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JUDGES' SALARIES AND RETIREMENT

HEARING
BEFORE
SUBCOMMITTEE NO. 4
OF THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS
SECOND SESSION
ON
H.R. 15678
TO INCREASE THE SALARIES OF CERTAIN JUDGES
AND
H.R. 15679 and H.R. 14202
RELATING TO RETIREMENT OF CERTAIN JUDGES

MAY 1, 1968

Printed for the use of the Committee on the District of Columbia

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's views on the state of the Union and the progress of the war.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It contains a detailed account of the military operations of the Army during the year 1861.

3. The third part of the document is a report from the Secretary of the Navy Department, dated January 15, 1862. It contains a detailed account of the naval operations of the Navy during the year 1861.

4. The fourth part of the document is a report from the Secretary of the Department of the Interior, dated January 20, 1862. It contains a detailed account of the operations of the Department during the year 1861.

5. The fifth part of the document is a report from the Secretary of the Department of the Treasury, dated January 25, 1862. It contains a detailed account of the operations of the Department during the year 1861.

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8. The eighth part of the document is a report from the Secretary of the Department of the Navy, dated February 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.

9. The ninth part of the document is a report from the Secretary of the Department of the Interior, dated February 15, 1862. It contains a detailed account of the operations of the Department during the year 1861.

10. The tenth part of the document is a report from the Secretary of the Department of the Treasury, dated February 20, 1862. It contains a detailed account of the operations of the Department during the year 1861.

JUDGES' SALARIES AND RETIREMENT

WEDNESDAY, MAY 1, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 4 OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in Room 1310, Longworth House Office Building, Honorable B. L. Whitener (Chairman of the Subcommittee) presiding.

Present: Representatives Whitener (presiding), Gude, and Steiger.

Also present: James T. Clark, Clerk; Donald Tubridy, Minority Clerk; and Leonard O. Hilder, Investigator.

Mr. WHITENER. The Subcommittee No. 4 will come to order.

We will proceed with hearing on H.R. 15678, a bill to increase the salaries of judges in the District of Columbia; bill H.R. 15679, to amend the retirement law for judges in the District of Columbia; H.R. 14202, a bill to amend the judges' retirement law.

(H.R. 15678, H.R. 15679 and H.R. 14202 follow:)

[H.R. 15678, 90TH CONG., 2D SESS., INTRODUCED BY MR. McMILLAN ON
FEBRUARY 29, 1968]

A BILL

To increase the salaries of judges of the District of Columbia Court of General Sessions, and the salaries of judges of the District of Columbia Court of Appeals

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 11-902(d) of the District of Columbia Code is amended by striking out "\$24,000" and inserting in lieu thereof "\$28,000", and by striking out "\$23,500" and inserting in lieu thereof "\$27,500".

SEC. 2. Section 11-702(d) of the District of Columbia Code is amended by striking out "\$25,000" and inserting "\$29,000", and by striking out "\$24,500", and inserting "\$28,500".

SEC. 3. The amendments made by this Act shall take effect as of October 1, 1967.

[H.R. 15679, 90TH CONG., 2D SESS., INTRODUCED BY MR. McMILLAN ON
FEBRUARY 29, 1968; AND H.R. 14202, INTRODUCED BY MR. ADAMS ON
NOVEMBER 29, 1967]

A BILL

To amend section 11-1701 of the District of Columbia Code relating to retirement of certain judges of the courts of the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs (1) and (2) of subsection (a) of section 11-1701 of the District of Columbia Code are amended to read as follows:

(1)

"(a) (1) (A) Any judge of the of the District of Columbia Court of General Sessions, any judge of the District of Columbia Court of Appeals, or any judge of the juvenile court of the District of Columbia who is subject to this subsection shall hereafter be eligible to retire after having performed services as a judge of such court or courts for a period or periods aggregating ten years or more, whether continuously or not: *Provided*, That if any such judge shall retire after less than twenty years of judicial service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of sixty, except that such judge may elect to receive a reduced retirement salary beginning at the age of fifty-five or the date of his retirement if subsequent to that age, the reduction in retirement salary in such case to be one-twelfth of 1 per centum for each month or fraction of a month the judge is under the age of sixty at the time of commencement of his reduced retirement salary: *Provided further*, That if any such judge shall retire after twenty or more years of judicial service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of fifty, but no reduction shall be made for age. Any judge retiring under this paragraph shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service as a judge of any such court bears to the period of thirty years, plus any amount to which such judge is entitled under subparagraph (B) of this paragraph. In computing the years of service performed as a judge of such courts referred to in the first sentence of this subsection, service as a judge in either the police court of the District of Columbia or the municipal court of the District of Columbia, or the juvenile court of the District of Columbia, the District of Columbia Court of Appeals, or the District of Columbia Court of General Sessions, as heretofore constituted, shall be included whether or not such service be continuous. Retirement salary under this section shall be paid in the same manner as the salary of such judge, but in no event shall the sum so received as retirement salary under this section be in excess of 80 per centum of the salary of such judge at the date of his retirement. The terms 'retire' and 'retirement' as used in this section shall mean retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent.

"(B) In computing the retirement salary of any judge retiring under this section (including retirement for disability), such judge shall be entitled to receive, in addition to the amount provided under subparagraph (A) of this paragraph, an annual amount (payable in equal monthly installments during the remainder of his life) based on any military or civilian service performed by such judge which is allowable under section 8332 of title 5 of the United States Code, computed in accordance with section 8339 (a), (b), (c), (d), (g), and (h) of such title as may apply; except that average pay for the purpose of such computation shall be deemed to be the salary of such judge at the time of his retirement.

"(2) Any judge subject to this subsection may hereafter retire after having served five years or more (including civilian service performed by such judge which is allowable under section 8332 of title 5 of the United States Code) and having become permanently disabled from performing his duties. Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by a duly licensed physician and approved by the Surgeon General of the Public Health Service. A judge who retires for disability under this subsection shall receive annually in equal monthly installments, during the remainder of his life, a sum computed in accordance with paragraph (1) of this subsection except that no reduction shall be made for age. Such sum shall be paid in the same manner as the salary of such judge except that in no event shall the sum received by any judge as retirement salary at the time of his retirement for disability hereunder be in excess of 80 per centum of the salary of such judge at such time."

SEC. 2. Paragraph (5) of subsection (a) of section 11-1701 of the District of Columbia Code is amended to read as follows:

"(5) Each judge, subject to the provisions of this subsection, shall deposit in the fund a sum equal to $3\frac{1}{2}$ per centum of his salary received for judicial service performed by him as a judge of any court referred to in paragraph (1) of this subsection prior to the date he became subject to the provisions of this subsection, and he shall deposit in or transfer to the District of Columbia Judicial Retirement and Survivors Annuity Fund from the Civil Service Retirement and Disability Fund a sum equal to $3\frac{1}{2}$ per centum of his salary received for any civilian service within the purview of section 8332 of title 5 of the United States Code. Each judge may elect to make such deposits in installments during

the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners of the District of Columbia. Notwithstanding the failure of any such judge to make such deposits, credit shall be allowed for the service rendered, but the retirement pay of such judge shall be reduced by 10 per centum of such deposit remaining unpaid, unless such judge shall elect to eliminate the service involved for purposes of retirement salary computation."

SEC. 3. Paragraph (3) of subsection (b) of section 11-1701 of the District of Columbia Code is amended to read as follows:

"(3) Each judge who has elected to bring himself within the purview of this subsection shall deposit to the credit of the fund a sum equal to 3 per centum of his salary received for service as a judge of any of the courts referred to in paragraph (1) of subsection (a), including salary received after retirement, and of his basic salary, pay, or compensation for services as a Senator, Representative, Delegate, or Resident Commissioner in Congress and for any other civilian service within the purview of subchapter III (relating to civil service retirement) of chapter 83 of title 5 of the United States Code. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 per centum of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under paragraph (13) of this subsection: *Provided*, That no deposit shall be required from a judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States."

SEC. 4. Paragraph (5) of subsection (b) of section 11-1701 of the District of Columbia Code is amended by adding, immediately after the period at the end thereof, the following "Notwithstanding any other provision of this subsection, the annuity payable under this subsection to a dependent child who is regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution shall not terminate while he is pursuing such study or training until he has attained the age of twenty-two years. For the purpose of this subsection, a dependent child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A dependent child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Commissioners of the District of Columbia that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school year during the school semester (or other period into which the school year is divided) immediately after the interim."

SEC. 5. Subparagraph (B) of paragraph (6) of section 11-1701 of the District of Columbia Code is amended to read as follows:

"(B) The term 'dependent child' means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support or who is between eighteen and twenty-one years of age and is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution."

SEC. 6. All interest paid by any judge, active or retired, on deposit pursuant to section 11-1701(b) (3) of the District of Columbia Code shall be refunded to such judge.

MR. WHITENER. We have with us today, Judge Andrew Hood, the Chief Judge of the District of Columbia Court of Appeals; Judge Harold H. Greene, Chief Judge of the District of Columbia Court of General Sessions; and Judge DeWitt S. Hyde, and Judge Charles W. Halleck, both of the Court of General Sessions; Judge Jo Morgan of the District of Columbia Tax Court; Mr. Austin Canfield, Chairman of the Committee on the Court of General Sessions for the District of

Columbia Bar Association; Mr. Thomas A. Flannery, Chairman of the Court Subcommittee of the Committee on Administration of Justice of the Bar Association; and Mr. Thomas F. Moyer, Assistant Corporation Counsel; and Mr. Barney Farber, Accounting Officer, District of Columbia.

Mr. FLANNERY. Mr. Chairman, I am Mr. Flannery, and I might add I am also authorized to appear here today on behalf of the Metropolitan Washington Board of Trade.

Mr. WHITENER. Thank you, Mr. Flannery.

Now, are there others?

Judge Morgan is here, is he?

Judge MORGAN. Yes.

Mr. WHITENER. Now, are there any other gentlemen or ladies back there who would like to join in?

Suppose we hear from Judge Hood, and Judge Greene, and Judge Morgan.

Now, that will get the courts that are involved.

STATEMENT OF HONORABLE ANDREW HOOD, CHIEF JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

SALARIES

Judge Hood. I will be brief, Mr. Chairman, because Judge Greene has a prepared statement on all of these, and I will depend on those. I have approved those which concern our courts.

I would like to make these remarks about the salary increases, pointing out that it was in 1942, when the District of Columbia courts were reorganized, the old Municipal Court and the old Police Court being consolidated into the Municipal Court and the Municipal Court of Appeals created.

The question of course arose as to the salaries of these judges, and the powers to be at that time. The Federal judges and the District Court judges were receiving \$10,000 a year, so it was decided that the highest of the District of Columbia judges would be \$500 less than the lowest of the Federal judges. So the salary for the Chief Judge of the Municipal Court of Appeals, was fixed at \$9,500, and then there was a drop of \$500 to the associate judges, another drop of \$500 to the Chief Judge of the Municipal Court, and then a \$500 drop to the associate judges on that court.

In 1945 the salaries of the Federal District Court judges was raised to \$15,000. At that time the same formula was used for the local courts, so that the highest paid judge of the local courts was \$14,500 with the \$500 drop below that.

Then in 1955 when the Federal judges were raised to \$22,500, the highest local court was raised to \$19,000, a differential of \$3,500.

Then, again, in 1964, when the Federal judges were raised to \$30,000, the highest of the local courts was \$25,000, a differential of \$5,000.

So in the time we have dropped from a differential of \$500 to one of \$5,000. Although in spite of that drop, the Court of General Sessions has continually—its jurisdiction has been increased by taking away to help the District Court—adding jurisdiction to the Municipal Court of the Court of General Sessions—there has been that differential increase in the pay.

Now, I realize that a pay bill for a judge cannot be worked out on a mathematical formula. It cannot be worked out on a strictly logical basis; but in any judicial system, and the Federal courts in the District and the local courts constitute the judicial system for the District of Columbia, there should be some reasonable proportion to the salaries. This increase which is proposed today would bring the salaries of the District of Columbia judges more in proportion to the Federal judges, and while it wouldn't actively bring it back to the formula started and followed in the first pay raise, because it would be a \$1,000 differential instead of a \$500. I do think it is a reasonable proposal and should be adopted.

Mr. WHITENER. Judge Greene.

**STATEMENT OF HONORABLE HAROLD H. GREENE, CHIEF JUDGE,
DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS; ACCOMPANIED BY HONORABLE DEWITT S. HYDE AND HONORABLE CHARLES W. HALLECK, JUDGES**

Judge GREENE. Mr. Chairman, I have a prepared statement, and I would like to, with your permission, make that a part of the record rather than reading the statement.

Mr. WHITENER. All right, sir. We will make it a part of the record.

Judge GREENE. I would like to say only this, that my statement and my testimony in favor of these bills is supported unanimously by the Board of Judges of the Court of General Sessions who have passed resolutions to that effect. We did not initiate the request for an increase in salaries. These were initiated by other bodies and partial bodies, the District of Columbia Crime Commission, and the Committee on the Administration of Justice of the Municipal Council. We are, however, supporting the concepts that those bodies have suggested, and also the figures that were mentioned by these committees.

We believe that, for the reasons that I have given, by the Crime Commission and by the Committee on Administration of Justice that the salary increase is justified by the work load and the stature of the courts that are involved.

The Court of General Sessions, as has been mentioned before, now handles 97 percent of all litigation in the District of Columbia, which I would think is a sizable amount.

We handle on an estimated basis about 80 percent of all serious criminal offenses. That proportion is steadily increasing over the years.

In connection with the recent civil disorder that took place in the District of Columbia, the District of Columbia Court of General Sessions has handled all of the work load connected with that riot. As a matter of fact, the Court was open on a 24-hour basis throughout this disorder from Friday, April 5 to Monday midnight, April 8.

Something I did not have in my prepared statement, which only came to my attention yesterday is the fact that, perhaps of some significance, that since the last salary increase was granted to the judges of the District of Columbia courts in 1964, classified employees in the Federal service had their pay raised by 19 percent. By July 1 of this year their salaries will be increased by approximately 6 percent more, which will be an increase of 25 percent since 1964.

Even if the present bill is adopted, the salaries of the judges of the Court of General Sessions will be increased by only 17 percent so even with this increase, we are certainly not ahead, but we are still behind the classified employees.

Now, insofar as the retirement bill is concerned, again, it has the full and unanimous support of the judges of our court, and as I understand, it has complete support of all the governmental bodies, including the District of Columbia and the Bureau of the Budget.

The major effect, Mr. Chairman, would be to permit those judges who are eligible to retire under the Judicial Retirement Law at that time to count toward their annuities also any prior civil service, congressional service, or military service that they might have. This kind of amendment is completely in line with all other retirement systems that exist in the Federal service; and we would suggest that the judicial Retirement System should be brought in lin with those other systems as well.

