

y4
D63/1:
93-13

1014

93-13
1/23/1
1/23/1

COUNSEL FOR INDIGENT CRIMINAL DEFENDANTS
DOCUMENTS

JAN 21 1975

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

GOVERNMENT

SUBCOMMITTEE ON THE JUDICIARY

Storage

OF THE

COMMITTEE ON

THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

THE PRESENT DISTRICT OF COLUMBIA INDIGENT DEFENDERS
PROGRAM AND ON

H.R. 14374

TO ESTABLISH A D.C. DEFENDER SERVICE

H.R. 14376

TO PROVIDE A SYSTEM OF DEFENSE OF INDIGENTS
CHARGED WITH CERTAIN CRIMES IN THE DISTRICT OF
COLUMBIA

Serial No. 93-13

JUNE 28, 1973 AND JUNE 13, 1974

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



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

35-284

COMMITTEE ON THE DISTRICT OF COLUMBIA

CHARLES C. DIGGS, Jr., Michigan, *Chairman*

DONALD M. FRASER, Minnesota
W. S. (BILL) STUCKEY, Jr., Georgia
RONALD V. DELLUMS, California
THOMAS M. REES, California
BROCK ADAMS, Washington
WALTER E. FAUNTROY,
District of Columbia
JAMES J. HOWARD, New Jersey
JAMES R. MANN, South Carolina
ROMANO L. MAZZOLI, Kentucky
LES ASPIN, Wisconsin
CHARLES B. RANGEL, New York
JOHN BRECKINRIDGE, Kentucky
FORTNEY H. (PETE) STARK, California

ANCHER NELSEN, Minnesota
WILLIAM H. HARSHA, Ohio
JOEL T. BROYHILL, Virginia
GILBERT GUDE, Maryland
HENRY P. SMITH III, New York
EARL F. LANDGREBE, Indiana
STEWART B. McKINNEY, Connecticut
E. G. SHUSTER, Pennsylvania
ROBIN L. BEARD, Tennessee
CLAIR W. BURGNER, California

ROBERT B. WASHINGTON, Jr., *Chief Counsel*

JAMES T. CLARK, *Legislative Counsel*
RUBY G. MARTIN, *Associate Counsel*
DALE MACIVER, *Assistant Counsel*
DANIEL M. FREEMAN, *Assistant Counsel*
YVONNE CHAPPELL, *Professional Staff*
WILBUR HUGHES, *Professional Staff*
LINDA L. SMITH, *Professional Staff*
JACQUELINE WELLS, *Professional Staff*
MARIA L. OTERO, *Office Administrator*

DOROTHY E. QUARKER, *Senior Consultant*
DR. ALVIN D. LOVING, Sr.,
Special Consultant

JOHN E. HOGAN, *Minority Counsel*
LEONARD O. HILDER, *Professional Staff*
RALPH E. ULMER, *Professional Staff*

SUBCOMMITTEE ON THE JUDICIARY

WALTER E. FAUNTROY, District of Columbia, *Chairman*

THOMAS M. REES, California
JAMES R. MANN, South Carolina
CHARLES B. RANGEL, New York
JOHN BRECKINRIDGE, Kentucky

HENRY P. SMITH III, New York
WILLIAM H. HARSHA, Ohio
E. G. SHUSTER, Pennsylvania
ROBIN L. BEARD, California

HOWARD LEE, *Subcommittee Counsel*

CONTENTS

H.R. 14374 (Mr. Diggs), a bill to establish the District of Columbia Defender Service-----	Page 1
Staff memorandum, section-by-section analysis of H.R. 14374-----	5
District Government's recommendations-----	6
H.R. 14376 (Mr. Diggs), a bill to authorize counsel for indigent criminal defendants-----	10
Staff memorandum, section-by-section analysis of H.R. 14376-----	12
District Government's recommendations-----	52
Joint Committee on Judicial Administration in the District of Columbia recommendations-----	13, 32

STATEMENTS

Administrative Office of U.S. Courts:	
Foley, William E., Deputy Director-----	15
Kirks, Rowland, Director-----	15
Sweeney, William R., Assistant Director for Management Affairs-----	162
Bar Associations:	
Bar Assn. of the District of Columbia, Fred S. Hird, Jr.-----	65, 70
Unified Bar Assn.:	
Austern, David-----	65
Duncan, Charles T., president-----	192
Karsten, Frank-----	192, 194
Washington Bar Assn., Claude Roxborough-----	65
Brown, James, Director of the Criminal Justice Act Program-----	53
D.C. Government:	
Coppie, Comer S., Director, Office of Budget and Financial Management-----	78
Murphy, C. Francis, Corporation Counsel-----	44, 50, 78
Robinson, William, Assistant Corporation Counsel-----	44
Washington, Hon. Walter E., Mayor-Commissioner-----	78, 79
Green, Hon. Harold H., Chief Judge, D.C. Superior Court-----	26, 33, 41, 90, 208
Kelly, Hon. Catherine B., Acting Chief Judge, D.C. Court of Appeals-----	90
Kirks, Rowland F., Director, Administrative Office of the U.S. Courts-----	163
Public Defender Service:	
Dash, Samuel, Board of Trustees-----	53
Hickey, J. Patrick, Deputy Director-----	53, 199
Lefstein, Norman, Director-----	53, 199
Reilly, Hon. Gerald D., Chief Judge, D.C. Court of Appeals-----	26, 29
Sneed, Hon. Joseph T., Deputy Attorney General of the United States-----	144
U.S. General Accounting Office:	
Levy, Howard, Attorney Adviser, Office of General Counsel-----	147
Socular, Milton J., Deputy General Counsel-----	147

MATERIAL SUBMITTED FOR THE RECORD

Administrative Office of the U.S. Courts:	
Correspondence and Other material re appointment of counsel in D.C. Courts-----	
Letters:	165-181
Mar. 7, 1972 to Comptroller General-----	112, 159
Sept. 19, 1973 to Hon. Carl Albert-----	16
Appropriations Committee Report, excerpts from-----	181-191
Ash, Roy L., Director, Executive Office of the President, Office of Management and Budget, letter to Chief Judge Gerard D. Reilly, D.C. Court of Appeals, dated April 25, 1973-----	122

Burger, Hon. Warren E., Chief Justice, U.S. Supreme Court, letters to:	Page
Frank M. Karsten, Esq., Member, Unified Bar of the District of Columbia, dated June 7, 1973	196
E. Barrett Prettyman, Jr., Esq., President, the D.C. Bar, dated June 7, 1973	196
Canfield, Austin F., Jr., President, The Bar Association of the District of Columbia, letter to the Chairman, dated May 6, 1974	73
Comptroller General of the U.S.:	
Decision B-156932	105, 151
Decision B-158948	155
Letters:	
Mar. 3, 1969 to Attorney General	149
Sept. 24, 1970 to Chief Judge Greene	110
May 26, 1972 to Hon. Rowland Kirks	118
Court Opinion (Hon. Harold H. Greene) in <i>United States v. Frank Walker</i> , D.C. Court of General Sessions (Criminal Action No. 363-66)	97
"Criminal Justice in a Metropolitan Court", article	122
Dash, Samuel, Chairman, Board of Trustees, Public Defender Service, letter to Mayor Washington, dated April 3, 1974	74
Duncan, Charles T., President, Unified Bar of the District, letter to Chief Judge Harold H. Green, D.C. Superior Court, dated June 23, 1973	193
Greene, Hon. Harold H., Chief Judge, D.C. Superior Court, letter to the Comptroller General of the United States, dated May 5, 1974	114
Imlay, Carl H., General Counsel, Administrative Office of the U.S. Courts, letter to the Comptroller General of the United States, dated March 7, 1972	112
Keller, Hon. R. F., Deputy Comptroller general of the United States, letter to Hon. Rowland F. Kirks, Director, Administrative Office of the U.S. Courts, dated May 26, 1972	118
Kirks, Rowland F., Director, Administrative Office of the U.S. Courts, letter to Hon. Carl Albert, dated September 19, 1973	16
Reilly, Gerard D., Chairman, Joint Committee on Judicial Administration in the District of Columbia, letters to the Chairman, dated:	
April 19, 1974	13
May 13, 1974	32
Santarelli, Donald E., Administrator, U.S. Department of Justice, letter to Chief Judge Harold H. Greene of the D.C. Superior Court, dated June 27, 1973	122
Washington, Hon. Walter E., D.C. Mayor-Commissioner, letters to:	
Albert, Hon. Carl, dated April 23, 1974	6
The Chairman, dated June 13, 1974	43
Whalen, Rev. John P., Executive Director, Consortium of Universities of the Washington Metropolitan Area, letter to Hon. Walter E. Fauntroy, dated June 25, 1974	73

SUMMARY OF TESTIMONY

Agency Jurisdiction	39, 58
Alternate Proposals	27
Amendments Proposed:	
Dash, Samuel	55
District Government	45
Hird, Fred S.	71
Kirks, Rowland	20
Public Defender Service	60
Reilly, Hon. Gerald D.	28
Appropriations	48
Appropriations Committees	133
Attorney's Fees	35, 38, 59
Attorney's Qualifications	37, 142
Authority for Appropriations	136, 140, 146
Background	80
Bar Association's Report	141
Bar Study	65
Board of Trustees	34, 45, 57, 63
Budget Control	34, 60, 62, 67, 68
Budgetary Independence	55
Continuing Resolution	84, 87
Comptroller General's Opinion	128

	Page
Cost of Defender Program	22, 85
Court Procedure	196
Court's Recommendation	33
Defendants Represented	25, 38
Defender Agencies in Other Areas	25
District Budget for Judiciary	82
District Recommends	44
Emergency Legislation	22, 38
Federal Criminal Justice Act	132
Federal Public Defender Agency	23, 54, 56, 59, 66, 86, 131, 202
Fees Paid Attorneys	37, 130
Financing the Local Courts	131
Funding for Counsel for Indigents	40, 46, 59, 81, 203
Funds Required	137, 144, 203
H.R. 14374	19, 28, 54, 56, 60
H.R. 14376	18, 26, 35
Indigency Determination	138
Jurisdiction Dispute	140
Justice Recommendations	85
Local Bar	15
Need for Legislation	14, 26
Nonpaid Counsel	129, 130
Other Funding Efforts	129
Plan for 1975	136
Present Problem	204
Previous Counsel System	208
Public Defender Service	19, 202
Recommendations	47, 56, 66, 70, 87
Refunding to Justice Department	137
Representation in United States and District of Columbia Courts	207
Request for LEAA Funds	141, 144
Staffing	21, 205
Stop-Gap Legislation	27, 40, 44, 66, 68
Substantive Authority Needed	88
Unexpended Funds	83, 130

1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

COUNSEL FOR DEFENDANTS

THURSDAY, JUNE 13, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE JUDICIARY OF THE HOUSE
DISTRICT OF COLUMBIA COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy (chairman of the subcommittee) presiding.

Present: Delegate Fauntroy.

Also present: James T. Clark, Legislative Counsel; Daniel Freeman, Assistant Counsel; Howard Lee, Subcommittee Counsel; John Hogan, Minority Counsel; and Leonard O. Hilder, and Ralph Ulmer, Professional Staff.

Mr. FAUNTROY. The Subcommittee on the Judiciary of the House Committee on the District of Columbia hearings on H.R. 14374 and H.R. 14376 will now come to order.

[The bills referred to and pertinent documents follow:]

H.R. 14374, 93d Cong., Second Sess., by Mr. Diggs (by request) on April 24, 1974.

A BILL To establish the District of Columbia Defender Service, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Defender Services Act."

ESTABLISHMENT OF SERVICE

SEC. 2. There is hereby established a District of Columbia Defender Service which shall provide or cause to be provided legal representation before the courts of the District of Columbia for persons financially unable to retain counsel.

BOARD OF TRUSTEES

SEC. 3. (a) The District of Columbia Defender Service (hereinafter referred to as the "Service") shall be governed by a Board of Trustees (hereafter referred to as the "Board") which shall consist of seven members appointed by the Commissioner of the District of Columbia, with the advice and consent of the District of Columbia Council. The Board shall establish a general plan and set the general policy for the Service but shall not direct the conduct of particular cases.

(b) The term of office of a member of the Board shall be three years, except that in cases of the initial Board, two members shall be appointed for a term of two years and two members shall be appointed for a term of one year. Vacancies on the Board shall be filled in the same manner in which original appointments were made and shall be for the unexpired portion of the term. A member of the Board may be appointed to not more than two consecutive terms of office and shall serve until his successor is appointed. A Chairman and a Vice Chairman shall be elected by and from the members of the Board.

ESTABLISHMENT OF THE PLAN

SEC. 4. (a) After consultation with the Joint Committee on Judicial Administration in the District of Columbia and the bar of the District of Columbia, the Board shall establish and place in operation in the District of Columbia a plan for furnishing representation for any person who is financially unable to obtain adequate representation and—

(1) who is charged with a felony, misdemeanor, or petty offense for which a jury trial may be required by the laws of the District of Columbia or the Constitution; or

(2) who is under arrest, when such representation is required by law; or

(3) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill); or

(4) who is a juvenile and alleged to be delinquent or in need of supervision; or

(5) who is charged with violating a condition of probation or parole, in custody as a material witness, or seeking collateral relief, as provided in—

(A) District of Columbia Code, section 23-110 (Remedies on motion attacking sentence),

(B) District of Columbia Code, title 23, chapter 7 (Extradition and fugitive from justice),

(C) District of Columbia Code, title 16, chapter 19 (Habeas Corpus), or

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302, commitment of mentally ill person while serving sentence).

(b) The plan established under this section may include the furnishing of counsel and other services to any person who is financially unable to obtain adequate representation before the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. Where such counsel or other services are so provided, the Service shall be reimbursed therefor by the United States Government pursuant to the provisions of title 18, section 3006A, United States Code.

(c) Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Service, and attorneys and qualified students participating in clinical programs. Not more than 60 per centum of the persons who are annually determined to be financially unable to obtain adequate representation and who are persons described in the above categories may be represented by the Service, but the Service may furnish technical and other assistance to private attorneys appointed to represent persons described in the above categories.

(d) The Service shall establish and coordinate the operation of an effective and adequate system for appointment of private attorneys to represent persons described in subsection (a), but the courts shall have final authority to make such appointments in individual cases in accordance with the plan.

(e) Upon approval of the Board, the Service may perform such other functions as are necessary and appropriate to the duties described in this section.

(f) The plan referred to in subsection (a) shall provide, but not be limited to providing, for—

(1) establishment of criteria for determining the financial ability of those seeking representation by the Service;

(2) establishment of criteria for the review and approval of vouchers for those seeking to be compensated under this Act;

(3) establishment of eligibility standards and procedures for selecting attorney panels provided for in section 5 hereof; and

(4) authorization of attorneys to engage in providing legal representation in cases where post conviction relief is sought.

(g) The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the Service shall require. Whoever in providing this information knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

APPOINTMENT OF COUNSEL

SEC. 5. Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the Service in

accordance with procedures established by the Board. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to the appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary with the court, the court shall advise the defendant or respondent that counsel may be appointed to represent him if he is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which the appointed counsel may be obtained.

DURATION AND SUBSTITUTION OF APPOINTMENTS

SEC. 6. A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 9 of this Act, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel who he had retained, it may appoint counsel as provided in section 5, and authorize payment as provided in section 7 as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

PAYMENT FOR REPRESENTATION

SEC. 7. (a) **HOURLY RATE.**—Any attorney appointed pursuant to this Act shall, except attorneys employed by the Service, at the conclusion of the representation or any segment thereof, be compensated by the Service at a rate fixed by the Board not to exceed the hourly scale established by the provisions of title 18, United States Code, section 3006A(d). Such attorney shall be reimbursed for expenses reasonably incurred.

(b) **MAXIMUM AMOUNTS.**—For representation of a defendant or respondent before the superior court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by the provisions of title 18, United States Code, section 3006A (d) (2) for like cases or proceedings.

(c) **WAIVING MAXIMUM AMOUNTS.**—Payment in excess of any maximum amount provided in subsection (b) of this section may be made for extended or complex representation whenever the judge in the superior court or before the presiding judge of the District of Columbia Court of Appeals before whom the representation was rendered, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Service.

SERVICES OTHER THAN COUNSEL

SEC. 8. (a) **UPON REQUEST.**—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the Service shall authorize counsel to obtain the services.

(b) **WITHOUT PRIOR REQUEST.**—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the amount provided by title 18, United States Code, section 3006A(e) (2), whichever is higher, and expenses reasonably incurred.

(c) **MAXIMUM AMOUNTS.**—Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the amount provided by title 18, United States Code, section 3006A (e) (3), whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Service.

(d) **FILING CLAIMS.**—A separate claim for compensation and reimbursement shall be made to the Service for representation before the superior court and the District of Columbia Court of Appeals. Each claim shall be supported by a sworn written statement certifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and compensation and reimbursement applied for or received in the same case from any other source. The Service shall fix the compensation and reimbursement to be paid to the attorney.

(e) **NEW TRIALS.**—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) **PROCEEDINGS BEFORE APPELLATE COURTS.**—If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28 of the United States Code.

RECEIPT OF OTHER PAYMENTS

SEC. 9. Whenever the Service finds that funds are available for payment from or on behalf of a person furnished representation, it may request that the court direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 8 to render investigative, expert, or other services, or to the Service for deposit in the Treasury to the credit of the District of Columbia as a reimbursement to the appropriation current at the time of payment, to carry out the provisions of this Act. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing any defendant or respondent.

DIRECTOR AND DEPUTY DIRECTOR

SEC. 10. The Board shall appoint a Director of the Service, who shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board may prescribe. The Deputy Director, who shall be appointed by the Director, shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. The Board shall fix the compensation to be paid to the Director and the Deputy Director without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but compensation for the Director shall not exceed the rate prescribed for GS-18 of the General Schedule and compensation for the Deputy Director shall not exceed the maximum rate prescribed for GS-17 of the General Schedule.

EMPLOYMENT OF ATTORNEYS AND OTHER PERSONNEL

SEC. 11. (a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective defense services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director in accordance with budgetary and personnel constraints and guidelines established by the Board, without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but shall be comparable to the compensation which may be paid to persons of similar qualifications and experience in the Office of the United States attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice.

REPORTS BY BOARD OF TRUSTEES

SEC. 12. The Board shall submit an annual report of the Service's operations to the Commissioner of the District of Columbia.

APPROPRIATIONS

SEC. 13. (a) For the purposes of carrying out the provisions of this Act, there are authorized to be appropriated for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary to implement the purposes of this Act. When so specified in appropriation Acts, such appropriations shall remain available until expended. The budget estimates made pursuant to this Act shall be prepared by the Board and submitted to the Commissioner of the District of Columbia.

(b) Upon approval by the Board, the Service may accept public grants and private contributions made to assist it in carrying out the provisions of this Act.

MEMBERS OF THE BOARD AND THE SERVICE EXEMPT FROM PERSONAL LIABILITY

SEC. 14. The members of the Board and employees of the Service shall not be personally liable in damages for any official action performed in good faith, nor shall any members of the Board or employees of the Service be liable for any costs that may be taxed against them on account of such official action by them in their official capacities; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said members of the Board or employees of the Service be required to give any supersedeas bond or security for costs or damages on any appeal whatever.

CRIMINAL PENALTY

SEC. 15. Any person compensated, or entitled to be compensated, by the Service for any services rendered under this Act who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

AMENDMENT AND REPEAL

SEC. 16. (a) Paragraph (1) of section 3006A, title 18, United States Code, as amended, is amended to read:

"(1)—APPLICABILITY IN THE DISTRICT OF COLUMBIA. Except for subsection (h) of section 1, the provisions of this Act shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals."

(b) Title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 473; D.C. Code, secs. 2-2201 through 2-2210) is repealed, except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before the effective date of this Act.

EFFECTIVE DATE

SEC. 17. This Act shall take effect upon enactment, except that the plan provided for in section 4 of this Act shall take effect one hundred and twenty days after the date of enactment. Until such plan is placed into operation by the Board, payments to private attorneys and the legal representation of persons in the District of Columbia shall continue in accordance with the authorities contained in laws, policies, procedures, and practices in effect on the effective date of this Act and in such manner as the Commissioner shall provide.

STAFF MEMORANDUM

SECTION-BY-SECTION ANALYSIS OF H.R. 14374

Section 1. Short title—Authorizes the Act to be cited as the District of Columbia Defender Services Act.

