even be higher.

Mr. EDWARDS (of California). I would suggest that the percentage might be higher. Do they lose their offices and staff as they retire?

Mr. REHNQUIST. I think it would depend somewhat on the particular courthouse. But I think generally speaking if there are offices available, and I believe there are in most courthouses, they do not lose their offices. I think undoubtedly they lose some part of their staff.

Again the Administrative Office would be in a better position to answer that than I would.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Thank you, Mr. Chairman.

I wonder what Mr. Rehnquist would feel, and I hope that you will be very candid, and I am sure that you will, about an amendment that would have the effect of requiring a judge who reaches age 70 retire from active service and become a senior judge subject to being designated to continue his service, but permitting some degree of latitude?

Mr. REHNQUIST. I think as Congressman McCulloch suggests, this raises more serious questions than the voluntary retirement proposition.

And I feel a little bit like an appraisal witness on the witness stand.

He was called to appraise one piece of property. If asked on cross-examination to appraise another parcel, he's going to say "I want to go back to my office and take a look at it."

We did do some work in connection with the Department's recommendations on Senator Tydings' bills providing for a Commission to determine disability or misbehavior on the part of Federal judges.

And I think we concluded there that just letting the man continue to have his salary is not enough under Article 3 of the Constitution, that the independent judiciary means the right during good behavior to continue to exercise judicial functions.

Mr. RAILSBACK. Mr. Rehnquist, I think it would be very helpful to us to have some information on that point. I have asked LRS for an analysis and we have talked with them about the need for a constitutional amendment. We have discussed not actually requiring mandatory retirement as such but rather permitting the judge to become senior status and then still, in effect, hold office.

But I think it would be very helpful because I for one think that this is relevant to the general public matter and will probably have some kind of an amendment. I think it would be very helpful if you could give us your opinion about the problems involved, the constitutional problems.

Mr. REHNQUIST. This would be regarding a proposal which would make retirement at 70 mandatory for Federal judges?

Mr. RAILSBACK. I don't have my amendment here. I would like to send it to you and see what your feeling is from a constitutional standpoint.

Mr. REHNQUIST. I would certainly be happy to render what ever advice might be helpful.

Mr. RAILSBACK. Thank you.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. I have no questions, thank you.

Mr. ZELENKO. Mr. Rehnquist, it is true, is it not, that judicial retirement is different from other retirement programs in the Federal service for two reasons.

One, as you have said, judicial retirement is at full pay and second, the judges do not contribute to any retirement fund?

Mr. REHNQUIST. It is unique in the first respect. However, members of the Armed Forces, like our Federal judges, do not contribute to their retirement benefits.

Mr. ZELENKO. Do you see any problem or difficulty from any legal standpoint if judges were asked to contribute to a retirement program?

Mr. REHNQUIST. Do you mean by statute?

Mr. ZELENKO. Yes.

Mr. REHNQUIST. No; I think that Congress, subject to perhaps an obligation to recognize vested interests of existing judges, and I don't know just to what extent that obligation would extend, could, as to all future appointees, say, "From now on, you boys are going to contribute to the retirement fund just the way others in the Federal service do."

Mr. ZELENKO. As I understand your testimony, Mr. Rehnquist, the Department of Justice supports the principle of earlier retirement for Federal judges, in part, because it will enable some additional sitting judges now to go on senior status, and make way for new appointees. The result would be to provide the Federal judiciary somewhat of an increase in the manpower available to deal with the backlog and caseload.

Mr. REHNQUIST. This is our primary reason, Mr. Zelenko, for supporting it. These senior judges will be able to function, I think, in a way that mere additional judges with a particular station could not. They could be troubleshooters who could be sent to wherever congestion existed.

Mr. ZELENKO. You have conceded that it is impossible really to predict how many judges who would be eligible actually would opt for such early retirement. Thus, if our goal is to improve the judicial manpower situation, would it not be more efficient just to increase the number of permanent judgeships?

Mr. REHNQUIST. To an extent, I agree except that I don't think that either of the solutions by itself would be as good as both together.

For instance, in an area that has a backlog that would require half of a judge to come in and clear up, then it is not really warranted to create a new judgeship, but if one of these senior judges could come to that area 6 months a year, he could take care of that backlog and still be available somewhere else for a part of the year.

Mr. ZELENKO. Thank you, Mr. Chairman.

The CHAIRMAN. How many judges are on the retirement list now?

Mr. REHNQUIST. 106, Mr. Chairman.

The CHAIRMAN. Do the same limitations apply to sitting judges as apply to retired judges?

Mr. REHNQUIST. I think a judge so long as he is retired is forbidden by a provision of the Judicial Code from practicing law.

The CHAIRMAN. Can he go on a lecture tour and receive compensation for it?

Mr. REHNQUIST. I don't think there is any provision now in law that prevents a sitting judge from going on a lecture tour and receiving compensation for it.

The CHAIRMAN. What about a retired judge who has no regular assignments, to what degree can he earn money?

Mr. REHNQUIST. In view of the fact that a senior judge continues to be a judge, I think he would be subject to the same statutory restrictions as regular active judges, and no others.

The CHAIRMAN. Can they become presidents of universities?

Mr. REHNQUIST. This would depend on the particular restrictions in effect.

The CHAIRMAN. With compensation?

Mr. REHNQUIST. I would answer this question in the same manner.

The CHAIRMAN. In other words, he can do anything but practice law?

Mr. REHNQUIST. That is my belief, insofar as statutory prohibitions are concerned.

The CHAIRMAN. Could he become a president of a bank?

Mr. REHNQUIST. I think he could.

The CHAIRMAN. President of an insurance company?

In fact, could he manage a business or go into business? You don't mean to tell me that a retired judge can do those things, do you?

Mr. REHNQUIST. I am not going to back away. I think he can.

The CHAIRMAN. Are you suggesting that a Federal judge could retire under the Senate bill (S. 1508) at 55 and become a bank president and earn a hundred thousand dollars a year and still get his salary as a judge?

Mr. REHNQUIST. I think that is true. Under existing law, he can retire at 65 after 15 years and become a bank president and still get his salary.

The CHAIRMAN. Are there any bank presidents that are retired judges?

Mr. REHNQUIST. I know of no retired Federal judge, though I must admit, I have not made a study of the subject, who has gone into some full-time occupation other than the judgeship.

The CHAIRMAN. It would be interesting to check and see what these retired judges have been doing. Have you any kind of a record of it?

Does anybody keep any such record? Does the Director of the Administrative Office of the U.S. Courts keep such a record? You do have it, sir; Mr. Foley?

Mr. FOLEY. Yes, sir.

The CHAIRMAN. Will you testify as to it when we interrogate you?

Mr. FOLEY. Yes, sir.

The CHAIRMAN. Are there any other questions?

Mr. Poff.

Mr. POFF. I apologize for being late, Mr. Chairman. If the question has been already asked that I am about to ask, I hope they will say so.

I am looking at the law to which the two sections of the bill is addressed. I think it is important to emphasize at this point that section 371 (b) uses the verb "retire" while section 373 of the present law deals with judges of territorial courts who "resign." There is a difference between retirement and resignation. In the one case we are giving the judge of the territorial court the power to resign after serving 20 years at any age, and the other is we are giving to district judges and justices of the Supreme Court the power to retire at any age after serving 20 years service.

They are not treated the same. Is there some special reason why?

Mr. REHNQUIST. I think this is just an effort, Congressman Poff, to keep the terms the way they are now in the statutes. Territorial judges do not have the right of retirement. They have the right of resignation only, with certain salary compensations. The purpose of the provision in the bill concerning territorial judges is to make like adjustments in the provisions for territorial judges as are made in the case of Federal district judges under the other provision of the bill.

Mr. POFF. Was there any reason originally why it was felt that judges of territorial courts should be treated differently so far as the right to retire is concerned?

Mr. REHNQUIST. I am certainly not a historian on that subject. Mr. Duffner suggests to me a guess that might not be a bad one, that at one time they were appointed for terms and that perhaps that might have a bearing on it.

Mr. POFF. Thank you.

Mr. MOONEY. Mr. Chairman, may I ask just one question?

The CHAIRMAN. Yes.

Mr. MOONEY. Under the distinction between territorial and district and circuit judges, is it not true that a territorial judge can resign with full pay and practice law and that the distinction is between resigned and retired?

Mr. REHNQUIST. I think a resigned judge generally, and I have no reason to think this is not true of territorial judges, can practice law. This is the difference between resignation and retirement.

Mr. POFF. Will the gentleman yield?