There are some other amendments in the retirement bill which I will not bother to enumerate, since they are discussed in my prepared statement.

(Subsequently, the following tabulation was received for the record:)

Year	Judges		Teachers' Salary Act	
	Average percentage increase	Public Law	Average percentage increase	Public Law
1955.....	33.0	84-139	14.9	84-243
1958.....			14.0	85-838
1960.....			7.5	86-773
1963.....			10.6	87-881
1964.....	33.0	88-426	7.0	88-575
1966.....			8.9	89-810
1967 (effective Oct. 1, 1967).....	16.7	H.R. 15678	19.2	H.R. 16409
Cumulative average.....	82.7		82.1	

¹ Two phases. Phase I effective Oct. 1, 1967, and phase II effective July 1, 1968.

Source: Government of the District of Columbia, Personnel Office, May 2, 1968.

MR. WHITENER. I think at this point we might make the report of the District of Columbia Commissioners on each of the bills a part of the record.

(Two letters dated May 1, 1968 to Chairman McMillan from the Commissioner of the District of Columbia are as follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
Washington, D.C., May 1, 1968.

The Honorable JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
United States House of Representatives,
Washington, D.C.

DEAR MR. McMILLAN: The Government of the District of Columbia has for report H.R. 15679 and H.R. 14202, 90th Congress, identical bills, "To amend section 11-1701 of the District of Columbia Code relating to retirement of certain judges of the courts of the District of Columbia."

These bills are designed to improve the retirement benefits for the judges of the District of Columbia Court of General Sessions, the District of Columbia Court of Appeals, and the Juvenile Court of the District of Columbia. The first

section of each bill revises paragraph (1) of subsection (a) of section 11-1701 to permit the retirement at age sixty of a judge with less than 20 years service, instead of at age sixty-two, as at present. Under both existing laws and the proposed amendment, a retiring judge with less than twenty years service can elect to receive retirement compensation beginning at age 55, but under existing law, a judge retiring at age 55 would have his retirement compensation reduced by one-half of one percent for each month that he is under 62 years of age. Under the proposed new subparagraph (A) of section 11-1701(a) (1), the judge's retirement compensation would be reduced by one-twelfth of one percent for each month that the judge is under age 60. The new subparagraph (A) also permits a judge with 20 or more years of service to retire at age fifty without reduction of his retirement compensation for age.

Under both existing law and the bills, the basic retirement compensation of a judge is to be a sum equal to such proportion of the salary received by such judge at the date of his retirement as the total of his aggregate years of service bears to the period of thirty years. However, the bills add to section 11-1701 (a) (1) a subparagraph (B) permitting judges to claim toward their retirement as judges, service in a military or civilian capacity, and providing that a judge's retirement salary shall be increased by an annual amount based on any such military or civilian service.

The bills also make changes in existing law relating to the retirement of judges for permanent disability. At present, a judge may retire on permanent disability with five years or more service, and receive retirement income computed on the number of years spent in service proportionate to thirty years, with a ceiling of 80 percent of total salary. Under H.R. 15679 and H.R. 14202, a judge could also receive an annuity based on civilian or military service.

Section 2 of the bills amends paragraph (5) of subsection (a) of section 11-1701 of the District of Columbia Code to require the deposit in the District of Columbia Judicial Retirement and Survivors Annuity Fund of a sum equal to 3½ per centum of the salary received by a judge for any civilian service within the purview of section 8332 of title 5, United States Code, which the judge may have performed. The judge could elect to pay such deposit in installments during his judicial service. Should he fail to make such deposit or any part of it, his retirement pay would be reduced by 10 percent of the deposit remaining unpaid.

Section 3 of the bills amends paragraph (3) of subsection (b) of section 11-1701 to provide that a judge may elect to make his periodic payments into the retirement fund whether continuously a judge or not. The law as presently written does not require payments into the fund during a period when a judge is separated from service.

Finally, paragraph (5) of subsection (b) of section 11-1701 would be amended to provide that notwithstanding existing law, under which any benefits payable to a surviving child of a judge terminate at age 18 years, such benefits shall continue to be payable to a surviving child until he reaches 22 years of age, so long as he is "regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institution, junior college, college, university, or comparable recognized institution."

The Government of the District of Columbia supports amendments in the Judges Retirement Act to improve the retirement benefits of the city's judges consistent with retirement benefits for District teachers and other District employees covered by the civil service retirement system. The District therefore supports the provisions of sections 1 and 5 of the bills.

However, sections 2, 3, and 6 of the bills would serve to give the judges certain benefits which are not enjoyed by most other District employees. Sections 2 and 3 would permit judges to deposit in the judges' fund any retirement monies they accumulated during prior government service without also having to deposit the interest these monies would have earned in the judges' fund. By contrast, civil service retirement and the D. C. teachers retirement legislation require employees to include interest with all deposits made to retirement funds. Section 6 of the bills provides for the refund of interest on deposits paid by judges prior to the enactment of these amendments.

The bills deal only with interest provisions as they relate to deposits. The District believes that they could be improved by expanding them to also include provisions for interest on refunds, making these compatible with similar provisions in civil service retirement legislation. The present Judges Retirement Act, in paragraph (b) (4) of section 11-1701, D. C. Code, provides for refunds of all deposits with interest should a judge resign from office regardless of length of

service. This is not consonant with civil service retirement legislation which provides for refunds with interest only when the person resigning has served for less than five years.

There is one additional provision in section 4 of the bills which we believe warrants comment. This provision, adding student-child survivorship benefits to the law, contains a four-month non-school interval feature. Past experience in administering student-child benefits under the civil service retirement law discloses that an interim of four months fails to cover students at schools on a trimester basis or in other circumstances (such as shifting from high school to college) where periods of absence between terms often exceed four months by a few days. To correct this problem, the civil service retirement law was amended by Public Law 89-407, approved April 25, 1966, to permit continuance of student-child annuity benefits over non-school intervals of up to five months. The District therefore recommends that there be substituted five months in lieu of the present four months non-school interval contained in this section of the bill.

The District also recommends that the bills be amended to include the judge of the District of Columbia Tax Court. The pay and retirement benefits of this judge have, for a number of years, been comparable to the pay and retirement benefits of a judge of the Court of General Sessions.

The basic intention of this proposed legislation is to improve the benefits of the Judicial Retirement Act. Of particular importance, a judge would not be entitled to apply retirement credits previously earned in a civilian or military capacity to his existing judicial retirement credit. The substance of the bills was largely drafted in consultation with the Court of General Sessions, and they are supported by the Board of Judges of the court. With the legislation to increase the number of judges on the court and to increase the salary of the judges, these bills on judicial retirement form one of the three principal legislative objectives of the District of Columbia Courts for this particular session of Congress. The proposed amendment will make a judicial career even more attractive to qualified persons, and implement the emphasis of this administration on crime reduction.

The District Government is generally in accord with the purpose of the bills, and if they be amended as the District has recommended in this report, it would favor the enactment of one of the bills.

The Government of the District of Columbia has been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

THOMAS W. FLETCHER,
Assistant to the Commissioner,
(For: Walter E. Washington, Commissioner).

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
Washington, May 1, 1968

The Honorable JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. McMILLAN: The Government of the District of Columbia has for report H.R. 15678, 90th Congress, a bill "To increase the salaries of judges of the District of Columbia Court of General Sessions, and the salaries of judges of the District of Columbia Court of Appeals."

The purpose of the bill is reflected generally in its title. Under existing law (the Act approved August 14, 1964; D.C. Code, sec. 11-902), the Chief Judge of the Court of General Sessions is compensated in the amount of \$24,000 annually, and each Associate Judge receives an annual salary of \$23,500. The bill would increase the compensation of the Chief Judge to \$28,000, and that of an Associate Judge to \$27,500.

The increase in the caseload of the Court of General Sessions has become apparent as the effort to maintain a reasonably current docket in both the civil division and the criminal division of the Court has become more difficult. The judges have found that as they have attempted to attack the pressing problems of delay and congestion on the criminal docket, similar problems of delay and congestion have arisen in the civil division of the Court. The time between the

initiation of a civil suit and final disposition has steadily been widening. For example, the time of delay between the joinder of issue of a civil jury case and trial is now 26 months; last year that delay was 22 months; in 1963 the time of delay was only four months. The number of pending civil jury cases has increased from 3,272 on September 30, 1965 to 5,492 in April, 1968. At the same time the Court faced, as of April 24, 1968, a backlog of 1,742 criminal jury cases.

This increasingly heavy burden being imposed upon the judges of the Court makes it clearly desirable that their compensation be augmented as the bill provides. It should be emphasized that the compensation of the judges sitting in the Court of General Sessions has not been increased since 1964. The District believes that their service in what is a very significant and heavily burdened court merits this consideration.

Section 2 of the bill provides for an increase in the compensation of the judges of the District of Columbia Court of Appeals. Under existing law (as provided by the Act approved August 14, 1964), the Chief Judge of the District of Columbia Court of Appeals receives an annual salary of \$25,000 and each Associate Judge receives an annual salary of \$24,500. The bill would increase the salary of the Chief Judge to \$29,000 and that of each Associate Judge to \$28,500. The increasingly heavy burden carried by the judges of the District of Columbia Court of Appeals is amply reflected in the caseload figures of recent years. In fiscal year 1965, 241 cases were filed in the Appellate Court; in 1965-66 the number increased to 295 cases; in 1966-67 the number of cases filed in the Appellate Court increased to 312; and for 1967-68 the number is estimated to be 350. The backlog of pending cases also continues to grow. On July 1, 1965 the backlog of cases amounted to 97; on July 1, 1966 the figure increased to 184; and as of April 30, 1968 the number of pending cases rose to 227. The District feels that, as in the case of the judges of the Court of General Sessions, the judges of the District of Columbia Court of Appeals are carrying a heavy burden and fully deserve the proper consideration that would be extended to them by the compensation increase authorized by this section of the bill.

The salaries of the judges of the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals were last increased in 1964 (Public Law 88-426). However, since that time professional salaries have risen substantially in government as well as in other areas of the economy. The proposed increases averaging 16.3 percent for the judges of the District of Columbia Court of Appeals and 17 percent for the judges of the District of Columbia Court of General Sessions would still remain below the overall average increase of the General Schedule of 19.6 percent since 1964. This does not include the additional increase of 4.9 percent approved for July 1, 1968.

The salary of the judge of the District of Columbia Tax Court has, for a number of years, been comparable to that of a judge of the Court of General Sessions. The District supports this comparability and recommends that it be maintained by amending H.R. 15678, as follows:

1. Redesignate section 3 as section 4.
2. Insert the following new section 3:

"SEC. 3. The first sentence of the second paragraph of section 2 of the District of Columbia Revenue Act of 1937, as amended (D. C. Code, sec. 47-2402), relating to the compensation of the person appointed to the District of Columbia Tax Court, is amended by striking out '\$23,500' and inserting in lieu thereof '\$27,500'."

The increase in the compensation for judges as provided by the bill will require the appropriation of an additional \$116,000 per year. This amount includes an increase in the salaries of the Chief Judge and Associate Judges of the Juvenile Court whose salaries, by operation of law (D. C. Code, sec. 11-1502 (d)), remain equal to the salaries of the Chief Judge and Associate Judges of the Court of General Sessions. If the legislation be amended to provide for a pay increase for the judge of the District of Columbia Tax Court, as the District has recommended in the preceding paragraph, the cost would be \$120,000.

In view of the growing needs of the District of Columbia courts and the heavy burdens now being carried by the judges, the District favors enactment of the bill.

The Government of the District of Columbia has been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

THOMAS W. FLETCHER,
Assistant to the Commissioner
 (For: Walter E. Washington, Commissioner).

Mr. WHITENER. Also, a letter to Chairman McMillan from Chief Judge Greene, reporting on one of the retirement bills before us.
(The letter referred to follows:)

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS,
Washington, D.C., February 8, 1968.

The Honorable JOHN L. McMILLAN,
United States House of Representatives,
Washington, D.C. 20515

DEAR CONGRESSMAN McMILLAN: Thank you for your letter of January 15, 1968, in which you request my comments on H.R. 14202, which would amend the District of Columbia judges retirement legislation. I am very appreciative of the opportunity of commenting on this bill.

I strongly endorse H.R. 14202; it is also fully and strongly supported by the Board of Judges of the District of Columbia Court of General Sessions.

The principal amendments to the District of Columbia Judges' Retirement Act of 1964, as proposed by H.R. 14202, have as their purpose to correct certain inequities in the present law which affect judges who prior to appointment on the bench had accrued many years of congressional, civil, or military service under the respective retirement laws relating to such service. Specifically, these amendments would permit a judge who is eligible to retire under the Judicial Retirement Act to receive credit at the time of his judicial retirement for any earned civilian and active military service. Civilian service would be counted only if the appropriate deposit for any such prior service is made in the judicial retirement fund, and it would be counted for purposes of the annuity only at the rates allowed under the Civil Service Retirement Act. The average pay for the purpose of computing the annuity would be the salary at the time of retirement. For purposes of disability retirement, the amendments proposed by H.R. 14202 would permit aggregation of civilian and judicial service to arrive at the five year minimum required under both.

Prior to 1964, the District of Columbia judges retirement system was separate and apart from any other retirement system. Its operative provisions completely differed from those of the Civil Service and Congressional retirement schemes, and, unlike those schemes, it did not require a contribution by the covered individual. The District of Columbia Judges' Retirement Act of 1964 changed that situation. Like other retirement laws enacted by Congress, it requires a contribution by the covered individual of 6½% of his salary, and the benefits are based upon the period of time during which contributions are made, with appropriate reductions for age. But while the civil service, congressional, and military retirement systems are closely tied to each other, in the sense that service under one of these systems may be aggregated at the time of retirement with service under the others to arrive at the amount of the total benefits, such aggregation is not now provided for in the District of Columbia Judges retirement legislation. The omission apparently is simply a carry-over from the period when the District judicial retirement system had a completely different structure from other retirement systems and was based on the non-contribution concept.

The omission of an aggregation provision, which H.R. 14202 would rectify, leads to many inequities.

Under the present civil service retirement laws, it is possible for a federal employee to retire with 30 years of service at age 55, or with 20 years of service at age 60, without reduction in annuity (5 U.S.C.A. 8336(a), (b)). But under present law, a person with 20 or more years of civil service who is appointed to the bench and there serves a minimum of 10 years will still not be permitted to draw his earned civil service retirement benefits until he reaches the age of 62; in spite of the fact that, had he remained in the civil service, he would have been able to retire on a full annuity at age 55. The amendments embodied in this bill would remove this penalty on those former members of Congress and congressional and executive employees who are appointed to the bench. It would thus increase the attractiveness of judicial service on the local courts and thereby improve the administration of justice in all its aspects, including the fight on crime.

