CONGRESSIONAL RECORD

Proceedings and Debates of the 85th Congress

HOUSE

BILL: H.R. 12292
ACTION: Passed

DATE: August 12, 1958
PAGE: 15619 - 21

ASSIGNMENT OF RETIRED JUDGES TO ACTIVE DUTY

Mr. CELLER. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 12292) to amend subsections (b), (c), and (d) of section 294 of title 28, United States Code, relating to the assignment of retired judges to active duty.

The Clerk read as follows:

Be it enacted, etc., That subsections (b), (c), and (d) of section 294 of title 28, United States Code, be amended to read as follows:

"(b) Any judge of the United States who has retired from regular active service under section 371 (b) or 372 (a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

"(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he willing and able to undertake.

"(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court."

The SPEAKER. Is a second demanded?

Mr. KEATING. Mr. Speaker, I demand a second.

The SPEAKER. Without objection a second will be considered as ordered.

There was no objection.

Mr. CELLER. Mr. Speaker, briefly, this bill concerns the assignment of retired judges to active duty. There are cases where the calendar is congested and it is necessary at times to use these retired judges to relieve the pressure of many cases in certain of the districts. There has been a bit of confusion as to who shall assign these judges. This bill seeks to clarify that situation. It would provide that where a retired judge is willing to sit within his judicial circuit the chief judge and the judicial council shall so assign him; but if he is willing to sit in a district outside his judicial circuit, then the right to assign shall be with the Chief Justice of the United States Supreme Court from the roster of senior judges. Heretofore there has been an overlapping, in the sense that the chief judge of the circuit and the Chief Justice of the United States Supreme Court had more or less concurrent power to assign outside the judicial circuit a retired judge. This will clarify that situation.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Iowa.

Mr. GROSS. Does it become an exclusive authority from the Chief Justice of the United States to assign judges on the senior roster?

Mr. CELLER. If a judge is willing, and only if he is willing, and a certificate of necessity has been filed by the chief judge of the court where the services are needed.

Mr. GROSS. If his name is on the roster?

Mr. CELLER. If his name is on the roster, the Chief Justice of the Supreme Court makes the assignment.

Mr. GROSS. The Chief Justice makes the assignment?

Mr. CELLER. Yes.

Mr. GROSS. That is the main difference between the power proposed in this bill and the old law?

Mr. CELLER. That is correct. That is in the main the real difference.

Mr. GROSS. This gives exclusive power to the Chief Justice of the United States Supreme Court to assign judges?

Mr. CELLER. With this exception: No retired judge can be commanded or required to go outside of his official station if he does not wish to.

Mr. GROSS. This roster is composed of judges who have expressed a willingness to go outside their judicial district?

Mr. CELLER. Yes. Even if they have expressed a willingness, if a judge does not wish to follow the dictates of the Chief Justice he is not required to do so. Ordinarily they will follow the Chief Justice.

Mr. DOWDY. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Texas.

Mr. DOWDY. I might say the first request has to come from the circuit judge to the Chief Justice of the United States. He does not originate the request.

Mr. CELLER. He must indicate the necessity for a judge to go outside of his circuit.

Mr. KEATING. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, this bill would clarify an administrative conflict which has arisen since the enactment of Public Law 219 in the last session of this Congress. That law added a new subsection 5 to section 294 of title 28 of the United States Code to authorize the Chief Justice of the United States to maintain a roster of senior judges. A senior judge is a Federal judge who has retired from regular active service but is willing to take on additional duties from time to time. The law which we passed in the last session authorized the Chief Justice to maintain a roster of these judges and to assign them from time to time either in their own judicial circuit or elsewhere.

Actually, under the law already then existing, a retired judge who was willing to undertake special judicial duties could be assigned by the Chief Judge or the judicial council of the circuit in which he had his official station. As to assignment within his circuit, therefore, the new law resulted in an overlapping authority with respect to assignments between the Chief Judge of the circuit and the Chief Justice of the United States. H. R. 12292 is designed to do away with this conflicting dual authority by leaving the assignment of senior judges outside their circuit to the Chief Justice and those inside the circuit to the Chief Judge of the circuit.

This is a law whose purpose is primarily to reduce congestion in our Federal courts. It may appear to be a minor step but it is an important one in that regard. For that reason I urge that the bill be passed.

Mr. CRAMER. Mr. Speaker, will the gentleman yield?

Mr. KEATING. I yield to the gentleman from Florida.

Mr. CRAMER. Is it not true that this bill was recommended by the Judicial Conference?

Mr. KEATING. Yes.

Mr. CRAMER. Is it true that this bill has as one of its purposes trying to do something about some 6,000 backlog cases which have been added in the last 9 months to the existing total of in excess of 43,000 cases all of which need expeditious handling at this time?