Section 2. Establishes District of Columbia Defender Service.

Section 3. Board of Trustees—Creates seven member Board of Trustees appointed by the Commissioner of the District of Columbia, with the advice and consent of the District of Columbia City Council with power to establish a general policy of the service but not to direct any individual case. Specifies that the members shall serve three year terms, the maximum number of terms which may be

served, and the procedures for selecting a chairman, vice chairman of the board, and the filling of vacancies.

Section 4. Establishment of the plan—Creates a plan for furnishing representation to indigents for a felony, misdemeanor, mental commitment, motion attacking sentence, extradition, habeas corpus, or other offense for which jury trial is required.

Reimbursement of counsel and other services is controlled by 18 USC 3006A. Service not to represent more than 60% of the number of indigents per annum, with remainder apportioned to private bar.

The plan shall provide for: determining eligibility of clients and of counsel to participate; and, for the authorization of post conviction relief.

Section 5. Appointment of Counsel—Counsel furnishing representation under the plan shall be selected from panels designated and approved by the Service in accordance with procedures established by the Board and shall be provided unless waived.

Section 6. Duration and Substitution of Appointments—Provides counsel from initial appearance through appeals and ancillary matters. Provides for termination and partial payment for the representation by one able to pay pursuant to section (9) provisions.

Section 7. Payment for Representation—Hourly rate to be fixed by 18 USC 3006A (d) (2) with waiver allowed for protracted litigation.

Section 8. Services other than Counsel—Provides for payment of ancillary services upon request or, if without prior request, not to exceed \$150.00. No request may exceed \$300.00, or a higher amount if permitted by 18 USC 3006A (e) (2), unless certified.

Requires claims for compensation and reimbursement to be supported by certification. The service shall fix the level of compensation.

New trials are considered new cases and costs of appeals are waived.

Section 9. Receipt of other payments—Provides for disposition of funds from a third party for benefit of defendant to attorney or other by order of the court.

Section 10. Director and Deputy Director—The Board shall appoint a Director who shall appoint a deputy whose respective compensation shall not exceed that of a GS-18 or GS-17.

Section 11. Employment of Attorneys and other Personnel—Attorneys employed by the Service shall be members of the District of Columbia Bar and shall not engage in private practice. Other personnel may be employed at rates fixed by the Board.

Section 12. Reports by Board of Trustees to Commissioner required.

Section 13. Appropriations Authorized.

Section 14. Members of Board and Service Exempt from Personal Liability—Members of the Board and employees not personally liable for any official action performed in good faith. Costs of any suit shall be paid as are other suits against the municipality.

Section 15. Criminal Penalty—Provides penalty of \$1,000 or 1 year imprisonment, or both, for any person who has rendered services for reimbursement and who then seeks or accepts compensation from defendant.

Section 16. Amendment and Repeal—Limits the provisions of 18 USC 3006A to the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia. Repeals Title III of the D.C. Court Reform and Criminal Procedure Act of 1970, with the exception of rights and duties which matured, penalties incurred, and proceedings begun before the effective date of this Act.

Section 17. Effective Date—Effective upon enactment except provisions of section (4) shall take effect 120 days after the active date. Until then, current procedures shall continue to be followed.

THE DISTRICT OF COLUMBIA,
Washington, D.C., April 23, 1974.

HON. SPEAKER,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: The Government of the District of Columbia has the honor to submit for consideration by the Congress a draft bill "To establish the District of Columbia Defender Service, and for other purposes."¹

¹ Subsequently introduced as H.R. 14374.

In 1972 and prior thereto, appropriations to compensate and reimburse attorneys appointed by judges of the District of Columbia Court of Appeals and the Superior Court to represent before the courts persons financially unable to retain counsel were included in appropriations for the judiciary of the United States (Office of the United States Courts) pursuant to the Criminal Justice Act of 1964 (78 Stat. 552; 18 U.S.C. sec. 3006A). Thus, the Appropriations Act for the Judiciary of the United States, approved November 27, 1973 (P.L. 93-162, 93rd Cong., 1st Sess., p. 17), provided in pertinent part:

"For the operation of the Federal Public Defender and Community Defender organizations, and the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964 (18 U.S.C. 3006A, as amended by Public Law 91-447, October 14, 1970), \$16,500,000; *Provided*, that not to exceed \$1,000,000 of the funds contained in his title shall be available for compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia."

The appropriations made by Congress in 1973 and prior thereto were substantively authorized by the provisions of the Criminal Justice Act of 1964 (78 Stat. 552; 18 U.S.C. sec. 3006A), as follows:

"(h) Appropriations.—There are authorized to be appropriated to the United States Courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Direction of the Administrative Office of the United States Courts."

In a letter dated March 4, 1973, from Warren E. Burger, Chief Justice of the United States Supreme Court, addressed to Chief Judge Gerard D. Reilly of the District of Columbia Court of Appeals, he advised that:

"* * * the Judicial Conference of the United States has explicitly directed that no provision be made in the budget of the federal courts of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in terms of compliance with the Criminal Justice Act. The Director of the Administrative Office is, of course, bound by the Judicial Conference action and I am equally bound by that action. For that reason, the Budget of the Administrative Office presently under consideration by the House Subcommittee does not include any provision for the local courts."

Subsequently, in accordance with this letter of the Chief Justice, no funds have been sought from Congress or provided for the local District of Columbia Courts under the Criminal Justice Act.

Because Congress has never authorized that funds be appropriated *specifically* for the District of Columbia to compensate and reimburse private attorneys appointed to represent before the courts persons who are financially unable to retain counsel (i.e., independent of the appropriations authorized for the District and funneled through the Administrative Office of the United States Courts), the Government of the District of Columbia is submitting the attached proposed legislation. The bill would provide the requisite substantive authority for the appointment and compensation of private attorneys, as well as absorb and continue the present functions of the Public Defender Service. In preparing this proposal, the District has sought the views of the various local bar, bar groups, community groups, public agencies, and others. It is our understanding that the Joint Committee on Judicial Administration will transmit shortly its separate legislative proposal on this subject. The matter is presently under study by the District of Columbia unified bar and its views are expected to be known within the next thirty days.

Section 1 of the draft bill provides that the Act may be cited as the "District of Columbia Defender Services Act".

Section 2 of the bill would establish a new agency in the District of Columbia, designated the District of Columbia Defender Service. This new agency would assume responsibility for making certain that legal representation is provided to those persons before local courts who are otherwise financially unable to retain counsel. This agency would assume the functions now performed by the present Public Defender Service and by the Administrator of the Office of the United States Courts, as mandated by the Criminal Justice Act of 1964. In addition, the bill expands the authority of the agency to perform duties not presently authorized to be performed by any local agency.

Section 3 would provide that the Service shall be governed by a seven-member Board of Trustees, which shall formulate policy and a general plan under which legal representation is to be provided in the local courts. The Board would have final authority and control over the agency. Members of the Board would be appointed by the Commissioner of the District of Columbia by and with the advise and consent of the City Council.

Subsection (a) of section 4 outlines the responsibility of the Board in formulating a general plan for furnishing representation for those persons financially unable to obtain counsel. The plan shall apply to those persons who are charged with certain offenses or who are respondents in certain proceedings to the same extent as would be provided under the Criminal Justice Act or the act which established the existing District of Columbia Public Defender Service.

Subsection (b) of section 4 would provide that the plan may include provision for furnishing legal services in the federal courts in the District of Columbia on a reimbursable basis. Without defining the particular terms of such provision, the bill contemplates that such services would be provided pursuant to an agreement between the Service and the federal courts.

Subsection (c) of section 4 would provide that the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense, as well as private and Service attorneys and qualified law students participating in clinical programs. This subsection contemplates continuation of the efforts now being made to utilize the services of such persons without specifying the precise details of the plan. This subsection would also continue a requirement of the present law which limits the maximum number of persons for whom the Public Defender Service may provide representation.

Subsection (d) of section 4 reserves to the courts the right to make appointments of counsel in individual cases. Such appointments must be made in accordance with the plan established by the Board. This provision contemplates that the plan will outline the circumstances under which appointments shall be made in both the usual and unusual situations.

Subsection (e) of section 4 authorizes the Service to perform such other necessary and appropriate functions as are necessary and appropriate to the duties prescribed for it.

Subsection (f) of section 4 outlines some of the specific matters which are to be a part of the plan established by the Board.

Subsection (g) of section 4 provides that the determination of whether a person is financially unable to retain counsel shall not be limited to information supplied by the person seeking appointed counsel. The Service is authorized to request information for other persons or agencies. Supplying false or misleading information would be punishable by a fine of up to \$1,000 or imprisonment for up to one year, or both.

Section 5 would provide for the appointment of counsel under the plan. Counsel are to be selected in every case from panels of attorneys which the Service shall designate and approve according to guidelines established by the Board. This section provides for the use of a panel selection procedure, reserving to the Board the option to follow procedures recommended by the American Bar Association or some other advisory board or agency. At the very least, however, the bill would require the Service to approve any attorney whose name is to be included in a panel listing, thus assuring that only qualified counsel shall be included on the panels.

Section 5 would also require the courts to advise any person facing loss of his liberty of his right to counsel and that counsel shall be appointed where required under this bill. The bill would further authorize the court to ratify appointments of counsel where representation had been furnished pursuant to the plan. This would enable appropriate compensation of counsel who serve prior to the appearance of the client in court when the plan authorizes such representation. This section would also require the courts to advise persons of their right to counsel, and when appointment of counsel is discretionary, to advise such persons that counsel may be appointed and the procedures for so obtaining counsel.

Section 6 would continue existing law on the duration and substitution of appointments. It would also provide that when the court finds that a person for whom counsel has been appointed is financially able to retain or pay counsel, the appointment can be terminated or the appointed counsel compensated. If a person becomes financially unable to retain counsel after having engaged him, the court is authorized to appoint counsel and approve payment under section 7.

Subsection (a) of section 7 would provide an hourly rate of compensation for any attorney appointed, but not employed, by the Service. The rate shall be fixed

by the Board but shall not exceed the maximum rate authorized under the Criminal Justice Act. Reimbursement for reasonable expenses incurred by the attorney shall be authorized.

Subsection (b) of section 7 prohibits payment in excess of the maximum amounts for representation in cases in the local courts.

Subsection (c) of section 7 would authorize payment in excess of the maximum amount provided in subsection (b) for extended or complex representation, provided the presiding judge certifies the excessive amount to be necessary for fair compensation and the Service approves the payment.

Section 8 provides a framework within which services of those persons other than counsel can be supplied. Subsection (a) provides for the Service to approve a request by counsel for such services in an *ex parte* application.

Subsection (b) of section 8 authorizes counsel to obtain such other services as may be necessary for an adequate defense but subject to later review. An exception is provided for the preparation of a reporter's transcript. A limit of \$150 or the maximum allowed under the Criminal Justice Act is authorized.

Subsection (c) of section 8 fixes the maximum amounts of compensation in accord with existing law—i.e., \$300 or the amount authorized by the Criminal Justice Act. Certain exceptions are allowed for service of unusual character or duration.

Subsection (d) of section 8 requires separate claims for reimbursement to be filed with the Service, which shall be supported by a sworn written statement. The Service is responsible for fixing the compensation and reimbursement to be paid to the attorney.

Subsection (e) of section 8 provides that a new trial is to be comparable to a new case for purposes of compensation and payment under this section.

Subsection (f) of section 8 provides for the filing of appeals to the District of Columbia without fees and costs or security therefor.

Section 9 provides authority for the Service to request the court to order a person who has been appointed counsel to make payments as a reimbursement for counsel's services if that person has funds with which to do so and the Service so finds. This section specifically prohibits any person or organization from requesting or accepting payment or a promise thereof for representation under the plan. This provision is included so as to prohibit, subject to criminal penalties, harassment of clients for payment once an attorney has been appointed pursuant to the plan or after he has assumed responsibility for providing such representation with the expectation of receiving compensation under the plan.

Section 10 provides for the appointment of a Director of the Service by the Board. The Director shall be responsible for supervision of the work of the Service and shall appoint a Deputy Director. Both must be members of the District of Columbia Bar.

Section 11 would authorize the Director of the Service to employ a staff of attorneys and other personnel who may be necessary. All attorneys shall be members of the District of Columbia Bar and shall not engage in the private practice of law while so employed.

Section 12 would require the Board to submit an annual report of the operations of the Service to the District of Columbia Commissioner.

Section 13 would authorize appropriations for each fiscal year out of moneys in the Treasury to the credit of the District of Columbia, in such amounts as may be necessary to implement the purposes of this bill. Budget estimates are to be prepared by the Board and submitted to the Commissioner for normal budgetary processing, like any other department or agency in the District of Columbia Government. The Service shall be authorized, with Board approval, to accept public grants and private contributions to carry out its approved functions.

Section 14 would remove individual personal liability of all Board and Service personnel for damages and costs arising out of any official action performed in good faith, just as in the case of other District of Columbia officers and employees.

Section 15 would authorize criminal penalties for those persons who, if compensated or entitled to be compensated by the Service, seek or receive any money, goods, or services from a client in return for their services.

Section 16 provides for conforming amendments.

Section 17 provides that the Act shall be effective immediately, except for the plan under section 4, which shall not take effect until 120 days later. This delay is to allow the new Board of Trustees time to prepare the plan. In contemplation of the need for transitional arrangement, beginning July 1, 1974, this section provides that until the plan under section 4 is effective, payments to private

attorneys shall be processed through the courts under procedures in effect on the effective date of the Act and in the manner prescribed by the Commissioner.

It is estimated that the cost to the District Government for the establishment and operation of the service authorized by the proposed legislation will amount to \$4,000,000 for fiscal year 1975.

We believe the proposals contained in the attached draft bill will substantially improve the rendition of defender services and the administration of criminal justice in the District of Columbia, and accordingly urge favorable consideration and early enactment of this proposed legislation.

Sincerely yours,

WALTER E. WASHINGTON,
Mayor-Commissioner.

H.R. 14376, 93d Cong. Second Sess., by Mr. Diggs (by request) on April 24, 1974.

A BILL To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Criminal Justice Act".

SEC. 2. Title 11 of the District of Columbia Code (1973 edition) is amended by the addition of the following new sections:

CHAPTER 26.—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

- 11-2601. Plan for furnishing representation to indigents in criminal cases.
- 11-2602. Appointment of counsel.
- 11-2603. Duration and substitution of appointments.
- 11-2604. Payment for representation.
- 11-2605. Services other than counsel.
- 11-2606. Receipt of other payments.
- 11-2607. Preparation of budget.
- 11-2608. Authorization of appropriations.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases

The Joint Committee on Judicial Administration shall place in operation in the District of Columbia a plan for furnishing representation to a person in the District of Columbia who is financially unable to obtain adequate representation—

(1) who is charged with a felony or misdemeanor and the United States Attorney prosecutes, or with juvenile delinquency by the commission of an act which, if committed by an adult, would be prosecuted by the United States Attorney;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole, in custody as a material witness, or seeking collateral relief, as provided in—

(a) section 110 of title 23 of the District of Columbia Code (remedies on motion attacking sentence),

(b) chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(c) chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(d) section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence), or

(4) for whom the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any local law requires the appointment of counsel. Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs.

§ 11-2602. Appointment of counsel

Counsel furnishing representation under the plan shall be selected from panels of attorneys designated or approved by the courts. In every criminal case in which a person may be appointed counsel under this chapter the court shall advise the defendant that he is entitled to be represented by counsel and that counsel will be appointed for him if he is financially unable to obtain counsel.

Unless the defendant waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

§ 11-2603. Duration and substitution of appointments

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

§ 11-2604. Payment for representation

(1) *Hourly rate.*—Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of title 18, United States Code, section 3006A(d). Such attorney shall be reimbursed for expenses reasonably incurred.

(2) *Maximum amounts.*—For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by title 18, United States Code, section 3006A(d) (2) in the corresponding kind of case or proceeding.

(3) *Waiving maximum amounts.*—Payment in excess of any maximum amount provided in subsection (2) of this section may be made for extended or complex representation whenever the Superior Court in which the representation was rendered, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the District of Columbia Court of Appeals.

(4) *Filing claims.*—A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the D.C. Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(5) *New trials.*—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(6) *Proceedings before Appellate Court.*—If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by 1915(a) of title 28 of the United States Code.

§ 11-2605. Services other than counsel

(1) *Upon request.*—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(2) *Without prior request.*—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by title 18, United States Code, section 3006A(e)(2) whichever is higher, and expenses reasonably incurred.

(3) *Maximum amounts.*—Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by title 18, United States Code, section 3006A(e)(3), whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the District of Columbia Court of Appeals.

§ 11-2606. Receipt of other payments

Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized to section 2605 to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

§ 11-2607. Preparation of budget

(a) The Joint Committee shall annually prepare and submit to the Commissioner of the District of Columbia in conformity with section 11-1743, or to his successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, its estimate of the amount needed for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601(b) of this title.

(b) In making its computation of such estimate, the Joint Committee shall—

- (1) issue and follow definitional standards with respect to financial inability to obtain adequate legal representation;

- (2) estimate the respective percentage of indigent defendant cases which can be effectively handled by the Public Defender Service, private attorneys, and qualified law students participating in clinical programs under attorney supervision;

- (3) take into account the number of cases in the United States courts for which payment was made under the last appropriation for the administration of the Criminal Justice Act in such courts and the proportion which such number bears to the estimated number of such cases in the District of Columbia courts for the particular fiscal year;

- (4) shall not request an amount to be paid private attorneys for representation pursuant to section 2601 of this title in excess of the estimated appropriation for the prosecution of those persons thus represented.

§ 11-2608. Authorization of appropriations

There is hereby authorized to be appropriated to the District of Columbia such funds as may be necessary for the administration of this Act. Unless otherwise specified in appropriations Acts, such appropriations shall remain available until expended. Disbursements from such appropriations to persons entitled to payments, pursuant to orders of the courts, under this Act, shall be made by the executive officer of said courts, subject to the supervision of the fiscal officer of the District of Columbia.

SEC. 3. Subsection 1(c) of the Act of October 14, 1970, amending the Criminal Justice Act of 1964 (Public Law 91-447, 84 Stat. 916 at 920, 18 U.S.C. 3006A(1)) is repealed.

SEC. 4. This Act shall take effect at the end of thirty days following enactment.

STAFF MEMORANDUM

SECTION-BY SECTION ANALYSIS OF H.R. 14376

Section 1. Short title—Authorizes the Act to be cited as the District of Columbia Criminal Justice Act.

Section 2. Amends D.C. Code by addition of the following chapter to title XI: Chapter 26—Representation of Indigents in Criminal Cases

11-2601—Plan for funding representation—Creates plan for furnishing representation to indigents for a felony, or misdemeanor prosecuted by the U.S. Attorney, motion attacking sentence, extradition, habeas corpus, mental commitment, or other offense where loss of liberty or local law requires.

11-2602—Appointment of Counsel—Counsel furnishing representation under the plan shall be selected from panels designated or approved by the courts, and provided, unless waived.

11-2603—Duration and Substitution of Appointments—Provides counsel from initial appearance through appeals and ancillary matters and for substitution.

11-2604—Payment for Representation—Hourly rate to be fixed by the Joint Committee on Judicial Administration with maximum amounts of compensation set by 18 USC 3006A (d) (2) with waivers allowed for protracted litigation.

11-2605—Services other than Counsel—Provides for payment of ancillary services upon request or, if without prior request, not to exceed \$150.00. No request may exceed \$300.00, or a higher amount if permitted by 18 USC 3006A (e) (2), unless certified. New trials are considered new cases and costs of appeals are waived.

11-2606—Receipt of other payments—Provides for disposition of funds from a third party for benefit of defendant to attorney or other by order of the court.

11-2607—Preparation of budget—Allows Joint Committee to prepare and submit to the Mayor an estimate of the amount needed pursuant to formula in conformity to Section 11-1743 of the D.C. Code.

11-2608—Authorization of Appropriations.

Section 3. Repeals subsection 1(c) of the Act of October 14, 1970, amending the Criminal Justice Act of 1964.

Section 4. Provides for effective enactment at the end of thirty (30) days.

DISTRICT OF COLUMBIA COURT OF APPEALS,

Washington, D.C., April 19, 1974.