It may be noted in this connection that judges on the United States District Court are eligible for retirement at full pay after serving fifteen years. Moreover, their retirement plan is non-contributory while judges on the Court of General Sessions make the same contribution as Civil Service employees and employees of the legislative branch.

The omission in the present law is particularly critical with respect to judges who are able to serve only one ten-year term on the Court. At the conclusion of that term, they may not be eligible for any judicial retirement benefits, or relatively inadequate benefits further sharply reduced for each year the retiree is under the age of 62, while having to wait to the age of 62 to draw any earned civil service or congressional retirement benefits at all. To permit an individual to retire under part of the total federal retirement system, while requiring him to wait many years for his retirement benefits under another part of that system—particularly where the contributions are the same under both—is an obvious anomaly. It is precisely for that very reason that the law permits aggregation of the other contributory retirement benefits (congressional, civil, and military) at the time the individual involved is eligible to retire under any one of them (5 U.S.C.A. 8339(c), (a); 5 U.S.C.A. 8332(c)). H.R. 14202 would align the District of Columbia judges retirement system on the same basis.

Another consequence of the omission of an aggregation clause concerns disability. The Judges' Retirement Act permits a judge to become eligible for disability retirement when he has served at least five years on the bench. The Civil Service Retirement law likewise permits disability retirement after five years of service (5 U.S.C.A. 8337(a)). But under present law, civil service cannot be counted toward the five-year judicial disability minimum even if that civil service amounted to ten, twenty or more years. It may be noted in this connection that no minimum number of years of service is required for the disability retirement of federal judges.

H.R. 14202 would permit disability retirement for those who had accumulated the requisite number of years under either retirement system. It would thus eliminate the further anomaly that a judge who becomes disabled during his first five years on the bench will have no retirement benefits under either the judicial or the civil service retirement laws regardless of the total number of years of his government service. Indeed, unless the law is amended, as provided in H.R. 14202, those judges who become permanently disabled after serving more than five years on the bench, will thereafter receive an annuity based only on their judicial service, and, notwithstanding their permanent disability, they will have to wait until they reach the age of 62 before they receive any benefits for earned civil, congressional, or military service.

It is important to note that under H.R. 14202, for purpose of computation of the annuity, civil service time would be counted at the lower civil service rates (1½% for the first five years, 1¾% for the next five years, and 2% for each year thereafter), rather than at the higher judicial rate. By contrast, under the retirement system for members of Congress, congressional employee service which does not exceed 15 years (5 U.S.C.A. 8339(c)), and military service which does not exceed 5 years, is counted at the higher congressional rate. In this respect, then, the proposed amendments to the District of Columbia Judges' Retirement Act do not treat the retirees under that Act as favorably as other precedents might suggest.

H.R. 14202 would permit the entire retirement annuity including the Civil Service portion thereof, to be based on the highest salary attained in the federal service, including the years served in the courts. In this respect, H.R. 14202 is similar to the retirement provisions applicable to members of Congress, which for congressional and non-congressional service alike use as their base for computation of the annuity the highest "average pay" received including that received as a member of Congress (5 U.S.C.A. 8331(4)). The purpose of this kind of provision is to protect the value of the judge retiree's retirement under the Civil Service Act. Had those judges remained in the Civil Service, that value would have risen constantly due to automatic salary increases resulting both from longevity and from Civil Service-wide pay increases authorized by the Congress (not to mention promotions which in many instances would have come about in due course). Those persons with prior civil service who are appointed to the bench should not be cut off from the benefits of those normal pay increases when their retirement annuity is being calculated. It might also be noted that in the military, too, the basis for the annuity is the salary level attained at the time of retirement, irrespective of the length of service in the particular rank.

H.R. 14202 would allow credit for service in the armed forces to the same extent and with the same limitations as is permitted under the Civil Service Act with respect to executive and legislative employees and members of Congress (5 U.S.C.A. 8332(c), (d)).

Under present judicial retirement law, retirement without a penalty for age is permitted only at age 62 with respect to those persons who do not serve a full twenty years. Moreover, the penalty for retirement at less than 62 years of age is $\frac{1}{2}$ or 1 percent for each month that the retiree is under the age of 62 at the time of his retirement, or 6 per cent per year.

Under present law, a member of Congress who has served at least ten years is eligible to receive a non-reduced deferred annuity at age 60 (5 U.S.C.A. 8338 (b)). H.R. 14202 would permit a judge to retire at age 60 without reduction in annuity if he has served at least 10 years, although the judicial retirement scheme would not be as liberal as the congressional retirement system in regard to retirement by those less than 60 years of age.

The bill would also reduce the penalty for retirement at less than age 60 from 6 per cent per year to 1 per cent per year. It is believed that there is no federal retirement statute which imposes a penalty as high as 6 per cent per year for retirement at an earlier age than normally contemplated. So high a penalty is particularly inappropriate with respect to judges who serve ten-year terms and who may or may not be reappointed at the termination of their terms. The Civil Service Retirement Act imposes a penalty of 1 per cent per year for the first five years with respect to the members of Congress who are under the age of 60 at the time of retirement, and 2 per cent for additional years (5 U.S.C.A. 8339(g)), and a penalty of 2 percent per year for civil service employees, under age 55, who are involuntarily separated after completing 25 years of service or after becoming 50 years of age and serving at least 20 years (5 U.S.C.A. 8339(g)).

Prior to the enactment of the District of Columbia Judges' Retirement Act, many of the judges were covered both under the predecessor statute to the 1964 Act and under the Civil Service Retirement Act. Pursuant to their coverage under the Civil Service Retirement Act, they made the regular and routine deposits in the fund created by that Act. When the 1964 judicial retirement statute was enacted, these judges, in order to purchase the equivalent amount of time under the judicial retirement statute, withdrew their deposits from the civil service fund and redeposited them in the judicial retirement fund. But while these monies drew no interest while on deposit in the civil service fund, the judges were required to pay interest for the same period of time when they transferred these monies to the judicial fund. Thus, what was merely a bookkeeping transaction turned out to cost these judges a substantial amount in interest. H.R. 14202 would eliminate the requirement of payment of interest upon the transfer of these funds when no interest was received for the equivalent period while the monies were held in the Civil Service Retirement Fund.

The civil service and congressional retirement systems provide for survivorship annuities (5 U.S.C.A. 8341) to be paid to dependent children who are between 18 and 22 years of age and are pursuing a fulltime course of study in an educational institution. H.R. 14202 would incorporate this provision in the District of Columbia Judges' Retirement Act of 1964.

If I can be of further service in connection with this bill or any other matter, please let me know.

Sincerely yours,

HAROLD H. GREENE.

Mr. WHITENER. Now, gentlemen, we have information here that there are 70 employees of the District of Columbia Government as of July 1 of this year, 1968, compensated at a rate which exceeds that salary now paid to judges down in the Court of General Sessions. So we would like to make this table a part of the record.

(The table referred to follows:)

Following are the officials of the District Government whose pay is now, or on 7/1/68 will be, more than the \$23,500.00 presently paid the Judges of the Court of General Sessions:

Executive

Level III: \$29,500 Commisssioner-----	1
Level V: \$28,000 Deputy Commissioner-----	1
Total -----	<u>2</u>

Public Safety

Class 10: \$22,491-\$25,166 (Police Crief and Fire Chief)----- 2

Education

Level I: \$30,000 College President----- 1
 Class I: \$26,000, Superintendent----- 1
 Level I: \$25,000, College President----- 1
 Level II: \$25,000-\$27,000, Provost & VP----- 1
 Level III: \$22,000-\$25,000, VP's----- 2
 Level II: \$21,000-\$24,000, VP's & Deans----- 4
 Total----- 10

GS-17

(Now: \$23,788-\$26,960; 7/1/68: \$26,264-\$28,000*)

Finance Officer----- 1
 Director of Corrections----- 1
 Director of Licenses and Inspections----- 1
 Director of Zoological Park----- 1
 (Var.) Public Health----- 5
 Director of Sanitary Engineering----- 1
 Total----- 10

GS-18

(Now: \$27,055; 7/1/68: \$28,000*)

Executive Officers----- 2
 Director of Public Safety----- 1
 Program Officer----- 1
 Corporation Counsel----- 1
 Director of Public Health----- 1
 Director of Highways & Traffic----- 1
 Executive Director of R.L.A----- 1
 Total----- 8

GS-16

(Now: \$20,982-\$26,574; 7/1/68: \$22,835-\$28,000*)

Budget Off----- 1
 Pub. Serv. Comm----- 2
 Coroner----- 1
 Director of Buildings and Grounds----- 2
 Dep. Finance Off----- 1
 Director of Public Library----- 1
 Management Office----- 1
 Personnel Officer----- 1
 Superintendent of Insurance----- 1
 Asst. Corporation Counsel----- 5
 Deputy Director of Corrections----- 1
 Deputy Director of Licenses and Inspections----- 1
 Superintendent of Recreation----- 1
 Regional Dir. National Parks----- 1
 (Var.) Public Health----- 15
 Deputy Director of Highways and Traffic----- 1
 Deputy Director of Sanitary Engineering----- 1
 Deputy Director of R.L.A----- 1
 Total----- 38

*Maximum salary in all GS grades is limited to \$28,000.

Totals:

Executive -----	2
GS-18 -----	8
GS-17 -----	10
GS-16 -----	38
Education -----	10
Public Safety -----	2
Total -----	70

Mr. WHITENER. Well, let us go to Judge Morgan for a moment. I believe your main contention, Judge, is that we have forgotten your court in this bill. You are the forgotten court in this bill?

**STATEMENT OF HONORABLE JO MORGAN, JUDGE, DISTRICT OF
COLUMBIA TAX COURT**

Judge MORGAN. That is correct, sir.

Every bill that the Chief Judge of the Court of Appeals has outlined contains an increase of salaries for the Judge of the District of Columbia Tax Court, and in all of those acts it was included. I was a little bit surprised at this time why it wasn't included. I would be very glad—I don't want to take up your time—

Mr. WHITENER. As I understand it, Judge Morgan, the District of Columbia Commissioner, in his report, has submitted a proposed amendment which would take care of the situation that you mentioned.

Judge MORGAN. I haven't much interest in this, since I am retiring on June 30. There is one thing in the proposal—the amendment proposed by the Commissioners, and I appreciate it very much, their interest in it. They use the words “judge appointed” to the Tax Court, and I think there may be an inference—some very careful person over at the Comptroller's Office might say, well, that applies to my successor and not to me.

I have a suggestion from the legislative officer of the District which amends that, and I would like to read it in the record.

It says—it is section 3, new section 3. The first sentence at the second paragraph of section 2 of the District of Columbia Revenue Act in 1937 as amended (D.C. Code, Section 47-2402) is amended by striking out “\$23,500” and inserting in lieu thereof “\$27,500.”

The reason why we mentioned the Revenue Act is because section 2402 of Chapter 47 of the Code is not positive law as of the sections referring to the Court of Appeals and the Court of General Sessions. So we have to insert that in it.

Mr. WHITENER. Why don't we go to Mr. Moyer on that proposition?

Judge MORGAN. Well, he is the one that just wrote that amendment.

Mr. WHITENER. That is right. He may have had a different idea than what you think he had.

**STATEMENT OF THOMAS F. MOYER, ESQ., ASSISTANT CORPORATION
COUNSEL; ACCOMPANIED BY BARNEY FARBER, ACCOUNTING
OFFICER, DISTRICT OF COLUMBIA GOVERNMENT**

Mr. MOYER. Yes, Mr. Chairman. The District recommended that the salary of the Tax Court Judge also be increased. The amendment which we had put in the report was similar to a previous amendment

in previous acts of Congress which gave him a raise. I am sure it wasn't intended—it might be interpreted that it might apply to somebody else, and the most recent amendment that the Judge mentioned is basically the same amendment with some of these extra words stricken.

Mr. WHITENER. I see no reason to quarrel with the language of the Judge's suggested amendment as compared to one in this Commissioner's report.

Mr. MOYER. No. I think we have just stricken some language which might be confusing. The amendment as the Judge gave it, I think, would do the job.

Mr. WHITENER. We were getting along pretty well up to now.

Well, gentlemen, I wonder if, just for the record, we couldn't start out by having one of you just state what the present pay level of the different judges is and then go into a brief discussion of the present retirement system as you gentlemen understand it.

My reason for suggesting that is it will be a lot easier for our colleagues in the Congress to read a brief statement from you than to look at tables and charts.

Mr. FLANNERY. Chief Judge of the D.C. Court of Appeals: present salary is \$25,000; the Associate Judges, \$24,500; Chief Judge of the Court of General Sessions' salary is \$24,000; the Associate Judges, \$23,500; and the salary of the Tax Court is \$23,500.

RETIREMENTS

Mr. WHITENER. Now, how about the retirement situation at the present as compared to the proposals in the legislation.

Judge GREENE, do you have anything?

Mr. FLANNERY. I think Judge Greene may know a little bit more about that than I do.

Judge GREENE. Under the present statutes, Mr. Chairman, a judge who retires other than for permanent disability must serve a minimum of 20 years, and he may then retire at the age of 50. If he serves less than 20 years, that is, 10 years or more, then he may retire at the age of 62. But if he is less than 62 years of age, that is 55 or over, he may retire on a reduced annuity, reduced by 6 percent for every year he is under 62.

Mr. WHITENER. How many years of service must he have?

Judge GREENE. He must have a minimum of 10—up to 20 years to retire on the 62 age level. If he has 20 years he may retire at the age of 50.

Now, the major effect of the present bill—there are several provisions and several in this bill which would affect the computations I just gave. One of them is that in allowing for the retirement and computing annuity for retirement, the present law does not permit the counting of any prior service—any kind of service, that is, either Civil Service or Congressional service or military service. Quite a number of judges. I would think, probably the majority of judges, do have prior service of some kind, either in Congress or in Civil Service or military service. However, this bill, H.R. 15678, which we support, would permit at the time that the judge is eligible to retire under the Judicial Retirement Act, it would permit him at that time also to count, for purposes of the annuity, any prior service in the Federal

and or District of Columbia Governments that he might have had. Of course that service would not be counted at the higher judicial rates, but only at the rates that he would be allowed to compute it as under the Civil Service Retirement Act. That is, the part of the annuity for the Federal service would be computed in accordance with title 5, section 8339, D.C. Code, using the salary of the judge as his average pay for such purpose.

FEDERAL DISTRICT JUDGES

Mr. WHITENER. Let me ask you this: As to the U.S. District judges, under their retirement system, do they have the right to tack on congressional, military or other Government service?

