

Newsvine.com – May 27, 2010

Justice Souter may be retired, but he still works

By Denise Lavoie, Associated Press Writer

BOSTON — Justice David Souter ever so politely interrupts an attorney making a complicated legal argument.

"May I ask you a question?" Souter asks. "I will tell you, you do not have to answer it as far as I'm concerned."

Then Souter cuts to the chase, stinging the lawyer with an ethical question: "Do you believe you have a good faith basis in law to make that argument?"

For Souter, retirement from the U.S. Supreme Court last June has not meant retirement from the bench.

At the age of 70, he is unwilling to hang up his robe and is hearing cases one or two days a month for the 1st U.S. Circuit Court of Appeals in Boston, which handles federal appeals for Maine, Massachusetts, New Hampshire, Rhode Island and Puerto Rico.

"It was an opportunity to stay involved with the law at a very high level, and he's enjoying it immensely," said former U.S. Sen. Warren Rudman of New Hampshire, a longtime friend of Souter's who was a key player in his nomination to the Supreme Court.

For those who observed Souter during his 19 years on the Supreme Court, the demeanor is the same — polite, formal and sharp.

"He's incredibly bright and insightful," said New Hampshire attorney Sven Wiberg, the lawyer who was asked to defend his argument to Souter. "He cuts right to the heart of things."

Souter is known for being intensely private and declined a request to be interviewed.

As a Supreme Court justice, his rulings often were unpredictable. After his nomination in 1990 by President George H.W. Bush, he was called a moderate conservative. But he soon joined in a ruling affirming a woman's right to an abortion, and he became a reliable liberal vote. He was one of the four dissenters in the 2000 decision in *Bush v. Gore* that sealed the presidential election for George W. Bush.

By retiring at age 69, he became one of the youngest judges to leave the bench. Friends say he never enjoyed Washington — he once said he had "the world's best job in the world's worst city."

So they are not surprised by his decision to return to the 1st Circuit court, where he had served just one day before his nomination.

"It's something he always told us he was going to do," said Norman Stahl, a senior judge on the court who has been friends with Souter for 40 years. "He loved the work (of the Supreme

Court), but he was never a fan of living in Washington, so he's enjoying being home and sitting here."

It's not unusual for retired Supreme Court justices to continue to work in appeals courts after retirement. Justice Sandra Day O'Connor also has sat on the 1st Circuit, and the late Justice Byron White sat on several appeals courts, including the 9th Circuit U.S. Court of Appeals in San Francisco and the 10th Circuit in Denver, after his retirement.

But Mark Tushnet, a Harvard Law School professor who has written extensively about the Supreme Court, said Souter is working more often than most retired justices. He said Souter may enjoy the difference in the appellate work compared with the Supreme Court.

"What you are doing on the court of appeals is making decisions that have a significant effect on the daily lives of individuals who are in front of you, on a case-by-case basis, whereas with the Supreme Court you're making decisions that affect a lot of people, but they are not the ones in front of you, you don't see them," Tushnet said.

Souter doesn't receive any extra compensation for hearing the appeals cases. Under federal law, he will continue to receive an annuity equal to the salary at the time of his retirement, which was \$213,900.

In order to be eligible for any pay raise or cost-of-living adjustment, retired judges are required to perform administrative or judicial services, such as sitting on a circuit court, for the equivalent of three months in a calendar year.

Souter returned to the appellate court in January. It is close to his home in New Hampshire, where earlier in his career he served as state attorney general, Superior Court judge and associate justice of the state Supreme Court. A bachelor, he recently moved from his family's 200-year-old farmhouse in Weare to a more modern home in a suburb of Concord.

He also has been working on a New Hampshire task force formed to improve civics education in public schools. In a speech to the American Bar Association last year, Souter warned that the failure of many Americans to understand how the government works poses a threat to the ability of the nation's judges to remain free from political pressure.

"There is a danger to judicial independence when people have no understanding of how the judiciary fits into the constitutional scheme," Souter said.

Friends say Souter is spending his spare time settling into his new home and trying to organize a massive book collection. He returned to his alma mater Thursday to be the principal speaker at Harvard University's commencement.

"He simply was in a job that most people don't walk away from," said Bill Glahn, a longtime friend from New Hampshire. "This gives him an opportunity to still be occupied by (the law) and also think about how much he wants to continue to do it and what he wants to do with the rest of his life."