Hon. CHARLES C. DIGGS, JR.,

Chairman, Committee on the District of Columbia, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am herewith transmitting for the consideration of the House Committee on the District of Columbia proposed legislation which would establish a plan for providing representation of defendants who are financially unable to retain defense counsel in criminal cases in the courts of the District.¹ This draft bill has been prepared by the Joint Committee on Judicial Administration in the District of Columbia, established by D.C. Code 1973, § 11-1701. If enacted, it would repeal the provision in the Criminal Justice Act which makes that statute applicable to cases in the District of Columbia courts (i.e., subsection (1) of 18 U.S.C. 3006A) and create in lieu thereof a similar act covering only the District of Columbia Court of Appeals and the Superior Court. Such legislation would provide statutory authorization for a requested appropriation of \$2,300,000, now pending before the House Appropriations Committee, as an item included in the Mayor-Commissioner's budget estimate for fiscal year 1975.

The need for this legislation is compelling for the whole system of criminal justice in this jurisdiction is threatened with breakdown as a result of the exhaustion of funds appropriated for the current fiscal year to pay counsel for representing indigent defendants in our courts. Since early March, Chief Judge Greene and I have had to resort to a makeshift plan for drafting lawyers. We are rapidly approaching a day when these efforts will be unavailing, as the staff of the Public Defender Service and experienced private trial counsel are already burdened with an excessive number of assignments. In the meantime, the Federal Judicial Conference has remained adamant in its position for supplemental appropriations to meet the obligations incurred by our courts for appointments of private counsel in the fiscal years 1973 and 1974.

Continuation of this situation into the next fiscal year would be intolerable. Consequently, in order to expedite passage of an authorization bill the enclosed draft proposes no change in the structure or operation of the Public Defender Service. In other words, the Joint Committee at the present time is making no recommendations for amendments to Chapter 22, Title 2, of the D.C. Code, as

¹ Introduced as H.R. 14376.

the pending D.C. budget estimate for the Service has already been formulated on the basis of this existing statutory framework.

Accordingly, the revised legislative proposal of the Joint Committee simply fills the gap created by the absence of any federal budget estimate for the payment of fees of private counsel, transcripts and other expenses. It follows the same scales of compensation prescribed by the Federal Criminal Justice Act, but by repealing the subsection of that statute making it applicable to the District of Columbia courts and authorizing direct appropriations for this purpose to the District government, it precludes the raising of possible points of order to the 1975 budget estimate.

We recognize, of course, that the proposed bill is something of a stopgap measure, for some revisions of the laws relating to the Public Defender Service should eventually be considered by Congress. At present, however, there are so many conflicting views as to what should be done in this respect, particularly as the Federal Judicial Conference for this circuit last month authorized appointment of a committee to study the matter, we believe that to include in the authorization bill controversial proposals on this subject might result in postponing until the next fiscal year passage of this much needed legislation.

My colleagues and I shall be available at any time should the Committee decide to set the matter down for hearing.

Faithfully yours,

GERARD D. REILLY,

*Chairman, Joint Committee on Judicial
Administration in the District of Columbia.*

This morning we will take testimony on two of the most important bills which have come before the subcommittee this year, H.R. 14374 and H.R. 14376.

Each in its way is an attempt to address the needs of the citizens of this city who may be charged with a crime and who are unable to afford private counsel. The United States Supreme Court in its 1972 decision of *Argersinger v. Hamlin* (407 U.S. 25, 1972) required that counsel be appointed in any case where there existed the possibility of the deprivation of liberty.

With the full implementation of the District of Columbia Court Reorganization Act, however, the Administrative Office of the United Courts, the United States Judicial Conference, and the Chief Justice of the United States have taken the position that the Superior Court and the Court of Appeals are not rightful beneficiaries of the Criminal Justice Act of 1964 which has, up until now, been the source of funds for reimbursement of counsel in appearing before the local courts.

NEED FOR LEGISLATION

While it is highly academic as to whether the local courts, which are federally created, were intended to be covered in the scope of the 1964 Act, it is not at all academic that both the House and the Senate have seen fit to state in their Appropriation Reports for the U.S. Department of State, Commerce, and the Judiciary that the District of Columbia needs a criminal justice authorization for the local court system.

I am hopeful that at the end of these hearings the subcommittee will have before it enough facts to proceed in a way which will allow the report of legislation that will definitively assure the poor of this city adequate counsel.

In March of this year, the available funds were exhausted from which counsel could be paid. As a result, the Superior Court Trial Lawyers Association announced that they would be unable to accept

appointments to defend an indigent unless there were some assurance of compensation.

The courts, responding in the best way that it could, asked for volunteers and decided that they would order the private bar to provide a defense when volunteers were insufficient.

The local bar, to its credit, cooperated in an excellent way. To the best of my knowledge, no individual was without counsel and no cases were dismissed for a lack of counsel. This system, however well it worked in this emergency, cannot be expected to work again or be relied upon in the long run.

While I am a firm believer that members of the bar have a public duty and responsibility to defend anyone who is unable to do so, I do not believe that we can continue to require lawyers to work without compensation when the number of cases in this city is so large.

I am told that more than 300 defendants per week come through our criminal justice system in need of representation. This is a burden which the private bar in this city cannot bear. If it were a lesser burden, I am sure that the bar would willingly bear it.

LOCAL BAR

Additionally, while the city does have more than 14,000 lawyers on its rolls, I am told that fewer than 1,000 have extensive trial experience. The impact upon indigent defendants is that when we draw upon the remaining number of lawyers, the quality of defense suffers. I need not note that the standard which the Supreme Court requires is more than the warm body of a lawyer; the standard is effective representation. Lawyers who are agency specialists cannot be expected to adequately defend criminal cases.

The judges of our Superior Court, which is the court of local general jurisdiction for the District, will and does try to aid an attorney who is unfamiliar with the rules and the practice before its bench; but, effective representation starts long before an appearance before the judge. It starts at the time when counsel is introduced to the defendant.

The legislation which we have before us is intended to provide the standard of justice which we have in this Nation and have come to expect.

Our witnesses are listed and we will hear now from Mr. Rowland Kirks, Director of the Administrative Office of the U.S. Courts.

STATEMENT OF ROWLAND KIRKS, DIRECTOR, ACCOMPANIED BY WILLIAM E. FOLEY, DEPUTY DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. KIRKS. Mr. Chairman and gentlemen of the committee, I am accompanied by Mr. William E. Foley, the Deputy Director of the Administrative Office of the U.S. Courts and one of the principal architects of the Federal Criminal Justice Act and the administration of that Act since it has been a statute.

I am Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts. I am appearing at the request of your committee concerning two bills, H.R. 14374 and H.R. 14376.

As you know, the Administrative Office does not of itself formulate comments on proposed legislation but rather presents the views of the Judicial Conference of the United States.

The Judicial Conference, even before the passage of the Criminal Justice Act of 1964, constituted an *ad hoc* committee to formulate plans for the implementation of such legislation should it become law.

When the bill was enacted this committee was formalized as a committee of the Conference and has since that time served the Conference in observing the implementation of the Act throughout the several federal district courts and courts of appeals, has drafted guidelines for the administration of the Act, and, with the assistance of the Administrative Office, has prepared semi-annual statistical data as required by the legislation.

With the passage in 1970 of the legislation which has resulted in the establishment of a separate court system for the District of Columbia and with the transfer of jurisdiction over local cases from the federal district court to the Superior Court now accomplished, the Judicial Conference has taken the view that the federal courts in all other districts of the country and that a separate system for the furnishing of counsel to persons financially unable to retain private counsel should be established for the local courts of the District which, in the view of the Conference, now operate essentially as state courts.

To accomplish this purpose, I transmitted to Congress, at the direction of the Judicial Conference, a legislative proposal which would establish such a separate system for furnishing counsel in the local courts of the District of Columbia. A copy of this proposal together with my letter to the Speaker of the House dated September 19, 1973, is attached hereto.

[The documents referred to follow:]

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., September 19, 1973.

HON. CARL ALBERT,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: At the direction of the Judicial Conference of the United States I have the honor to transmit herewith for the consideration of the Congress proposed legislation approved by the Conference which would establish a separate system for the local courts of the District of Columbia for the furnishing of counsel for persons charged with a crime, or otherwise facing loss of liberty, who are financially unable to retain counsel and which would transfer the Public Defender Agency of the District of Columbia to the local courts under the operational direction of the Joint Committee on Judicial Administration in the District of Columbia.

As you know, the House of Representatives in 1972 and again in 1973 expressed the view that funds for payment of counsel for defendants unable to retain counsel in the local courts of the District of Columbia should be sought through the District of Columbia appropriations rather than through the appropriation for the federal judiciary. The Senate Appropriations Committee in its report of September 12, 1973, (93-390), states at page 31 that the Committee "strongly concurs with the House that the appropriations for this activity should be provided for in the District of Columbia budget."

The Judicial Conference of the United States not only shares this point of view but believes that operational control over the system should likewise be lodged in the local courts of the District of Columbia. At present operational control rests with the Judicial Conference of the United States which otherwise has no authority over or responsibility for the operations of the District of Columbia courts. The proposed legislation would create a system patterned on the Criminal Justice Act of 1964, as amended, for the District of Columbia and

would transfer operational control to the courts of the District. The Public Defender Agency of the District of Columbia, reconstituted by the District of Columbia Court Reorganization Act of 1970, would become an instrumentality serving the local courts and under the direction of the Joint Committee on Judicial Administration in the District of Columbia, which was also established by the Court Reorganization Act of 1970.

The proposed legislation would thus leave the two federal courts in the District of Columbia Circuit in the same position under the Criminal Justice Act as are all other federal courts in all other federal judicial circuits throughout the country. The United States Court of Appeals for the District of Columbia Circuit and the United States District Court would thus be free to operate solely on the assigned counsel system or to adopt for themselves one of the public defender options provided by subsection (h) of the Criminal Justice Act of 1964, as amended.

The Judicial Conference is of the view that these legislative proposals are important not only for the equitable administration of the Criminal Justice Act in all the federal courts but are also consistent with the intent of the Court Reorganization Act of 1970. They provide the local District of Columbia courts with the same benefits which they now have but under their own operational control. They are essentially in the posture of state courts and, in the view of the Conference, these proposals would logically and properly recognize this fact.

Representatives of the Judicial Conference and of the Administrative Office will be glad to be of assistance to the committees of the Congress in their consideration of these proposals.

Sincerely yours,

ROWLAND F. KIRKS, *Director*.

Enclosure.

BILL To authorize in the District of Columbia a program providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, Title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970, (Act of July 29, 1970, P.L. 91-358, 84 Stat. 654), is amended by the addition of the following new sections:

"Representation by Private Counsel

"Sec. 310. Any person in the District of Columbia who is otherwise eligible for representation by the Public Defender Service under Section 302(a) may be represented by a private attorney appointed by the court under this title, as contemplated in subsection (b) of Section 302. Counsel furnishing representation shall be selected from a panel of attorneys designated or approved by the court.

"Sec. 311. In every case in which a person may be appointed counsel under this title, the court shall advise him that he is entitled to be represented by counsel and that counsel will be appointed for him if he is financially unable to obtain counsel. Unless the person waives representation, the court, if satisfied after appropriate inquiry that he is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished prior to appointment.

"(c) Duration and Substitution of Appointments.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

"(d) Payment for Representation.—

"(1) Hourly Rate.—Any attorney appointed pursuant to this section shall at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$30 per hour for time expended in court and \$20 per hour for time reasonably expended out of court. Such attorney shall be reimbursed

for expenses reasonably incurred, including the costs of transcripts authorized by the court.

"(2) Maximum Amounts.—For representation of a defendant before the Superior Court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$1,000 for each attorney in a case in which one or more felonies are charged, and \$400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under section 302(a) [(2) (3) (6) (7)], the compensation shall not exceed \$250 for each attorney in each proceeding in each court.

"(3) Waiving Maximum Amounts.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the District of Columbia Court of Appeals.

"(4) Filing of Claims.—A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior court, or an appellate court, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

"(5) New Trials.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

"(6) Proceedings Before Appellate Courts.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ or certiorari, he may do so without prepayment of fees and costs or security thereof and without filing the affidavit required by section 1915(a) of title 28.

"(e) Services Other Than Counsel.—

"(1) Upon Request.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

Sec. 2. Miscellaneous amendments.

"Sec. 303(b) (1) is amended by revising the next to last sentence thereof to read as follows: The panel shall be presided over by the Chief Judge of the District of Columbia Court of Appeals (or in his absence the designee of such Judge).

"Sec. 306(a) is amended by striking the following language:

"to the chief judges of the Federal courts in the District of Columbia,".

"Sec. 306(b) is amended by striking all of the remainder of the sentence, following the words "certified public accountant".

"Sec. 307(a) is amended by striking the last three sentences thereof.

Sec. 3. Section 3006A of Title 18, United States Code, is amended by deleting subsection (1) in its entirety.

Sec. 4. There are hereby authorized to be appropriated to the District of Columbia such funds as may be necessary for the administration of this title.

Sec. 5. This act shall take effect on the first day of the third month following enactment.

H.R. 14376

H.R. 14376 in a large measure accomplishes the recommendation of the Judicial Conference but with one important exception. You

will note that the legislation proposed by the Judicial Conference would assign solely to the local courts of the District of Columbia the service of a public defender agency of the District of Columbia. The Conference believes that this is an important provision for several reasons.

PUBLIC DEFENDER AGENCY

At the present time the public defender agency is permitted by statute to handle up to 60 percent of the assigned cases in any court, federal or local, in the District. It is my understanding from such data as we have been able to acquire, that the agency at the present time receives very few, if any, assignments from the federal courts and yet is only able to handle substantially less than 60 percent of the assigned counsel cases in the two local courts of the District.

Until such time as the agency can receive and dispose of nearly 60 percent of the cases, it is suggested that it is not in a position to serve both the local and federal courts.

For operational purposes also the Conference believes that it is important, now that the jurisdiction of the federal courts is substantially similar to the jurisdiction of all other federal courts in the country, that these courts should be free to operate under the Criminal Justice Act of '64, as amended, including the provisions of subsection (h) which permits each federal court with 200 or more assigned counsel cases in a given year to opt for a federal public defender or community defender organization. If the caseload warrants, the Conference sees no objection and no reason why the federal courts in the District should not have their own defender organization.

We foresee no conflict between such an agency and the present public defender agency serving the local courts, any more than there is any conflict in the 26 districts now operating with some type of defender organization and the local state agencies.

As my letter to the Speaker points out, the Judicial Conference has no administrative or operational authority over the local courts of the District. It is, therefore, incongruous that the Conference should be charged with any responsibility for the operation of any type of defender system in these courts.

The administration of the Criminal Justice Act has required careful supervision in the distribution of some \$16 million annually of public funds. We think that the system has worked very well throughout the country. A survey made in 1968 and another made within the past year have confirmed that impression.

The only serious difficulties have been experienced in the District of Columbia as a result of the combined state and federal aspects of the administration of justice in the District.

Now that the D.C. Court Reorganization Act of 1970 has fully accomplished the transfer of jurisdiction to the local courts and we have what are essentially two separate court systems, one Federal and the other basically akin to a State court system, the Conference believes that an assigned counsel and defender system will operate more effectively and more efficiently by recognizing this dichotomy.

H.R. 14374

H.R. 14374 provides primarily for the District Defender Service. I have three observations to make concerning this.

AMENDMENTS PROPOSED

The first is a reiteration of the point I have already tried to stress, and that is the view of the Conference, that the defender service for the local courts should be separate and apart from any defender service for the Federal courts. Accordingly we would suggest the revision of section 16 (a) of the proposed bill.

Secondly, I should like to observe for the consideration of your committee the fact that the defender services provided by subsection (h) of the Criminal Justice Act, as amended, are now authorized and in most instances do receive and handle up to 75 percent of the cases in their respective districts in which the court finds the defendant financially unable to retain counsel.

We have found that the remaining 25 percent of the cases are in the main those in which either there are more than one defendant and therefore assigned counsel is required except for the defendant represented by the defender agency or the defendant resides in a remote area of a larger district where it would be inefficient and difficult for a defender agency to afford him adequate representation.

Your committee may wish to consider whether, if a defender service is limited to the local courts, it may not be able to take care of 75 percent rather than 60 percent of the assigned cases and thus reduce the burden on the private bar.

My comment is based on our experience which admittedly is limited to the Federal system, which operates on this formula, whereas the type of criminal litigation in the Superior Court of the District of Columbia is more similar to the type of case handled in the courts of the States or the larger municipalities.

Lastly, you will note that the legislation proposed by the Judicial Conference would make the public defender agency of the District serve under the direction of the Joint Committee on Judicial Administration established by the Court Reorganization Act of 1970 rather than by a private board of trustees.

We have had some experience in community defender organizations with boards of trustees and, so far as we are aware, this has normally worked well.

There have, however, been some instances where the head of the defender organization has not had the freedom to select or discharge staff members, which we believe to be an essential ingredient of a well-run defender organization.

As we understand subsection (h) of the Criminal Justice Act, it places full responsibility for the operation of the organization on the federal public defender himself or on the head of the community defender organization. I submit these thoughts for such consideration as your committee may wish to give them.

In conclusion I would commend to the serious study of the subcommittee the legislation as proposed by the Judicial Conference of the United States which will serve, we believe, not only to provide a more effective system for the District of Columbia and to permit the federal courts in the District to operate on the same basis as do all other federal courts under the Criminal Justice Act, but it should for the future solve the problem which we have experienced in the past 2 years as to the responsibility for seeking funds from the Congress to implement the defender systems in the District of Columbia.

Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you, Mr. Kirks, for a very thorough analysis of our bills and some very sound recommendations.

I have first a couple of questions. You, of course, suggest that a public defender agency serves exclusively on the local courts. To what extent do you think that requirement would reflect—would require more money or how much money would be required from local sources to fund that service?

STAFFING

Mr. KIRKS. The only increase that I can visualize, sir, would be where there would be the necessity, and I do not know that there would be necessarily the necessity, for, if you will, duplicate personnel in the administration of the two programs.

I am talking about the administrative personnel that would be involved. I would think that it would be negligible. That would be my best judgment, but I have to speculate, of course.

Mr. FAUNTROY. And the 75 percent assigned cases which would normally follow from your suggestion of exclusive attention to local courts would require—do you think that would require additional staff?

Mr. KIRKS. Well, apparently from our knowledge of the administration of the program locally, the principal reason that they are not able to absorb 60 percent at the present time is because of the shortage of personnel. And certainly if they are going to be expected to add an additional 15 percent, unquestionably they would need more staff attorneys for that purpose. But the local people who are actually conducting that program would be better informed on that than we, sir.

Mr. FAUNTROY. Now, would you just run over again for me your recommendation on the administration or direction of the programs as relates to a Board of Trustees on the one hand and on the other, you say giving authority and responsibility to the public defender for the management of staff.

What is precisely your recommendation?

Mr. KIRKS. I believe that it is sound, sir, to consider the virtue of having fixed responsibilities to hire and fire in one responsible individual and in those areas where you do not have that authority vested in one person, they have encountered more difficulty in operation than where it is being handled by a committee, and under the present proposal it is a joint committee that would have this administrative responsibility.

I just think that it is just a fundamental proposition of management, in any type of operation, whether it is a court system or a hospital or anything else. If you fix responsibility upon an individual to carry out the mandate of the statute, he, I would suggest to you, should have authority to fix responsibility of every employee under him; namely, he ought to be held responsible for whom he employs and for that person's performance and if in his judgment it is inadequate, since he has the final accountability to the authorities, for the conduct of his business, he should have the exclusive right to fire the individual. That is putting it in every day terms, sir.

Mr. FAUNTROY. Very good.
Counsel?

COST

Mr. FREEMAN. I have one quick question.

If the programs are fabricated and we have the city government picking up the local as far as the cost is concerned, what is the price going to be on the cost of representation under the Criminal Justice Act in the Federal courts for the District that will have to be picked up under the State-Justice appropriation?

Mr. KIRKS. Let me speak to Mr. Foley. I do not know whether I can give you the exact figure. If you will indulge us just a moment, please.

Mr. FAUNTROY. Certainly.

Mr. KIRKS. May Mr. Foley respond to this question?

Mr. FAUNTROY. We will be very pleased.

Mr. FOLEY. Mr. Chairman, our statistics are complete through December 31 last. They show that as of that date, 1,834 persons received appointed counsel from the federal courts in the District.