Judge GREENE. No, Mr. Chairman, they do not. They do not need to tack it on because their retirement system is so far superior and so far more liberal than anything that we even can conceive of that anything like that would be superfluous. The Federal District judge or the Federal judge of the Court of Appeals may retire after 15 years of service with full pay. They do not contribute to their retirement systems as the judges do in our courts and as do all of the other Federal servants. That is, we contribute the same 6½ percent of our pay check every two weeks as do civil servants, congressional employees and Members of Congress. Federal judges do not contribute. Their system is entirely noncontributory. As I say, they can retire after 15 years of full pay and they can retire on disability after one day of service at half pay. So that on any comparison with our system, obviously, the Federal Court Retirement Act is far superior.

What we are trying to do is to bring our judicial retirement system more or less in line with other contributory retirement systems. For example, Mr. Chairman, a member of Congress might have had prior civil service or military service and he is eligible to retire, may count for the purposes of annuity that prior service.

Mr. WHITENER. If he pays in?

Judge GREENE. If he pays in. This bill would provide that of course if the judges wanted to count that prior service, would also have to pay in.

EXAMPLES

Mr. WHITENER. Let's take Judge Halleck as an example. Let's use Judge McIntyre as another example. Judge Hyde had six years of congressional service. I believe that Judge McIntyre probably had 15 years as a staff aide here on Capitol Hill with the Senate District Committee.

Now, under this proposal, Judge Hyde would get credit for his six years of congressional service, assuming that he had paid into the congressional retirement fund and left the money in; is that right?

Judge HYDE. That is right.

Mr. WHITENER. Suppose Judge Hyde, when you left Congress you had reclaimed what you had paid in on the retirement program, how, then, would your proposal work when you retire?

Judge GREENE. Under this bill, Mr. Chairman, if I may, what he would have to do, he would have to pay into the Judicial Retirement fund the amount that would be required to pay a sum equal to 3½ per centum of the salary receivable for his civilian service.

Mr. WHITENER. Let me ask you this: Suppose Judge Hyde would like to participate under the congressional retirement fund on the basis of the six years that he paid in and whatever military time he had and also wants to participate under the Judicial Retirement?

Judge GREENE. He could not do that, Mr. Chairman. I believe there is a specific provision in the statute which prohibits double counting for these services.

Mr. WHITENER. What is the situation now in that case?

Judge HYDE. If I may, sir, I can still draw under the present law, I can still draw what I have earned in Congress. Incidentally, to be further personal, I have left the money in, but I can still draw my retirement for that at age 62 in addition to the Judicial Retirement Law.

Mr. WHITENER. Now, if this proposal goes into effect where would you stand—where would you be? Would you still do that?

Judge HYDE. Yes.

Mr. WHITENER. If you did elect, then, to draw on those sources you could not then use your congressional time to beef up your retirement under the judicial plan?

Judge HYDE. That is right. I couldn't do both.

Mr. WHITENER. Under the proposed law you couldn't. I think this is a rather important thing to have in the record.

Now, suppose—let's say Mr. Moyer—how long have you worked for the District Government?

Mr. MOYER. Almost 11 years, Mr. Chairman.

Mr. WHITENER. Suppose that he is under a civil service retirement. Again, perhaps we shouldn't use individuals, but suppose Mr. Moyer went on the bench, served for 10 years or 20 years, whatever the case would be, what would then be the effect of this taking into account that he had built up some 11 years of good retirement years under the Civil Service Act?

Judge GREENE. Mr. Chairman, under the present retirement law—take that first—he would not get credit at the time of his retirement from the bench. He would not get credit for this 11 years. He would eventually get credit for the 11 years, that is, when he reaches the age of 62 by way of a so-called deferred annuity, but if at the time he completes his judicial service he happens not to be 62 years old, he would then receive only his judicial annuity and he would not be able to count the 11 years at that point. Under the proposed law if a judge is eligible to retire under the Judicial Retirement Act, he would, at that point, receive credit not only for his judicial time but also for his prior civil service or congressional time.

I might add, if I may, Mr. Chairman, that perhaps the most graphic illustration that I can give of what the effect of this dividing up of these various retirement systems is, which we are trying to join together concerns disability. Under the Civil Service Retirement Act, which members of Congress and congressional employees and civil service employers are subject to, the person can retire on disability after having served five years. Likewise, under the Judicial Retirement Act, a judge is eligible to retire on disability after he has served five years.

Now, if, taking Mr. Moyer as an example again, supposing he served 11 years in the civil service, and prior to his retiring from that service

or resigning from that service he became disabled, he would be entitled to annuity at that very minute. But if he is appointed to the bench and becomes disabled one year later, he would be entitled to no annuity whatever, because the service under the Civil Service Retirement Act and the service under the Judicial Retirement Act may not be added up together. This division of retirement systems really works a considerable hardship on those who are appointed to the bench and who subsequently, for one reason or another, retire on disability or because they are not reappointed or because they simply retire.

But our proposal would do, or what really the bill 15678 would do would be to join together these various systems and permit them, with the various years of Federal service, including judicial service, to be added up together, civil service, congressional service and military service for specific purposes. The civilian service would be computed in accordance with the proposed statute.

MILITARY SERVICE

Mr. WHITENER. Let's take another example and see how it works now. As a Member of Congress—as of this term I will have served 12 years—I have had 38 months of active military duty in World War II. I paid nothing into any retirement fund as a member of the military during the war, but as a member of the Congressional Retirement Fund or the Civil Service Retirement Fund, if I were in Mr. Moyers' situation, I get the 38 months added even though I paid nothing in.

Now, let's take me as an example. Now, and I go on to the Court of General Sessions on this proposed retirement plan. I serve my 10 years or my 20 years. Do I then, under this bill, get credit for that 38 months of military service where I paid nothing?

Judge GREENE. Yes, sir, Mr. Chairman. You would just as you would if you retired under the congressional retirement system or the civil service retirement system.

Mr. WHITENER. Let's take another example. Suppose instead of being a reservist I had gone into the military service upon graduation from law school and served the 20 years or whatever is required for military retirement. Under these proposals, assuming I had 20 years of honorable service in the legal branch of one of the branches of the service, then I would start out with 20 years military service, which at the end of 10 years judicial service would give me 30 years of retirement; is that right?

Judge GREENE. Well, Mr. Chairman, I can't answer it exactly, because I am not entirely certain as to what the effect of that 20 years of military service would be under the Civil Service Retirement Act. This bill provides that military service will be continued to the same extent and to the same number of years as it would be under the Civil Service Retirement Act.

Mr. WHITENER. Maybe we had better go to some of the civil service retirement acts first.

Judge HYDE. I am not an expert, Mr. Chairman. I think, just like the congressional service, the maximum of five years that you get in the military service.

Mr. WHITENER. Mr. Eaton, how about that? Do you know anything about that?

Mr. EATON. I am not an expert on it, but if he retires as a military person after 20 years, he could not, obviously, count that on a judicial retirement. Now, if he had not retired and had 20 years in the military service, I assume under this law that it could be counted.

Judge HYDE. If I may interrupt—excuse me.

Mr. WHITENER. What about what Judge Hyde said about the five-year maximum for military service?

Judge HYDE. Under the congressional retirement, the maximum amount of credit for military service you can get is five years. I think that is the same under—

Mr. FARBER. Barney Farber. There is limitation in the retirement act as it affects survivors that they cannot use more than five years military service; but that limitation is not in the part that is the judge's retirement, nor is it effective in a civil service retiree unless he uses that military service for another retirement.

Judge GREENE. That is my understanding, Mr. Chairman.

Mr. WHITENER. Let's go to him again.

Mr. Farber, the man with the 20 years military service which entitles him to military retirement—there is no way, is there, under the proposed legislation or under existing law where this individual could draw his military retirement based on 20 years plus civilian retirement which gave credit for the 20 years?

Mr. FARBER. No, sir, this bill makes the military and civil service retirements that apply to a civil service retiree the same as for a judge. So any restriction that would be on a civil service retiree as deals with military service or previous service would also apply under the judge's retirement act.

Mr. WHITENER. Now, I have no other questions specifically to ask now about it.

Mr. STEIGER. Yes, I have a few questions, Mr. Chairman, if I may.

CONTRIBUTIONS TO SYSTEM

Judge Greene, you used in your colloquy the figure $6\frac{1}{2}$ percent that you currently pay in. It is my understanding it is $3\frac{1}{2}$ percent. Where did you get the other 3 percent?

Judge GREENE. Well, we pay $6\frac{1}{2}$ percent—just $6\frac{1}{2}$ percent is deducted from our salary just as it is from the salaries of civil service employees.

My understanding is that $3\frac{1}{2}$ percent goes to the retirement fund and 3 percent goes to the survivorship fund; but the total that is deducted is $6\frac{1}{2}$ percent just as it is in the case of civil service employees.

Mr. STEIGER. But on that portion of your pay which you have not contributed on, and which you now have the option of paying on, that amount is only $3\frac{1}{2}$ percent, is that correct?

Judge GREENE. Well, that is probably correct with respect to those judges who have elected to participate in the annuity provisions of the Retirement Act, which I would think that probably most of them are, or perhaps all of them. They would have already contributed 3 percent. If they want to participate in the retirement portion of this new statute, they would have to contribute the additional $3\frac{1}{2}$ percent so it would again add up to $6\frac{1}{2}$ percent.

Mr. WHITENER. Mr. Steiger, maybe Mr. Farber could tell us whether there is any difference in the present fee and the allocation of this survivorship and so forth as far as judges are concerned—as far as civil service retirement is concerned.

Mr. FARBER. Sir, under the present judge retirement act the survivor part of that act provides that the 3 percent is a deduction for survivorship to include military up to 5 years and outside service up to 15 years under a certain formula. So they can, and many have, applied their civilian civil service to the retirement fund for survivorship benefits.

Mr. WHITENER. I think what Mr. Steiger is trying to point out is, as I understand it, that there may be a situation where a judge would only pay in 3 percent if he didn't elect to take a survivorship.

Mr. FARBER. Yes, sir. If a judge happened to be not married and did not deduct survivorship, he would only pay $3\frac{1}{2}$ percent for his own retirement and for the service that he might purchase.

Mr. WHITENER. Now, that is not true for civil service?

Mr. FARBER. No, sir. Well, the survivorship compilations under civil service and the judges' retirement acts are different. Under the Civil Service Retirement Act it provides the widow's benefits based on the retiree's annuity.

In other words, up to 55 percent of the retiree's annuity. Under the judges' retirement act, it is based on a formula of $1\frac{3}{4}$ percent, I think, of certain factors and $\frac{3}{4}$ percent of other factors, not to exceed $37\frac{1}{2}$ percent of their salary. So you can't compare—actually compare the survivor benefits one to the other, but as to the retiree himself, he will, under this act, get the same provisions of using past services as is now possible for the survivor to use under her part of the act.

Mr. STEIGER. Thank you.

Mr. Chairman, may I—

Judge Greene, I address this to anyone actually. Obviously our concern is that it is not so much your individual welfare as it is the judicial structure of the District. I am sure that is your concern, too, basically. The table on organizations calls for 20 judges of the General Sessions at this point. Are there any vacancies at this point?

Judge GREENE. No, sir.

Mr. STEIGER. So apparently at least whatever existing salary and retirement is—at least it is satisfactory to the point that it is not a cause for a vacancy in the existing number of judgeships available?

Mr. GREENE. That is correct. There are no vacancies, although we believe, and certainly other organizations who are better qualified to speak on that point, than we are, believe that if the salaries and retirement structure were improved, it would be possible to attract constantly well-qualified persons who could go to the bench without sacrifice.

Mr. STEIGER. As a matter of fact, Judge Greene, if the existing structure is upgraded in this rather dramatic fashion, particularly the retirement, is it a fact that it is not going to be able to attract any people, because these people aren't going to leave. The only way we are going to attract any new people is to increase the number of seats on the bench, which I understand is also a recommendation.

Judge GREENE. Congressman Steiger, of course I don't believe, if I may, that the improvements in the retirement act are particularly dramatic.

Mr. STEIGER. Excuse me. Do you yield at that point?

Judge GREENE. Yes, sir.

Mr. STEIGER. I would point out that in your own case your retirement would go from some \$8,000—I can't verify these tabulations—you are perhaps more familiar than I am. In your case if you retired at age 62, your retirement would go from \$8,975 to \$20,994. Now, I would call that a rather dramatic—

Judge GREENE. Well, Congressman Steiger, I have not made a computation, and truly I have not in my own case. I have had a computation made of the retirement benefits of older judges, at least I think it is all the judges who are covered under this present law, and I ask that they are designated simply by letter rather than by name so that I wouldn't particularly know who they are. It may well be true, Congressman Steiger, that there would be an increase of the kind that you mentioned in the individual cases, but that omits the fact, omits two which I think are relevant factors.

Mr. WHITENER. May I interrupt you. I think Mr. Farber may have some information on that.

Mr. FARBER. He also has some previous service and under a deferred annuity, he would get \$6,252, which would bring his possible annuity up to \$15,227. So the difference is not between \$8,000 and \$20,000. There are factors worked in since we worked the other figures, and we tried to determine what these judges would get as civil service retirees. So there is not a difference of \$15,000.

Mr. STEIGER. I want to make it clear, Judge, that I am not quarelling when I selected you. I don't expect you to have to defend your own particular position. I don't mean to do that.

Judge GREENE. I understand.

Mr. STEIGER. It occurs to me that when you have some, for example, in your own court, how big is your backlog now?

Judge GREENE. I wonder, Congressman, if I may answer your first question first and then get to the backlog, if I may be permitted to do so?

I would first want to endorse what the gentleman just said that if you compare the present additional annuity with what it would be under the bill, to be accurate in comparing, one would also have to include any civil service annuity or military or congressional annuity a person will get which he will be entitled to in any event under the present law. If that is counted in the difference between the two in most cases would be relatively small, if any difference at all.

The other point I would like to make about that is that, from what I can gather from the figures that were given to me, and I haven't checked them, but at least those figures were given to me are reasonably accurate, it would show that under present law quite a number of the judges—several of the judges at any rate—had they remained for an additional 10 years in the civil service when they were appointed to the bench, they would have at that point been entitled to a far higher annuity than they are entitled to presently under the Judicial Retirement Act so that I think that the purpose of this bill is to remove this penalty which really comes about, a penalty at least insofar as

retirement is concerned, comes about at appointment to the bench.

In one case, as I say, I don't know who these judges are, but in one case, for example, if the particular judge had remained for an additional 10 years in the civil service, he would have been entitled to an annuity of \$14,511, where under the judicial annuity, he is only entitled to \$6,889, which if I may use your term, is a dramatic penalty for service on the bench.

Now, if we are talking about backlog, and I am getting back to the backlog—

Mr. STEIGER. I would like to comment on your point about the penalty for civil service. You are not, however, suggesting that in order to equalize or eliminate any such discrepancy that we bring the judicial retirement in complete conformity with the civil service retirement. I think that is not your desire either.