I would suggest one other obvious distinction. I think when the judge retires, he gets the benefit of whatever pay increases may be made subsequent to his retirement, whereas, if he resigns, he must separate at the level at which he resigned.

Mr. REHNQUIST. That is certainly my understanding.

The CHAIRMAN. Thank you very much.

We appreciate your appearance.

Our next witness is the Acting Director, William E. Foley, Administrative Office of the U.S. Courts. We are very glad to have you here. We know you have done an excellent job as Deputy Director.

We welcome you before the committee today, and you may proceed as you wish.

STATEMENT OF WILLIAM E. FOLEY, ACTING DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. FOLEY. Thank you, sir.

I would like to submit my statement with the attachments for the record.

The CHAIRMAN. Without objection it is so ordered.

(The document referred to follows:)

STATEMENT OF WILLIAM E. FOLEY, ACTING DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman, my name is William E. Foley. I am Acting Director of the Administrative Office of the U.S. Courts. I appear before your committee today to present the views of the Judicial Conference of the United States on S. 1508, a bill to improve judicial machinery by amending provisions of law relating to the retirement of Justices and judges of the United States—insofar as it relates to judges of the United States.

RETIREMENT OF JUDGES

Paragraph (a) of S. 1508 would amend 28 U.S.C. 371(b) to permit a Justice or judge of the United States to retire "at any age" after having served "at least 20 years continuously or otherwise." The Judicial Conference of the United States, at its recent meeting on October 31, and November 1, 1969, expressed approval of the concept of permitting retirement of judges after 20 years of service as provided in paragraph (a) of S. 1508, but was of the further view that a judge should be 60 years of age before he would be permitted to avail

himself of this new retirement provision. The Judicial Conference therefore recommends that the bill be amended to permit retirement at age 60, after 20 years of service.

With this amendment the bill would apply only in the case of a judge who was appointed to the Federal bench before his 50th birthday (since he would otherwise qualify under the provision permitting retirement at age 65 after 15 years of service). Nominees to Federal judgeship positions are usually chosen from the ranks of lawyers or legal scholars who have reached middle age. A survey of judgeship appointments made by the Administrative Office of the U.S. Courts indicates that the average age of all judges appointed in the 10-year period from 1960 to 1970 was approximately 51½ years. Should S. 1508 be enacted, as recommended by the Judicial Conference, only 10 judges would be eligible as of July 1, 1970 to retire under this new provision. Past experience would indicate that some of those eligible for retirement at age 60 would not in fact retire since it is not obligatory. There are four other judges who will have 20 years of service as of July 1, 1970, but will not be 60 years of age on that date.

Mr. Chairman, as you know, retirement for Federal judges does not have the same implication as does retirement from other governmental positions. A retired Federal judge may upon designation continue to carry a full or limited caseload and may be available to undertake assignments in other courts provided he is designated to do so (28 U.S.C. 294). In this regard some great jurists have rendered invaluable service in their retirement. In addition, the President may appoint another judge to fill the vacant position of the "retired" judge. This tends to give more flexibility to the system, particularly in the case of a judge who has become partially disabled after long service on the bench and, to improve the operation of his court, would like to retire at age 60 but continue to perform judicial work.

Retirement at age 60, after long years of service, has become common. The civil service retirement laws were recently amended by the act of September 11, 1967, 81 Stat. 214, 5 U.S.C. § 336(b), to allow an employee separated from the service after becoming 60 years of age and completing 20 years of service to retire and receive an annuity. Corporations are likewise extending (and sometimes requiring) retirement to their executives. It is the view of the Judicial Conference that this concept should be applied to the judiciary.

RETIREMENT OF TERRITORIAL JUDGES

Paragraph (b) of S. 1508, as it passed the Senate, would allow a judge of a territorial court (Canal Zone, Guam, and the Virgin Islands) to retire at any age after 20 years of service, continuous or otherwise. Pursuant to existing law, 28 U.S.C. 373, a judge of a territorial court may now retire at age 70 with 10 years service or at age 65 with 15 years of service. Judges in these courts do not have life tenure. They are appointed for terms of 8 years. If such a judge is removed from office by the President because of mental or physical disability, or fails of reappointment, he will receive an annuity (provided he has served a minimum of 10 years) in the proportion that the number of his years of service bears to 16 times his salary. However, this annuity does not commence until age 65. The Judicial Conference of the United States has recommended that judges of territorial courts be made eligible to retire at age 60, after 20 years of service, in the same manner as judges of other courts, as would be provided by paragraph (a) of S. 1508.

If there are any questions, I will be pleased to try to answer them. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Chairman, and members of the committee, as you have indicated in your opening statement, Mr. Chairman, I appear here in behalf of the Judicial Conference of the United States in support of this pending legislation but with the proviso on the part of the Judicial Conference, that an age limit of 60 years be inserted in the statute—in other words, that a judge should not be able to retire after 20 years of service unless he has reached the age of 60.

This proposal of the Conference would bring this legislation into line with existing legislation, whereby a judge may retire at age 70, with 10 years of service, or at the age of 65 with 15 years of service.

We have in the Administrative Office made a calculation of the average age of judges at the time of the appointment over the last 10 years and the average age range is approximately 51½ years.

The likelihood, therefore, that this legislation will at present at least reach a great many judges is rather remote. In addition, if the amendment proposed by the Judicial Conference were to be adopted there would be 10 judges who would, as of July 1 of this year, become eligible for retirement. That is, they would have reached the age of 60 and would have had 20 years of service.

The CHAIRMAN. In the first instance, that is, retirement after 20 years of service with no minimum age, there would be 17 eligibles and in the second instance 20 years of service and a minimum age of 60 years, there would be 10 eligibles.

Mr. FOLEY. I don't like to differ with the previous witness, but we would have 14 and 10, Mr. Chairman, because there are three judges on the Department of Justice list who between now and July 1 will become eligible for retirement under existing statutes, and therefore we feel that the 14 is a more accurate number than 17.

(The documents referred to follow :)

Average ages of judges upon appointment

Average age of all judges appointed—	
During 5-year period, 1960-64.....	51.7
During 5-year period, 1965-69.....	51.1
During 10-year period, 1960-69.....	51.4
Average age of all circuit judges appointed—	
During 5-year period, 1960-64.....	53.1
During 5-year period, 1965-69.....	51.5
During 10-year period, 1960-69.....	52.1
Average age of all district judges appointed—	
During 5-year period, 1960-64.....	51.5
During 5-year period, 1965-69.....	51.0
During 10-year period, 1960-69.....	51.3

JUDGES CURRENTLY ELIGIBLE TO RETIRE BASED ON ATTAINMENTS OF AGE 70 AND 10 YEARS' SERVICE

Judge and circuit or district	Date of birth	Date eligible to retire
Leonard P. Moore, 2d circuit.....	July 2, 1898	July 2, 1968
Simon E. Sobeloff, 4th circuit.....	Dec. 3, 1894	July 20, 1966
Herbert S. Boreman, 4th circuit.....	Sept. 21, 1897	Sept. 21, 1967
Paul C. Weick, 6th circuit.....	Aug. 25, 1899	Aug. 25, 1969
Latham Castle, 7th circuit.....	Feb. 27, 1900	Feb. 27, 1970
Julius J. Hoffman, Illinois, north	July 7, 1895	July 7, 1965
Francis J. W. Ford, Massachusetts	Dec. 23, 1882	Dec. 23, 1952
Robert Van Pelt, Nebraska.....	Sept. 9, 1897	Sept. 9, 1967
Reynier J. Wortendyke, Jr., New Jersey	Mar. 22, 1895	June 28, 1965
John R. Bartels, New York, east.....	Nov. 8, 1897	Aug. 13, 1969
John F. X. McGohey, New York, south.....	Jan. 7, 1894	Jan. 7, 1964
Girard E. Kalbfleisch, Ohio, north.....	Aug. 3, 1899	Oct. 16, 1969
James C. Connell, Ohio, north.....	Sept. 20, 1897	Sept. 20, 1967
Axel J. Beck, South Dakota.....	May 6, 1894	Apr. 1, 1968
Ewing T. Kerr, Wyoming.....	Jan. 21, 1900	Jan. 21, 1970

¹ To retire Feb. 28, 1970.

² To retire upon appointment and qualification of a successor.