Now, we could strike a figure for you on an average and submit it to you, to your committee, as to what that might cost assuming that number of appointments continued more or less stationary.

Mr. FREEMAN. Does that figure not include persons represented by PDS in the federal courts or is there any representation in the federal courts under PDS?

Mr. FOLEY. This figure would not include it if there are any.

Mr. FREEMAN. But then the projection for cost of a future program for federal courts completely separate from a local program would have to include the estimation of the 1,834 you have estimated here appointed plus that margin which Mr. Kirks indicated was fairly small of people now represented by the PDS in federal courts.

Mr. FOLEY. It is our understanding, since the final transfer of jurisdiction there are very few assignments in the federal courts to the public defender agency.

Mr. FREEMAN. Perhaps Mr. Lefstein can give us more insight.

Mr. FOLEY. Yes. We don't have any figures on that. But even augmenting this figure a little we could give you an average, we could give you a figure for the record, if we may have leave to submit it, as to what it might cost.

Mr. FAUNTROY. Counsel?

Mr. LEE. Mr. Kirks—Mr. Foley, I have one question regarding the 1,800 figure you have just indicated. Those are defendants who are charged with Title 18 crimes or crimes which are triable exclusively in the federal courts?

Mr. FOLEY. That is correct.

Mr. LEE. So there would be no possibility that that figure could be reduced by any other kinds of transgressions that may have been in effect at that time?

Mr. FOLEY. That is correct.

EMERGENCY LEGISLATION

Mr. LEE. One of the considerations we had, Mr. Kirks, is the fact that time is going by us very quickly. And we have a very heavy committee load and also heavy load in the House. We are wondering if there is any language, since both the bills before us are fairly com-

prehensive bills providing a system for the defense of indigents in the District of Columbia, I wonder whether or not there would be some mechanism that you could suggest that would enable us to enact some kind of an emergency situation, providing emergency legislation, that would enable us to continue perhaps pretty much as we are continuing now with funds coming from some source, perhaps from the city government's appropriation, which would provide the authorization for that without our having to create in the District a complete system, given the lack of time we have really to analyze the kind of system we want and need.

I am almost in fact asking can we go back under your system some kind of way?

Mr. KIRKS. Well, Mr. Lee, I think you gentlemen of the Congress are better informed about the difficulties or the absence of difficulties in enacting either permanent legislation or, as you suggest, temporary.

It would be my impression that so far as designing the statute and enacting it, and I would be so bold as to express the hope that it would be non-controversial, I do not think it would take any longer and it should not be any more difficult to enact a permanent statute in this particular situation than it would interim legislation, and so far as structuring it, once it becomes law, the facilities of my office, of course, are available to cooperate with the District authorities and we would assist in any way that we possibly could to implement any act passed by the Congress.

I believe as soon as the Congressionally enacted legislation is signed by the President into law that we will no longer in the future be confronted with this problem that we have had of financing the system, and it will be clean-cut in the future. But the District's budgetary operation will embrace financing whatever program exists in the District and in turn the Federal system will be incorporated in the federal judicial budget.

Mr. Lee. I have no further questions at this time, Mr. Chairman.

Mr. FAUNTROY, Counsel?

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. Kirks, do you happen to know where your proposal that you forwarded up to the Speaker last year, where that found its way, to which committee? Did it go to the Judiciary Committee?

Mr. KIRKS. It is my assumption that it was referred to the Judiciary Committee. But we have not been informed that any legislative action has been taken on it.

Mr. HOGAN. You weren't contacted by the staff of the Committee or anything as to what action they were going to take?

Mr. KIRKS. No, sir.

FEDERAL PUBLIC DEFENDER AGENCY

Mr. HOGAN. Turning to your recommendation on page 3 and page 4 about the Federal Public Defender Agency concept, isn't that a matter really that should go to the Judiciary Committee of the House rather than this committee? In other words, if they want to adopt a Federal Public Defender Agency for the federal courts here, isn't that a matter that really they should determine rather than this committee?

Mr. KIRKS. I am not secure in my answer to you, sir. I would suggest that this is a jurisdictional matter that the Parliamentarian of the

House might appropriately address himself to. I just would not presume to try to draw the line.

Mr. HOGAN. The problem as I see it is that if this committee takes upon itself to cut away the authority for this existing public defender agency to represent indigents before the federal courts, then there would be a hiatus when there would be no agency to facilitate the cases before the federal courts and there would have to be then some action taken to establish one. I doubt very much whether this committee would want to take it upon itself to establish one for the local court system and thus amend the federal enactment. Maybe they would, but I tend to think there would be some hesitancy in doing that.

If they took upon themselves either from some initiation from you or from some other source, the Department of Justice or otherwise, to do that, it might be more in order.

Along that line, I would also tend to think that—I do not know whether you are familiar with the Home Rule Act, Self-Determination Act that was passed and enacted into law last December, but the court system, more particularly Title XI of the District of Columbia Code, the authority for revising, amending or altering that in any way resides with the Congress and not with the local government. And I think it raises questions before the committee. I think they will have to take it up, when they consider this legislation, as to whether or not it may be in the interests of the local court system to particularly separate themselves in one way or another from the federal system.

The President, as you know—or may not know—under the provisions of the Self-Determination Act still appoints judges here. He does it on the basis of recommendations made to him. But he still appoints them. And the Congress still handles Title XI which relates to the organization of the courts.

The financial situation in the District may be such that it may be in their interest to maintain the court system largely in the future under the umbrella of the federal government to the largest extent they possibly can, and therefore you might want to give some consideration with the local judiciary to determine whether or not it would be a good idea, not just for purposes of the federal public defender service but for looking to other problems that the local judiciary may have, as to whether or not it is in their interests as well as the federal interest to dismantle a public defender system. That applies to both courts and what that might imply in the future as it relates to future funding and other matters that relate to the courts generally.

I just have one question about the Board of Trustees. I assume that that there is no Board of Trustees in your other 26 federal jurisdictions. They operate strictly through a committee of the court?

Mr. KIRKS. In the eight community defender organizations, there are.

Mr. HOGAN. They operate under Board of Trustees?

Mr. KIRKS. Yes, sir.

Mr. HOGAN. Is there any indication here that there is any problem with the Board of Trustees that has come to your attention as far as their involvement in administrative problems vis-a-vis policy determinations?

Mr. KIRKS. None that we are aware of, sir.

Mr. HOGAN. So that it probably is more an individual problem than it is a—in other words, it is a problem involved with the individual

members probably of the Board of Trustees and those who serve on those Boards than it is with the concept of the Board of Trustees itself.

Mr. KIRKS. Well, I am sure that the personalities of the trustees could resolve the problem one way or another. If they are a harmonious group that work well together you won't have any difficulty and if it is to the contrary, then you run the risk of some difficulty.

DEFENDANTS REPRESENTED

Mr. HOGAN. Now, turning to the problem of raising the public defender from 60 to 75 percent, do you happen to know—I would imagine that there is—you have 75 percent in the Federal, under the Federal Public Defender System.

Mr. KIRKS. Yes, sir.

Mr. HOGAN. Now, I would assume by and large that you have a different problem in the Federal Public Defender agency than you do in the State public defender agency, would you not agree?

In other words, in most jurisdictions you don't have a large bar representation in some States who practice uniformly before the Federal courts whereas you have a substantially larger proportion of the members of the bar practicing before the State, the State bar.

It would seem to me that accordingly, you might not want to institutionalize so much the public defender system under a State-like organization as you might want to do it before a Federal court system. And I wondered if you had any experience as it related to the State agencies and its proportion of representation they have through public defenders as it relates to the State agencies.

DEFENDER AGENCIES IN OTHER AREAS

Mr. KIRKS. May I attempt to answer your inquiry in this fashion? We refer to the District of Columbia for certain purposes as the equivalent of a State but its geographical concentration is such that in other respects it is a city and its geographical boundaries are so restricted that the problems that you are alluding to that might arise under a State system where you have a large geographical area and a large dispersion I think would be minimized if not eradicated entirely so far as the District is concerned.

Where we have these agencies established now, they are, of course, in large metropolitan areas because they have to have the potential of 200 assignable cases annually before you can establish such an agency, and if we could more closely parallel the District to one of these metropolitan cities rather than comparing it to a large geographical area like the State of Texas, just to illustrate, I do not believe we would anticipate any difficulty.

Mr. HOGAN. But what you are doing when you increase the burden for the public defender agency, you are institutionalizing in effect the defense of indigents with a public agency. You are increasing that. You are taking that out of, in effect, the private sector. When the 1970 Act was before this committee, there was strong commentary and testimony at that time that the breakout was about 60-40 and that they thought generally in this community that the 60-40 split was

about the way that it should go and that if you left 40 percent of it with the private bar, that you then had a good balance and that you did not have to have the total reliance on the public defender agency as opposed to giving some experience and some participation by the local bar and thus in effect cutting down the institutionalization, the bureaucratization, I guess you call it, of the public defender in the city. I wondered what the State experience was. For instance, how does the State of Texas break out its public defender? Do they have 75 percent public defender or do they have some other ratio or do you know?

Mr. KIRKS. I'm sorry, sir. We do not have that information.

Mr. HOGAN. Thank you, sir. Thank you, Mr. Kirks.

Mr. FAUNTROY. Thank you, Mr. Kirks and Mr. Foley.

Mr. KIRKS. Thank you for the privilege of appearing before the committee, Mr. Chairman.

Mr. FAUNTROY. Next we will call Judge Reilly and Judge Greene, if you will please come and make your presentations together in whatever order you choose.

STATEMENT OF HON. GERALD D. REILLY, CHIEF JUDGE, D.C. COURT OF APPEALS, ACCOMPANIED BY HON. HAROLD H. GREENE, CHIEF JUDGE, D.C. SUPERIOR COURT

Mr. FAUNTROY. It is a real pleasure to have both of you before our committee.

Judge REILLY. Thank you, Mr. Chairman and members of the committee.

Pursuant to your kind invitation to comment on the two bills respecting representation of indigent defendants now pending before your subcommittee, I appear on behalf of the Joint Committee on Judicial Administration to urge that H.R. 14376, which was drafted by our Joint Committee, be favorably reported, and that action be deferred on H.R. 14374, a more far-reaching proposal transmitted to Congress by the Mayor-Commissioner.

NEED FOR LEGISLATION

The immediate need for authorization legislation to enable the D.C. courts to function with an adequate method for providing representation to the indigent in criminal prosecutions is recognized by all.

The appropriations committees in both branches of Congress have already completed hearings on the District of Columbia appropriation bill, containing an item of \$2,300,000 to enable the D.C. Court of Appeals and the Superior Court to appoint counsel in cases where the public Defender's staff is not available.

Unless authorization legislation is speedily enacted, the passage of any appropriation for the fiscal year beginning July 1, 1974, is clouded by the possibility of points of order being raised.

H.R. 14376

H.R. 14376, proposed by our Joint Committee,¹ essentially preserves the *status quo*, yet provides the necessary authority. It leaves intact the present Public Defender Service.

¹ See p. 13, *supra*.

What this bill does would be to repeal the provision in the Criminal Justice Act which makes that statute applicable to cases in the District courts (i.e., subsection (1) of 18 U.S.C. 3006A) and create in lieu thereof a similar act covering only the District of Columbia Court of Appeals and the Superior Court.

The enactment of H.R. 14376 would not be inconsistent with other proposals and it would afford the time necessary to weigh difficult issues and principles before a complete remodeling is undertaken. To this end, Chief Judge Bazelon of the Federal circuit, in his capacity as Chairman of the Federal Judicial Conference for the District of Columbia Circuit has appointed a commission to study the problem of the representation of indigents in the District and report to the Conference as soon as possible. Pending a review of said report, the stop-gap legislation proposed by our Joint Committee, namely H.R. 14376, might well be enacted in order to avoid a point of order, in the event that the House Appropriations Committee might present its bill during the fiscal year.

ALTERNATE PROPOSALS

In drafting H.R. 14376, the Joint Committee on Judicial Administration considered a number of alternative proposals. One proposal would have made the Public Defender Service an agency serving the District court system exclusively. Trustees of the Public Defender Service objected, however, to being removed from criminal proceedings in the U.S. District Court and the U.S. Court of Appeals.

Chief Judge Bazelon also stated that the Service should be available to both systems. Another proposal was to remove the Public Defender Service from court dependence entirely and to make it an independent agency with authority to appoint and compensate private attorneys in cases not defended by staff attorneys. Still another proposal, H.R. 14374, which is before you today and is recommended by the Mayor-Commissioner, would make the Public Defender Service an agency under the control of the executive branch of the D.C. government, with broad authority over the selection and payment of private attorneys appointed to act as counsel.

STOPGAP LEGISLATION

It is true, of course, that our proposal, H.R. 14376, is something of a stopgap measure, really offered just to meet the current emergency in the need for having an authorization act when the appropriation comes up. So our bill deliberately omitted any provisions changing the structure or operation of the Public Defender Service established by Chapter 22, Title II of the D.C. Code, for we were aware that the pending D.C. budget estimate for the Service for fiscal 1975 had already been formulated on this existing statutory framework.

We recognize that some revisions of the laws relating to the Public Defender Service should eventually be considered by Congress. At present, however, we feel there are so many conflicting views as to what should be done in this respect, we believe that to include in the authorization bill now controversial proposals on this subject might result in postponing until the next fiscal year passage of this much needed legislation.

H.R. 14374

In referring to H.R. 14374, the Legal Defender bill, as being controversial in contradistinction to H.R. 14376, the Joint Committee has noted that H.R. 14374 contains such provisions as the following:

Section 3 provides that the seven-member board of trustees of the new Service shall be appointed by the Mayor, subject to confirmation by the D.C. Council.

At present, such appointments are made by the Mayor and the four chief judges (U.S. Court of Appeals, U.S. District Court, D.C. Court of Appeals, and Superior Court). The bill contains no wording which keeps any of the present trustees of the Service, appointed under D.C. Code 1973, subsection 2-2223, in office until their terms expire; nor, I might add, in passing does this bill contain any provisions which transfer the existing staff of the Public Defender's Office to the new Legal Defender Service contemplated by that bill.

Section 4 provides that the board of trustees has the final responsibility for establishing and placing in operation the plan for furnishing representation for indigents. Under existing law, 18 U.S.C. 3006(a) (1) places this responsibility upon the Judicial Council of the D.C. Circuit and the D.C. Court of Appeals.

AMENDMENT PROPOSED

A particularly troublesome problem in H.R. 14374 arises from sections 4 and 5 respecting persons for whom an attorney shall be appointed. Section 4(a) (1) specifies persons "charged with a felony, misdemeanor, or petty offense for which a jury trial may be required." Of course, there are many charges, not triable by a jury, which require appointment of an attorney. Many of these charges are prosecuted by the District of Columbia rather than the United States. At the present time the Public Defender Service furnishes staff only in cases where the United States Attorney is the prosecuting officer. The cases where the Corporation Counsel of the District of Columbia is the prosecuting officer up until now have been handled—this is indigent cases—handled by private attorneys appointed under the Criminal Justice Act.

Section 5 seems to recognize that fact when it requires the court to advise a defendant of his right to appointed counsel "in all cases where a person faces loss of liberty and the Constitution . . . requires the appointment of counsel." That is the standard in the *Argersinger* Case to which Chairman Fauntroy referred.

I draw this to the attention of the committee because Section 4 seems to be inconsistent with Section 5.

In my prepared statement—I believe all members of the committee have copies of it—I have commented upon some other drafting effects, problems created by the bill reorganizing the Legal Defender Service, so that I will refrain from elaborating on them now unless the committee has some questions, as I know you have a number of other witnesses to hear. But a final and traditional reason for expeditious enactment of H.R. 14176 and deferring consideration now of any proposals for complete overhaul of the Public Defender Service is the timing. I have already made reference to the fact that the budget estimate for the Defender Service for fiscal 1975 was submitted several

months ago and it has been the subject of Appropriation Committee hearings in both houses and is on the verge of being reported to the Floor. This is equally true of the \$2,300,000 item to pay private attorneys in 1975 which is pending in both Appropriations Committees as an item in the D.C. Judicial System budget, not the D.C. Executive budget as would be the case if this Legal Defender Service bill was enacted.

Obviously, revised and supplemental budget estimates would have to be presented to Congress for the coming fiscal year if Congress delays action on our bill in order to consider major modifications of the Public Defender system.

We are less than three weeks away from the start of a new fiscal year. Congress eventually solved the problem of the exhaustion of funds for indigent representation by including a sum sufficient to meet the obligations incurred to lawyers in fiscal 1973 and 1974 in the Supplemental Appropriation Act which was just signed last Friday, but, if legislative action is delayed we foresee another crisis in the courts next month over the uncertainty of whether the funds will be forthcoming to those who have and are continuing to represent indigents in criminal cases.

Thank you very much, Mr. Chairman and members of the committee.

Mr. FAUNTROY. Thank you so much, Chief Judge Reilly.

I think at this point I would like to have Chief Judge Greene make his presentation and then if you will both remain for questions which we may have, I would appreciate it.

Judge GREENE. Mr. Chairman, I have a prepared—

Mr. FAUNTROY. May I just also indicate that, of course, Judge Reilly's statement in its entirety will be included in the record together with his letter of May 13, 1974 to the Chairman.

[The full statement of Judge Reilly follows:]

STATEMENT OF GERARD D. REILLY, CHIEF JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

Mr. Chairman and members of the subcommittee, Pursuant to your kind invitation to comment on the two bills respecting representation of indigent defendants now pending before your subcommittee, I appear on behalf of the Joint Committee on Judicial Administration to urge that H.R. 14376, which was drafted by our Joint Committee, be favorably reported, and that action be deferred on H.R. 14374, a more far-reaching proposal transmitted to Congress by the Mayor-Commissioner.

NEED FOR LEGISLATION

The immediate need for authorization legislation to enable the District of Columbia courts to function with an adequate method for providing representation to the indigent in criminal prosecutions is recognized by all. The appropriations committees in both branches of Congress have already completed hearings on the District of Columbia appropriation bill, containing an item of \$2,300,000 to enable the D.C. Court of Appeals and the Superior Court to appoint counsel in cases where the Public Defender's staff is not available. Unless authorization legislation is speedily enacted, the passage of any appropriation for the fiscal year beginning July 1, 1974, is clouded by the possibility of points of order being raised.

H.R. 14376

H.R. 14376, proposed by our Joint Committee,¹ essentially preserves the *status quo*, yet provides the necessary authority. It leaves intact the present Public

¹ See Chief Judge Reilly's letter to the chairman, dated April 19, 1974 at p. 13, *supra*.

Defender Service. This bill would repeal the provision in the Criminal Justice Act which makes that statute applicable to cases in the District of Columbia courts (i.e., subsection (1) of 18 U.S.C. 3006A) and create in lieu thereof a similar act covering only the District of Columbia Court of Appeals and the Superior Court.

The enactment of H.R. 14376 would not be inconsistent with other proposals and it would afford the time necessary to weigh difficult issues and principles before a complete remodeling is undertaken. To this end, Chief Judge Bazelon of the Federal circuit, as Chairman of the Federal Judicial Conference for the District of Columbia Circuit has appointed a commission to study the problem of the representation of indigents in the District and report to the Conference as soon as possible. Pending a review of said report, the stopgap legislation proposed by our Joint Committee, H.R. 14376, should be enacted in order to avoid a point of order, in the absence of authorizing legislation, during the consideration of the appropriation request for fiscal 1975.

ALTERNATE PROPOSALS

In drafting H.R. 14376, the Joint Committee on Judicial Administration considered a number of alternative proposals. One proposal would have made the Public Defender Service an agency serving the District of Columbia court system exclusively. Trustees of the Public Defender Service objected, however, to being removed from criminal proceedings in the United States District Court and the United States Court of Appeals. Chief Judge Bazelon also stated that the Service should be available to both systems. Another proposal was to remove the Public Defender Service from court dependence and to make it an independent agency with authority to appoint and compensate private attorneys in cases not defended by staff attorneys. Still another proposal, H.R. 14374, which is before you today and is recommended by the Mayor-Commissioner, would make the Public Defender Service an agency under the control of the executive branch of the District of Columbia government, with broad authority over the selection and payment of private attorneys appointed to act as counsel.

