

ONE PAGE SUMMARY OF THE STATEMENT OF DIVISION 6 ON
H.R. 3370
THE D.C. PROSECUTORIAL AND JUDICIAL EFFICIENCY ACT OF 1985

We support as consistent with the spirit of the Court Reform and Self-Government Acts (1) changing the caption of prosecutions of local crimes to reflect that they are conducted in the name of the District of Columbia, although the U.S. Attorney would retain prosecutorial responsibility; (2) eliminating the joinder of federal and local offenses in the same indictment or information; (3) requiring the U.S. Attorney to make annual statistical reports and recommendations to the Mayor and Council; (4) providing for limited details of Assistant Corporation Counsel to the Office of the U.S. Attorney; (5) eliminating of the federal role in the appointment of the Executive Officer of the District Courts; (6) elimination of the federal Chief Judges from the panel that appoints the Board of Trustees for Office of the D.C. Public Defender; (7) eliminating the requirement that District of Columbia Judges file financial disclosure reports with the Federal Judicial Ethics Committee, in view of the existing requirement that these judges file similar reports with the Tenure Commission; and (8) authorizing the D.C. Court of Appeals to answer questions certified by federal and state courts. However, we hesitate to support giving permanent authority for hearing commissioners in the absence of further evaluation, but suggest it be extended temporarily.

We strongly urge elimination of the provision repealing automatic disbarment of attorneys convicted of crimes involving moral turpitude in view of the potential impact on the quality of the bar. We urge that the issue be thoroughly considered by the citizens of the District and members of the Bar before legislation is enacted.

With respect to amendments relating to the Judicial Nomination Commission, we support (1) giving the Commission more time to evaluate judges who have made themselves available for another term and (2) making the list of judicial nominees public, although we urge clarification of whether the Commission or President has this responsibility. While we do not necessarily oppose the substance of the provisions exempting the Commission from the Freedom of Information Act and Open Meetings provision, we believe that these amendments to local laws are in the Council's authority and should be made by that body in the interests of home rule. We hesitate to support certain provisions permitting disclosure of information to the Commission without further local discussion. We strongly oppose deleting the category of "exceptionally well-qualified" in the Commission's evaluation of sitting judges as its presence is an inducement to the bench to maintain high levels and informs the bar and the public.

STATEMENT OF
JAMES C. MCKAY, JR.
CHAIRMAN, LEGISLATIVE COMMITTEE
DIVISION VI (DISTRICT OF COLUMBIA AFFAIRS) OF THE
DISTRICT OF COLUMBIA BAR*
BEFORE THE
SUBCOMMITTEE ON JUDICIARY AND EDUCATION
DISTRICT OF COLUMBIA COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 3370
DISTRICT OF COLUMBIA
PROSECUTORIAL AND JUDICIAL EFFICIENCY ACT OF 1985

October 1, 1985

Mr. Chairman and members of the Committee:

Thank you for the opportunity to submit a statement on H.R. 3370, the District of Columbia Prosecutorial and Judicial Efficiency Act of 1985. This statement is made on behalf of Division VI of the District of Columbia Bar, the Division responsible for monitoring legislative and judicial developments that affect the District of Columbia. The views expressed herein are only those of the Division and not those of the District of Columbia Bar or its Board of Governors.

We support a number of provisions in the bill which are a logical outgrowth of the Court Reorganization and Self-Government Acts and which further home rule by enhancing the independence of the District of Columbia Government from the Federal Government.

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STANDARD DISCLAIMER

The views expressed herein represent only those of Division VI (District of Columbia Affairs) of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

We fully support the provisions in section 2 providing that all local offenses be conducted in the name of the District of Columbia and eliminating the joinder of federal and local offenses in indictments and informations. We also believe that the requirement for annual reports on prosecutions and convictions by the United States Attorney for the District of Columbia to the Mayor and Council would be of great benefit to the District Government in fulfilling its administrative and legislative responsibilities over the District's criminal justice system.

We further believe that the requirement in section 2 for the detail of a limited number of Assistant Corporation Counsel to the office of the United States Attorney would be of great benefit to both offices. We premise this support on the understanding that its object would be to give the Office of the Corporation Counsel the benefit of greater experience in handling prosecution of serious offenses, to give the United States Attorney's Office the benefit of additional attorneys experienced in prosecuting local offenses, and to promote cooperation between the two prosecutorial offices responsible for public safety in the District. We would have serious reservations, however, if the primary goal were simply to achieve budget savings in the Office of the United States Attorney.