JUDGES CURRENTLY ELIGIBLE TO RETIRE, BASED ON ATTAINMENTS OF AGE 65 AND 15 YEARS' SERVICE

Judge and circuit or district	Date of birth	Date eligible to retire
J. Joseph Smith, 2d circuit	Jan. 25, 1904	Jan. 25, 1969
William Henry Hastie, 3d circuit	Nov. 17, 1904	Nov. 17, 1969
Albert V. Bryan, 4th circuit	July 23, 1899	July 23, 1964
Bryan Simpson, 5th circuit	May 30, 1903	May 30, 1968
Joe McDonald Ingraham, 5th circuit	July 5, 1903	Aug. 30, 1969
Luther M. Swygert, 7th circuit	Feb. 7, 1905	Feb. 7, 1970
Martin D. Van Oosterhout, 8th circuit	Oct. 10, 1900	Sept. 9, 1969
James M. Carter, 9th circuit	Mar. 11, 1904	Mar. 11, 1969
Alfred P. Murrah, 10th circuit	Oct. 27, 1904	Oct. 27, 1969
Jean S. Breitenstein, 10th circuit	July 18, 1900	June 3, 1969
George B. Harris, California, Northern	Aug. 16, 1901	Aug. 16, 1966
Edward M. Curran, District of Columbia	May 10, 1903	May 10, 1968
William A. Bootle, Georgia, Middle	Aug. 19, 1902	June 2, 1969
Fred M. Taylor, Idaho	Feb. 25, 1901	July 26, 1969
J. Sam Perry, Illinois, Northern	Nov. 30, 1896	Aug. 28, 1966
Mac Swinford, Kentucky, Eastern	Dec. 23, 1899	Dec. 23, 1964
Herbert W. Christenberry, Louisiana, Eastern	Dec. 11, 1897	Dec. 30, 1962
Roszel C. Thomsen, Maryland	Aug. 17, 1900	May 17, 1969
Ralph M. Freeman, Michigan, Eastern	May 5, 1902	June 29, 1969
Theodore Levin, Michigan, Eastern	Feb. 18, 1897	Feb. 18, 1962
Harold P. Burke, New York, western	June 6, 1895	June 6, 1960
Sidney Sugarman, New York, southern	Sept. 4, 1904	Sept. 4, 1969
Sylvester J. Ryan, New York, southern	Sept. 10, 1896	Nov. 10, 1962
Edward Weinfeld, New York, southern	May 14, 1901	May 14, 1966
Stephen S. Chandler, Oklahoma, western	Sept. 13, 1899	Sept. 13, 1964
John W. Lord, Jr., Pennsylvania, eastern	Dec. 19, 1901	May 28, 1969
John L. Miller, Pennsylvania, western	Mar. 24, 1901	June 18, 1969
Edward William Day, Rhode Island	May 24, 1901	Nov. 30, 1968
Robert L. Taylor, Tennessee, eastern	Dec. 20, 1899	Dec. 20, 1964
Allen B. Hannay, Texas, southern	Feb. 14, 1892	Aug. 18, 1957
Willis W. Ritter, Utah	Jan. 24, 1899	Oct. 25, 1964
William J. Lindberg, Washington, western	Dec. 17, 1904	Dec. 17, 1969
George H. Boldt, Washington, western	Dec. 28, 1903	Dec. 28, 1968
Robert E. Tehan, Wisconsin, eastern	Jan. 7, 1905	Jan. 7, 1970
Paul P. Rao, U.S. Customs Court	June 15, 1899	June 15, 1964

JUDGES CURRENTLY ELIGIBLE TO RETIRE UNDER ANY CRITERIA (AS OF FEB. 27, 1970)

Judge and circuit or district	Date of birth	Date eligible to retire
Leonard P. Moore, 2d circuit	July 2, 1898	July 2, 1968
J. Joseph Smith, 2d circuit	Jan. 25, 1904	Jan. 25, 1969
William Henry Hastie, 3d circuit	Nov. 17, 1904	Nov. 17, 1969
Simon E. Sobeloff, 4th circuit	Dec. 3, 1894	July 20, 1966
Herbert S. Boreman, 4th circuit	Sept. 21, 1897	Sept. 21, 1967
Albert V. Bryan, 4th circuit	July 23, 1899	July 23, 1964
Bryan Simpson, 5th circuit	May 30, 1903	May 30, 1968
Joe McDonald Ingraham, 5th circuit	July 5, 1903	Aug. 30, 1969
Paul C. Weick, 6th circuit	Aug. 25, 1899	Aug. 25, 1969
Latham Castle, 7th circuit	Feb. 27, 1900	Feb. 27, 1970
Luther M. Swygert, 7th circuit	Feb. 2, 1905	Feb. 7, 1970
Martin D. Van Oosterhout, 8th circuit	Oct. 10, 1900	Sept. 9, 1969
James M. Carter, 9th circuit	Mar. 11, 1904	Mar. 11, 1969
Alfred P. Murrah, 10th circuit	Oct. 27, 1904	Oct. 27, 1969
Jean S. Breitenstein, 10th circuit	July 18, 1900	June 3, 1969
George B. Harris, California, northern	July 16, 1901	Aug. 16, 1966
Edward M. Curran, District of Columbia	May 10, 1903	May 10, 1968
William A. Bootle, Georgia, middle	Aug. 19, 1902	June 2, 1969
Fred M. Taylor, Idaho	Feb. 25, 1901	July 26, 1969
J. Sam Perry, Illinois, northern	Nov. 30, 1896	Aug. 28, 1966
Julius J. Hoffman, Illinois, northern	July 7, 1993	July 7, 1965
Mac Swinford, Kentucky, eastern	Dec. 23, 1899	Dec. 23, 1964
Herbert W. Christenberry, Louisiana, eastern	Dec. 11, 1897	Dec. 30, 1962
Roszel C. Thomsen, Maryland	Aug. 17, 1900	May 17, 1969
Francis J. W. Ford	Dec. 23, 1882	Dec. 23, 1952
Ralph M. Freeman, Michigan, eastern	May 5, 1902	June 29, 1969
Theodore Levin, Michigan, eastern	Feb. 18, 1897	Feb. 18, 1962
Robert Van Pelt, Nebraska	Sept. 9, 1897	Sept. 9, 1967
Reynier J. Wortendyke, Jr., New Jersey	Mar. 22, 1895	June 28, 1965
John R. Bartels, New York, eastern	Nov. 8, 1897	Aug. 13, 1969
Harold P. Burke, New York, western	June 6, 1895	June 6, 1960
Sidney Sugarman, New York, southern	Sept. 4, 1904	Sept. 4, 1969
Sylvester J. Ryan, New York, southern	Sept. 10, 1896	Nov. 10, 1962
John F. X. McGohey	Jan. 7, 1894	Jan. 7, 1964
Edward Weinfeld, New York, southern	May 14, 1901	May 14, 1966
Girard E. Kalbfleisch, Ohio, northern	July 3, 1899	Oct. 16, 1969

JUDGES CURRENTLY ELIGIBLE TO RETIRE UNDER ANY CRITERIA (AS OF FEB. 27, 1970)

Judge and circuit or district	Date of birth	Date eligible to retire
James C. Connell, Ohio, northern	Sept. 20, 1897	Sept. 20, 1967
Stephen S. Chandler, Oklahoma, western	Sept. 13, 1899	Sept. 13, 1964
John W. Lord, Jr., Pennsylvania, eastern	Dec. 18, 1901	May 28, 1969
John L. Miller, Pennsylvania, western	Mar. 24, 1901	June 18, 1969
Edward William Day, Rhode Island	May 24, 1901	Nov. 30, 1968
Axel J. Beck, South Dakota	May 6, 1884	Apr. 1, 1968
Robert L. Taylor, Tennessee, eastern	Dec. 20, 1899	Dec. 20, 1964
Allen B. Hannay, Texas, southern	Feb. 14, 1892	Aug. 18, 1957
Willis W. Ritter, Utah	Jan. 24, 1899	Oct. 25, 1964
William J. Lindberg, Washington, western	Dec. 17, 1904	Dec. 17, 1969
George H. Boldt, Washington, western	Dec. 28, 1903	Dec. 28, 1968
Robert E. Tehan, Wisconsin, eastern	Jan. 7, 1905	Jan. 7, 1970
Ewing T. Kerr, Wyoming	Jan. 21, 1900	Jan. 21, 1970
Paul P. Rao, U.S. Customs Court	June 15, 1899	June 15, 1964

¹ To retire upon appointment and qualification of a successor.