STOP-GAP LEGISLATION

It is true, of course, that our proposal, H.R. 14376, is something of a stopgap measure. This bill deliberately omitted any provisions changing the structure or operation of the Public Defender Service established by Chapter 22, Title 2 of the D.C. Code, for we were aware that the pending D.C. budget estimate for the Service for fiscal 1975 had been formulated on this existing statutory framework. We recognize that some revisions of the laws relating to the Public Defender Service should eventually be considered by Congress. At present, however, there are so many conflicting views as to what should be done in this respect, we believe that to include in the authorization bill controversial proposals on this subject might result in postponing until the next fiscal year passage of this much needed legislation.

H.R. 14374

In referring to H.R. 14374, the Legal Defender bill, as being controversial in contradistinction to H.R. 14376, the Joint Committee has noted that H.R. 14374 contains such provisions as the following:

Section 3 provides that the seven-member board of trustees of the new Service shall be appointed by the Mayor, subject to confirmation by the D.C. Council. At present, such appointments are made by the Mayor and the four chief judges (U.S. Court of Appeals, U.S. District Court, D.C. Court of Appeals, and Superior Court). The bill contains no wording which keeps any of the present trustees of the Service, appointed under D.C. Code 1973, § 2-2223, in office until their terms expire.

Section 4 provides that the board of trustees has the final responsibility for establishing and placing in operation the plan for furnishing representation for indigents. Under existing law, 18 U.S.C. 3006(a) (1) places this responsibility upon the Judicial Council of the D.C. Circuit and the D.C. Court of Appeals. The current function of the Defender Service under D.C. Code 1973, § 2-2222 (b) is to "establish and coordinate the operation of [a] . . . system for appointment of private attorneys . . ." This subsection is also incorporated in Section 4 (d) of the bill, so apparently Section 4 (a) contemplates broader responsibilities.

AMENDMENT PROPOSED

A particularly troublesome problem in H.R. 14374 arises from sections 4 and 5 respecting persons for whom an attorney shall be appointed. Section 4(a)(1) specifies persons "charged with a felony, misdemeanor, or petty offense for which a jury trial may be required." Of course, there are many charges, not triable by a jury which require appointment of an attorney. Many of these charges are prosecuted by the District of Columbia rather than the United States. Section 5 seems to recognize that fact when it requires the court to advise a defendant of his right to appointed counsel "[i]n all cases where a person faces loss of liberty and the Constitution . . . requires the appointment of counsel." In our opinion, Section 4 is deficient and inconsistent with the Sixth Amendment to the extent that some nonjury triable offenses require counsel.

The criminal provision at the end of section 4 seems unnecessary in light of the local and national perjury laws and 18 U.S.C. § 1001. Moreover, it would surely limit the use of those laws by making falsification under H.R. 14374 a misdemeanor. Conceivably there may be cases where felony prosecution would be warranted, but foreclosed by section 4.

The last sentence of section 5 is impossible to understand. It speaks of "discretionary" appointment of counsel. Yet section 4, save for erroneously omitting nonjury prosecution, obviously must refer to "loss of liberty" cases where the Constitution *requires* counsel. It is also not possible to know from a reading of the bill what advice the court must furnish a defendant respecting "the manner and procedures by which the appointed counsel may be obtained." In this context, *see and compare* the last two lines of section 4(d).

SELECTION OF COUNSEL

While, under H.R. 14374, section 5, the courts appoint counsel for indigent defendants, they are confined to a list of attorneys provided by the Service. Compare section 4(d) with section 5, first sentence. This strange admixture of executive and judicial power, with the executive controlling bar membership available for appointment, is quite antithetical to the proper role of an independent judiciary and its responsibility for administration of criminal justice as well as to the relationship of the courts and the bar. Standard 13.15 of the Report of the National Advisory Commission on Criminal Justice Standards and Goals relating to the Courts recommends that the judges should be able to retain the right to add attorneys to the panels. After all, the judge is the first to perceive relative ability.

The provision of section 6 relating to inability "to pay counsel whom [the defendant] had retained" is confusing and probably unnecessary. If a retained attorney is permitted by the court to withdraw and the defendant is then entitled to appointment of counsel, such is possible without this provision. If its intent is to permit appointment of earlier retained counsel, there is a real possibility of abuse. Moreover, retained counsel may not be on a panel of attorneys designated and approved by the Service under section 5.

COMPENSATION

As to compensation of appointed counsel, it seems clear under H.R. 14374 that the courts, which are in a position to make some judgment respecting payment, are to be removed from that function except in extended or complex cases. The Service, which may have far less knowledge of the case than the trial judge, seems to have absolute discretion under section 8(d) to "fix the compensation or reimbursement to be paid the attorney." Yet this provision is confusing when one reads section 7 which *mandates* compensation "by the Service at a rate fixed by the Board" not exceeding the hourly scale provided under the federal Criminal Justice Act. This aspect of the bill is not acceptable for it confuses compensation determination, fails to utilize an informed person, the judge, in arriving at that determination, and has a real potential for allowing a systematic discrimination in the payment of the District of Columbia attorneys over attorneys in like position in other federal courts. To ensure against such unequal treatment, any new defender system should be tied to the Criminal Justice Act level and system of compensation. This, of course, would be consistent with congressional control over District of Columbia fiscal affairs. In the present context, I believe the courts should have final authority to appoint counsel and approve payment.

Another point relates to section 8 and the questionable policy of excluding the courts from approving payment vouchers submitted by appointed attorneys. Section 8 is captioned "SERVICES OTHER THAN COUNSEL", yet the last sentence of subsection (d) provides that the Service "shall fix the compensation and reimbursement to be paid to the attorney." This provision is not only confusing and inconsistent with the mandatory language of section 7(a), but also misplaced in the bill as a part of section 8.

RECOMMENDED ACTION

A final additional reason for expeditious enactment of H.R. 14376 and deferring consideration now of any proposals for a complete overhaul of the Public Defender Service is timing. Reference has already been made to the fact that the budget estimate for the Defender Service for fiscal 1975 was submitted several months ago, has been the subject of Appropriation Committee hearings in both houses, and is on the verge of being reported to the floor. This is also true of the \$2,300,000 item to pay private attorneys in 1975, which is pending in those committees as an item in the budget of the D.C. judicial system, not the D.C. executive budget. Obviously, revised and supplemental budget estimates would have to be presented to Congress for the coming fiscal year if Congress delays action on our bill in order to consider major modifications of the Public Defender system.

We are less than three weeks away from the start of a new fiscal year. Congress eventually solved the problem of the exhaustion of funds for indigent representation by including a sum sufficient to meet the obligations incurred to lawyers in fiscal year 1973 and 1974 in the Supplemental Appropriation Act signed last Friday. But, if legislative action is delayed we foresee another crisis in the courts next month over the uncertainty of whether funds will be forthcoming to those who have and are continuing to represent indigents in criminal cases.

DISTRICT OF COLUMBIA COURT OF APPEALS,
Washington, D.C., May 13, 1974.

HON. CHARLES C. DIGGS, Jr.,
Chairman, Committee on the District of Columbia, Suite 1310, Longworth Building, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Joint Committee on Judicial Administration in the District of Columbia, I appreciate this opportunity to comment on H.R. 14374, entitled "A Bill to establish the District of Columbia Defender Service, and for other purposes", now pending before your committee. A copy of the bill was enclosed with your letter of April 26, 1974.

This bill, apparently precipitated by the refusal of the United States Judicial Conference to include in its budget estimates to the appropriations committees funds for paying counsel to indigent defendants in criminal cases, and the subsequent submission by the Mayor of a budget request for those purposes in the D.C. appropriation act for fiscal, 1975, not only proposes new legislation (in lieu of the Criminal Justice Act, 18 U.S.C. 3006A) to authorize such payments by the District government, but also a complete reorganization of the structure, functions and authority of the D.C. Public Defender Service established by Chapter 22 of the D.C. Code. To accomplish this latter objective, it would repeal Title III of the D.C. Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473, and D.C. Code 1973, § 2-2201 through § 2-2210.

In our opinion, this bill is a very controversial one. We respectfully suggest that consideration of it by the committee should be postponed until after Congressional action on H.R. 14376, which you were good enough to introduce upon the recommendation of our Joint Committee. In submitting this latter bill for consideration, we described it as a relatively noncontroversial measure which leaves the present Public Defender Service untouched but provides statutory authority to enable the District government to pay private counsel appointed by the Superior Court and the D.C. Court of Appeals on the same scale and under the same terms and conditions specified in the Federal Criminal Justice Act currently applicable to these local courts. If speedily enacted, it would preclude any points of order being raised against the D.C. budget estimate, concerning which the House and Senate appropriations subcommittees are holding hearings this week.

In referring to H.R. 14374, the Legal Defender bill, as being controversial in contradistinction to H.R. 14376, the Joint Committee has noted that H.R. 14734 contains such provisions as the following :

Section 3 provides that the seven-member board of trustees of the new Service shall be appointed by the Mayor, subject to confirmation by the D.C. Council. At present, such appointments are made by the Mayor and the four chief judges (U.S. Court of Appeals, U.S. District Court, D.C. Court of Appeals, and Superior Court). The bill contains no wording which keeps any of the present trustees of the Service, appointed under D.C. Code 1973, § 2-2223, in office until their terms expire.

Section 4 provides that the board of trustees has the final responsibility for establishing and placing in operation the plan for furnishing representation for indigents. Under existing law, 18 U.S.C. 3006(A) (1) places this responsibility upon the Judicial Council of the D.C. Circuit and the D.C. Court of Appeals. The current function of the Defender Service under D.C. Code 1973, § 2-2222 (b), is to "establish and coordinate the operation of [a] . . . system for appointment of private attorneys. . . ." This subsection is also incorporated in Section 4(d) of the bill, so apparently Section 4(a) contemplates broader responsibilities.

Section 4(a) also greatly enlarges the various types of criminal proceedings in which indigents may obtain representation under its terms. At present, these categories are limited to the seven enumerated in D.C. Code 1973, § 2-2222 (a).

Section 4(f) vests the trustees with authority to set standards or criteria, *inter alia*, for determining the financial ability of those seeking representation, review of vouchers, eligibility of attorney panels, etc. Hitherto such responsibility has been placed on the individual judges.

Section 5 grants the Service authority to select the panels of attorneys from which individual counsel are appointed by the judges. Under the present plan, each trial judge or the appellate court, as the case may be, has wide latitude in making such selections, with the courts using the assistance of the Service in drawing up the lists and keeping them up to date.

Section 7 gives the board of trustees authority to fix rates *not in excess* of the hourly scales provided by the federal act, 18 U.S.C. 3006A (d). Under the present plan, the printed forms of vouchers presented by individual counsel for their services contemplate payments at the statutory scale for particular kinds of proceedings, although the judge to whom the voucher is presented may reduce the total if he views the claimed computation of time excessive.

These are only a few of the provisions of the bill which will give rise to sharply divergent views among judges, court administrators, and members of the bar. At the Federal Judicial Conference for this jurisdiction last month, a resolution was passed authorizing the Chief Judge to appoint a committee to study and report on the matter. Our own Joint Committee would be in a better position to comment in detail upon all the provisions of H.R. 14374 when this report is made and becomes available for study.

Faithfully yours,

GERARD D. REILLY,
*Chairman, Joint Committee on Judicial
Administration in the District of Columbia.*

Judge GREENE. Mr. Chairman, I have a prepared statement which I furnished to the committee and with your permission I will not read it but simply submit it for the record and just make some brief remarks.

Mr. FAUNTROY. Without objection, so ordered.

COURT'S RECOMMENDATION

Judge GREENE. Mr. Chairman, I am in fundamental agreement with the position taken by my colleague, Chief Judge Reilly. The issue, it seems to me, before this committee, boils down to a question whether interim legislation should be enacted to assure funding for legal defense services for the fiscal year starting July 1 which would be H.R. 14376, or whether the committee should undertake a more comprehensive review of legal defense services which is essentially the

case with respect to H.R. 14374. We suggest, Mr. Chairman, that the Committee recommend and the Congress enact, solely interim stop-gap legislation.

The legislation submitted by the Mayor, H.R. 14374, raises many controversial problems and I would—it seems to me that there is real danger if the Congress would undertake at this late stage in the Congressional session, and particularly at this late stage in the fiscal year, there would be real danger that the emergency legislation, namely, the legislation which will provide for funding for defense services, would get lost in the discussion and in the controversy.

For example, Mr. Kirks mentioned the question of whether a separate federal Public Defender Service should be created or whether a single Public Defender Service should service both the local and federal courts. It seems to me that is not an easy question. It is a question to which some thought should be given and on which there are many differences of opinion.

BOARD OF TRUSTEES

Another question concerns the appointment of a board of trustees. H.R. 14374 would permit the Mayor solely, exclusively, to appoint the board of trustees of the Public Defender Service. On the other hand, Chief Judge Bazelon has appointed a committee to study just that question. As I understand Chief Judge Bazelon's position he would prefer a board composed essentially of citizen members to appoint the board. Chief Judge Reilly has taken the position which the Joint Committee endorsed at an earlier stage of these matters that the Joint Committee of the local courts ought to appoint the board of trustees of the Public Defender Service.

Just these various positions, all of which could be argued with considerable force and merit, would I think get us bogged down in unnecessary problems at this stage.

BUDGET CONTROL

Another problem that exists is the question of the control of the budget of the Public Defender Service and who would make payments to the attorneys. As I understand the public defender position which I am sure Mr. Lefstein will address himself to, it is their feeling that the budget of the Public Defender Service ought to be under the sole control of the Public Defender Service and ought not to be reviewed either by the courts or by the Executive Branch of the District Government.

I am quite certain that there are differences of opinion on that issue.

Also the Public Defender Service takes the position that payments to attorneys ought to be made solely by the Public Defender rather than by the judge who tried the case and who presumably was the one who could evaluate the performance of the attorneys.

I do not mean to say that these matters ought to be resolved necessarily in favor of having the courts appoint the board of trustees or control the budget of this agency or make the determination what payments ought to be made. Much of that is a rather disagreeable chore so far as I am concerned. But I think just from an enumeration of these problems it can be seen that they are difficult and that I think their resolution would necessarily be somewhat time-consuming.

H.R. 14376

We suggest for that reason that H.R. 14376 should be enacted. It is really only interim legislation. It transfers in effect what had been under the Administrative Office of the United States Courts and the Judicial Conference of the United States to the Joint Committee on Judicial Administration, the equivalent local body, the administration of the existing program and then next year the Congress, with the assistance of others, can then address itself to the more far-reaching problems and come up with a solution to those problems and set up whatever public defender agency or broader agency seems desirable at the time.

It is for that reason that we commend to the committee that it support H.R. 14376.

Mr. FAUNTROY. Thank you.

In your support of H.R. 14376, are you suggesting that within the next fiscal year the controversial problems that you have raised could possibly be worked out and a permanent piece of legislation be recommended to the committee?

Judge GREENE. Yes, indeed, sir.

ATTORNEY'S FEES

Mr. FAUNTROY. Do I understand from your reference to the question of who shall control the budget that the present system is that judges evaluate the performance of the court appointed defendant, decide how much he is worth?

Judge GREENE. Well, the way it works is that the court appointed attorney under the system which was established initially by the Administrative Office of the U.S. Courts submits a voucher in which he lists the time he spent both out of court and in court. Under the present statute the attorney's compensated, \$20 per hour for time spent out of court, \$30 for time spent in court, and that voucher is then submitted to the judge who tried the case.

We actually require more detail than the Administrative Office of the U.S. Courts does, but on the basis of that submission and on the basis of what the judge knows of what happened at the trial he then approves or in some cases reduces the amount that is requested.

Mr. FAUNTROY. Did you ever have to go to court on that matter?

Judge GREENE. Not yet.

Mr. FAUNTROY. Counsel?

Mr. LEE. I would like to pursue, Judge Greene, that line of questioning which Mr. Fauntroy initiated with you. Sam Dash, testifying before the Senate, indicated to the Senate that for the judges to set these fees in effect was to—I certainly do not have his testimony before us, so I cannot allude exactly to what he said.

Judge GREENE. I read his testimony.

Mr. LEE. But he alluded to the standards in the American Bar Association Criminal Justice Standards, saying in effect it was inappropriate.

I frankly have not been able to find that in the standards. Mr. Fauntroy alluded to the question of whether or not judges would be taken to court. I am not sure whether they would take you, for one problem.

Which court do we go to and with which judge would we try this and who pays for that?

I am a little bothered and I just wonder whether or not some of the horrors that Professor Dash related before the other committee have a degree of validity before them. Perhaps it should not be put to you in those terms, but I do not know any other way to phrase the question.

Judge GREENE. Well, my first answer would be that this is again a matter which should be deferred until next year, that it is too difficult to resolve at this particular time. The other answer would be that there are problems both ways. Conceivably, theoretically, Professor Dash's concern might be justified. I suppose it could be said that a judge might—which I guess is what he is contemplating—a judge might penalize an attorney for particularly vigorous advocacy by cutting the voucher he has submitted. I really do not believe it is in practice a particularly significant problem. But there is also a problem the other way. The Public Defender Service, if they were to fix the fees, would be under the greater handicap that he would not know anything about what happened. They were not there at the trial, didn't know how long it took, didn't know what kind of representation was given, and so they would be operating under some sort of handicap. I think it is a matter to which one could address himself at some length.

Mr. LEE. Which handicap you want to accept? Is that—

Judge GREENE. I beg your pardon?

Mr. LEE. Which set of handicaps you wish to accept; is that the choice?

Judge GREENE. Well, perhaps there is a compromise solution. I don't know. Of course, one problem we have is that Congress appropriates only a relatively limited amount and we have to live within that amount. And if reductions are made, it is because we have to live within the amount the Congress in its wisdom wishes to appropriate. And who can best make that determination is something which I am not particularly advocating at this point, but I think there are problems with Mr. Dash's suggestion which I think one has to consider before just accepting it as given.

Mr. LEE. Let me just ask one additional question along that line. Is it possible within the system now, if we were to follow your suggestion in adopting this legislation, that prior to any attorney's fees being cut that there would be some review by another member of the bench somewhere who might perhaps have more objectivity, if I may use that word? I have not—let me make it clear I have not had any information sent to us that any judge in the Superior Court has done anything along this line. We have not heard anything like that to the best of my knowledge. So we are not suggesting that anything over there is going on that is not proper but the question has been raised on the Senate side and I felt the obligation to pursue that.

Judge GREENE. To some extent we are doing that now. In all instances where there is no trial, where the case is disposed of by either guilty plea or dismissal, all of the vouchers go to a single judge for that—who is assigned for that purpose for that particular month. So to some extent—and, of course, a great number, a great proportion are disposed of short of trial.

To that extent the problem you raised has been taken care of. We have not done that with the cases disposed of by trial simply for the

practical reason that it is difficult for someone who was not there to make an evaluation.

Now, I suppose it is possible to set up a system of reviews but because the contemplation is that vouchers are cut too much and that a review body should be appointed to increase them, if there are going to be many such increases in compensation, I suppose we would have to have some indication that the Congress is willing to pay for them.

FEE SCHEDULE

Mr. LEE. Without suggesting that minimum fee schedules are good or bad, has the court attempted to construct something that might resemble a minimum fee schedule that an attorney may look at and a sum that a reasonably competent attorney doing the following kinds of tasks can be expected to be compensated the following sums based upon the remaining balances you have?

Judge GREENE. No. We have strictly followed the Criminal Justice Act which provides for fees to be set on the basis of time spent.

Mr. LEE. What I am suggesting is that whether or not it is possible to construct that—in certain kinds of cases one might spend X amount of dollars and others 2-X and others something minus X.

Judge GREENE. We have considered that and again that is a problem that raises difficulties one way or the other. One person might handle a preliminary hearing in a felony case and be there for 5 minutes and make—do a perfunctory job and someone else might be very conscientious and interview a number of witnesses and call a number of witnesses for his side and spend several hours, and if you had a fixed fee schedule, they would both be compensated at the same rate.

On the other hand, if you have an hourly rate you run into the difficulty that you suggest; namely, that perhaps some would not be compensated adequately.

As I say, these are not easy questions and we have addressed ourselves to them from time to time with some depth, in some depth, but I cannot say that here testifying in five minutes I would be able to come up with a solution that would be appropriate. The Judicial Conference of the United States and the Congress in adopting the Criminal Justice Act felt that an hourly rate of compensation was a better method than a method based on the type of proceeding that was involved.

ATTORNEY'S QUALIFICATIONS

Mr. LEE. Let me just ask you one additional question. Is there any effort in the appointment of counsel, particularly in cases, to assure that the counsel who is appointed for trial is able and competent to pursue and is willing to pursue the issue through appeal here in the District?