In addition, we fully support provisions of the bill eliminating the federal role in the administration of the

District's criminal justice system. We therefore favor section 4, which deletes the requirement that the Executive Officer of the Court be selected from a list provided by the Administrative Office of the United States Courts, and section 7, which eliminates the Chief Judges of the Federal Circuit and District courts from the panel that appoints the Board of Trustees for the Office of the Public Defender for the District of Columbia.

Similarly, we support section 9, which eliminates the requirement that District of Columbia Judges file financial disclosure reports with the Federal Judicial Ethics Committee, in view of the existing requirement in D.C. Code § 11-1530 that these judges file similar reports with the District of Columbia Commission on Judicial Disabilities and Tenure. We believe that it is consistent with court reform and home rule that the District of Columbia judiciary report to an agency of the District of Columbia Government rather than the Federal Government.

Likewise, we support section 10, which would authorize the D.C. Court of Appeals to answer questions certified to it by federal and state appellate courts, because it is consistent with the theory embodied in the Court Reform Act that the District of Columbia Court of Appeals should be treated like the highest court of a state. Many states have similar referral mechanisms, and we believe that giving this authority to the District of Columbia Court of Appeals would be in the interests of judicial economy.

We have reservations about section 3, which would remove the sunset provision from the statutory authorization for hearing commissioners. While we recognize the need to extend this authority on a temporary basis to avoid its abrupt cessation, we believe that a decision to make it permanent at this time may have the negative effect of discouraging evaluation of the hearing commissioner program, including the important questions of the method of and standards for appointment. Therefore, we suggest the Committee extend the authority for a limited period to permit further evaluation.

We have grave reservations about section 5, which would repeal D.C. Code § 11-2503, which provides for the disbarment of attorneys convicted of crimes involving moral turpitude. Although there may be some justification for reconsidering the policy embodied in this law, we believe that its potential impact on the quality of the Bar and the public's perception of the Bar is too great for us to support it without the benefit of further debate and discussion among citizens of the District and the members of the Bar.

We have a varied reaction to the provisions concerning the Judicial Nomination Commission. We fully support section 15, which would give the Commission additional time to evaluate judges who have made themselves available for another term. We also support the concept of section 13, which would make the list of judicial nominees public.

However, we would suggest that the legislation make it clear whether the Commission or the President has the responsibility of making the list public and specify guidelines as to the timing of the disclosure of the list.

While we have no opposition to the policies embodied in those provisions of sections 11 and 12 that exempt the Commission from the D.C. Freedom of Information Act and Open Meetings provision, respectively, we believe that the Council of the District of Columbia has the legislative power to make these exemptions and should be given the opportunity to do so. Our analysis leads us to conclude that the Commission, as an agency of the District Government, is specifically excluded from the federal Freedom of Information Act by 5 U.S.C. §551(1)(D), but that it does fall within the scope of the D.C. Freedom of Information Act. Therefore, the Council, not Congress, should enact any legislation making exemptions from this local act.

Likewise, we believe that the Council should be permitted to exempt the Commission from the Open Meetings provision, D.C. Code § 1-1504. This provision, although originally enacted by Congress by Title VII of the Self-Government Act, is a purely local law which the drafters of that Act contemplated would be within the legislative authority of the Council. No one has questioned the Council's authority to amend other provisions of local law enacted by Title VII, such as the amendments to the D.C.

Election Act, added by § 751 of the Self-Government Act. Therefore, the Council should be permitted to amend the local Open Meetings provision to provide an exemption for the Commission.

We have reservations about two provisions in section 14 of the bill, which permit disclosure of certain confidential information submitted to the Commission--namely, the provision authorizing a judge to disclose confidential medical information, which may have the practical effect of forcing its disclosure, and the provision permitting disclosure of documents at a hearing before the Commission for the purposes of prosecution for perjury before the Commission, which may raise fifth amendment concerns. We believe that these provisions should be more fully discussed before enactment.

Finally, we oppose section 16 of the bill, which would eliminate the option of the Tenure Commission to rate a judge "exceptionally well-qualified." The requirement can and should be made to serve the purpose of recognizing those judges whose service is truly exceptional. It also serves as an inducement to judges to maintain a high quality of justice. In our view, any efforts expended concerning this requirement should be devoted to making the rating meaningful by, for example, encouraging the Commission to give reasons for an "exceptionally well-qualified" rating. Therefore, we believe that this section should be deleted from the bill.

In conclusion, we support the many provisions of H.R. 3370 that further the independence of the District's judicial and criminal justice system and thereby enhance home rule. We have reservations about certain provisions that are unrelated to this purpose, and hope that the Committee will reconsider the ones that we have mentioned. With these exceptions, we support this legislation and hope that the Committee will take favorable action.

Thank you for the opportunity to submit this statement.