PRESENT ACTIVE JUDGES WHO WILL HAVE SERVED 20 YEARS OR MORE AND WHO WILL REACH AGE 60 ON OR BEFORE JULY 1, 1970

Name and court	Date of birth	Oath
Bazelon, David L., District of Columbia Appellate	Sept. 3, 1909	Nov. 1, 1949
Tamm, Edward A., District of Columbia Appellate	Apr. 21, 1906	June 28, 1948
Worley, Eugene, Custom and Patent Appeals	Oct. 10, 1908	Apr. 6, 1950
Kaufman, Irving R., 2d circuit	Jun. 24, 1910	Nov. 1, 1949
Hill, Delmas C., 10th circuit	Oct. 9, 1906	Oct. 27, 1949
Lynne, Seybourn H., Alabama, Northern	Jul. 25, 1907	Jan. 9, 1946
Wyzanski, Charles E., Massachusetts	May 27, 1906	Jan. 26, 1942
Harper, Roy W., Missouri, Eastern	Jul. 26, 1905	Aug. 11, 1947
Solomon, Gus J., Oregon	Aug. 29, 1906	Nov. 14, 1949
Connally, Ben C., Texas, Southern	Dec. 28, 1909	Nov. 14, 1949

PRESENT ACTIVE JUDGES WHO WILL HAVE SERVED 20 YEARS OR MORE AND WHO WILL NOT HAVE REACHED AGE 60 AS OF JULY 1, 1970

Name and court	Date of birth	Oath
Wright, J. Skelly, District of Columbia, Appellate	Jan. 14, 1911	Oct. 26, 1949
Ford, Morgan, Customs	Sept. 8, 1911	July 28, 1949
Steckler, William E., Indiana, Southern	Oct. 18, 1913	Apr. 15, 1950
Foley, James T., New York, Northern	July 9, 1910	Feb. 16, 1949

JUDGES WHO WILL REACH AGE 65 BETWEEN FEB. 27, 1970, AND JULY 1, 1970, AND WILL HAVE 15 OR MORE YEARS OF SERVICE

Judge and circuit or district	Date of birth	Date eligible to retire
William J. Campbell, Illinois, northern	Mar. 19, 1905 ¹	Mar. 19, 1970
Rabe Ferguson Marsh, Pennsylvania, western	Apr. 26, 1905	Apr. 26, 1970
A. Sherman Christensen, Utah	June 9, 1905	June 9, 1970

¹ Retirement papers submitted effective Mar. 19, 1970.

RESIGNED JUDGES CURRENTLY RECEIVING SALARY PURSUANT TO 28 U.S.C. 373

Name and district	EOD	Date of resignation
Paul D. Shriver, Guam	Sept. 28, 1950	¹ Oct. 16, 1968
	Sept. 22, 1961	² Oct. 1, 1969
Herman E. Moore, Virgin Islands	Aug. 10, 1939	² Nov. 15, 1957
Walter A. Gordon, Virgin Islands	Sept. 24, 1958	² Oct. 1, 1968

¹ Term expired.

² Resigned.

Mr. FOLEY. At the present time, in connection with a question that was asked of the previous witness, and as I believe Congressman Railsback indicated, there are 56 judges who now or by July 1 will be eligible for retirement under existing statutes.

(A memorandum setting forth that information follows:)

RETIREMENT OF JUDGES

There follows a table showing the numbers of judges eligible to retire between now and July 1, 1970, under existing law, plus those who would become eligible should 28 U.S.C. 371 be amended either to provide for retirement at (a) age 60 with 20 years of service or (b) 20 years of service with no age qualification.

Presently eligible.....	50
Becoming eligible through operation of existing law:	
15 years service and 65 years of age.....	3
10 years service and 70 years of age.....	3
Total under existing provisions of 28 U.S.C. 371.....	56
Eligible after 20 years service and attaining age 60.....	10
Eligible after 20 years service with no age qualification.....	4

Attached are lists of the judges, by name, who fall into the above categories.

Fifteen who will reach the age of 70 and will be eligible and 35 who will reach the age of 65 and be eligible. As of January 31, we had 110 senior judges. And I think this is a fairly interesting figure in that 10 years ago, we had approximately the 77 senior judges. That had been a relatively stable figure. The figure in recent years is now going up. It was 110 at a month ago and there are already two additional letters to the President that have come in since that time from judges.

The CHAIRMAN. To what do you attribute that increase?

Mr. FOLEY. I think, Mr. Chairman, there is a greater understanding on the part of judges that when they take senior status, they can still remain in harness, so to speak; they don't have to hang up their judicial robe and start working.

I think there is a great awareness of the advantages of this retirement provision that judges now have.

At the same time, there is an awareness that, by taking senior status and continuing to work, their court in effect achieves an additional judge.

In many of the courts which are hard pressed, this has a very salutary effect.

Mr. McCULLOCH. Will the chairman yield?

The CHAIRMAN. Yes.

Mr. McCULLOCH. Yes.

That was the case in the fifth circuit, where Judge Lester Cecil retired and carried a full caseload for at least 4 years thereafter.

Mr. FOLEY. Yes, sir; in the sixth circuit.

This in essence is the substance of the statement I have, Mr. Chairman. I will be glad to answer any questions.

The CHAIRMAN. You will remember I interrogated the previous witness as to what these retired judges would do. I asked certain questions as to whether they became bank presidents or head of companies and so forth.

Does your office keep a record of what these retired judges do?

Mr. FOLEY. We receive a report once a year on each senior judge, each retired judge.

We have no indication that any of them has ever gone into any venture other than to remain on the bench as long as his health would permit it; with this exception, and a very good exception, several judges have become much more active in judicial administration.

As you know, Mr. Chairman, Judge Maris of the third circuit has been head of the program for the rules of practice and procedure in the Federal courts. Judge Biggs of the same circuit has been extremely active in the conference committees of the Judicial Conference.

The CHAIRMAN. Also Judge Clark.

Mr. FOLEY. Judge Clark for many years was. Judges throughout the country have become very active in Judicial Conference committee work.

The CHAIRMAN. Have any of the retired judges become teachers or professors of law?

Mr. FOLEY. Some have on a part-time basis while active judges and have continued on a part-time basis after they were senior judges. They might, for example, give one course in law school or give an occasional lecture. But we have no record of any full-time employment.

The CHAIRMAN. We have to consider these possibilities under a statute. Would it be your opinion, as it was the opinion of the previous witness, that a retired judge can become a bank president?

Mr. FOLEY. There is one additional sanction that possibly the previous witness was not aware of and that is a Judicial Conference regulation prohibiting any judge, retired or otherwise, from being an officer or executive of any type in any business, corporation, or bank.

The CHAIRMAN. That is the answer. But that is a regulation of the Judicial Conference?

Mr. FOLEY. Yes, sir. It is not a law.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Thank you, Mr. Chairman.

I wonder if you have a breakdown of the various Federal judges over the age of 70.

Mr. FOLEY. Those in senior status?

Mr. RAILSBACK. I would be interested in how many are in the eighties, not any names or anything, but just a general breakdown.

Mr. FOLEY. We could certainly furnish you that.

Mr. RAILSBACK. Yes.

I think we want to know the ages and number of those over 70, retired and not retired.

Mr. FOLEY. Those I have already submitted to the committee, those who are still active and eligible to retire. That is, who have reached the age of 70 and are eligible to retire.

Mr. RAILSBACK. Then you will also supply us with the number of senior judges.

Mr. FOLEY. Yes, and their ages.

Mr. RAILSBACK. Are you going to give us those who have been designated to remain active or all of them?

Mr. FOLEY. We can give you all of them. I think it would be easier if we did that.

(The information referred to follows:)