Judge GREENE. Perhaps Chief Judge Reilly had better answer that.

Judge REILLY. Well, the practice of our Court, contrary to that of some other appellate courts, is to ask trial counsel, designated trial counsel, and appellate counsel also. Now, there are occasional cases where the client and the counsel had a falling out, so once in a while if the client wants another counsel on appeal we generally allow the first counsel to withdraw.

The reason we do that is that one of the things that is a very expensive item in the Criminal Justice Act is the transcript item and exhibits.

Mr. LEE. That is precisely the reason I asked the question.

ATTORNEY'S FEES

Judge REILLY. And if you appoint a new counsel, instead of just asking for a fragment of the transcript for the point that he raises an appeal on, he is likely to ask that the stenographer transcribe everything, the voir dire, the opening remarks to the jury on both sides, and the summation as well as all the instructions, so a great deal of surplus material is in there.

Now, so far as the fear that Mr. Dash expressed of particular judges retaliating against counsel or unduly underrating their performance, actually what the Judges do is more or less of an auditing function.

The statute which gives them a rate of pay for so many hours in court and a slighter rate of pay for hours outside the court and the appellate court knows how long the lawyer had to wait in court that day for his case to be called on the calendar. So we can verify that.

Now, of course, in appellate cases most of the charge comes from work done outside on briefs but occasionally if you get a brief of 10 pages you know that the average cost of appeal including even the completion on the average runs only around \$400 and on a case with just one issue raised on appeal and a ten-page brief you get a bill for a thousand dollars or more, kind of an auditing function, and you try to perhaps cut that down so it is within the dimensions of the average case. But it is not done because you think one lawyer is better than another. It is simply done in order to insure a fair amount of uniformity.

Mr. LEE. Let me again emphasize, Judge Reilly, no one was suggesting that anyone in the District Court has done that. It really was raised in the committee hearing because we wanted to pursue that line just to assure ourselves that in fact this is not a problem or if it is a problem, how to resolve the potential problem.

Mr. Chairman, I have no further questions.

Mr. FAUNTROY. Counsel.

Mr. HOGAN. Thank you, Mr. Chairman.

EMERGENCY LEGISLATION

Judge Reilly and Judge Greene, I think that by and large the majority of the minority members of this committee would agree with me that there is some urgency about this matter and probably the best thing to do is to move as swiftly as possible in coming up with something that is non-controversial at the earliest date possible.

It is my understanding that the D.C. Appropriations Subcommittee has a markup scheduled for Monday and I think that if there is much controversy raised on a bill such as this it will encounter considerable trouble whether it reaches the floor on the 24th or even in July.

DEFENDANTS REPRESENTED

Are you satisfied that the 60-70 breakout as far as public defender can go over until the next Congress so that that matter could be ironed out?

Judge REILLY. Yes. There seems to be an assumption in the bill that the Public Defender Office does not have any function with regard to the use of private attorneys. That is not so. Under the existing Act they have a coordinating function now.

Mr. HOGAN. Investigating—

Judge REILLY. And their staff is such that the 60 percent statutory limitation is rather academic. I think the appropriations are such that they handle more in the neighborhood of 20 or 25 percent of the cases. And they actually prepare the panels—judges can add to them, but by and large since I have been on the District of Columbia Court of Appeals, which has been 4 years, I would say that in 90 percent of the cases the lawyer that is selected on appeal, not trial counsel, is selected from a panel of names which has been developed by the Public Defender Service. I believe they have one panel for the Federal Circuit Court, another for us, and so those are the names that we select from.

Mr. HOGAN. Well, if the the members go to the Floor, certainly they could say with the—as far as H.R. 14376 is concerned, that the procedures both appointive—and the procedures for payment is virtually the same if not identically the same as it is in the U.S. Court system and that what would be—what the Congress in effect would be doing is to lay on the court system an existing procedure which is now under the—principally under the U.S. Court system.

Judge REILLY. Right.

Mr. HOGAN. It would be adapting that to the local court system.

Judge REILLY. Right. The only real change that would occur at all is that instead of Mr. Kirk's office, and of course we did not want that but that was their action—

Mr. HOGAN. The Joint Committee would be handling it.

Judge REILLY. Yes. That Mr. Kirk's office, instead of being responsible for auditing the vouchers approved by the judges and drawing the checks and upping the amount if the voucher is insufficient, that would be done by executive officers and local courts and fiscal officers for the District of Columbia.

AGENCY JURISDICTION

Mr. HOGAN. And you see no problem continuing with the local public defender system, both the federal and local court system, until such time as you can work out some other system if in fact you want to do this.

Judge REILLY. Yes. I see no objection to that at all. We did think originally that it would be better if the Public Defender Service handled only cases in the Superior Court and the D.C. Court of Appeals but I think our Joint Committee was impressed by the argument of Judge Bazelon that since the United States Attorney frequently where there are overlaps in the Federal Criminal Court and D.C. Criminal Court, kind of decides which kind of an indictment to proceed under, that to kind of match that, the Public Defender Office ought to be able to furnish counsel if the judges so requested in the federal courts as well as in our local courts.

Mr. HOGAN. If I understand correctly, you would at this time oppose the establishing the separate budget for the—independent budget for the Public Defender system which I gather is going to be their later testimony.

Judge REILLY. I have great hesitation about doing that and I think quite a number of the trial lawyers in the Bar that have been serving these cases would be disturbed by that, too.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FAUNTROY. Counsel?

STOP-GAP LEGISLATION

Mr. FREEMAN. You both referred to stop-gap legislation, your proposed bill being stop-gap legislation. Is there any kind of stop-gap legislation we could consider short of your bill, basically what is known as a one liner, quick authorization? Would that do the job that you want done and then turn it over to this committee and Congress to analyze the complexities of the situation next year?

Judge GREENE. I really do not know how you can do that. We thought of that but I really do not know how you can do that because there are a certain number of just mechanical logistical kinds of problems that need to be taken care of that a one line type legislation cannot do. Who is to—for example, who is to be appointed? Who is to supervise and submit the budget? And all of those really relatively minor things that are not a controversy.

This is really a one line legislation except that it spells out the kind of things that—except it is five pages because it takes five pages to transfer what is now being done by the Administrative Office of the U.S. Courts to the Joint Committee and its staff. It may look like five pages, but it is really only a one-liner.

Mr. HOGAN. Housekeeping.

Judge GREENE. I am afraid lawyers and judges find very great difficulty in writing only one line.

Mr. HOGAN. It is a housekeeping one-liner, I gather, for conformity.

FUNDING FOR COUNSEL FOR INDIGENTS

Mr. FAUNTROY. I have just one question which occurred to me earlier and I reserved it to this time and that is I am concerned about the bottom line difference in terms of appropriations that might follow from the two authorizations which are before us. Is there a difference in your judgment?

Judge REILLY. Well, I doubt if H.R. 14374 should be enacted, these two appropriation items which are about to be considered in the markup in the Appropriations Committee would be archaic. For example, in the Public Defender Service bill in H.R. 14374, since that contemplates the Public Defender Service would also represent cases prosecuted by the District Corporation Counsel, the caseload would be tremendously increased and the—

Mr. FAUNTROY. And Corporation Counsel's load would be thereby decreased, wouldn't it?

Judge REILLY. No, no.

Corporation Counsel's load would remain the same. He would continue to prosecute. But you see, the present budget estimate for the Public Defender Service is based on the premise that they will appear only in cases where the United States Attorney is the prosecutor. All private attorneys—I mean all defense attorneys now in cases brought by the Corporation Counsel's Office, and that includes juvenile cases

as well as all cases which are a serious breach of the city ordinances, if there is an indigent involved, he is defended by a private attorney, not a public attorney.

Mr. FAUNTROY. What is the extent of the public defender funds you are protecting by H.R. 14376?

Judge GREENE. Presently there are two different appropriations, one for the Criminal Justice Act appropriation which is in the nature of \$2.3 million, and there is a separate Public Defender Service appropriation which I believe is around \$1.7 million.

Now, H.R. 14374 would establish a District Defender Service which would take over all of these functions and I really do not know, I could not answer what the magnitude of the appropriation of this new service would be.

Mr. FAUNTROY. But you can tell me what the magnitude of the functions protected under H.R. 14376—

Judge GREENE. They would be the same funds that—the Public Defender would receive the same funds, I assume, that he received last year and the Criminal Justice Act appropriation which would be for the compensation of private attorney, at least our request to the Congress is \$2.3 million which is adequate to carry out that function.

Mr. FAUNTROY. Is it your view that without legislation, this legislation passed, you would not have access to the 2.3?

Judge GREENE. That is correct. It would seem to me, although I am certainly not an expert on the House rules, my understanding is that if this legislation does not pass, the appropriation request that we have made for \$2.3 million would be subject to a point of order.

Mr. FAUNTROY. Thank you.

Judge GREENE. Thank you very much, Mr. Chairman.

Mr. FAUNTROY. Thank you for your expert testimony on the bill before us.

[The judge's statement in full follows:]

STATEMENT OF CHIEF JUDGE HAROLD H. GREENE, D.C. SUPERIOR COURT

Mr. Chairman, I am very pleased to be here today to testify before the Subcommittee concerning the enactment of legislative authorization for a local Criminal Justice Act for the District of Columbia.

FUNDING FOR COUNSEL FOR INDIGENTS

As you are well aware, since 1966 the federal Criminal Justice Act has been applicable in the local courts of the District of Columbia. However, with the passage of the Court Reorganization legislation the Judicial Conference of the United States took the position that further funding for this program should come from the budget of the District of Columbia rather than from the budget of the Federal Judiciary. The City Government, on the other hand, responded that the Criminal Justice Act was, by its terms, applicable to the District of Columbia Court System and that there was no authority on which to rest a separate appropriation request for funds to compensate counsel appointed to represent indigent defendants in the District of Columbia.

As you know, Mr. Chairman, the controversy over the source of funding for our program for the compensation of counsel for indigent defendants has raged for more than two years, culminating recently in the refusal of those attorneys who have normally accepted appointments under the Criminal Justice Act to take further appointments until the funding uncertainty was resolved. During the period when the lawyers on whom we have relied in the past to represent indigent defendants were not accepting appointments the Superior Court ordered members of the Bar at large to appear at the court and represent indigent

defendants, but this system resulted in lengthy delays and seriously threatened the continuation of the court's record of expeditious handling of all cases.

H.R. 14376

There are two bills pending before the Subcommittee concerning defense services in the District of Columbia. One of these, H.R. 14376, was developed by the Joint Committee on Judicial Administration and was introduced, at our request, by Congressman Charles Diggs, the Chairman of this committee. I support the enactment of this bill. In drafting the proposed legislation the Joint Committee considered thoroughly the defense needs of the local court system of the District of Columbia and the unique status of this city with its local and national components. The Joint Committee drafted a bill which requires the development by the Committee of a plan for furnishing representation to indigents, and which assures that the cost of such representation will not exceed the cost of similar representation in the federal courts. Moreover, the total cost of compensation to private attorneys for the representation of indigents may not exceed the amount appropriated for the prosecution of such individuals. This legislation is a straightforward effort to authorize the establishment of a local Criminal Justice Act and to insure that that Act will operate with the same high standards which are in effect in the federal CJA program.

H.R. 14374

H.R. 14374, which was developed by the Executive Branch of the District of Columbia Government, is a much broader bill than that suggested by the Joint Committee on Judicial Administration. This bill would create a District of Columbia Defender Service which would incorporate the present functions of the Public Defender Service of the District of Columbia as well as having control over the operation of the plan whereby private attorneys were appointed to represent indigent defendants. The service would be governed by a seven member board of trustees appointed by the Commissioner.

Mr. Chairman, the Public Defender Service of the District of Columbia is a highly competent and professional defender organization, in my opinion one of the best such organizations in the Nation. The combination of the Public Defender Service and the Criminal Justice Act system has provided the local court system here with defense services of a high caliber, and the existence of such services is, in large part, responsible for the success our court system has enjoyed in dealing fairly and expeditiously with criminal cases while avoiding the build up of serious backlogs and delays. I by no means suggest that the system now in operation is a perfect one, there are undoubtedly many respects in which it can be improved. I do strongly suggest, however, that no wholesale revision of the present system ought be undertaken without a thorough study of the system and without thorough consideration of the effects of any proposed change. I do not believe that the suggested revision contained in H.R. 14374 has been the result of the kind of dispassionate and thoughtful study which I suggest, and on that ground alone I must oppose its enactment.

NEED FOR LEGISLATION

The immediate and pressing need is for legislation to authorize the appropriation of funds in the District of Columbia budget to compensate counsel appointed to represent indigent defendants. If that legislation is not enacted prior to the end of this fiscal year, we will again be faced with the kind of crisis situation we were in earlier this Spring when there were no funds available to pay appointed counsel. I suggest that the need to pass authorizing legislation is urgent and that such legislation should assure that the high standards of the federal Criminal Justice Act program will be continued in the local operation. There is no urgent need to restructure the Public Defender Service in this city and I believe that an attempt to hurry through legislation to change the service may well lead to problems far more serious than any which now exist. I suggest, therefore, that H.R. 14376 be enacted and that in the next year or two studies be undertaken to determine whether sweeping changes in the system of providing defense services in the District of Columbia ought be undertaken.

I will be happy to attempt to answer any questions you may have.

Mr. FAUNTROY. We call now the Corporation Counsel.

As Mr. Murphy and Mr. Robinson come forward, I want to submit now for the record a position stated by the Mayor-Commissioner on H.R. 14376. H.R. 14374 is the Commissioner's bill.

[The report on H.R. 14376 follows:]

GOVERNMENT OF THE DISTRICT OF COLUMBIA,

Washington, D.C., June 13, 1974.

HON. CHARLES C. DIGGS, JR.,
Chairman, Committee on the District of Columbia,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 14376, a bill "To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes", which may be cited as the "District of Columbia Criminal Justice Act."

H.R. 14376 would amend Title 11 of the District of Columbia Code by adding thereto a new chapter 26 entitled "Representation of Indigents in Criminal Cases". The proposed section 11-2601 of the new chapter would vest in the Joint Committee on Judicial Administration, established pursuant to section 11-1701 of the D.C. Code, total responsibility for placing in operation a plan for furnishing representation before the Superior Court of the District of Columbia and the District of Columbia Court of Appeals to persons who are financially unable to retain counsel in specified criminal cases and proceedings involving generally the potential loss of one's liberty. The plan would include counsel and investigative, expert, and other services, and would include the use of private attorneys, attorneys furnished by the existing Public Defender Service, and attorneys and students participating in clinical programs.

Under the proposed section 11-2602 of the D.C. Code, the selection of attorneys to furnish representation would be made from panels of attorneys designated or approved by the local courts. The new section 11-2604 would provide compensation to attorneys appointed under the plan at a rate fixed by the Joint Committee on Judicial Administration. The hourly rate of compensation and the maximum amount of compensation to be paid an appointed attorney would be established at a rate and in amounts not in excess of those set forth in section 3006A(d) of title 18, United States Code (Criminal Justice Act) for corresponding kinds of cases or proceedings.

The proposed section 11-2607 would authorize the Joint Committee on Judicial Administration to annually prepare and submit to the Commissioner, in accordance with existing procedures, an estimate of the amount needed to compensate private attorneys for furnishing representation in matters to which they are appointed. The proposed section 11-2608 authorizes appropriations to administer the bill and provides that disbursements to persons entitled to payments from such appropriations will be made by the executive officer of the local courts.

Section 3 of H.R. 14376 repeals section 1(c) of the Act of October 14, 1970, which made applicable in the District of Columbia the provisions of the Criminal Justice Act of 1964. Section 4 of the bill provides an effective date at the end of thirty days following its enactment.

On April 23, 1974 the District Government submitted to the Congress a proposed "District of Columbia Defender Services Act", which has been introduced in the House of Representatives as H.R. 14374. While H.R. 14374 and H.R. 14376 are similar in objective—to insure that defendants and respondents who are financially unable to obtain an adequate defense in criminal cases and proceedings before the courts of the District of Columbia are provided representation—they differ materially in the method of providing such representation. H.R. 14374 would, *inter alia*, establish a District of Columbia Defender Service to combine in a single agency, acting under an independent Board of Trustees, the existing private attorney and Public Defender Service programs; authorize representation of indigent defendants before the Federal courts of the District of Columbia on a reimbursable basis; and unify the functions of planning, selection of attorney panels, preparation of budgets, payment of compensation to private attorneys, and administration in an independent agency of the District Government.

We believe that H.R. 14374 offers the most beneficial and effective means of providing adequate legal representation for persons financially unable to retain counsel in that it would involve more continuity and less disruption in the admin-

istration of existing private and public defender service programs; permit to a greater degree the independence and objectivity of appointed counsel; and preserve the necessary authority of the Commissioner and the Council over the budgetary processes of the District of Columbia. In connection with the preparation of a budget for the plan which would be authorized under H.R. 14376, we must point out that annual estimates of the expenditures and appropriations needed to furnish representation by private attorneys would be developed by the Joint Committee on Judicial Administration in conformity with the provisions of section 11-1743 of the D.C. Code. This means that all such estimates would be forwarded to the Office of Management and Budget without revision by the District Government and would be included in the District's budget submission by the President to the Congress without revision, but subject to their respective recommendations. In providing four specific factors to be considered in developing cost estimates for furnishing representation by private attorneys, the proposed section 11-2607 of H.R. 14376 precludes inclusion of other considerations in the formulation of the budget. For instance, this section would relate the average cost-per-case experiences in all Federal courts to estimates for the local courts of the District. The formula method proposed in this section isolates the budget estimate from other program and financial considerations which the District must take into account in the preparation of an overall budget and is not desirable.

Enactment of H.R. 14376 would result in a cost to the District of Columbia of approximately \$2.3 million in fiscal year 1975.

For the reasons set forth herein and for the further reasons expressed in our letter of transmittal of April 23, 1974, the District Government recommends against the enactment of H.R. 14376 and urges in lieu thereof the favorable consideration and enactment of H.R. 14374.

Sincerely yours,

WALTER E. WASHINGTON,
Mayor-Commissioner.

**STATEMENT OF C. FRANCIS MURPHY, D.C. CORPORATION COUNSEL,
ACCOMPANIED BY WILLIAM ROBINSON, ASSISTANT CORPORATION
COUNSEL**

Mr. MURPHY. Good morning, Mr. Chairman.
I have with me Mr. Robinson of my office.

Mr. Chairman, I have prepared and presented to the committee a prepared statement and with your permission I would submit that for the record and just summarize briefly what our position is.

Mr. FAUNTROY. All right.

DISTRICT RECOMMENDS

Mr. MURPHY. We recommend the creation of an independent agency which would consolidate both Public Defender Services and private attorney services in the area of representation of indigent defendants.

We think from an organizational point of view that this is the proper approach in this area. We think from a budget point of view that the budget for both of these services, both public and private, should be generated in one agency, and we further feel that this approach is along the lines of the recommendations made by the National Advisory Committee on Criminal Justice, Standards and Goals and the standards supported by the American Bar Association.

STOP-GAP LEGISLATION

We recognize that the committee or the Congress may not wish at this time to change the existing structure as radically as we propose.

And we would suggest that if the Congress would be inclined to enact an interim or stop-gap type measure, it would enact a measure that would in effect recognize the existing plan that is in effect, authorize the funding for the District's costs which are presently not funded from—will not be funded by federal resources, and authorize the administration functions previously performed by the Administrative Office to be performed either by the Public Defender Service or by the Administrative Officer within the Superior Court system.

Also recognizing the Congress may be inclined to enact the recommendation that the Joint Committee has made, we would suggest in that respect that if the Congress is so inclined that there be a specific provision that the city Council could later, after July of—January of next year, enact a measure if it so chose which might be along the lines we suggest or if they were not inclined to do so, could leave intact the recommendations presently made by the judges. And in that respect I would suggest that if the—if that is to be the bill, that it be specifically provided that the Council could later provide a different system. Otherwise, it would necessitate action by the Congress because the Council would be without authority, to amend what would be a part of Title XI by the time January 1, 1975, rolls around. And further, we would strongly suggest that the budgeting of this program, no matter where it rests, is subject to the ordinary budget process of the District and not be considered a part of the budget of the courts. I mean not be processed in the same manner as the budget of the courts.