Judge GREENE. Well, I am not suggesting that. What I am suggesting is the formula which would permit judicial retirement to be taken into—judicial years of service to be taken into account and to be computed at the rate for judicial service; and that civil service be taken into account and computed at the rates allowed for civil service at the lower rates—the two simply being combined at the time of retirement from the bench.

BACKLOG OF CASES

Mr. STEIGER. Let's touch on the backlog.

Judge GREENE. Mr. Chairman, in spite of the fact that we have had a tremendous increase in numbers of cases and numbers of trials and particularly in the criminal field and including the civil field, our courts have been successful and perhaps the only court in the District of Columbia that has been successful in reducing the backlog. Now, our courts—the criminal cases tried in our courts increased about 100 percent in the last 16 years. Those are just serious criminal cases—so-called United States cases. At the same time, I understand from the Crime Commission Report, the cases tried in the United States District Court did not increase at all. So we have absorbed all of the increase in crime in the District of Columbia. We have also had the phenomena in the last few years of a substantial increase in the number of trials as compared to the numbers of dismissals, guilty pleas, and summary judgments and so on. Of course trials take substantially more time, as the committee knows, than simply a plea or a dismissal. At a matter of fact, if my memory serves correctly, between 1965 and 1967 the number of trials in serious criminal cases increased from about a thousand to over 1,800, which is almost 80 percent increase in number of trials alone.

In spite of that we were successful in reducing the backlog between January 1, 1967, when some new procedures were instituted, and April 1, 1968, from something like 2,100 to about 1,700 or 1,600 cases.

Mr. STEIGER. Criminal cases?

Judge GREENE. Criminal cases, yes, sir. I should say in all candor that the April 1, 1968 figure is deceptive because in the last three weeks our backlog has risen more than we have been able to reduce it in the past 15 months. It is now up to over 2,300. That is due to something which we had no control over—that is the civil disorder that fell upon us.

Mr. WHITENER. May I interrupt a moment. Isn't it true, also, Judge, that within the last 10 years the time that is required now in the criminal court to take a plea of guilty is probably three times as long as it was three years ago?

Judge GREENE. Well, Mr. Chairman, all of the procedures are substantially more time consuming. Motions more time, pleas take more time, trials take more time, plus the fact, as I indicated, that proportionately the numbers of trials that we have as against the numbers of pleas has increased almost astronomically.

Mr. WHITENER. Well, when I was a prosecutor I asked the prisoner if he pleaded guilty. If he said yes, you went out in the courtroom and let him plead guilty. Now the judges in my state have a great long sheet of paper and he stands up, and the judge asks him how old he is, how much income his mother has, how much his father has, how many children—all of this before they ever let him say whether he is guilty or not. The lawyers, and the judges tell me that it is just impossible now to take a plea of guilty and move proceedings expeditiously.

Excuse me for interrupting you, Mr. Steiger.

Mr. STEIGER. Yes, sir, Mr. Chairman. Thank you.

Judge, do you concur, however, with the need for additional judges in General Sessions or the District Court and General Sessions who are faced with the backlog of 1,500 or whatever it is?

Judge GREENE. Yes, indeed, Congressman Steiger. I believe, and I have made some pretty careful calculations on this, that the court could really cope with its present criminal and civil case load and do something about reducing the backlog only if we were given five additional judges.

Now, I know this coming year, in asking for additional judges is not always the answer. I am not really grabbing the figure five out of the air. I have studied the numbers of cases that we have. I have had computations made as to how long an average case takes to try; and on the basis of this computation I have concluded that if we have 26 judges instead of 21 we would be able to cope with the present criminal case load and the present civil case load, and at the same time reduce the back log in both our criminal and civil jury cases so that they are in manageable proportions.

Mr. STEIGER. I respect your judgment. Put yourself in the committee's position for a moment. We are faced with the possibility of having to choose between the economic factor of approving the five new judges or approving the five new courts and/or raising the existing salaries and retirement of the present courts with our goal not to fix justice as important as it is the efficiency of the judicial process in the District. If you were to have to make a decision as to whether you get five new courts—now, I am not being facetious about it, either—which is of greater value to the judicial process of the District—the welfare of the sitting judges or the five new courts?

Judge GREENE. Well, Congressman Steiger, let me say this. I don't really think that choice must be made. In the first place, to attract the capable, well-qualified judges is important, and I think the salaries that are paid and the retirement structure that is available to have does have some significance in relation to that.

When I think of, for example, the kind of men who have applied or have made their availability known for appointment to the United States District Court, and the kind of people who have sort of attempted to receive endorsements for appointments to our courts, I believe that in some instances at least it indicates that our court does not have the statute that it should; and I think it is something of the kind of benefits that are available, and the salary and retirement to have something to do with it. So I don't believe that the salary and retirement benefits are irrelevant to excellence in the judicial structure and the kind of justice that is administered.

Secondly, Congressman, I would say this, that the kind of funds, the kind of financial expenditures that we are talking about here—and I realize that Congress is concerned about funds and we are concerned about the expenditure of funds—but the kind of funds that we are talking about here are so small in proportion to the other needs.

Mr. STEIGER. That is always the case.

Judge GREENE. I really think, in terms of bringing up the Court of General Sessions, which, after all, is the major trial court in this jurisdiction to a real position of strength and excellence, where we are talking about really perhaps at the most, several hundred thousand dollars when millions of dollars are spent on programs which have at best a marginal effect on the welfare of the city, I really don't think we are talking about proportions when a choice—let me say a choice would have to be made between the two.

Mr. STEIGER. What you are saying is that we can really afford both?

Judge GREENE. I think the Congress and the city and we, the citizens, can afford both, particularly since this is not something we will be talking about thousands and thousands of employees who will get vast salary increases, or—

Mr. STEIGER. Of course they will get those increases on top of this. You do recognize that. That has been the history. The other expenses will continue, of course. You are right, this is a very small percentage. Percentage-wise it is infinitesimal. It is from the infinitesimal part that the whole is made, I am sure you are aware of that.

Judge GREENE. Well, Congressman, I really would like to emphasize, if I can, in all seriousness that the administration of justice and the role that the courts perform and particularly the Court of General Sessions, since for all intents and purposes it is the major trial court in this jurisdiction, is so far out of proportion in relationship to the money that is spent on it. As a matter of fact, Congressman Steiger, this court actually, if I may put it that way, is a money making proposition. We turn back more money to the Treasury each year out of fines and forfeitures than our total budget comes out to so in terms of just straight finance accounting, the court is not costing the taxpayers any money.

Judge HALLECK. I would like to make a couple of observations with Judge Greene's permission. You mentioned who else is going to get salary increases, Congressman. My secretary has already had a couple of salary increases since I have been there, and I haven't. My clerk has just received a salary increase. I think everybody at the courthouse except the judge has received periodic salary increases. So it isn't a question of just judges getting salary increases.

Mr. STEIGER. When was the last judicial increase?

Judge GREENE. 1964.

Judge HALLECK. Congressman, there is one other thing, if I can be personal for a moment.

Mr. STEIGER. Yes.

Judge HALLECK. You talked about the problem of judges coming in and attracting people—I wouldn't for a moment suggest that I am one of those well-qualified people that someone would want to attract, but be that as it may, two years ago I came to the bench. I have seven children, and I have to educate those children. Had I stayed in my law firm instead of coming—a good law firm here in town—instead of coming to the bench I would have made last year \$4,000 more than I made last year in the court. Mr. Flannery and others know what the problem is. Mr. Canfield knows what private practice can bring. Now, for a young man like—I might say young—it depends on which side of 40 you are when you look at me, but running this court now is getting to be an active job. For example, during the riot the whole court, for a 12-hour period, all night long. This is a job that requires a man with a little bit of stamina, I think. That can generally be understood. We all have small children. We are going to have to educate them. The cost of living is catching up with us. I just bring this to your attention in line with your suggestion that perhaps we had all our vacancies filled, and there wasn't any real problem. Frankly, and I will be honest with you, I don't know how much longer, at the present salary, I can continue on in court and educate my children.

Mr. STEIGER. Judge Halleck, I am not unsympathetic. I don't want to give the impression that I am. The fact that you are coming in here and requesting what amounts to a 16 or 17 percent increase at a time when the President himself, in my opinion, is not famous for being penurious—recognizing that the past inequities as you see them, require this kind of an increase, I think that in recognizing the need that you cite as very valid, I am sure that the competition between the bench and private practice is common to all areas. I know it is a familiar one in my state. I am not unsympathetic. I do hope that you recognize that we have a judgment to make and it is that simple.

Judge GREENE. Congressman, I wonder if I may add something which I said before, and that is when we talk about a 16 or 17 percent increase that can be compared with a 25 percent increase that has been given to the two and a half million or more civil service employees. So that, again, we are talking about a less increase for an infinitesimal number of persons.

Judge HYDE. I just want to make one interruption, if I may, with respect to the figures. I might say that in the privacy of my chambers I have computed this many, many times in my own particular instance. As it now stands, under the present law, at the end of 10 years in my particular case, taking—and I will have to wait until age 62 to get congressional retirement—mine would figure out at \$14,926 under the present law. If the proposed amendment went through it would be \$16,750, roughly \$1700 difference.

Mr. STEIGER. The combination of the congressional and the judicial?

Judge HYDE. Right. It would be a matter of about \$1,700 difference.

Mr. STEIGER. Well, that is interesting. As I say, I don't know even who is responsible for this computation.

Judge GREENE. I think, Congressman, if you will check you will find that in all cases the difference will be very small when you take into account the separate judicial retirement and civil service retirement and compare it with the combined retirements. There will even be a loss if you compare it with those who had substantial civil service, and they will have stayed at their civil service job for an additional 10 years. In many instances the present computation works out at a loss for those who are on the judicial work.

Mr. WHITENER. Mr. Steiger, would you yield?

Mr. STEIGER. I would be happy to, sir.

Mr. WHITENER. I might point out that the Teachers' Pay Bill, which was passed the other day, if it remains at the present level will have the effect of giving to the school teachers 82.80 percent increase over what school teachers were making in 1954 in the District of Columbia. Now, Judge Hood, do you know what judges were making in 1954? In 1954 what was the salary of the judges?

Judge HOOD. In 1954 the salaries of the judges were \$14,500 with that \$500 drop, because it was in 1965 it was raised to \$19,000.

Mr. STEIGER. I would like to yield to my friend, Congressman Gude, at this point.

Mr. GUDE. Thank you for yielding. I would also like to thank you for bringing up the question about the increase in the number of judges. I am inclined to feel that an increase in salary or an increase in the number of judges is not mutually exclusive. I really feel we are going to do justice to problems we are facing right now—that we should consider legislation to increase the number of judges along with these.

I am sponsoring such legislation—a group of three bills having to do with the bench. I hope we can consider that matter at this time. If we are going to raise the level of the entire crime fighting machinery, why, I think we ought to take a look at all aspects of the bench.

I notice you speak for all the judges on the court on the question of salary increase. Would you have any idea about how the general feeling would be as far as the increase in the size of the bench?

Judge GREENE. I am not sure we have voted on it. I do speak for all of the judges on the salary and retirement, and I would think, without having taken a formal vote, that all of the judges would agree that an increase in the number of judges is warranted in this—is appropriate, because as all of the judges are familiar with the figures that are put out in semiannual reports. They indicate a constant increase in the work load, and there just isn't any way that I can think of that we can cope with this short of increasing the number of judges.

The court, Congressman, has made, I think, tremendous efforts, particularly—I can only speak for the period that I am personally familiar with, which is the last two years I have been Chief Judge. We have experimented with new procedures and we have tried different ways and handling these cases, by central assignment systems and other ways.

The judges have worked longer hours, we have done everything we can to cope with this work load, and as I said, we are the only court, I believe, who have been successful in, actually reducing its criminal backlog. But you cannot indefinitely be faced with increased work loads, both civil and criminal, both in terms of numbers and the complexity of the cases and still keep up to date. It just can't be done.

Mr. GUDE. I don't have the information right at hand about the cost for the judicial system as compared to the cost of the police organization or the rehabilitation machinery in our anticrime set-up. As I recall it, the relative cost of the judicial system is very low, not because it is low relatively it means that you can necessarily ignore each dollar of increase. I think each dollar has to be counted carefully and if there is no objection, I would like to insert the statement about the cost of the judicial system relative to the other aspects of the system in the record.

Judge GREENE. As I say, Congressman, the cost of operating the Court of General Sessions is less than the fines and forfeitures that the court collects. So the court is not costing the taxpayers any more money.

(The prepared statement of Judge Greene is as follows:)

STATEMENT OF CHIEF JUDGE HAROLD H. GREENE

My name is Harold Greene. I am chief judge of the District of Columbia Court of General Sessions. I very much appreciate this opportunity to testify in support of H.R. 15678, H.R. 15679, H.R. 12738, and H.R. 14202, which deal with the salaries and the retirement benefits of the judges of the District of Columbia Court of General Sessions. I should like to make it clear at the outset that in testifying in favor of these bills I speak for all of the judges of our court. The Board of Judges of the Court of General Sessions unanimously endorsed the concepts embodied in these bills and favors their enactment. I also wish to express the gratitude of our Board of Judges and my own for the action of the committee in scheduling these hearings. We hope that the hearings will be productive and will lead to the enactment of the bills under consideration.

The salary provisions of H. R. 15678 are identical with those of H. R. 12738, except that the former would make any increases retroactive to October 1, 1967, while the latter does not contain a retroactivity feature. Both of these bills would increase the salary of associate judges of the Court of General Sessions to \$27,500 and of the chief judge to \$28,000. They would also increase the salary of associate judges of the District of Columbia Court of Appeals to \$28,500 and of the chief judge of that court to \$29,000.

An increase in the compensation of the judges of the Court of General Sessions was first proposed by the President's Commission on Crime in the District of Columbia in 1966, and it has been strongly supported by other, impartial bodies and groups since that time. The specific increases to \$27,500 and \$28,000 respectively were suggested by the Committee on the Administration of Justice of the Judicial Council, under the chairmanship of Mr. Gerhard Gesell, now a judge on the U.S. District Court, after that committee had conducted a survey of salary ranges in similar courts in large urban centers.

Both the Crime Commission and the Judicial Council Committee indicated that, in view of the constantly increasing duties and the ever expanding workload of the Court of General Sessions, it was important, as the Committee put it, "to make service on this court more attractive and give its judges a status commensurate with their responsibilities."

The fact is that the Court of General Sessions now handles 97% of the litigation of this city, including the bulk of the serious criminal offenses. All of the recent increase in criminal prosecutions has been absorbed by our court, where criminal offenses tried rose 100% in the last 16 years, while they increased not at all or very little in the United States District Court. In spite of this staggering caseload, our court was able actually to reduce its backlog of criminal jury cases from 2,065 on January 1, 1967 to 1,597 on April 1, 1968.