Mr. KEATING. That is true.

Mr. CRAMER. Does not the gentleman think if this Congress wants to do a job with reference to this backlog of cases, and to assure the constitutional right of every citizen to expeditious justice, the logical thing to do would be to vote out the omnibus judgeship bill which would provide 45 additional judges in areas where it has been proven they are needed? Does not the gentleman think that is the real way and one of the most effective ways of attacking this particular problem, in the light of the fact that it now takes an average of over 2 years to dispose of a case?

Mr. KEATING. The gentleman is dead right on that. There is no measure that could be more effective in meeting that problem than the omnibus judgeship bill on which our committee has acted favorably and upon which a rule has been requested. It seems to me it is indefensible for that legislation not to be enacted at this session of the Congress. I am glad the gentleman raised that point, because I think it is extremely important.

Mr. CRAMER. I appreciate the gentleman's views. Of course, I join with him in expressing those views, and I trust that this Congress will not adjourn without taking up this all-important measure.

Mr. KEATING. This Congress should not think of adjourning without taking up that measure.

Mr. CRETELLA. Mr. Speaker, will the gentleman yield?

Mr. KEATING. I yield to the gentleman from Connecticut.

Mr. CRETELLA. The chairman of the Committee on the Judiciary is on the floor. Perhaps he could give us some information as to the status of that bill at this time.

Mr. KEATING. I will be glad to yield to him for that purpose if he can shed any light on the problem. Our committee has acted, and it now lies within the power of the Committee on Rules and the leadership of this body as to whether they will allow the House to work its will on this legislation in this session, and I sincerely hope they will.

Mr. CRETELLA. The Committee on the Judiciary has acted favorably on the omnibus bill?

Mr. KEATING. Yes.

Mr. Speaker, I now yield 3 minutes to the gentleman from Iowa [Mr. GROSS].

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Speaker, I take this time to ask the chairman of the Committee on the Judiciary a question as to what happens when these judges are called back into service with respect to their retirement pay. Is that suspended?

Mr. CELLER. Oh, no.

Mr. GROSS. They are not paid a salary?

Mr. CELLER. We have no right to curtail or reduce or affect the salary of any judge, because he is appointed for life.

Mr. GROSS. Tell me this. The judge does not draw both a salary and retirement, does he?

Mr. CELLER. Oh, no. He does not draw two; he draws the salary for life.

Mr. GROSS. The same retirement pay?

Mr. CELLER. Which is his salary.

Mr. GROSS. I thank the gentleman.

Mr. KEATING. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. HOFFMAN].

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Speaker, ordinarily there would be no harm in legislation of this kind, but with the present tendency on the part of the Supreme Court to legislate, to the exclusion of the Congress, there is some danger in this sort of a program. We all know that the the present Chief Justice has certain fixed convictions about what the Congress should or should not do, and sometimes, when we have tried to make our wishes known through legislation, under his guidance that Court has said that we did not mean what we said; meant something else. Due to that tendency, this bill places additional power in his hands to legislate along the line that he thinks the Congress should have legislated. What is meant is this. Assume we have a group of Federal judges. Some of them believe in one theory of government, of law enforcement; some believe in another. One does not need to read all of the Federal court decisions, District Courts, Courts of Appeal, Supreme Court, to get that idea pretty firmly fixed in his mind. There was a time when a young man, admitted to the bar, read the decisions of the United States Supreme Court—That was my policy—almost as one would read the prayer book. It was the law, and it was next to the law laid down by the Almighty. But, in recent years there are so many demands one is tempted to believe they do not follow the law. Recently Judge Warren, the Chief Justice, said that we should pay attention to precedent. But he must have been absent minded when he made that statement because he is one of the chief offenders in disregarding what the Court has said in previous years. You have on the Supreme Court as Chief Justice a very strong-willed man. Sure in his convictions. That is all right, too, for that matter; there is no fault to be found with that. Then assume he looks around the country and picks out a group—a roster I think you call it—of retired judges. He picks them according to whether they believe in this or that theory of government or of law enforcement. What does he get? He gets a group of judges who believe as he does. You cannot say that they are biased or prejudiced; that would hardly be right.

I notice that the gentleman from New York [Mr. CELLER], the chairman of this great committee, is shaking his head.

Mr. CELLER. Mr. Speaker, will the gentleman yield?

Mr. HOFFMAN. Certainly.

Mr. CELLER. There is nothing compulsory about it. The Chief Justice would not do that without the consent of the other judges.

Mr. HOFFMAN. Oh, the gentleman is not that innocent—oh, no.