Mr. FAUNTROY. Thank you, Mr. Murphy. That is very clear testimony.

Let me, for purposes of emphasis, review what you have now said to us in light of the eloquence of the presentation of the Chief Judges, and the response of counsel for the Minority, that perhaps that formulation is one which is certainly to the liking of the Minority members of the Committee.

AMENDMENTS PROPOSED

You would suggest that if we are going to lean that way, we include two things: First, that a specific authorization be given the City Council to implement following the Home Rule Government the kinds of provisions suggested in H.R. 14374 and that the budget for the courts as provided under H.R. 14376 would become the rightful subject of the Mayor-City Council process and not that of an appropriations process in the Congress.

That is not really what you are saying. They could become the rightful subjects of the Mayor-City Council and not that of the Judiciary Branch.

Mr. MURPHY. Exactly.

Mr. FAUNTROY. I see. Well, you have made yourself very clear, and I am sorry the Judge stepped out for some water. I would like to get his reaction to that. In the absence of that, I will yield to counsel at this time.

Mr. LEE. Thank you, Mr. Chairman.

BOARD OF TRUSTEES

Mr. Murphy, there are a couple of questions I would like to pursue with you. What is the rationale of the City Government in suggesting

That all the trustees be appointed by the Mayor with the advice and consent of the city Council and apparently without reference to Judiciary or the Chief Judge—

Mr. MURPHY. The central thrust of our proposal is that the Defender Service be separated to the extent possible from the Judiciary and that it would be appropriate that the Mayor, with the advice and consent of the Council, would make the appointments to this particular board.

Mr. LEE. There is no reference to the Bar Association either in the appointments of these trustees. Is that—

Mr. MURPHY. No.

Mr. LEE [continuing]. Also in line with some particular formulation of thought?

Mr. MURPHY. Well, we would certainly be open to consideration of adding other organizations in there in an amendatory capacity, or whatever, but it would be a natural thing that the Mayor would consult with the local Bar Associations in this area. But as a matter of legislation, to me it would be perfectly appropriate just to lodge that power in the Mayor with the proviso that the appointment would have to be approved by the City Council.

FUNDS FOR ATTORNEYS

Mr. LEE. One other questions, Mr. Murphy. What assurance is the City Government prepared or able to provide that when the questioning comes up, when the budget crunch comes, that funds will be there to supply and pay for counsel if it is removed from the purview of the Judiciary budget? That was one of the considerations raised at great length by Judge Nibbicker on the Senate side when he testified stating the fact that this was embodied under Title XI, save the funds, protect the moneys from all those who were coming—I would like to pursue that line of thought with you. How valid is Judge Nibbicker's concern?

Mr. MURPHY. If I understand what you are saying, he would say you get some additional assurance of appropriations if you keep it within the Judicial.

Mr. LEE. You would not have additional assurances of appropriations?

Mr. MURPHY. You would have assurance that the requests were made, that that \$2.3 million were needed, would be asked for.

Mr. LEE. The city has budgeted \$2.3 million. It is in our present budget. This is the estimate of what the needs of this program will be.

Maybe I am phrasing the question incorrectly. Maybe the way I should phrase it is in terms of priorities.

Mr. LEE. Are we assured this will have a high enough priority in the city's scheme of things?

Mr. MURPHY. Oh, I am sure of that.

It is obviously something that is required by the Constitution. Once you develop a fair plan of compensation for attorneys, and obviously I believe attorneys should be compensated, as a general proposition, not from a percentage point of view, but there may well be areas that the public should not be required to pay compensation to attorneys for, that attorneys should still fill the role of free representation.

Mr. LEE. Can you list some of those?

Mr. MURPHY. I think it is some of the minor offenses. I do not see anything wrong with the plan being delimited so that there is still an

area where the Bar would be called upon to furnish free services. I think it is a question of being fair.

Mr. LEE. I have no further question at this time, Mr. Chairman.

Mr. FAUNTROY. Counsel?

Mr. HOGAN Thank you, Mr. Chairman.

RECOMMENDED LEGISLATION

If I understand you correctly, what you want to do is amend the Self-Determination Act and that you grant some additional authority to the District Council which was not contained therein in fact?

Mr. MURPHY. Well, at the present time the Home Rule legislation provides that the City Council cannot amend any provision of Title XI.

Mr. HOGAN. That is right.

Mr. MURPHY. Now, it is unclear in my mind as to what would happen to some amendment to Title XI which occurred after January 1, 1975, but I do feel that this is the type of area where you are not really talking about the Judiciary as such. We are talking about a special program.

Now, if it should be determined at this time to lodge that project in the Judiciary, I do not think the new City Council should be precluded from Examining this entire area. It may determine that the approach suggested by the judges is the appropriate method and not change anything. But I think it should be free if it should, for example, be persuaded that the approach which we recommend would be the appropriate instrument to carry out these functions, I think they should be free to do that by legislation.

I do not think it interferes with the purpose of the restriction that is in the present legislation because we are not really talking here about strictly a judiciary function. We are talking about a special function, which historically through the Federal Act has been administered by the Judiciary.

Mr. HOGAN. But what we have here seems to me to be intertwined with the Federal Court system, both the Public Defender system and the criminal justice local enactment. Some of those provisions are intimately intertwined with the operation of the U.S. Attorney's Office, the operation of the U.S. Magistrates that operate as I understand it both for the local court and the U.S. Court. And then you have the study that currently is going on on behalf of the U.S. Circuit Court that Judge Greene referred to that Judge Bazelon had ongoing as to what their recommendation would be.

Why couldn't this matter come back to the Congress as is provided in the Self-Determination Act, even though it is stop-gap legislation and it does place it under Title XI of the D.C. Code.

Would there be any problem in the District officials and the Court officials and the U.S. officials, Mr. Kirks and others coming up here to the Congress?

Mr. MURPHY. No, there would be no problem but I just suggest to the committee that it would seem to me that this is an appropriate type legislative matter which could rest with the City Council.

Mr. LEE. Would the gentleman yield for a moment?

Mr. HOGAN. Surely.

Mr. LEE. I just wonder, Mr. Hogan, whether or not in pursuing this line of questioning it might be beneficial to the committee to have some suggested language from the Corporation Counsel that we may be better able to analyze as to exactly the purview, the scope that he would want to give over to them.

Mr. HOGAN. I would certainly have no objection to that. My recollection is, however, that this was Discussed, that the District officials came up and we had a long hearing in April of 1973 about this very subject and at that time the suggestion was made by the Committee that the local legislation such as we have now before us be considered and now we are a year later and we are just, you know, in April, 1974, and we are just considering it and now it is getting into June and July again. So if there—maybe this difficulty in addressing the problem—maybe Congress is the logical one to whom it should come and if the local Mayor and the local Council want to submit their recommendations to the Congress, certainly they can do so at their leisure.

Mr. LEE. I am not sure, Mr. Hogan, you understand what I am saying.

Mr. HOGAN. I understand what you are saying but I am also suggesting that maybe in light of the history of this legislation which we are considering that there would be some problem in getting such a measure passed on the Floor no matter what kind of language you have in there, especially in view of the fact that the very legislation we are considering today apparently took in excess of a year of consideration to get up here.

Mr. LEE. Would the counsel yield further?

Mr. HOGAN. Surely.

Mr. LEE. Would there be other sections in the Code, Mr. Murphy, in which this thing could be put besides in Title XI? Maybe that is a question more appropriately addressed—

Mr. MURPHY. I think you could enact it without putting in any Title XI.

Mr. LEE. I am not so sure that would be good draftsmanship.

Mr. MURPHY. Well, not all the Code is codified.

Mr. LEE. Well—

Mr. FREEMAN. If I might add, there is also a specific provision in Section 602 of the Home Rule Act which prohibits the council in modifying the role of the U.S. Attorney, something that Mr. Lee suggested could be done. You are going to have to do it within that framework, kind of a convoluted thing to do.

Mr. HOGAN. May I just pursue one other question here?

Would you address some of the issues perhaps for the committee that are raised in H.R. 14374 by Judge Reilly in his comments, some of the problems involved in the provisions as contained in H.R. 14374? Not now, but subsequently.

Mr. MURPHY. I would be happy to.

APPROPRIATIONS

Mr. HOGAN. Secondly, I wonder if you can give us an estimate—the information I have, exact figure submitted by the Mayor—this is the justification I suspect that the budget itself went up to the committees with identical language. I know that everybody talks in terms of 2.3. The exact figure is \$2,388,445 for the Criminal Justice Act

and I gather incidentally that turning to the remark that Judge Nibbicker made on the Senate side under the provisions of the Self-Determination Act the court will be submitting its budget in a dissimilar way than that of the other Departments and agencies of the District of Columbia Government, will they not?

Mr. MURPHY. Yes. They will continue to—

Mr. HOGAN. And although the Criminal Justice moneys are now under the District of Columbia—here in the budget, they appear under the District of Columbia Courts, so that if the Court system put their budget together for the Criminal Justice Administration of funds it would appear under their particular portion of the budget which would receive a somewhat difficult review by the local government, is that not correct?

Mr. MURPHY. Yes. I mean I think it could be provided. Right now the courts are authorized to submit their budget. The Commissioner is required to transmit it as submitted to the Council. The City Government really is required to transmit it to the Congress as submitted with whatever recommendations the City Government chooses to make which is—

Mr. HOGAN. And that will continue.

Mr. MURPHY. That will continue.

Mr. HOGAN. That will continue even under the Self-Determination Act.

Mr. MURPHY. That is correct.

Mr. HOGAN. But if I understand you correctly, you would take it out of the court budget in effect on which you would have little impact in changing or altering and put it into the regular District budget.

Mr. MURPHY. It would be processed in the same manner as the regular District budget.

Mr. HOGAN. The school system, the welfare—

Mr. MURPHY. Yes. The Public Defenders Agency.

Mr. HOGAN. And what have you.

Mr. MURPHY. We think you should approach this funding with the same latitude that we have for public defender, so we have the same approach to both areas involved.

Mr. HOGAN. Now, then, the figure again I have for the—submitted for the Public Defenders Service is \$1,679,000 for the Public Defender System. Now, assuming both of those figures for the current year, under the provisions of your bill do you have any estimate that you could give the committee as to how much additional funding would be used because there is no question, I don't think, but what you would have to go with this funding now.

Mr. MURPHY. That is correct.

Mr. HOGAN. No matter whether the committee passed H.R. 14374 or not. Now, I think that we are asking is would you have to come in, then, with a supplemental?

Mr. MURPHY. As far as I understand we do not anticipate that we would.

Mr. HOGAN. In other words, even under H.R. 14374 you could operate with this same amount of money.

Mr. MURPHY. With the same funding we presently have.

Mr. HOGAN. Yet if I understand correctly, you are going to have some of this criminal justice fund going to cases that are brought in

the name of the District of Columbia as opposed to those brought in the name of the United States.

Mr. MURPHY. Let me point out that under the plan as devised by the courts, the authority contained in the legislation includes any case in which, under the Sixth Amendment, there is requirement for appointment of counsel.

Now, that is the broad authority granted, that would be granted insofar as how far you could go in compensating, where you would be authorized to compensate. It does not mean to my way of thinking that you have to go to that extreme and that you have to include every case which falls within the requirements of the Sixth Amendment appointment of counsel. The plan itself could determine that there would be an area of cases that the Bar would still be called upon to furnish free services for.

Mr. HOGAN. But if I understand correctly, under H.R. 14374 as opposed to H.R. 14376, there would be broader representation, would there not?

Mr. MURPHY. There would be authorized broader representation. I think—the authority could really be the same and I really think in our bill we should include the same type provision that is in H.R. 14376 and that is subparagraph (4) which is the general all-inclusive provision authorizing payment of compensation in any case where appointment is required by the Sixth Amendment of the Constitution, or in any case where it is otherwise required by law in effect. That is the broad parameter within which the plan can be drawn.

Mr. HOGAN. So you do not see any difference as far as the coverage and the representation clause between your bill and H.R. 14376?

Mr. MURPHY. Not as far as what is authorized.

Mr. HOGAN. Thank you.

Mr. FAUNTROY. Thank you so much, Mr. Murphy and Mr. Robinson.

Mr. MURPHY. Thank you, Mr. Chairman.

[The full statement of Mr. Murphy follows:]

STATEMENT OF C. FRANCIS MURPHY, D.C. CORPORATION COUNSEL

Mr. Chairman and members of the committee, I appreciate this opportunity to appear to present the views of the District of Columbia Government on H.R. 14376 and H.R. 14374.

H.R. 14374

As you are aware, the District Government's legislative proposal, which has been introduced as H.R. 14374, would establish a D.C. Defender Service to provide representation in the courts of the District of Columbia for persons who are financially unable to retain counsel. The Mayor's letter of transmittal to the Speaker of the House, dated April 23, 1974, discussed in detail our reasons for submitting this proposal and I would like to make that letter a part of the record of this hearing.

I need only point out now that legislation is urgently needed. On July 1, 1974 it will be the responsibility of the District of Columbia Government to provide the funds for the payment of the attorneys who now receive compensation under the Criminal Justice Act of 1964, as amended. Also on July 1, 1974 the District of Columbia will need to have a substantive law in order to authorize appropriations for the payment to attorneys since payments will no longer be available to attorneys under Section 3006A of Title 18 United States Code.

The District Government's proposal, H.R. 14374, would combine in a single agency under an independent Board of Trustees, the private attorneys and the Public Defender Service attorneys programs. It is our view that this proposal

offers the most beneficial and effective means to insure that defendants and respondents in the District of Columbia obtain adequate representation. In important respects our proposal is in accord with the standards of the National Advisory Commission on Criminal Justice Standards and Goals and the Standards supported by the American Bar Association. For the use of the Committee, I will submit a copy of these standards.

H.R. 14376

We have carefully examined the other proposal, H.R. 14376 which is before this Committee. In our opinion, for the reasons outlined in the Mayor's letter of April 23, 1974, our proposal has several significant advantages over H.R. 14376. Briefly stated we would point out that H.R. 14376 would place total responsibility for establishing a plan for providing representation in the D.C. Court of Appeals and the D.C. Superior Court in the Joint Committee on Judicial Administration established by Section 11-1701 of the D.C. Code. This is not in accord with the principles on which our proposal is based and is at odds with the professional standards I have just referred to. H.R. 14376 would establish a plan for the two local courts only. Our proposal would authorize representation on a reimburseable basis in Federal courts. It would thereby allow flexibility to adopt whatever arrangement is ultimately deemed desirable by the judiciary, the bar, and the local government.

H.R. 14376 would vest all planning, appointment of attorney panels, budget preparation, and administration with the Joint Committee on Judicial Administration. Our proposal would lodge these functions in an agency which is independent of the courts. Furthermore, H.R. 14376 refers to the existing Public Defender Service only in that the use of its resources would be integrated into the plan with other classes of counsel (private attorneys and qualified students). Our proposal would place all attorneys under one head: the Board of Trustees of the Defender Service.

PUBLIC DEFENDER SERVICE

The contrasts between these two proposals presents the question of whether or not it is preferable to lodge overall responsibility for managing indigent representation services with a single agency, or to perpetuate a more fragmented approach which would find the courts in charge of private assigned counsel and students, but also require the courts to coordinate these legal services with those of the Public Defender Service, which would be duplicatively required by D.C. Code Section 2-2272(b) to "establish and coordinate the operation of an effective . . . system for appointment of private attorneys. . . ."

It is apparent that in the District Government's proposal the creation of a unified indigent representation program no major changes are proposed in the existing Public Defender Service. This agency has worked well; it is governed by an independent board; its budget is subject to the regular review process which applies to all D.C. agencies and departments. Included among the benefits to be realized by enactment of our proposal are: (1) there would no longer be a legal distinction between types of cases which could be handled by the Public Defender Service and private assigned counsel; (2) the plan for indigent representation would automatically include the D.C. Public Defender Service rather than having to accommodate a separate Public Defender Service operation; and (3) although appointment of counsel would remain with the judges, establishment of the attorney panels and compensation of private attorneys would be done by the Defender Service.

RECOMMENDATION

We recognize that the Congress may desire to defer taking definitive action on the city's defender service programs and enact an interim measure until the D.C. City Council can act.

If the Congress is so disposed, then we recommend that this be accomplished by continuing the present plan for representation in D.C. courts and including in any interim measure provisions for the necessary administrative functions to be performed by the Public Defender Service. We believe there are several important advantages to this approach as an interim approach.

First, the D.C. Public Defender Service presently performs a number of administrative services with respect to the private attorneys who are appointed to represent clients in the D.C. courts and the Public Defender Service would continue to do so during the interim period. This would involve less of a disruption in the current defender service programs than enactment of H.R. 14376.

Second, it would also allow completion of various studies which are underway before any major changes are made in the current defender service programs.

Third, it would preserve the necessary and essential budget authority of the Mayor and City Council.

Finally, it would allow the transition from the system which ends on June 30th, 1974 to a new defender service program enacted by the City Council to be relatively smooth since there would be only one change: a change from the present-and-interim process to whatever the City Council enacts.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
Washington, D.C., June 13, 1974.

HON. CHARLES C. DIGGS, JR.,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 14376, a bill "To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes", which may be cited as the "District of Columbia Criminal Justice Act."

H.R. 14376 would amend Title 11 of the District of Columbia Code by adding thereto a new chapter 26 entitled "Representation of Indigents in Criminal Cases". The proposed section 11-2601 of the new chapter would vest in the Joint Committee on Judicial Administration, established pursuant to section 11-1701 of the D.C. Code, total responsibility for placing in operation a plan for furnishing representation before the Superior Court of the District of Columbia and the District of Columbia Court of Appeals to persons who are financially unable to retain counsel in specified criminal cases and proceedings involving generally the potential loss of one's liberty. The plan would include counsel and investigative, expert, and other services, and would include the use of private attorneys, attorneys furnished by the existing Public Defender Service, and attorneys and students participating in clinical programs.

Under the proposed section 11-2602 of the D.C. Code, the selection of attorneys to furnish representation would be made from panels of attorneys designated or approved by the local courts. The new section 11-2604 would provide compensation to attorneys appointed under the plan at a rate fixed by the Joint Committee on Judicial Administration. The hourly rate of compensation and the maximum amount of compensation to be paid an appointed attorney would be established at a rate and in amounts not in excess of those set forth in section 3006A (d) of title 18, United States Code (Criminal Justice Act) for corresponding kinds of cases or proceedings.

The proposed section 11-2607 would authorize the joint Committee on Judicial Administration to annually prepare and submit to the Commissioner, in accordance with existing procedures, an estimate of the amount needed to compensate private attorneys for furnishing representation in matters to which they are appointed. The proposed section 11-2608 authorizes appropriations to administer the bill and provides that disbursements to persons entitled to payments from such appropriations will be made by the executive officer of the local courts.

Section 3 of H.R. 14376 repeals section 1(c) of the Act of October 14, 1970, which made applicable in the District of Columbia the provisions of the Criminal Justice Act of 1964. Section 4 of the bill provides an effective date at the end of thirty days following its enactment.

On April 23, 1974 the District Government submitted to the Congress a proposed "District of Columbia Defender Services Act", which has been introduced in the House of Representatives as H.R. 14374. While H.R. 14374 and H.R. 14376 are similar in objective—to insure that defendants and respondents who are financially unable to obtain an adequate defense in criminal cases and proceedings before the courts of the District of Columbia are provided representation—they differ materially in the method of providing such representation. H.R. 14374 would, *inter alia*, establish a District of Columbia Defender Service to combine in a single agency, acting under an independent Board of Trustees, the existing private attorney and Public Defender Service programs; authorize representation of indigent defendants before the Federal courts of the District of Columbia on a reimbursable basis; and unify the functions of planning, selection of attorney panels, preparation of budgets, payment of compensation to private attorneys, and administration in an independent agency of the District Government.