The Court of General Sessions also bore the entire brunt of the judicial work required in connection with the civil disorder early last month. From Friday morning, April 5, to Monday midnight April 8, the court never closed. Judges and clerical personnel worked in 12-hour shifts around the clock, and by Monday night, every one of the persons arrested during the riot—except only those released on citation—had been presented to the court. The court is now engaged in holding trials and preliminary hearings in many hundreds of these cases.

I cite these facts and figures only to indicate the pivotal role of the Court of General Sessions plays in law enforcement and in the administration of justice in the District of Columbia. Yet by July 1 of this year, unless H.R. 15678 or similar legislation is enacted, civil service employees in grade 17 and 18 and most of these in grade 16 will receive salaries well in excess of those paid to the judges of our court. And under the so-called comparability legislation, this imbalance would be still further aggravated. We believe this salary relationship does not accurately reflect the true significance of the court or the responsibilities of its judges.

I respectfully urge the committee to give sympathetic consideration to H.R. 15678, in order that the compensation paid to the judges on the Court of General Sessions and those on the District of Columbia Court of Appeals may be commensurate with their responsibilities as well as with the stature these courts and the administration of justice generally should enjoy within the general governmental framework in this city.

I should like to turn now to H.R. 15679 and H.R. 14202 which are identical bills to amend the District of Columbia Judges' Retirement Act.

As I understand it, when the Retirement Act became law late in the congressional session in 1964, it was contemplated that any possible deficiencies would be remedied when the Congress would be able to take another look at the statute. H.R. 15679 recognizes and remedies these deficiencies, and for that reason we strongly urge the enactment of this bill.

The major effect of the bill would be to permit those judges who prior to their appointment to the bench had congressional, civil, or military service, to count such service in the computation of their retirement annuities. This kind of aggregation of service is presently permitted with respect to all other major contributory retirement systems, and H.R. 15679 would merely follow the precedents set by these other systems. For example, a member of Congress or a congressional employee with prior civil service or military service may count that service toward his annuity when he retires from the Congress. But under present law, a judge on our court who retires from that court, or is not reappointed, would not at that time receive credit for any prior congressional, civil, or military service, and he might have to wait a substantial number of years before he would be eligible for such credit. We believe this disparity in treatment is inequitable, particularly since the judges on our court make the same financial contribution toward their retirement every two weeks that is made by congressional and executive employees.

The inequity of the present provisions is even more apparent when the disability features are considered. A judge on our court may retire on disability after serving for a minimum of five years. Similarly, a civil service or congressional employee may retire on disability after five years in the civil service or the congressional service. But, under the present law, if a person with as much as twenty or twenty-five years in congressional, civil or military service is appointed to the bench and becomes disabled less than five years later, he would be entitled to no retirement benefits whatever at that point, notwithstanding his total service of almost thirty years. Likewise, under present law, those judges who become disabled after serving more than five years on the bench will receive an annuity based only on their judicial service. Notwithstanding their permanent disability, they will have to wait until they reach the age of 62 to receive any benefits based on civil service, congressional service, or military service, no matter how lengthy. H.R. 15679 would permit an aggregation of these various kinds of service to arrive at the required five-year minimum, and it would base the disability annuity at the time of retirement on the entire service.

H.R. 15679 would effect four other amendments in present law, but I will comment on these only briefly. First, like all other federal retirement systems, it would allow credit for military service. Second, with respect to those judges who are less than sixty years old at the time of their retirement (or failure of reappointment), it would reduce the penalty for each year under 60 from 6 per cent to 1 per cent. Third, it would refund interest to those judges who withdrew money from the Civil Service Retirement Fund (where they received no interest) to deposit it in the judicial retirement fund (where they had to pay interest for the identical period). And fourth, H.R. 15679 would provide for survivorship annuities to be paid to dependent children between the ages of 18 and 21 who are pursuing a fulltime course of study in an educational institution. In that respect, too, the bill would simply follow the pattern laid out in the other federal retirement systems.

Mr. Chairman, we believe the provisions of this bill represent very reasonable steps to bring the judicial retirement law into line with other retirement legislation, and we respectfully urge that this subcommittee recommend its enactment to the full committee and to the House.

H.R. 15678; H.R. 12738—SALARY LEGISLATION

1. H.R. 15678 would increase the salary of associate judges of the Court of General Sessions from \$23,500 to \$27,500, and of associate judges of the District of Columbia Court of Appeals from \$24,500 to \$28,500. The chief judges of the respective courts would continue to receive \$500 more than the associate judges.

2. The President's Commission on Crime in the District of Columbia recommended that "the judges of the Court of General Sessions should receive substantial increases in salary." The Commission noted that "new judges are often obliged to relinquish established law practices, frequently far more lucrative than the position on the bench. The \$23,500 salary is less than the \$25,897 paid to government employees at the GS-18 level and less than the \$30,000 paid to the United States District Court judges, much of whose former jurisdiction now lies in the Court of General Sessions."

3. The Committee of the District of Columbia Judicial Council on the Administration of Justice likewise recommended that the "salaries of the judges of the [Court of General Sessions] should be increased. The judges receive \$23,500 per year and the Chief Judge receives \$24,000. Salaries in general trial courts in other jurisdictions with large municipal centers range between \$25,000-\$37,000, with the median range around \$27,000 to \$28,000. It is suggested that the salary should be \$27,500 for the associate judges and \$28,000 for the Chief Judge."

4. The Court of General Sessions now handles the bulk of the District of Columbia's civil litigation, most serious criminal offenses, and all petty offenses. While during the past sixteen years criminal prosecutions in the U.S. District Court did not significantly increase, they rose by over 100% in the Court of General Sessions. As a result of these developments, the Court of General Sessions is now one of the pivots around which the solutions to many of the problems of the District of Columbia revolve. Most criminal cases are tried in this court, and any war on crime which focuses on police protection at one end of the criminal process and on punishment and rehabilitation at the other, without strengthening the pivot in between, is not likely to be successful. As the judicial Council Committee stated, "... The judges on the Court of General Sessions handle 97% of all litigation in the District of Columbia, and proposals have been made to transfer still more jurisdiction to this court. With its growing workload and increased responsibilities, it is necessary to make service on this court more attractive and give its judges a status commensurate with their responsibilities. The proposed salary increase is an important step in this direction."

5. As the Crime Commission noted, civil servants at the GS-18 level are paid more than judges of the Court of General Sessions. This disparity has further increased since the Crime Commission report was written. Civil service employees have received a general pay increase since then, and the salaries of those in the upper grades now amount to \$27,055 for GS-18; \$23,788 to \$26,966 for GS-17; and \$20,982 to \$26,574 for GS-16. By July 1, 1968, the GS-18 salary will be \$30,239; GS-17 will be \$26,264 to \$29,764; and GS-16 will be \$22,835 to \$28,923. And it is expected that under the comparability legislation, these salary ranges will be as follows: GS-18—\$34,950; GS-17—\$29,965 to \$34,070; and GS-16—\$25,780 to \$32,655. Judges on the Court of General Sessions did not and do not participate in any of these automatic or comparability pay increases, and their salaries remain fixed unless changed by statute. For these reasons, and for the reasons stated by the District of Columbia Crime Commission and by the Judicial Council Committee, the increase in salary for the judges of the Court of General Sessions provided for in H.R. 15678 is appropriate and warranted.

Any increase in the salaries paid to the judges of the Court of General Sessions would logically call for a comparable increase to the judges of the District of Columbia Court of Appeals.

H.R. 15679; H.R. 14202—RETIREMENT LEGISLATION

1. The principal effect of H.R. 15679—which would amend the District of Columbia Judges' Retirement Act—would be to permit a judge, at the time he is eligible to retire from his judicial office, to receive credit also for any earned congressional, civil, and military service. This aggregation of judicial with all other service

would follow the precedents set with respect to legislative and executive officials and employees, all of whom are authorized under present law to aggregate their congressional, civil, and military service to arrive at the total amount of their annuities.

The amendment would remove what in effect is a penalty on those judges who have prior federal service. Had those judges remained in the non-judicial federal service, they could have retired with full benefits with 30 years of service at age 55, or with 20 years of service at age 60. But absent the amendment contained in H.R. 15679, a judge with more than 20 or 30 years of total federal service would still not receive any earned and paid-for civil service retirement benefits until he reaches the age of 62. By removing this penalty on those former members of Congress and congressional and executive employees who are appointed to the bench, the bill would increase the attractiveness of service on the local courts and thereby improve the administration of justice in all its aspects, including the fight on crime.

It should be noted that under H.R. 15679, any service other than judicial service would be counted for purposes of the computation of the annuity only at the rates allowed by the Civil Service Retirement Act rather than at the higher judicial rates. It should further be noted, by way of comparison with the pending bill, that judges on the federal courts are eligible for retirement at full pay after serving fifteen years. Moreover, their retirement plan is noncontributory, while judges on the Court of General Sessions make the same contribution as civil service employees and employees of the legislative branch.

2. The Judges Retirement Act permits a judge to become eligible for disability retirement when he has served at least 5 years on the bench. The Civil Service Retirement Law likewise permits disability retirement after 5 years of service. But again, without the amendment proposed in H.R. 15679, congressional, civil, and military service could not be aggregated with judicial service to arrive at the 5-year minimum. Thus, under present law, a person who serves more than 5 years in congressional, civil, or military service and then becomes disabled, is entitled at that time to disability benefits. But should such a person be appointed to the court and become disabled within his first five years on the bench, he would receive no benefits whatever until he reached the age of 62, not even for his prior civil or military service and even if that service should amount to 20 years or more. Likewise, under present law, those judges who become disabled after serving more than five years on the bench will thereafter receive an annuity based only on their judicial service, and, notwithstanding their permanent disability, they will have to wait until they reach the age of 62 before receiving any annuity benefits for earned civil, congressional, or military service. H.R. 15679 would permit their disability annuity at the time of retirement to be calculated on the basis of their entire service.

3. H.R. 15679 would allow credit for service in the armed forces to the same extent and with the same limitations as is permitted under the Civil Service Retirement Act with respect to executive and legislative employees and members of Congress.

4. Under present law, the penalty for retirement at less than 62 years of age (for those judges who have not served a full 20 years) is 6 per cent for each year the retiree is under 62. It is believed that there is no federal retirement statute which imposes so high a penalty. H.R. 15679 would reduce this penalty to 1 per cent per year and it would reduce the applicable age to 60.

5. At the time of the enactment of the Judges' Retirement Act, the judges then on the court withdrew deposits they had made in the Civil Service Retirement Fund and deposited them in the judicial fund. These monies drew no interest in the civil service fund but the judges were required to pay interest for the same period to the judicial fund. H.R. 15679 would return that interest.

6. The civil service and congressional retirement systems provide for survivorship annuities to be paid to dependent children who are between 18 and 21 years of age and are pursuing a fulltime course of study in an educational institution. H.R. 15679 would incorporate this provision in the District of Columbia Judges' Retirement Act.

H.R. 12738—ADDITIONAL JUDGES

The 21 judges presently authorized to the Court of General Sessions are not enough in my opinion, to permit the court to cope successfully with its growing criminal and civil work. I believe that, without additional judges, the pressure of volume will bring about one or more of the following: (1) another substantial rise in the criminal backlog; (2) a decrease in the quality of justice, and an

almost exclusive reliance on bargaining instead of trials to dispose of criminal cases, or (3) a further increase in the civil and domestic relations backlogs. For reasons which I will not explain, each of these alternatives would be very damaging to the cause of the administration of justice.

I believe that the certainty of swift and realistic punishment is an effective deterrent to crime. But a criminal caseload which is too large for the number of judges available makes it impossible for punishment to be either swift or certain. As case backlogs grow, long delays occur between arrest and ultimate disposition; prosecution witnesses become increasingly reluctant to testify; and ultimately many cases must be dismissed for want of prosecution.

These delays and dismissals can often be avoided only by a prosecution dismissal of some charges in return for a defense plea of guilty to others. While this method does have the effect of clearing the backlog, it does not always serve the best interests of the community. A plea of guilty which is the product of a bargain for the dismissal of other charges does not protect the public because it may well result in an inadequate sentence.

Because of these considerations, among others, the Court of General Sessions has made every effort to accomplish three goals. First, to increase the number of criminal dispositions, second, to decrease the proportion of cases disposed of by bargain instead of by trial; and third, to reduce the criminal backlog itself. With regard to the first point, the court, in 1967, disposed of cases involving 1,984 more defendants than it did in 1965, and it held 1,485 preliminary hearings in felony cases as against only 567 two years earlier. The plan to reduce bargaining has also shown solid results. In 1967, the court conducted 1,864 trials in serious misdemeanor cases (out of a total of 7,638 dispositions). Finally, as a result of strenuous efforts, the criminal jury case backlog was reduced from 2,065 on January 1, 1967, to 1,597 on April 1, 1968. This was accomplished in spite of the fact that the proportion of trials to bargains increased very considerably.

Unfortunately, the cases arising out of the recent civil disturbance have wiped out the gains made during the past year, and the backlog is now greater than ever (2,347 cases as of April 23). It must also be recognized that the past gains in the criminal area were achieved partly at the expense of the civil jury calendar; 5,492 civil jury cases are now pending; and it takes an estimated 27 months from the joinder of issue to the date of trial in a civil jury case. This period of delay has steadily lengthened over the past several years, and it will continue to increase unless more judges are authorized for the court.

I do not come here simply asking for more judges, but I have conducted some careful calculations of numbers of cases and the time it takes to dispose of each category of case. It is on the basis of these calculations that I have concluded and that I submit to this committee that if the court had 26 judges instead of the 21 now allocated, it would be able to cope successfully with all of its work and reduce both its criminal and civil backlogs.

I estimate that the time of $4\frac{1}{2}$ judges is needed to dispose of the well over 500 criminal cases per month in which jury trial is demanded and the time of $1\frac{1}{2}$ judges to handle the 160 serious misdemeanor cases in which no jury demand is made and the 140 preliminary hearings in felony cases per month. Thus, the general criminal calendar requires 6 judges.

Five judges are needed to handle the 185 civil jury demand cases per month and to begin a reduction of the tremendous civil jury backlog. At the same time, it takes 3 judges to conduct 240 civil non-jury cases and 180 pretrials per month. This makes a total of 8 judges for the general civil calendar. There are 7 categories of cases which individually do not take as much time to dispose of, but which are very large in volume. These are the cases prosecuted by the District of Columbia; traffic cases, criminal assignments; civil motions; criminal motions; landlord and tenant matters; and small claims cases. I believe that the time of $6\frac{1}{2}$ judges is required to handle all of these matters. In addition, 3 judges are by statute assigned to the Domestic Relations Branch; and, computed on an annual basis, $2\frac{1}{2}$ judges are unavailable on account of vacations, illness, or attendance at necessary professional meetings. In other words, to perform its functions properly, the court requires 26 judges instead of the present 21.