Mr. WALTER. Mr. Speaker, will the gentleman from Michigan yield to me?

Mr. HOFFMAN. Yes.

Mr. WALTER. If the bill meant what the gentleman from Michigan is attempting to read into it, I assure him that it would not be before us today. The judge is assigned not because of any preconceived ideas or because of his philosophy. The judge is assigned to a particular district because of a congested calendar, not to try a particular case.

Mr. HOFFMAN. Yes, and all that the gentleman says being true, it does not prevent the Chief Justice from picking the judges who have the same political philosophy as the Chief Justice. He takes a look at all the judges. Surely, the Chief Justice can pick the judges who have rendered decisions somewhat along the same line as those rendered by the Chief Justice. I could fix that, if I were the Chief Justice, so that I would legislate this Congress pretty nearly out of existence by court decisions. And so could anyone else, if he were so inclined.

The Chief Justice by his opinions and his decisions—and there are 2 or 3 more there who have indicated the same thought—has indicated that this Congress does not know what it is doing, that it just cannot express itself. You can see the reasons why there may be objections to this bill from the practical standpoint.

The Court on several occasions, in effect, has said that 2 and 2 do not make 4, even though we said it did. They said it made 3 or 5; and that I do not like.

The SPEAKER. The time of the gentleman from Michigan [Mr. HOFFMAN] has expired.

Mr. KEATING. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina [Mr. JONAS].

Mr. JONAS. Mr. Speaker, I should like the attention of the chairman and the ranking minority member of this great Committee on the Judiciary to raise a question for them to reconsider during the congressional recess. We all recognize the fact that the Federal courts are congested. That is really the reason for this bill; am I correct, Mr. Chairman?

Mr. CELLER. I will say that is one of the reasons.

Mr. JONAS. I wonder if the Committee on the Judiciary has given any consideration or thought or study to the advisability of creating a Federal court inferior to the district court, a court with jurisdiction somewhere between that of a United States commissioner and a United States district judge. It seems to me from the experience I have had in Federal practice before I came to Con-

gress that the Federal judiciary, the district judges, have to handle a volume of insignificant matters that could properly be handled, I think, by an inferior court.

Mr. WALTER. Mr. Speaker, will the gentleman yield?

Mr. JONAS. I yield to the gentleman from Pennsylvania.

Mr. WALTER. Of course, the gentleman remembers that we recently changed the law so that the amount involved in litigation was increased from $3,000 to $10,000.

Mr. JONAS. I understand that, but that does not apply to criminal cases. I am referring to the mass of criminal cases.

Mr. CELLER. Mr. Speaker, will the gentleman yield?

Mr. JONAS. I yield to the gentleman from New York.

Mr. CELLER. As far as I have been able to ascertain, there is no backlog of criminal cases in the Federal courts.

Mr. JONAS. However, if the United States district courts did not have to handle a variety of misdemeanor criminal cases they might dispose of the civil docket and keep it clear. You have the Federal district judges today handling a lot of cases comparable to the cases police court judges handle in our State courts.

Mr. CELLER. I doubt that, but I would say this: I imagine the gentleman is asking for the setup of something like a small claims court. We have no such bill before us. If the gentleman has such a bill, we would be very glad to consider it.

Mr. KEATING. Mr. Speaker, will the gentleman yield?

Mr. JONAS. I yield to the gentleman from New York.

Mr. KEATING. The gentleman from North Carolina has discussed this matter with me. Frankly, I am impressed with his arguments. I hope he will prepare some legislation so that we can consider it at the next session. I think there are many cases now handled by our Federal district judges which do not rise to the dignity of what that court should be doing, that is to say, a great many of these minor criminal offenses as well as small civil cases. I believe that at least our committee should give very serious thought to the problem which has been raised by the distinguished gentleman from North Carolina, who has had such a wide experience in legal work prior to coming here.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. JONAS. I yield to the gentleman from Maryland.

Mr. HYDE. I think many people do not realize that right here near Washington the Federal Court over in Baltimore has to try many, many cases involving nothing but traffic cases that arise on the road between here and Baltimore. Originally they are heard by the United States Commissioner, but may go direct from the Commissioner to the Federal Court. This results in the conditions the gentleman is talking about; takes up time on things with which the courts should not be bothered.

Mr. JONAS. I thank the gentleman from Maryland. I do not want to impose further on the time of the House today. I know the discussion is not applicable to the pending legislation. However, I thought that between now and the next Congress the members of the committee, or perhaps the staff of the committee, could give some thought to this problem. The establishment of an inferior court might go a long way toward taking care of the congestion problem.

The SPEAKER. The question is, Will the House suspend the rules and pass the bill?

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.