SENIOR JUDGES 70 YEARS OF AGE OR MORE AS OF JULY 1, 1970

Judge and court	Date of birth
Prettyman, E. Barrett, District of Columbia appeals	Aug. 23, 1891
Miller, Wilbur K., District of Columbia appeals	Oct. 9, 1892
Bastian, Walter M., District of Columbia appeals	Nov. 16, 1891
Fahy, Charles, District of Columbia appeals	Aug. 27, 1892
Danaher, John A., District of Columbia appeals	Jan. 9, 1899
Woodbury, Peter, 1st circuit	Oct. 24, 1899
Swan, Thomas W., 2d circuit	Dec. 20, 1877
Medina, Harold R., 2d circuit	Feb. 16, 1888
Maris, Albert Branson, 3d circuit	Dec. 19, 1893
Forman, Phillip, 3d circuit	Nov. 30, 1885
Biggs, John, Jr., 3d circuit	Oct. 6, 1895
Ganey, J. Cullen, 3d circuit	Apr. 22, 1899
McLaughlin, Gerald, 3d circuit	May 11, 1893
Kalodner, Harry E., 3d circuit	Mar. 28, 1896
Hutcheson, Joseph C., Jr., 5th circuit	Oct. 19, 1879
Rives, Richard T., 5th circuit	Jan. 15, 1895
Jones, Warren L., 5th circuit	July 2, 1895
Tuttle, Elbert Parr, 5th circuit	July 17, 1897
McAllister, Thomas F., 6th circuit	Mar. 4, 1896
Cecil, Lester L., 6th circuit	Nov. 21, 1893
O'Sullivan, Clifford, 6th circuit	Dec. 8, 1897
Major, J. Earl, 7th circuit	Jan. 5, 1887
Duffy, F. Ryan, 7th circuit	June 23, 1888
Knoch, Win G., 7th circuit	May 24, 1895
Hastings, John S., 7th circuit	June 30, 1898
Castle, Latham, 7th circuit	Feb. 27, 1900
Woodrough, Joseph W., 8th circuit	Aug. 29, 1873
Johnsen, Harvey M., 8th circuit	July 16, 1895
Vogel, Charles J., 8th circuit	Sept. 20, 1898
Bone, Homer T., 9th circuit	Jan. 25, 1883
Hamlin, Oliver D., Jr., 9th circuit	Nov. 30, 1892
Jertberg, Gilbert H., 9th circuit	Feb. 1, 1897
Phillips, Orie L., 10th circuit	Nov. 20, 1885
Huxman, Walter A., 10th circuit	Feb. 16, 1887
Pickett, John C., 10th circuit	Sept. 3, 1896
Hodge, Walter H., Alaska	Aug. 29, 1896
Miller, John E., Arkansas, western	May 15, 1888
Hall, Peirson M., California, central	July 31, 1894
Weinberger, Jacob, California, southern	Jan. 4, 1882
Yankwich, Leon R., California, southern	Sept. 25, 1888
Westover, Harry C., California, southern	May 19, 1894
Byrne, William M., California, southern	July 10, 1896
McLaughlin, Charles F., District of Columbia	June 17, 1887
Pine, David A., District of Columbia	Sept. 22, 1891
Youngdahl, Luther W., District of Columbia	May 29, 1896
McGuire, Matthew F., District of Columbia	May 30, 1898
Keech, Richmond B., District of Columbia	Nov. 28, 1896
McGarraghy, Joseph Charles, District of Columbia	Nov. 6, 1897
Matthews, Burnita Shelton, District of Columbia	Dec. 28, 1894
Choate, Emmet C., Florida, southern	May 21, 1891
Whitehurst, George W., Florida, northern, middle, and southern	May 18, 1891
Sloan, William Boyd, Georgia, northern	July 9, 1895
Hooper, Frank A., Georgia, northern	Apr. 21, 1895
Scarlett, Frank M., Georgia, southern	June 9, 1891
Briggle, Charles G., Illinois, southern	Jan. 27, 1883
Shelbourne, Roy M., Kentucky, western	Nov. 12, 1890
Lederle, Arthur F., Michigan, eastern	Nov. 25, 1887
Thornton, Thomas P., Michigan, eastern	Mar. 8, 1889
Donovan, Dennis F., Minnesota	Apr. 9, 1889
Nordbye, Gunnar H., Minnesota	Feb. 4, 1888
Cox, Allan, Mississippi, northern	Feb. 16, 1887
Reeves, Albert L., Missouri, western	Dec. 21, 1873
Duncan, Richard M., Missouri, eastern and western	Nov. 10, 1889
Jameson, William J., Montana	Aug. 8, 1898
Delehant, John W., Nebraska	Sept. 3, 1890
Foley, Roger T., Nevada	May 25, 1886
Hartshorne, Richard, New Jersey	Feb. 29, 1888
Dimock, Edward Jordan, New York, southern	Jan. 4, 1890
Cashin, John M., New York, southern	Aug. 31, 1892
Levet, Richard H., New York, southern	Jan. 24, 1894
Abruzzo, Matthew T., New York, eastern	Apr. 30, 1888
Rayfiel, Leo F., New York, eastern	Mar. 22, 1888
Bruchhausen, Walter, New York, eastern	May 29, 1892
Hayes, Johnson J., North Carolina, middle	Jan. 23, 1886
Warlick, Wilson, North Carolina, western	Mar. 8, 1892
Wilkin, Robert N., Ohio, northern	May 4, 1885
Kloebe, Frank Le Blond, Ohio, northern	June 16, 1890

SENIOR JUDGES 70 YEARS OF AGE OR MORE AS OF JULY 1, 1970—Continued

Judge and court	Date of birth
Underwood, Mell G., Ohio, southern	Jan. 30, 1892
Welsh, George A., Pennsylvania, eastern	Aug. 9, 1878
Kirkpatrick, William H., Pennsylvania, eastern	Oct. 2, 1885
Clary, Thomas J., Pennsylvania, eastern	Aug. 31, 1899
Follmer, Frederick V., Pennsylvania, middle	Dec. 13, 1885
Davidson, T. Whitfield, Texas, northern	Sept. 23, 1876
Thomason, Robert Ewing, Texas, western	May 30, 1879
Barksdale, Alfred D., Virginia, western	July 17, 1892
Bowen, John C., Washington, western	May 12, 1888
Grubb, Kenneth Philip, Wisconsin, eastern	Sept. 14, 1895
Madden, Joseph W., Court of Claims	Jan. 17, 1890
Jones, Marvin, Court of Claims	Feb. 26, 1886
Lawrence, Charles D., Customs Court	Aug. 5, 1878
Wilson, David John, Customs Court	Oct. 27, 1887
Donlon, Mary H., Customs Court	Aug. 25, 1893
Total, 92.	

ACTIVE JUDGES 70 YEARS OF AGE OR MORE AS OF JULY 1, 1970

Judge and court	Date of birth
Moore, Leonard P., 2d circuit	July 2, 1898
Sobelloff, Simon E., 4th circuit	Dec. 3, 1894
Boreman, Herbert S., 4th circuit	Sept. 21, 1897
Bryan, Albert V., 4th circuit	July 23, 1899
Weick, Paul C., 6th circuit	Aug. 25, 1899
Barnes, Stanley N., 9th circuit	May 1, 1900
Wollenberg, Albert C., California, northern	June 13, 1900
Perry, J. Sam, Illinois, northern	Nov. 30, 1896
Hoffman, Julius J., Illinois, northern	July 7, 1895
Swinford, Mac, Kentucky, eastern and western	Dec. 23, 1899
Christianberry, Herbert W., Louisiana, eastern	Dec. 11, 1897
Ford, Francis, J. W., Massachusetts	Dec. 23, 1882
Levin, Theodore, Michigan, eastern	Feb. 18, 1897
Smith, Talbot, Michigan, eastern	Oct. 11, 1899
Van Pelt, Robert, Nebraska	Sept. 9, 1897
Wortendyke, Reynier J., Jr., New Jersey	Mar. 22, 1895
Ryan, Sylvester J., New York, southern	Sept. 10, 1896
McGohey, John F. X., New York, southern	Jan. 7, 1894
Bartels, John R., New York, eastern	Nov. 8, 1897
Burke, Harold P., New York, western	June 6, 1895
Kalbfleisch, Girard E., Ohio, northern	Aug. 3, 1899
Connell, James C., Ohio, northern	Sept. 20, 1897
Chandler, Stephen S., Oklahoma, western	Sept. 13, 1899
Rosenberg, Louis, Pennsylvania, western	July 5, 1898
Beck, Axel J., South Dakota	May 6, 1894
Taylor, Robert L., Tennessee, eastern	Dec. 20, 1899
Hughes, Sarah Tilghman, Texas, northern	Aug. 2, 1896
Hannay, Allen B., Texas, southern	Feb. 14, 1892
Ritter, Willis W., Utah	Jan. 24, 1899
Michie, Thomas J., Virginia, western	June 7, 1896
Kerr, Ewing T., Wyoming	Jan. 21, 1900
Durfee, James R., Court of Claims	Nov. 3, 1897
Almond, J. Lindsay, Jr., Customs and Patent Appeals	June 15, 1898
Rao, Paul P., Customs Court	June 15, 1899
Total, 34.	

MR. RAILSBACK. Mr. Foley, you are the Acting Director of the Administrative Office. I wonder if you can shed any light on what, if anything, has been done as far as any recommendations as to any kind of a mandatory retirement by the Judicial Conference or any other organization?

MR. FOLEY. Senator Tydings has introduced a bill and referred it to the Judicial Conference for consideration, which would provide for mandatory retirement of judges upon reaching the age of 70, retirement in the sense that they would then become senior judges and remain active as judges thereafter.

This bill is before the Judicial Conference at the present time; that is, it is before a committee of the Conference. There they have not as yet taken a position on it.