I think the committee should know that if there are any further increases in the criminal or civil backlogs, the administration of justice generally, and the effort to control crime in particular will inevitably suffer. The Report of the Senate Committee on the District of Columbia on the Omnibus Crime Bill pointed out last year (Sen. Rep. No. 912, 90th Cong., 1st Sess., p. 8): "No matter what may be done by legislation designed to control crime, unless the court system in

the District of Columbia can adequately deal with the cases which may be prosecuted, most of our effort will be futile."

I suggest to the committee that an increase in the authorized number of judges will enable the Court of General Sessions properly to perform its functions and responsibilities. It will permit the court to cope with its ever-growing civil caseload, and it will equip the court to process swiftly and effectively the cases of those persons who may be brought before the bar of justice by the efforts of the police and the prosecuting authorities.

Mr. GUDE. Just one more question. In mentioning a backlog, do you have any information about the backlog in the Court of Appeals?

Judge HOOD. In the Court of Appeals we do have a backlog, but as you may recall, last year Congress passed a law increasing—adding three new judges to our court. As of yet the President has appointed only one. When we get our full complement of judges we hope that we can be able to clear up that backlog. But until the additional judges are appointed, we haven't made any real progress towards cutting down that backlog.

Mr. GUDE. Do you have any figures available, the exact status of the backlog?

Judge HOOD. I did not bring them with me. I brought them here last year when we were asking for the three new judges. I can furnish them as to the number of cases we have pending and unheard, and I can furnish something showing the increase in our work load if you want that.

Mr. GUDE. Yes. Well, if you could, we would appreciate that very much.

Mr. STEIGER. Well, I just wanted to ask Mr. Canfield—he has been sitting there very patiently, if he has any observations that he would care to make?

Mr. CANFIELD. Congressman, I do. Thank you very much for the opportunity.

STATEMENT OF AUSTIN CANFIELD, ESQ., COMMITTEE ON THE COURT OF GENERAL SESSIONS, BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. CANFIELD. As a representative of the Bar Association today, the position of the Bar is that it is in favor of the bills presently under consideration. As a practicing lawyer and having spent 14 years in the Court of General Sessions, I know a little something about the background of the court and can tell you the plight that the court is in by way of the fact that we have this existing backlog.

I have, in the past, written Congress, I think to Congressman Gude as well. Congressman Broynhill has a bill pending to increase the number of the judges as well as some of the Senators who have similar bills pending which would reach the same results.

In March of 1966, if memory serves me correct, then Chief Judge John Lewis Smith appeared before the Board of the District Committee of the House and he was questioned as to the need for five additional judges at that time. He indicated in his testimony that we could use seven or maybe eight. That was two years ago. Congress gave him five, and we have just recently received the last of our five. That is, the last of our complement has just been filled.

Going back to 1963, or possibly 1964, and I am not certain about my date, we had a court that was fairly current at that time; but

several things have happened since then to change that aspect. Some of it was the increase in the jurisdiction of the court; some was in certification of cases over from the District Court to the Court of General Sessions; and not the least of it was the number of increased criminal cases.

In addition we have been unfortunate in that we have had one judge who has not been available for service for close to three years. We have another judge presently ill, recuperating from a heart attack. As a result, in 1963, and if I may confine myself to the civil aspects of the court at this point, because I am much more familiar with that than I am with the criminal, we were at a point where we were only four months away from a trial once the case was at issue. I am defense attorney. I, along with several others squawked at this short time gap, because it was too short to actually prepare a case for trial. As you are probably familiar, by the time a defense lawyer gets a file, he doesn't have all the answers like plaintiff's counsel supposedly does. Consequently, he starts with depositions, medical examinations, interrogatories and the like. We found that we were not able to complete our investigation of a file in that four-month period of time. But by and large that began to change to the point where we are now approaching two and a half years between the date of the time the case is at issue and the date it is ready for trial.

It is going to continue in this fashion. The backlog has grown to a point where now it is over 5,000 on the civil calendar. Unless we get additional help for that court, the lawyers who practice on the civil side are being the same sort of injustice, and their clients are, that existed on the criminal side years ago. Certainly the two can go hand and glove, and as long as there is a need, which there is, for attention to the criminal side of the court, then we on the civil side feel that there is a need for attention there, too. This only can be rectified or remedied by additional judicial personnel. It will take presently a matter of two years or more to even get the backlog that we have. I feel personally closer affiliated to the civil side than I do to the criminal side, and that is just because of the nature of the animal which I am and the field in which I practice. I feel that the time has come when definitely the civil side needs more attention. It cannot get that attention until we have these additional judges.

At the present time, to give you some statistics, my case load is running about two cases set for trial a week; whereas a year ago and two years ago I was running three, four and five cases set a week. Again, as a defense lawyer, this is normal practice. My cases do not turn over like they used to and my backlog is increasing. Consequently, I have a personal interest in trying to remedy this situation.

I feel that as long as this committee is talking about the backlog in the court, it should realize the problems which do exist for the private practitioner in the civil practice and give it just the same attention as it gives criminal defendants and criminal attorneys on the criminal side of the courts.

I think, gentlemen, you can do both. I think you can have both bills, that is, an increase in the judiciary and an increase in the salaries for the judges on the bench. This is something of which they are deserving. By and large the majority of the court are hard working and they are

willing to spend time on it. I think that if we got the additional five judges and were in a position where the one judge has been ill—may be able to retire under this bill—I don't know whether it would affect that judge or not, we would have six judges.

If Judge Howard, who has had this heart attack returned, they would have seven judges. This would be of great service to the community.

MR. STEIGER. I take it, even as an individual, you would be reluctant to establish a priority as to whether additional judges would be more desirable than the increase in pay.

MR. CANFIELD. It all depends on whether or not I want to continue practicing.

MR. GUDE. I was wondering, you say you are principally interested in civil work, but what is the effect of extended delays as far as criminal work is concerned, the defendant, the speed at which he is brought to trial?

MR. CANFIELD. Congressman, the last statistics I had on that, I think came from Judge Greene's memorandum to the Attorney General. He can probably give you that much better than I. I think we are at a point where it was about a six weeks' delay, I think, Your Honor, was it not, between the time of arraignment and the time of trial for a criminal defendant. This was a much desired improvement over what it had been in the past.

MR. GUDE. What I was saying was more on a subjective observation on the factor of extended delays opposed to a speedy trial.

MR. WHITENER. It would make the defendant happy in a criminal court.

MR. CANFIELD. Well, it always does, because after awhile witnesses fail to appear—they get tired of appearing in court. Quite often cases must be nolle prossed because of the fact that proof can't be established. I think lawyers who practice on the criminal side, and again my experience is limited, but I do, as Chairman of the Board of General Sessions Committee, entertain discussions on this problem monthly, feel that they can only make a living themselves if the calendar moves. Now, a lot of lawyers are presently taking cases under what is known as the Criminal Justice Act. This act has worked well in some instances. It needs improvements, and there should be additional sums allocated to that, because as of the moment, in all of the courts there is a lack of funds available to adequately compensate these lawyers for the work that they do. The adequate compensation I am talking about is on a reduced basis of \$15 or \$10 per hour. In many cases, for instance, in Judge Greene's court, there are certain limitations set into what can be awarded to an attorney practicing under CJA. In Judge Hood's court there are certain limitations. These are not limitations inherent in the acts themselves, but are limitations which necessarily had to be imposed by the courts if there were to be funds to go around. As a result, there are a number of lawyers who have presented applications for payment in excess of these limitations which are awaiting disbursement. I don't know whether funds are available or not, but there is a backlog of some close to four, five, or six months in some of the applications in the Court of General Sessions. Again, this is something which can only be rectified by additional funds. If the program is to function correctly, then additional funds will have to be sought there, too, unquestionably.

As Congressman Steiger pointed out, they are on the horns of a dilemma. Would you choose one over the other? I don't think you can afford to choose. I think we are in a situation where we must do what is necessary and not pick and choose between a temporary remedy.

This is the general consensus of the members of the practicing board, at least in the Court of General Sessions.

Mr. GUDE. In other words, a piecemeal approach is not going to help the court.

Mr. CANFIELD. It never does, Congressman.

Judge GREENE. I hate to be a persistent witness, but if I may just add this. The court really is, at least as far as the criminal side is concerned, a part of the whole process which starts with the policeman and ends up with corrections and prison systems and so on. Millions of dollars are necessarily spent on police and law enforcement of that type. Millions of dollars are spent necessarily in terms of prison, probation, and parole, and so on. The court is right in between. If the court doesn't function adequately, either because there aren't enough judges or the judges are there are not of the caliber that they should be, then what you spend at those two ends is really wasted, because they all have to go through the court system. The court system has to be able to process them and the judges have to be able to do a good job in processing them. If that can't be done, and because of the expenditure of a relatively small amount that is necessary to do that, the court is weak in comparison with the other two parts of the system. Your entire system of criminal justice and law enforcement will not function properly. I really think it would be penny wise and pound foolish to concern one's self with the very limited funds that would be necessary to do the things—to upgrade the Court of General Sessions, when what is at stake here is the whole picture of law enforcement in the District of Columbia.

Mr. WHITENER. Gentlemen, is there any prepared statement that anyone wants to make a part of the record?

Mr. MOYERS. Mr. Chairman, I would just like to ask formally that the District reports on both of these bills be made a part of the record.

Mr. WHITENER. We have already done that.

Mr. MOYERS. I would just like to briefly state in capsule what the District's position is on the bill.

On the pay bill, of course the District supports the increased pay for these judges and makes the recommendation that the judge of the Tax Court also be included. On the retirement bill, the District points out several provisions in there which we feel each bit of modifying conforms more with the Civil Service Retirement System, mainly in the field of submitting interest on the funds that you move from the Civil Service Retirement Fund to the Judges' Retirement Fund. There is an additional small amendment which we recommend in that report.

Mr. STEIGER. I wonder if we could have Mr. Farber—if there is no objection—prepare a comparable anonymous identification of the increase in the retirement schedule and what effect it will have on the individuals, without identifying the individuals, in the manner that—I gather that you have already prepared something.

Mr. FARBER. Sir, I have it by name, but I can eliminate the name.

Mr. STEIGER. Well, if you could eliminate that name, that would serve the purpose if the Chairman has no objection.

Judge GREENE. I wonder, Congressman Steiger, that any such computation also include a column that we prepare, and perhaps Mr. Farber may prepare on his own, on what the effect would have been had the particular judge remained 10 years in the civil service and had retired on the civil service instead of serving 10 years in the judicial branch.

Mr. STEIGER. Does it already include that?

Mr. FARBER. No, sir.

Mr. WHITENER. Well, that can be helpful.

Mr. FARBER. Pardon me. That might be a problem, because you wouldn't know what the salary would be 10 years from now, but it would be very much higher. I don't know if we are defeating our purpose.

Mr. STEIGER. Do it on a current basis, then.

Mr. FARBER. Do you mean give him the same salary as was given a judge? In ten years the person with the proper qualifications duly moves up the line and receives more salary.

Mr. STEIGER. It is a matter of conjecture anyway. You could be arbitrary with this increase.

Mr. WHITENER. What he is saying, I think, Mr. Farber, is that Judge Greene has made such a computation based on his experience. That is the type of thing that we would like to have. The same as Judge Greene indicated his situation would be had he not gone on the bench and stayed in the same office.

Judge GREENE. What I would suggest, Mr. Chairman, to make it entirely equitable, would be a computation to take into account the grade that the judge had at the time he left the civil service, taking that grade of current salary plus any step increases he might have had. I think I can discuss it with Mr. Farber, if I may, and I can assure the committee—

Mr. WHITENER. I think we want something illustrating how the system works.

Without objection, the information requested will be filed in the record at this point, when received.

(The tabulations referred to follow:)

**LOSS IN ANNUITY TO JUDGES WITH PRIOR GOVERNMENTAL SERVICE AS A RESULT OF
APPOINTMENT TO THE BENCH**

	Annuity at expiration of present term under present law	Annuity at that time if indi- vidual had re- mained in civil or congressional service ¹	Loss in annuity as result of appointment to the bench	Number of years of prior service
Judge A	None	\$12,853	—\$12,853	16
Judge B	15,666	11,121	None	10
Judge C	None	None	None	6
Judge D	7,363	None	None	6
Judge F	None	17,215	—17,215	21
Judge G	None	None	None	6
Judge I	6,893	12,375	—5,481	13
Judge J	7,833	23,290	—15,457	34
Judge L	15,666	16,146	—480	9
Judge M	None	None	None	11
Judge N	5,953	18,672	—12,719	20
Judge P	None	None	None	10

¹ Assuming 1 promotion from the last grade the individual attained in the civil service and 5 longevity increases.

COMPARISON OF INCREASED RETIREMENT BENEFITS

	Years of congressional, civil and military service	Total present statute and deferred CS annuity	Annuity under H.R. 15679 (retirement bill) based on present salary	Annuity under H.R. 15679 based on salary estab- lished by H.R. 15578	Increase in annuity under H.R. 15679 if salary is increased under H.R. 15678	Net increase in annuity attributable to H.R. 15679
	(A)	(B)	(C)	(D)	(E)	
Judge A	16	\$11,877	\$14,471	\$16,889	\$5,012	\$2,594
Judge B	10	17,864	18,800	22,000	5,136	536
Judge D	6	9,165	10,007	11,951	2,786	842
Judge F	21	15,227	17,980	20,994	5,767	2,753
Judge H	7	17,764	18,800	22,000	4,236	1,036
Judge I	13	12,621	14,118	15,514	2,893	1,500
Judge L	9	17,311	18,800	22,000	4,689	1,489
Judge M	11	10,365	12,122	14,414	4,109	1,817
Judge N	20	15,585	17,644	19,868	4,283	2,059
Judge P	10	11,670	12,432	17,019	5,349	762
Judge R	11	16,702	18,800	22,000	5,298	2,098
Judge S		8,085		11,509	3,424	
Judge T		8,936		13,638	4,702	

Column D is the difference between columns A and C.
Column E is the difference between column A and B.