I believe you know, of course, Mr. Congressman, that any chief judge must step down from that position at the age of 70.

Mr. RAILSBACK. Is that by recommendation of the Conference?

Mr. FOLEY. That is by statute.

Mr. RAILSBACK. Thank you.

Mr. McCULLOCH. Mr. Chairman, I have one question I should like to ask of Mr. Foley. I discussed with the previous witness the judges that had retired pursuant to law and those who continued to accept assignments.

Do you have any statistical evidence that would show the number of days a retired judge spends in court or in performing judicial tasks?

Mr. FOLEY. Yes, sir, we do. We require a report once a year on the activity of each senior judge. This report is required in order to substantiate a request for space and for staff personnel.

We cannot afford staff personnel or space to a senior judge unless the chief judge of the circuit certifies that he is doing a substantial amount of judicial work.

Mr. McCULLOCH. I am very glad to know that you have those statistics and you will furnish them for the record.

Mr. FOLEY. We will be glad to, sir.

(The information referred to follows:)

SERVICE OF SENIOR JUDGES INCIDENT TO SERVICE IN COURTS OF APPEALS OR DISTRICT COURTS,
WITHIN CIRCUITS, JULY 1, 1968-JUNE 30, 1969

Circuit or district	Name of judge	Place of service	Service ¹		
			Courts of appeals, cases heard	District courts Number of trials	Trial days
1st circuit	Peter Woodbury	1st circuit	8		
2d circuit	Harold R. Medina	2d circuit	35		
3d circuit	John Biggs, Jr.	3d circuit	42		
Do	Phillip Forman	do	32		
Do	J. Cullen Ganey	do	43		
Do	Albert B. Maris	do	14		
Do	do	Virgin Islands		§ 108	40
Do	Gerald McLaughlin ²	3d circuit	79		
Do	Austin L. Staley	do	29		
Do	do	Virgin Islands		§ 78	48
5th circuit	Warren L. Jones	5th circuit	21		
Do	Richard T. Rives	do	64		
Do	Elbert Parr Tuttle	do	126		
6th circuit	Lester L. Cecil	6th circuit	70		
Do	Thomas F. McAllister	do	83		
7th circuit	F. Ryan Duffy	7th circuit	54		
Do	John S. Hastings ⁴	do	23		
Do	Win G. Knoch	do	42		
Do	J. Earl Major	do	33		
8th circuit	Charles J. Vogel	8th circuit	36		
9th circuit	Oliver D. Hamlin	9th circuit	56		
Do	Gilbert H. Jertberg	do	63		
Do	Walter L. Pope ⁵	do	30		
10th circuit	Orie L. Phillips ¹	10th circuit	44		
Do	John C. Pickett	do	40		
District of Columbia circuit	Walter M. Bastian	District of Columbia circuit	4		
Do	John A. Danaher ⁶	do	1		
Do	Henry W. Edgerton	do	2		
Do	Charles Fahy	do	73		
Do	Wilbur K. Miller	do	49		
Do	E. Barrett Prettyman	do	45		

DISTRICT COURTS

2d circuit:					
New York (southern)	Edward Jordan Dimock	New York (southern)		15	90
Do	Richard H. Levett	2d circuit	9		
Do	do	New York (southern)		47	133

SERVICE OF SENIOR JUDGES INCIDENT TO SERVICE IN COURTS OF APPEALS OR DISTRICT COURTS,
WITHIN CIRCUITS, JULY 1, 1968-JUNE 30, 1969—Continued

Circuit or district	Name of judge	Place of service	Service ¹	
			Courts of appeals, cases heard	District courts
			Number of trials	Trial days
DISTRICT COURTS—Continued				
2d circuit—Continued				
New York (eastern)	Matthew T. Abruzzo	New York (eastern)	17	16
Do	Walter Bruchhausen	do	28	53
Do	Leo F. Rayfiel	do	47	124
3d circuit:				
Delaware	Caleb Layton 3d	3d circuit	2	
Do	do	Delaware	9	18
New Jersey	Thomas M. Madden	New Jersey	1	1
Pennsylvania (Eastern)	Thomas J. Clary ⁷	Pennsylvania (Eastern)	6	7
Do	do	Virgin Islands	36	30
Pennsylvania (Middle)	Frederick V. Follmer	Pennsylvania (Middle)	1	2
Pennsylvania (Western)	Joseph P. Wilson ⁸	Pennsylvania (Western)	10	23
4th circuit:				
North Carolina (Middle)	Johnson J. Hayes	North Carolina (Middle)	10	27
Do	do	Virginia (Western)	1	1
North Carolina (Western)	Wilson Warlick	North Carolina (Western)	68	40
Virginia (Eastern)	Sterling Hutcheson	4th circuit	11	
Do	do	Virginia (Eastern)	2	2
Do	do	Virginia (Western)	1	1
Virginia (Western)	Alfred D. Barksdale	do	1	1
5th circuit:				
Alabama (Northern)	Harlan Hobart Grooms ⁹	Alabama (Northern)	35	36
Florida (Southern)	Emett Choate	5th circuit	57	
Do	do	Florida (Southern)	43	83
Georgia (Northern)	Frank A. Hooper	5th circuit	8	
Georgia (Southern)	Frank M. Scarlett ¹⁰	Georgia (Southern)	12	11
6th circuit:				
Kentucky (Western)	Roy M. Shelbourne	Kentucky (Western)	5	8
Michigan (Eastern)	Thomas P. Thornton	Michigan (Eastern)	23	61
Ohio (Northern)	Frank Le Blond Klobb	Ohio (Northern)	9	15
Tennessee (Western)	Marion Speed Boyd	Tennessee (Middle)	1	3
7th circuit: Wisconsin (Eastern)	Kenneth Philip Grubb	Wisconsin (Eastern)	2	1
8th circuit:				
Arkansas (Western)	John E. Miller	8th circuit	7	
Do	do	Arkansas (Western)	7	10
Minnesota	Gunnar H. Nordbye	Minnesota	14	25
Missouri (Eastern and Western)	Richard M. Duncan	Missouri (Western)	10	14
Nebraska	John W. Delehant	Nebraska	5	17
9th circuit:				
Alaska	Walter H. Hodge	California (Northern)	4	15
Do	do	Washington (Western)	3	4
California (Central)	William M. Byrne	9th circuit	45	
Do	do	Arizona	3	3
Do	do	California (Central)	3	18
Do	Peirsen M. Hall ¹¹	9th circuit	5	
Do	do	California (Central)	13	33
Do	do	Nevada	1	3
Do	do	California (Central)	20	52
Do	Harry C. Westover	Hawaii	1	4
California (Southern)	Jacob Weinberger	California (Southern)	2	3
Montana	William J. Jameson ¹²	9th circuit	13	
Do	do	Montana	3	3
Do	William D. Murray	Arizona	5	12
Do	do	Hawaii	1	2
Do	do	Montana	11	19
Do	do	Washington (Western)	1	10
Nevada	Roger T. Foley	California (Eastern)	1	2
Do	do	California (Southern)	7	15
Oregon	William G. East	Washington (Eastern)	9	14
Washington (Western)	John C. Bowen	9th Circuit	4	
Do	do	Arizona	6	9
Do	do	Washington (Western)	14	33
District of Columbia circuit:				
District of Columbia	Alexander Holtzoff	District of Columbia	97	122
Do	Richmond B. Keach	do	56	134
Do	Burnita Shelton Matthews	do	43	75
Do	Joseph Charles McGarraghy	do	32	79
Do	Charles F. McLaughlin	do	23	64
Do	Luther W. Youngdahl	do	33	68
Total			1,402	1,044 1,737

SUMMARY

Circuit or district	Place of service	Number of judges	Service		
			Courts of appeals, cases heard	District courts	
				Number of trials	Trial days
Senior circuit judges.....	Courts of appeals.....	29	1,241		
Do.....	District courts.....	2		186	88
Subtotal.....		31	1,241	186	88
Senior district judges.....	Courts of appeals.....	10	161		
Do.....	District courts.....	42		858	1,649
Grand total.....		83	1,402	1,044	1,737

¹ Service:

Courts of appeals: Includes only cases in the U.S. courts of appeals, unless service is indicated as performed in a special court.

Trials and trial days: Includes only evidentiary trials handled by a single judge. Service on 3-judge trial courts and time spent on the hearing of motions, the conduct of pretrial conferences, arraignments, pleas, and sentences in criminal cases and other hearings conducted in open court are not included.

² Retired July 15, 1968.

³ Includes criminal and civil trials disposed of in municipal and territorial matters.

⁴ Retired Feb. 1, 1969.

⁵ Deceased Mar. 27, 1969.

⁶ Retired Jan. 22, 1969.

⁷ Retired Mar. 1, 1969.

⁸ Retired Oct. 18, 1968.

⁹ Retired Feb. 3, 1969.

¹⁰ Retired Aug. 2, 1968.

¹¹ Retired Sept. 30, 1968.

¹² Retired Feb. 27, 1969.

Contributing courts	Name of judge	Court visited	Period of designation		Actual ² days on assignment	Courts of appeals cases heard	Service ¹	
			From	To			Number of trials	Trial days
COURTS OF APPEALS								
3d circuit:	Austin L. Staley	1st circuit	Sept 30, 1968	Oct. 4, 1968	5	15		
Do	do	9th circuit	Aug. 19, 1968	Sept 13, 1968	8	1		
5th circuit:	Warren L. Jones	do	Aug. 18, 1968	do	12	9		
Do	do	10th circuit	Sept 30, 1968	Oct. 4, 1968	8	12		
Do	Ehert Parr Tuttle	California (Northern)	Jan. 10, 1969	Feb. 15, 1969	30		9	12
Eighth circuit:	Harvey M. Johnson	9th circuit	July 22, 1968	Aug. 23, 1968	30			
10th circuit:	Orie L. Phillips	5th circuit	Feb. 10, 1969	Feb. 28, 1969	9	19		
Do	John C. Pickett	9th circuit	Aug. 19, 1968	Sept 13, 1968	3	1		
DISTRICT COURTS								
3d circuit:	Caleb R. Layton, 3d	Florida (Southern)	Jan. 6, 1969	May 1, 1969	39		3	20
Delaware	William H. Kirkpatrick	Court of Customs and Patent Appeals.	Oct. 7, 1968	Dec. 31, 1968				
Pennsylvania (E)	do	do	Jan. 7, 1969	June 30, 1969	7	28		
Pennsylvania (W)	Joseph P. Willson ³	Florida (Middle)	Feb. 17, 1969	Mar. 28, 1969	37		6	14
4th circuit:	Wilson Warlick	do	Feb. 3, 1969	Feb. 21, 1969	15		3	9
8th circuit:	do	Puerto Rico	Apr. 8, 1969	Apr. 15, 1969	8			
Iowa (N)	Henry N. Graven	Texas (Western)	Nov. 15, 1968	Mar. 15, 1969	90		6	9
Do	do	Florida (Middle)	Feb. 3, 1969	Feb. 21, 1969	71		14	27
Missouri (E. & W.)	Richard M. Duncan ⁴	California (Southern)	Apr. 28, 1969	June 7, 1969				
Nebraska	John W. Delehant	do	Jan. 6, 1969	Mar. 8, 1969	65		16	37
Do	do	Pennsylvania (Western)	Sept 23, 1968	Oct. 25, 1968	36		9	22
Do	do	2d circuit	June 16, 1969	June 25, 1969	14	33		
9th circuit: Montana	William J. Jameson ⁵	Florida (S)	Jan. 15, 1969	Mar. 15, 1969	59		8	31
District of Columbia circuit:	Alexander Holtzoff	Court of Customs and Patent Appeals.	May 5, 1969	May 8, 1969	4	14		
District of Columbia	do	do	Mar. 3, 1969	May 8, 1969	1	5		
Do	Matthew F. McGuire	do	May 5, 1969	May 8, 1969	4	14		
Do	Charles F. McLaughlin	do						
SPECIAL COURTS								
Court of Claims	Marvin Jones	10th circuit	Nov. 18, 1968	Nov. 22, 1968	7	15		
Do	Joseph W. Madden	9th circuit	July 2, 1968	June 30, 1968	10	34		
Supreme Court	Tom C. Clark	2d circuit	Feb. 18, 1969	Feb. 20, 1969	3	11		
Do	do	Court of Customs and Patent Appeals	Apr. 9, 1969		1	4		
Do	Stanley Reed	Court of Claims	Feb. 4, 1969	(⁶)	1	1		
Total					577	235	74	181

SUMMARY

Contributing courts	No. of judges	Courts visited	Actual days on assignment	Service	
				Courts of appeals, cases heard	District courts No. of trials
Courts of appeals.....	5	Courts of appeals.....	75	76	12
Do.....	1	District court.....	30		9
Subtotal.....	6		105	76	12
District courts.....	1	Courts of appeals.....	14	33	
Do.....	7	District courts.....	420		65
Do.....	4	Special courts.....	16	61	169
Subtotal.....	12		450	94	65
Special courts.....	3	Courts of appeals.....	20	60	
Supreme Court.....	2	Special courts.....	2	5	
Subtotal.....	5		22	65	
Grand total.....	23		577	235	74
					181

¹ Courts of appeals includes only cases in U.S. courts of appeals unless service is indicated as performed in a special court. Trials and trial days includes only evidentiary trials handled by a single judge. Service on 3-judge courts and time spent on the hearings of motion, the conduct of pretrial conferences, assignments, pleas, and sentences in criminal cases, and other hearings conducted in open court are not included.

² Actual days on assignment include travel time.

³ Retired Oct. 18, 1968.

⁴ Designation ends Mar. 31, 1970.

⁵ Retired Feb. 27, 1969.

⁶ As necessary.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS of California. Mr. Chairman, on the subject that Mr. McCulloch was discussing, I think the testimony today has been generally that these retired judges are willing to work and historically, they have been very cooperative in helping to dispose of cases.

Mr. FOLEY. That is true.

Mr. EDWARDS of California. However, when you furnish the statistics as requested by Mr. McCulloch, you might add a note as to the health of the retired judges. I understand that the main reason that some are not active after retirement is not because they do not want to, but because they cannot because of advancing age or the condition of their health.

Mr. FOLEY. This is true, but unfortunately, we do not have any record on that in our office. We do not know the facts as to their health; in some instances when we have tried to ask a senior judge to go to another circuit to help out in an emergency, he has had a family problem, such as a wife who has been unable to travel and he has been loath to leave over an extended period under such circumstances.

I may also say in connection with Congressman McCulloch's request that our statistics will show only the actual trial days. They won't reflect the time that a senior judge spends in motions or pre-trial work or of course, in any Judicial Conference activity.

So they won't be a true reflection of what he is actually doing.

Mr. McCULLOCH. But it would be very helpful, and of course any person who has practiced law to any great extent knows the value of the pre-trial conference and of the motions and the like, and you can come to a pretty good conclusion with respect to how much time a judge is giving.

I ask all of these questions in the best of faith, because I think the people of this country would be surprised at the very large number of judge hours that are given by dedicated, patriotic, retired judges.

Mr. FOLEY. Yes, this is very true.

Mr. ZELENKO. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ZELENKO. Mr. Foley, I want to review with you the various Federal courts that are presently affected by the retirement provisions which S. 1508 amends. They include not only the district courts (with approximately 340 judgeships), but also the circuit courts. What is the total number of circuit judgeships today?

Mr. FOLEY. There are 97 authorized and 92 positions actually filled.

Mr. ZELENKO. S. 1508 would also apply to the Court of Claims, the Customs Court, the Court of Customs and Patent Appeals.

Mr. FOLEY. That is right.

Mr. ZELENKO. Do these retirement provisions apply to the Tax Court?

Mr. FOLEY. No, sir.

Mr. ZELENKO. However these provisions pertain to the courts of the territories, such as the Virgin Islands, the Canal Zone, and Guam?

Mr. FOLEY. Yes, sir.

Mr. ZELENKO. Have I failed to enumerate any courts, Mr. Foley, to which the retirement provisions under title 28 of the United States Code to be amended by S. 1508, would apply?

Mr. FOLEY. Those are all the courts. I should put in a word of caution as to the territorial courts. The retirement provisions do not apply to those judges because they are on term appointments.

Mr. ZELENKO. I don't know what the total number of judges affected is, that is the total number of Federal judges in the system, but roughly I would estimate the number about 600.

Mr. FOLEY. It is closer to about 450. It is 456 actually.

Mr. ZELENKO. The material you submitted to the subcommittee suggests that if a bill providing a 60-year-age-minimum retirement at the end of 20 years of service were enacted, it would cover approximately how many judges?

Mr. FOLEY. 456.

Mr. ZELENKO. How many judges would be eligible?

Mr. FOLEY. Ten.

Mr. ZELENKO. Ten judges out of 551?

Mr. FOLEY. Yes, sir.

The CHAIRMAN. Mr. Mooney.

Mr. MOONEY. I have a couple of questions, Mr. Foley. One is in regard to a judge who has decided to accept retirement status under 371(b). His status as a judge has not changed any.