**LOSS IN ANNUITY TO JUDGES WITH PRIOR GOVERNMENTAL SERVICE WITH REGARD TO DISABILITY RETIREMENT
(AS OF DEC. 31, 1968) AS A RESULT OF APPOINTMENT TO THE BENCH**

	Disability annuity under present law	Disability annuity if individual had remained in civil or congressional service ¹	Loss in disability annuity as result of appointment	Number of years of prior service
Judge A	None	\$10,656	—\$10,656	16
Judge B	\$11,750	7,908	None	10
Judge C	None	4,761	—4,761	6
Judge D	3,916	5,189	—1,273	6
Judge F	None	11,905	—11,905	21
Judge G	None	4,761	—4,761	6
Judge I	7,050	10,656	—3,606	13
Judge J	None	11,905	—11,905	34
Judge L	13,311	11,905	None	9
Judge M	None	7,908	—7,908	11
Judge N	None	12,095	—12,095	20
Judge P	6,264	12,095	—5,831	10

¹ Assuming 1 promotion from the last grade that the individual attained in the civil service and 5 longevity increases.

Mr. WHITENER. Mr. Flannery.

**STATEMENT OF THOMAS A. FLANNERY, ESQ., REPRESENTING THE
COMMITTEE ON ADMINISTRATION OF JUSTICE, JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT**

Mr. FLANNERY. Mr. Chairman, I have a formal statement which I would like to submit. It is amended in the sense that it deals with the question of additional judges, which I didn't realize was going to be discussed this morning.

Mr. WHITENER. I didn't realize it either, but I don't think we are going to consider that in connection with this. It is very interesting to have it discussed.

Mr. FLANNERY. I would just like to make a very few brief comments. I am a lawyer in private practice with a firm which deals almost solely with the defense of corporations in civil litigation. I have done that for the past 6 years. Prior to that for 11 years I was Assistant United States Attorney in the District of Columbia handling criminal cases for 10 of those years in the District Court and for 1 year in the then Municipal Court, down at D.C. Court of General Sessions.

I am appearing here today on behalf of the Board of Trade, having served as its counsel for its Committee to Reduce Crime Now, and also on behalf of the Committee on the Administration of Justice of the Judicial Council.

Mr. WHITENER. Are you appointed to that latter post?

Mr. FLANNERY. Yes, by the senior judges of the United States Court of Appeals.

Now, we favor both of these groups—favor more pay.

We set out in our statement the reasons for that, and they have been elaborated on by Judge Greene but I would merely like to say this: I noticed in a newspaper article 10 days or two weeks ago that top law students from leading law schools are being offered as much as \$15,000 a year by large Washington and New York law firms. Also that a GS-18 as of July 1, 1968 will command a salary in excess of \$30,000 a year. Now, certainly when we consider that and compare that to the salaries that the judges in the Court of General Sessions now get—\$23,500 and \$24,500 a year—those salaries seem inadequate.

Mr. WHITENER. We have five Assistant Corporation Counsel who are making more money now than the judges.

Mr. FLANNERY. Yes, that is another good example. When we consider that this court—the principal trial court in this jurisdiction handling 97 percent of the litigation and 80 percent of the serious criminal cases, then the reason for a raise becomes even more apparent.

Now, my group, which I have the privilege of representing here today, also endorses more judges for the court. I can tell you, based on my experience as a prosecutor, that in recent years the cases have become much more complicated. Cases in that court which perhaps might have taken an hour or two hours to try, now take, I dare say, three, four, five times as long, because of the complicated procedures—the appellate decisions have led to more hearings, Miranda hearings, and more elaborate hearings on motions to suppress evidence.

Then, in addition, the Bail Reform Act, has contributed to court congestion in that there are fewer pleas of guilty. It used to be—when I was in the United States Attorney's office, and this was in the District Court, of course—why, as I recall, 75 or 80 percent of my cases would be disposed of by pleas of guilty. That is no longer the case. I don't know what the percentages are, but there has been a dramatic drop in the number of pleas and that is why you just have to have more judges to handle more trials.

Thank you, sir.

(The complete statement of Thomas A. Flannery is as follows:)

STATEMENT OF THOMAS A. FLANNERY ON BEHALF OF THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

My name is Thomas Flannery. I am an attorney in private practice with the law firm of Hamilton and Hamilton. I am appearing today as a member of the Committee on the Administration of Justice of the Judicial Council of the District of Columbia Circuit and as the Chairman of the Committee's Subcommittee on the District of Columbia Court of Appeals and Court of General Sessions. I also appear on behalf of the Washington Metropolitan Board of Trade, having served as counsel for its Committee to Reduce Crime Now and have been authorized by the Board of Trade to reiterate its support of the legislation calling for [more judges] and increased salaries for the judges of the Court of General Sessions.

The Committee on the Administration of Justice was appointed in March, 1966, to study the administration of justice in the District of Columbia, with particular attention to the operations of the judicial system. Every member of our Committee is an attorney actively engaged in the private practice of law and each has had substantial experience before the courts of the District. We have been studying the functioning of these courts for some time now, and in May of last year issued a series of comprehensive recommendations for the improvement of the administration of justice in the District. Our efforts since then have been directed toward implementation of these recommendations as well as further study of the problems facing the District's courts.

Included among these recommendations were proposals to give the judges of the D.C. Court of Appeals, Court of General Sessions and Juvenile Court a \$4,000 salary increase and to provide the Court of General Sessions with 5 additional Judges. Legislation covering these two measures was drafted by the Committee and was introduced in the House by Representatives Broyhill, Gude, Adams, Horton, and Jacobs,¹ and in the Senate by Senators Bible and Tydings.² We have been seeking Congressional action on these and other bills which would implement our recommendations for some time now and are, therefore, pleased that this Subcommittee is giving consideration to H.R. 15678, which provides for the much-needed salary increase.

The importance of the Court of General Sessions in the administration of justice in the District cannot be overstated. This court is currently handling 97% of all litigation in the District, and proposals have been made to transfer still more jurisdiction to it. In the past year the Court of General Sessions handled over 140,000 matters involving landlord-tenant and debtor-creditor relations and provided peaceful solutions to problems which are the most potent source of both private and public unrest and discontent in our community today. Furthermore, the significance of this court, which handles 80% of all serious criminal offenses, to the administration of criminal justice lies not only in the sheer number of defendants coming it, but also in its jurisdiction over many of the offenses that most affect the public. Since most convicted felons have prior misdemeanor records, the likelihood of diverting an offender from a career of crime is greatest at the time of his first brush with the law, and it is essential that the Court of General Sessions have the quality and quantity of judicial manpower to serve this purpose. It is only by attracting men and women of the highest caliber to serve on the local judiciary that the courts will be an effective instrument in dealing with the social and criminal problems facing our city today.

¹ H.R. 12738 and H.R. 13970.

² S. 2439 and S. 1981.

The \$23,500 salary now paid associate judges of the Court of General Sessions is not adequate compensation to attract such people to the judiciary in an area where the cost of living is already one of the highest in the nation and is rapidly increasing. They must often be willing to relinquish lucrative law practices or important government positions. In a time when a June graduate from law school can earn \$15,000 a year in leading Washington and New York law firms, when judges on the District Court bench here receive \$30,000 a year, and government employees at the GS-18 level will receive \$30,239 as of July 1, 1968, a salary of \$27,500 for the associate judges of the D.C. Court of General Sessions and \$28,500 for associate judges of the D.C. Court of Appeals is imminently reasonable.

Our specific recommendations in this direction have been endorsed by the Judicial Council of the District of Columbia Circuit, the Attorney General, the District of Columbia government, the Metropolitan Washington Board of Trade, the Washington, D.C., Clearing House Association, the Bar Association of the District of Columbia, the Washington Bar Association, Inc., the Women's Bar Association, and the Judicial Conference of the District of Columbia Circuit in a resolution adopted May 25, 1967. In addition, higher salaries for judges in our nation's urban courts were urged by the President's Commission on Law Enforcement and Administration of Justice, and salary increases for judges on the D.C. courts were urged by the D.C. Crime Commission.

For these reasons we urge this Subcommittee to give favorable consideration to the legislation presently before it, and also to the need of the Court of General Sessions for additional judicial manpower to handle its growing workload.

Approximately 52,000 prosecutions other than traffic cases are brought in the Court of General Sessions annually, and demands for jury trials in criminal cases are about 500 per month. The backlog of criminal jury cases is over 1400, and there is an average delay of 52 days. The Court of General Sessions has recently witnessed a sharp increase in the ratio of trials to summary dispositions. During 1965 approximately 15% of the serious misdemeanor cases went to trial; that percentage has since doubled. Because trials are obviously more time consuming than summary dispositions, this has resulted in pressure on the court calendar which was already overburdened with the rising crime rate. In addition, the recent riots have added an additional 7300 cases to the court's docket and substantially increased the delays.

Prosecution witnesses often become reluctant to testify as the time between arrest and ultimate disposition lengthens, thereby forcing dismissals for want of prosecution or dismissals of some of the charges in return for a plea of guilty to others. While this device may clear the backlog, it does not always serve the best interests of the community since it leads to no sentence or, at best, a sentence bearing an unrealistic relationship to the offenses actually committed. Unless enough judges are added to the court to enable it to cope realistically with its flow of criminal cases, many other crime fighting measures are likely to be made ineffective. If delays cause charges to be so stale that they are dismissed or reduced as a result of a bargain, the deterrent value of the criminal process is largely dissipated.

On the civil side, the time from joinder of issue to disposition of a civil jury case has risen from 17 months as of January 1, 1967, to a present delay of 23 months, and the delay from pretrial to trial has increased during this same time period from 5 to 7 months. In the past year, in spite of the fact that the court disposed of 442 more civil jury cases than it had during the previous year, the civil jury backlog increased from 4736 to 5279, as the court assigned more of its judicial manpower to handle the growing criminal docket. Many of the civil matters coming before this court require immediate attention, and unless more judges are assigned to the Civil Division, justice will be so long delayed as to be practically denied for many litigants.

Chief Judge Greene, in an elaborate statistical analysis, has demonstrated that the Court of General Sessions is in need of 26 judges, given its present workload. Six judges would be required for the expeditious operation of the criminal trial calendar; eight judges for the civil calendar in order to handle the present demands and reduce the extensive backlog by approximately 80 cases per month; at least one judge for each of the following operations: District of Columbia Branch, Traffic Branch, Criminal Assignment Branch, the combined Civil and Criminal Motions Branches, and the combined Landlord-Tenant and Small Claims Branches—for a total of five; three judges for the Domestic Relations Branch (required by statute); and at least one additional judge if the court is to institute permanent night operations. Since at any given

time an average of three judges are ill, on vacation or otherwise unable to sit, 26 judges are needed to carry the workload.

For these reasons the Committee urges this Subcommittee to recommend that the Court of General Sessions be increased by 5 judges.

Mr. WHITENER. Well, thank you, Mr. Flannery.

Does anyone else have anything to add?

Mr. CANFIELD. Mr. Chairman, I would just like to add one thing on behalf of the Bar Association.

Again, the bill did not originally apply to the Tax Court and to Judge Morgan. Certainly the Bar Association would be in favor of his receiving the same treatment as other judges in the Court of General Sessions.

Judge MORGAN. May I make just one statement. As I stated, I think the Court ought to be included in the bill of increasing the salaries. With respect to retirement, we are perfectly satisfied with our retirement. It is very simple. It is not complicated. And we get along very well with it. Since I am going to retire on June 30, I will hate to see it mixed up.

So if you will, do me a great favor and don't include us in the second paragraph. [Laughter.]

Mr. WHITENER. I am afraid you and Judge Hood have me under some handicap here, because I married a Morgan from South Carolina. So I am sort of trapped. We have here a communication from the Washington Clearing House Association signed by Mr. Robert C. Baker, Chairman, dated April 30, 1968, which we will make a part of the record.

(The letter dated April 30, 1968, signed Robert C. Baker is as follows:)

THE WASHINGTON, D.C., CLEARING HOUSE ASSOCIATION,
Washington, D.C., April 30, 1968.

HONORABLE BASIL WHITENER,
Chairman, Subcommittee No. 4,
House District Committee,
Rayburn Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: In June 1967 the Washington, D.C., Clearing House Association, of which I am Chairman, endorsed the recommendations of the Judicial Council's Committee on the Administration of Justice calling for an increase in salaries of the judges of the D.C. Court of Appeals and the Court of General Sessions and an increase in the number of judges for the Court of General Sessions. At that time I wrote the President of the United States approving these recommendations of the Committee, and we have continued our support of the measures it proposed. I am now writing to strongly urge your Subcommittee to take favorable action on H.R. 15678 which will raise the salaries of the judges on the D.C. Court of Appeals and the Court of General Sessions and on H.R. 14202 and 15679 which will affect their retirement benefits and give consideration to the need of additional judges for the Court of General Sessions.

Our organization enlisted long ago in the war against crime, and we have urged that all elements in our community put aside disputes on issues that divide us and concentrate upon practical proposals that should command the support of all reasonable men. These bills represent one such proposal. It is only by attracting men of the highest caliber to the judiciary that the courts will be the effective instrument in the war against crime that they must be.

H.R. 15678 would raise the existing salaries of these judges by a modest \$4,000. The \$23,500 now paid the judges in the Court of General Sessions is less than that paid Government workers at the GS-18 level since the latter will receive \$30,239 beginning July 1, 1968. And it is considerably below the \$30,000 now paid to the United States District Court judges. Yet the judges on the Court of General Sessions handle 97% of all litigation in the District, which includes 80%

of all serious criminal offenses. The salary of \$23,500 was established a few years ago, and since that time the work of the Court including the work load of each judge has increased substantially. As a city we simply must see to it that this great bulk of our civil and criminal work is in the hands of judges in whom the community has utmost confidence and respect.

I am satisfied that the interests of the District will be advanced if this bill is enacted into law. In view of the increased role the courts are playing in the efforts to solve the District's crime problem, it is important as never before that the community recognize its responsibility to support the judiciary and to take steps to make service on the local courts more attractive and give the judges a status commensurate with their important responsibilities.

We urge, therefore, that this Subcommittee give favorable consideration to the bills presently before it as we think it is a modest increase in salary that is long overdue and will result in strengthening these courts which are important to the community.

I will appreciate it if you will include this letter as a part of your proceedings.

Thanking you, I am,

Very truly yours,

ROBERT C. BAKER, *Chairman.*

Mr. WHITENER. Well, gentlemen, if there is nothing further to be presented, I want to thank you for being with us. I hope you understand the informality. I know that you judges are more accustomed to dignified proceedings than the general run of folks, but I find this type of hearing where we have the type people who talk as lawyers to one another it works out a little better, at least for me, to have the opportunity to move back and forth from one question to another than where you just hear formal statements. I don't suppose we saved any time but you get a little better record of what ought to be in the record.

So I wouldn't have any of you think we are trying to cut you off if you have anything else to say in behalf of these bills.

Judge GREENE. We appreciate, certainly speaking for myself, and I am sure for all of us, the patience of the committee and the consideration that it is giving this.

Mr. WHITENER. Thank you very much.

(Whereupon, at 12:25 p.m. the subcommittee adjourned, subject to call of the Chair.)