Mr. FOLEY. No.

Mr. MOONEY. In other words, if there is a law or regulation that prohibits a judge from doing certain things while on the bench, this same law or regulation is still applicable to a judge who has accepted retirement status.

Mr. FOLEY. That is right. There is one slight difference, but it is not pertinent to your question.

That is that a judge taking senior status no longer sits in the court en banc.

Mr. MOONEY. Mr. Chairman, I have a series of questions that I would like to ask Mr. Foley in the interest of developing a complete record. It should not take but a few minutes. Some are questions and some are statements, Mr. Foley.

Under 371(a), title 28, United States Code, which S. 1508 does not amend, a Federal justice or judge resigns from office, not retires from office. Is that correct?

Mr. FOLEY. That is right.

Mr. MOONEY. In other words, a Federal judge or justice before he can resign under 371(a) must be 70 years of age and have served 10 years continuously or otherwise?

Mr. FOLEY. Yes.

Mr. MOONEY. Does a judge who resigns under 371(a) do so with full pay and after resignation, can he pursue other gainful occupations and still retain his full pay?

Mr. FOLEY. Yes, sir.

Mr. MOONEY. S. 1508(a) does amend 371(b) which provides that the Federal justice or judge may retire at 70 years of age with 10 years continuous service or at 65 years of age with 15 years of service.

S. 1508 would provide retirement at any age, after serving at least 20 years. Under this section, 371(b), what a judge retires from is the regular service, not from office.

Mr. FOLEY. Yes, that is right.

Mr. MOONEY. Therefore, he retains his judge status and is subject to Federal code prohibitions.

Mr. FOLEY. That is right.

Mr. MOONEY. Such as, he could not practice law?

Mr. FOLEY. Yes, that is right.

Mr. MOONEY. Are there any other Federal code provisions prohibiting off the bench activities other than practicing law, that you can recall?

Mr. FOLEY. None that I can think of.

Mr. MOONEY. Is it possible for a territorial judge to retire from regular active service under 371(b) or any other United States Code provision?

Mr. FOLEY. A territorial judge may retire under section 373—I am sorry, he may not retire, he may resign under 373, but there is no provision for retirement of a territorial judge.

Mr. MOONEY. Why are they treated differently?

Mr. FOLEY. Presumably because it was a term appointment through the years. It was an 8-year appointment, many times a new judge will be appointed every 8 years, historically.

Mr. MOONEY. They get a somewhat better deal in that they can resign at 65 with pay, that is, the pay at which they resigned, for life, and practice law?

Mr. FOLEY. That is the only way they can retire with any pay is to resign.

Mr. MOONEY. Under 1508(b) as it passed the Senate, may a territorial judge resign with full pay at age 58 and continue to draw his pension for life and pursue other gainful occupations?

This is a territorial judge under S. 1508(b)?

Mr. FOLEY. This is under the proposed amendment, subsection (b) of S. 1508?

Mr. MOONEY. Yes.

Mr. FOLEY. Yes, as long as he has had 20 years in.

Mr. MOONEY. Thank you, Mr. Foley.

The CHAIRMAN. Mr. MacGregor.

Mr. MACGREGOR. No questions, Mr. Chairman.

The CHAIRMAN. Are there any other questions?

Thank you very much, Mr. Foley. We appreciate your testimony.

That will conclude the hearings for today.

(Whereupon, at 11:20 a.m. the subcommittee adjourned, subject to call of the Chair.)

(Subsequently the following information was furnished by the administrative office of the United States Courts.)

SENIOR JUDGES, U.S. COURTS

Name and Court

Prettyman, E. Barrett,
D.C. Court of Appeals
Miller, Wilbur K.,
D.C. Court of Appeals
Bastian, Walter M.,
D.C. Court of Appeals
Washington, George Thomas,
D.C. Court of Appeals
Fahy, Charles,
D.C. Court of Appeals
Danaher, John A.,
D.C. Court of Appeals
Woodbury, Peter, 1st Circuit
Swan, Thomas W., 2nd Circuit
Medina, Harold R., 2nd Circuit
Maris, Albert Branson, 3rd Circuit
Forman, Phillip, 3rd Circuit
Biggs, John, Jr., 3rd Circuit
Ganey, J. Cullen, 3rd Circuit
Staley, Austin L., 3rd Circuit
McLaughlin, Gerald, 3rd Circuit
Kalodner, Harry E., 3rd Circuit
Hutcheson, Joseph C., Jr., 5th Circuit
Rives, Richard T., 5th Circuit
Jones, Warren L., 5th Circuit
Tuttle, Elbert Parr, 5th Circuit
McAllister, Thomas F., 6th Circuit
Cecil, Lester L., 6th Circuit
O'Sullivan, Clifford, 6th Circuit
Major, J. Earl, 7th Circuit
Duffy, F. Ryan, 7th Circuit
Konch, Win G., 7th Circuit
Hastings, John S., 7th Circuit
Castle, Latham, 7th Circuit
Woodrough, Joseph W., 8th Circuit
Johnsen, Harvey M., 8th Circuit
Vogel, Charles J., 8th Circuit
Hamlin, Oliver D., Jr., 9th Circuit
Jertberg, Gilbert H., 9th Circuit
Phillips, Orie L., 10th Circuit
Huxman, Walter A., 10th Circuit
Pickett, John C., 10th Circuit
Grooms, Harlan Hobart, Alabama, N.
Hodge, Walter H., Alaska
Miller, John E., Ark., W.
Halbert, Sherrill, Calif., E.
Hall, Peirson M., Calif., C.
Weinberger, Jacob, Calif., S.
Yankwich, Leon R., Calif., S.
Westover, Harry C., Calif., S.
Byrne, William M., Calif., S.
Layton, Caleb R., III, Delaware
Steel, Edwin D., Jr., Delaware
Schweinhaut, Henry A.,
Dist. of Columbia
McLaughlin, Charles F.,
Dist. of Columbia
Pine, David A., Dist. of Columbia
Youngdahl, Luther W.,
Dist. of Columbia
McGuire, Matthew F., Dist. of Columbia

Keech, Richmond B., Dist. of Columbia
McGarraghy, Joseph Charles,
Dist. of Columbia
Matthews, Burnita Shelton,
Dist. of Columbia
Choate, Emmett C., Fla., S.
Whitehurst, George W., Fla., N., M., & S.
Sloan, William Boyd, Ga., N.
Hooper, Frank A., Ga., N.
Scarlett, Frank M., Ga., S.
Campbell, William J., Ill., N.
Briggle, Charles G., Ill., S.
Shelbourne, Roy M., Ky., W.
Lederle, Arthur F., Mich., E.
Thornton, Thomas P., Mich., E.
Donovan, Dennis F., Minn.
Nordbye, Gunnar H., Minn.
Cox, Allen, Miss., N.
Reeves, Albert L., Mo., W.
Duncan, Richard M., Mo., E. & W.
Murray, William D., Montana
Jameson, William J., Montana
Delehant, John W., Nebraska
Foley, Roger T., Nevada
Hartshorne, Richard, N.J.
Madden, Thomas M., N.J.
Dimock, Edward Jordan, N.Y., S.
Cashin, John M., N.Y., S.
Levet, Richard H., N.Y., S.
McGohey, John F. X., N.Y., S.
Abruzzo, Matthew T., N.Y., E.
Rayfiel, Leo F., N.Y., E.
Bruchhausen, Walter, N.Y., E.
Hayes, Johnson J., N.C., M.
Warlick, Wilson, N.C., W.
Wilkin, Robert N., Ohio, N.
Kloeb, Frank Le Blond, Ohio, N.
Underwood, Mell G., Ohio, S.
East, William G., Oregon
Welsh, George A., Penn., E.
Kirkpatrick, William H., Penn., E.
Clary, Thomas J., Penn., E.
Follmer, Frederick V., Penn., M.
Willson, Joseph P., Penn., W.
Gourley, Wallace S., Penn., W.
Beck, Axel J., South Dakota
Boyd, Marion Speed, Tenn., W.
Davidson, T. Whitfield, Texas, N.
Thomason, Robert Ewing, Texas, W.
Barksdale, Alfred D., Va., W.
Bowen, John C., Washington, W.
Grubb, Kenneth Philip, Wisconsin, E.
Madden, Joseph W., Court of Claims
Jones, Marvin, Court of Claims
Lawrence, Charles D.,
U.S. Customs Court
Wilson, David John,
U.S. Customs Court
Donlon, Mary H., U.S. Customs Court
Total, 107.