We believe that H.R. 14374 offers the most beneficial and effective means of providing adequate legal representation for persons financially unable to retain counsel in that it would involve more continuity and less disruption in the administration of existing private and public defender service programs; permit to a greater degree the independence and objectivity of appointed counsel; and preserve the necessary authority of the Commissioner and the Council over the budgetary processes of the District of Columbia. In connection with the preparation of a budget for the plan which would be authorized under H.R. 14376, we must point out that annual estimates of the expenditures and appropriations needed to furnish representation by private attorneys would be developed by the Joint Committee on Judicial Administration in conformity with the provisions of section 11-1743 of the D.C. Code. This means that all such estimates would be forwarded to the Office of Management and Budget without revision by the District Government and would be included in the District's budget submission by the President to the Congress without revision, but subject to their respective recommendations. In providing four specific factors to be considered in developing cost estimates for furnishing representation by private attorneys, the proposed section 11-2607 of H.R. 14376 precludes inclusion of other considerations in the formulation of the budget. For instance, this section would relate the average cost-per-case experiences in all Federal courts to estimates for the local courts of the District. The formula method proposed in this section isolates the budget estimate from other program and financial considerations which the District must take into account in the preparation of an overall budget and is not desirable.

Enactment of H.R. 14376 would result in a cost to the District of Columbia of approximately \$2.3 million in fiscal year 1975.

For the reasons set forth herein and for the further reasons expressed in our letter of transmittal of April 23, 1974, the District Government recommends against the enactment of H.R. 14376 and urges in lieu thereof the favorable consideration and enactment of H.R. 14374.

Sincerely yours,

WALTER E. WASHINGTON,
Mayor-Commissioner.

Mr. FAUNTROY. Our next witness is Mr. Norman Lefstein, Director, Public Defender Service, and he comes accompanied by Mr. J. Patrick Hickey, Deputy Director, and Mr. James Brown, Director of the Criminal Justice Act Program.

Welcome, gentlemen, to our subcommittee hearings.

STATEMENT OF NORMAN LEFSTEIN, DIRECTOR, FOR SAMUEL DASH, CHAIRMAN, BOARD OF TRUSTEES, PUBLIC DEFENDER SERVICE, ACCOMPANIED BY J. PATRICK HICKEY, DEPUTY DIRECTOR, AND JAMES BROWN, DIRECTOR OF THE CRIMINAL JUSTICE ACT PROGRAM

Mr. LEFSTEIN. Thank you very much, Mr. Chairman.

First, Mr. Chairman, I would like to state on behalf of Samuel Dash, the Chairman of the Agency's Board of Trustees, that he has asked me to express his regrets that he is unable to be here this morning. I do, however, have a prepared statement of Mr. Dash which I would like to have submitted to the committee and with your permission insert it in the record.

Mr. FAUNTROY. Without objection, so ordered.

[The statement of Mr. Dash follows:]

STATEMENT OF SAMUEL DASH, CHAIRMAN, BOARD OF TRUSTEES, PUBLIC DEFENDER SERVICE

Mr. DASH. Mr. Chairman, I am extremely pleased to be before the House Judiciary Subcommittee today on behalf of the Board of Trustees of the Public

Defender Service. The subject before your Subcommittee, namely, the manner in which defense services should be provided for persons unable to afford counsel, is of extreme importance to this city and to the administration of criminal justice. During the last several months the Board of Trustees of the Public Defender Service has spent many hours debating the significant issues presented by H.R. 14374 and H.R. 14376, and I welcome the opportunity of summarizing our views for your Subcommittee.

The two bills under consideration, which during this discussion I shall refer to as the City Government's bill (H.R. 14374) and the D.C. Courts' bill (H.R. 14376), contain two totally different approaches to the delivery of defender services. H.R. 14376 the D.C. Courts' bill limits its scope to the area of representation provided by private attorneys, appointed by the courts and compensated from government funds. It does not deal with nor affect the provision of defense services by staff employees employed by the Public Defender Service, an independent agency of the District of Columbia Government. Under the Courts' bill, a system for providing payments to private counsel is established which makes the approval and amount of each payment subject to the direct control of the judges before whom these attorneys appear. Because of this structure, which in our view affords substantial opportunity for judicial interference with the attorney-client relationship, we are opposed to the enactment of H.R. 14376 as presently drafted.

H.R. 14374

The D.C. Government's bill, on the other hand, would establish a new agency named the District of Columbia Defender Service to supervise the furnishing of *all* defense services in indigent cases. Governed by an independent board of private trustees, this agency would carry on the principle of independent defenders now incorporated in the existing Public Defender Service statute, and would extend and enhance the independence of private appointed attorneys by placing review of their fees and services in this new agency, rather than in the courts. Because we believe defense services for all citizens should be provided by attorneys who are free of the threat of judicial domination, we endorse the basic approach of the D.C. Government's bill, and have some suggested modifications aimed at strengthening its protection of this vital principle.

Our view that the independence of defense services is so fundamental that it may properly be the benchmark against which proposed legislation in this area should be measured is supported by numerous reports dealing with the administration of criminal justice. Last year, for example, the National Advisory Commission on Criminal Justice Standards and Goals forcefully adopted the proposition that public defender offices should be independent of judicial supervision and control:

"A public defender under the policy control and supervision of judges may experience unwarranted judicial interference in the defense of criminal cases. Those aware of the problems faced by defender offices are strong in their opposition to any substantial degree of judicial control of administration or supervision. The realities of criminal practice are such that the adversary system in this arena is not a two-way but a three-way encounter. The mediator between two adversaries cannot be permitted to make policy for one of the adversaries." (Citations omitted) *Report on Courts*, page 271, National Advisory Commission on Criminal Justice Standards and Goals (1973).

PUBLIC DEFENDER SERVICE

Similarly, the American Bar Association's Criminal Justice Standards Relating to Providing Defense Services, which were recommended to the ABA by a committee chaired by Chief Justice Burger, endorsed the concept of public defender programs having totally independent governing boards, so that defense attorneys will in no way subject to "the control of those . . . before whom they must appear in the representation of defendants. . . ." *Standards Relating to Providing Defense Services*, pages 21-2 (Approved Draft, 1967). While both these reports deal with services provided by public defender attorneys, they are equally applicable to private counsel compensated with government funds. The National Legal Aid and Defender Association's *Proposed Standards for Defender Services*, § 3.1 (First Discussion Draft, 1973), provides:

"However attorneys are selected to represent non-fee paying clients, they shall be as independent as any other private counsel who undertakes the defense of a fee paying criminally accused person. To accomplish this end, the assigned

counsel, whether public defender or private assigned counsel, should not be selected by the judiciary or an elected official, nor should he be an elected official."

The Standards further recommend in § 3.4 that "the relationship of the public defender to the court structure should be characterized by the same mutual independence which usually characterizes (or ought to characterize) that relationship as exists with respect to the private bar and the court structure."

AMENDMENTS PROPOSED

When measured against the paramount need for the independence of counsel, we think there is room for improvement in the D.C. Government's bill. Section 3(a) of the bill provides that the board of trustees of the District of Columbia Defender Service shall be selected by the Mayor, with the advice and consent of the District of Columbia Council. Although this formula removes the judiciary from its dominant role in the selection of the board of trustees, it substitutes instead the risk of executive control which we view as equally inappropriate. The executive branch is charged with the enforcement of our criminal laws and the apprehension and prosecution of those charged with violations of those laws. History and common sense make obvious the conflicts of interest which would exist were it also given control over attorneys charged with the defense of accused persons. We suggest, therefore, that the authority to select the board of trustees should be diffused among the several obvious groups who have an intimate interest in and responsibility for the administration of the criminal justice system—the judiciary, the District of Columbia Bar, the executive branch and the City Council. Specifically, we recommend that appointments to the board be made by the Chief Judges of the District of Columbia Courts, the Chief Judges of the Federal Courts, the Mayor of the District of Columbia, the Chairman of the District of Columbia Council, and the President of the District of Columbia Bar, plus three other Bar members elected by the Bar's Board of Governors. This selection method, in our judgment, would tend to assure a board of trustees which would be widely representative of attorneys practicing law in the District of Columbia. Moreover, since the trustees would be selected by a group of individuals representing differing interests in both the public and private sectors, we think it unlikely that the trustees would feel any allegiance except to the administration of justice, to the Defender Service and to the citizens it represents.

We also suggest that the size of the board of trustees be increased from seven to eleven persons. Our experience over the past several years suggests that this slight increase in size would be desirable, since it would both broaden the representative makeup of the board and would provide more assistance to discharge the additional responsibilities imposed on the Defender Service by the D.C. Government's bill.

Our final suggestion concerning the composition of the board of trustees is that your Subcommittee retain the language in § 2-2223 of the current Public Defender Service statute, which provides that "judges of the United States Courts in the District of Columbia and of District of Columbia Courts may not be appointed to serve as members of the board of trustees." The foregoing discussion concerning independence highlights the need for such an express prohibition.

BUDGETARY INDEPENDENCE

The only other significant change that we would urge in the D.C. Government's bill relates to securing a measure of budgetary independence for the Defender Service. As presently drafted, the annual budget of the Defender Service would be prepared by the board of trustees and submitted to the D.C. Government for approval. We would suggest, however, that the rationale which justifies independence for the daily activities of the defender agency also should dictate budgetary independence comparable to that accorded the judiciary. The District of Columbia Courts, as provided in the District of Columbia Court Reform Act of 1970, are granted the authority to have their annual budget submitted to the Congress without revision by either the District of Columbia Government or the Office of Management and Budget, though each may comment on the proposal. This provision relating to budgetary independence was retained by the Congress in the recently enacted District of Columbia Self-Government and Government Reorganization Act. Lodging control over budget requests for defense services in the executive branch gives ample opportunity for operational control as well. Complaints by prosecutors or police, both arms of the executive, about defender

effectiveness might result in budget cutting of significant program requests. In the always difficult assignment of priorities and allocation of insufficient funds, it blinks reality to suggest that the executive branch would favor an independent and necessarily adversarial agency over its own programs and offices.

RECOMMENDATIONS

In summary, therefore, the Public Defender Service believes that the independence of defense services, including budgetary independence, is an essential element of any legislation in this area. We cannot support the Courts' bill because of this, nor can we endorse the provisions of §§ 3(a) and 13(a) of the City Government's bill. However, with the modifications we have suggested relating to the independence of the board of trustees and its budget requests, we believe the City Government's bill to be a wise and prudent approach to the issue of defense services. The remaining sections of the City Government's bill, adopting many important provisions of the current Public Defender Service statute, embody sound principles for effective legal representation, and while I do not propose to discuss them individually, I would be happy to respond to any particular questions which the Subcommittee may have. I might also add that the Board of Trustees, as well as the Director and Deputy Director of the Service, are available at any time to respond to questions which may occur, and to assist your Subcommittee's staff in any way you think desirable.

Mr. LEFSTEIN. I will make copies of it available at the conclusion of my testimony if that is all right.

Mr. FAUNTROY. Thank you.

Mr. LEFSTEIN. At this time, if you wish, I would like to briefly summarize Mr. Dash's statement and in doing so, quote very briefly from that statement because I think it will illuminate the major thrust of the position of the Board of Trustees of the Public Defender Service.

RECOMMENDS H.R. 14374

Basically, the Public Defender Service endorses the city government's bill although we believe several modifications are absolutely essential. And I refer, of course, to H.R. 14374.

We start with the proposition that defense services should be provided by attorneys who are as independent as possible from both Judicial and Executive Branches of government and we believe that principle applies or should apply regardless of whether public defenders are involved or whether private counsel are involved.

PUBLIC DEFENDERS

To quote to you from a passage which is in the report on the courts of the National Advisory Commission on Criminal Justice, Standards and Goals which was a commission, as you will recall, which was set up under the auspices of the Law Enforcement Assistance Administration, there speaking about public defenders, the National Advisory Commission wrote:

A public defender under the policy control and supervision of judges may experience unwarranted judicial interference in the defense of criminal cases. Those aware of the problems faced by defender offices are strong in their opposition to any substantial degree of judicial control of administration or supervision. The realities of criminal practice are such that the adversary system in this arena is not a two-way but a three-way encounter. The mediator between two adversaries cannot be permitted to make policy for one of the adversaries.

BOARD OF TRUSTEES

When measured against the need for independence of counsel, the Board of Trustees believes that there is room for improvement in the D.C. Government's bill.

According to the D.C. Government's bill, all members of the Board of Trustees of the newly created District of Columbia Defenders Service would be chosen by the city's Mayor with the consent and advice of the City Council. Mr. Dash's statement speaks directly to this situation and he states as follows:

Although this formula removes the judiciary from its dominant role in the selection of the board of trustees, it substitutes instead the risk of executive control which we view as equally inappropriate. The executive branch is charged with the enforcement of our criminal laws and the apprehension and prosecution of those charged with violations of those laws.

History and common sense make obvious the conflicts of interest which would exist were it also given control over attorneys charged with the defense of accused persons. We suggest, therefore, that the authority to select the board of trustees should be diffused among the several obvious groups who have an intimate interest in and responsibility for the administration of the criminal justice system—the judiciary, the District of Columbia Bar, the executive branch and the City Council.

The statement then goes on and indicates specifically those persons which the the Public Defender Service would be most suited to make the actual selection of members of the Board of Trustees.

Mr. Dash concludes in his statement as follows:

This selection method, in our judgment, would tend to assure a board of trustees which would be widely representative of attorneys practicing law in the District. Moreover, since the trustees would be selected by a group of individuals representing differing interests in both the public and private sectors, we think it unlikely that the trustees would feel any allegiance except to the administration of justice, to the Defender Service and to the citizens it represents.

Mr. Dash's statement goes on to recommend that Section 2-2223 of the current Public Defender Service statute be retained. That provision states that judges of the D.C. courts and the Federal courts are not eligible to serve on the Board of Trustees of the Public Defender Service. The reason why we suggest judges ought not to serve on the Board of Trustees is obvious and we are concerned that the D.C.'s government bill by not including the section which is now in the Public Defender Service statute may by implication suggest that Congress intended to allow judges to sit on the Board of Trustees.

The statement also proceeds to comment that the Board of Trustees of the Agency thinks that under the District Government's bill the size of the Board should be increased from 7 to 11 persons. The reasons for this are that this is going to be an agency with broader responsibilities and new duties and there is a concern that 7 members may just be too small.

The statement also urges that a greater measure of budgetary independence for the Defender Service be authorized by the statute. The

suggestion is made that the annual budget requests of the Defender Service should be transmitted to the Congress in the same manner that the Judiciary's budget is handled. In other words, we think the budget of the Defender Service should be transmitted to the Congress without revision either by the D.C. Government or by the Office of Management and Budget.

Mr. Dash explains in his statement the reasons for this position.

Lodging control over budget requests for defense services in the executive branch gives ample opportunity for operational control as well. Complaints by prosecutors or police, both arms of the executive, about defender effectiveness might result in budget cutting of significant program requests. In the always difficult assignment of priorities and allocation of insufficient funds, it blinks reality to suggest that the executive branch would favor an independent and necessarily adversarial agency over its own programs and offices.

This concludes my summary of Mr. Dash's and I am pleased to answer any questions which the committee might have.

Before doing so, however, I would, with your permission, like to comment on several matters which have been discussed by prior witnesses.

AGENCY JURISDICTION

Mr. Kirks in his testimony made the suggestion that the jurisdiction of the current Public Defender Service should be restricted to the local courts. The City Government's bill in Section 4(b) would authorize the new District of Columbia Defender Service to continue to provide representation in the Federal Courts so long as necessary funds were made available through the Federal courts and the Administrative Office of the United States Courts.

We believe that the Public Defender Service today or the Public Defender Service as reconstituted as the District of Columbia Defender Service should continue to have the authorization to provide representation in the federal courts. We would point out that when there were amendments passed to the Criminal Justice Act several years ago, the issue of whether or not to authorize the creation of a federal public defender in the District of Columbia was debated at that time. Congressman Poff, former Congressman Poff, at that time commented directly on the issue and what he said, if I can locate his statement, was the following:

Since Congress had taken the time to specifically design a public defender system for the District of Columbia, similar provisions contained in the Criminal Justice Act amendments would merely be an overlap and duplication of effort and an unnecessary expense.

Mr. Kirks is correct when he indicates that the Public Defender Service at the present time does not provide a great deal of representation in the federal courts and this, of course, is attributable to the fact that we do not have sufficient staff to man the federal courts extensively. However, the need which is pointed up is to have the funds made available through federal appropriations and through the Administrative Office of the United States Courts. Mr. Kirks noted in his testimony that there is a geographical concentration in referring to the District of Columbia and we believe it would be unnecessary and

duplicative to have a separate agency although we would not in any way object to having the funds in order to do more in the way of representation in the federal courts.

FEDERAL PUBLIC DEFENDER

We are concerned, moreover, that the language of the Court's bill, which is H.R. 14376, would authorize the establishment of a Federal Public Defender because that bill suggests that Subsection (1) of the current Criminal Justice Act would be deleted and while that might be necessary for the enactment of H.R. 14376 to the extent that private counsel would be compensated by District of Columbia moneys, the effect of it would also be to make applicable Subsection (h) of the Criminal Justice Act which authorizes the federal courts in the District of Columbia as well as everywhere else to set up a local public defender.

Consequently, we would commend to this subcommittee's attention the language of Section 16(a) of H.R. 14374, which is the City Government's bill, which, while deleting the applicability of the Criminal Justice Act to the local courts, nevertheless retains the prohibition against the federal courts setting up a local federal public defender in the city of Washington.

I further wanted to comment on a statement by Mr. Kirks about the need of an agency head of the District of Columbia Defender Service to hire and dismiss personnel, and it is my judgment that under the current Public Defender Service statute and under Section 11(a) of the proposed bill of the city government, the head of that agency would have the kind of broad responsibilities to which Mr. Kirks referred and which I would agree are necessary and vital to the efficient administration of such an organization.

ATTORNEY COMPENSATION

Finally, I would comment on the language in the bill proposed by the courts, H.R. 14376, where in Section 4(a)(1) there is a reference to the requirement that representation will be compensated when provided for misdemeanor, felony and petty offenses cases for which a jury trial is authorized by law. The phrase "for which a jury trial is authorized" it seems to me limits the situations where representation would be compensated and ought to be deleted because there are certainly some petty offense cases where compensation is now authorized by law but for which no jury trial is required or is allowed by law.

That really concludes my remarks on Mr. Dash's bill and comments on statements made by earlier speakers and I would be happy to answer any questions you may have.

Mr. FAUNTROY. Thank you so much for your very clear exposition of the thoughts of Mr. Dash on the measures before us and for your additional comments on questions and points raised by other witnesses here today. I have simply two questions. The first is that in light of what you have heard from other witnesses as to the controversial natures of some of the provisions of H.R. 14394, what as a bare minimum of the so-called controversial issues would you like to see us include in the bill which we pass and send to the Floor for consideration?

AMENDMENTS TO H.R. 14374

Mr. LEFSTEIN. Insofar as H.R. 14374 is concerned, we believe that there are only two fundamental problems with that bill and they relate (1) to the method by which the Board of Trustees is selected, which I have already referred to, and (2) to the necessity to establish budgetary independence for the Defender Service which is the second issue to which I referred.

Save for those two problems with that bill, we would be satisfied to see it enacted at this time.

Mr. FAUNTROY. Maybe I had better phrase the question slightly differently.

Should we agree to H.R. 14376, what would have to be added from H.R. 14374 to satisfy you as making it an adequate bill?

Mr. LEFSTEIN. That impresses me as a difficult question because they are so fundamentally different in their approach to providing defender services and I am not sure that there are really provisions from the city government's bill which could be added effectively to the bill submitted by the courts, and I am not sure I am answering your question but I do not really think I know how to proceed.

Mr. FAUNTROY. May I put it this way: We will try it another way. What credence do you give to the assertion here by many that the provisions contained in H.R. 14374 are so controversial as to encumber the prospect of passing legislation through this Congress in the time remaining.

Mr. LEFSTEIN. I am not altogether certain that they are all that controversial.

Mr. FAUNTROY. For example, Judge Greene suggested that the question of a separate Public Defender Service, the question of the appointment of trustees, the question of control of the budget raised in H.R. 14374 are of sufficient controversial natures that we might impair the whole process, the legislative process, and deny ourselves access to the \$2.3 million and for that matter your 1.6 or 1.7.

Mr. LEFSTEIN. Well, I assume that—well, let me answer it this way. I think that we recognize the need for prompt legislation in this area and the difficulties which are presented if there is not prompt legislation. As far as the controversial aspects of that bill are concerned, they are going to be controversial. If they are now, they are going to be controversial a year from now or whatever time they may be taken up, and it was our judgment that it would be as well to act now on legislation of this kind as it would be to defer the issue until a later date.

BUDGET CONTROL

Mr. FAUNTROY. I see. All right. I just had one final question and that is on your question of budgetary independence, independence in terms of administrative supervision and policy control, how is your budget now submitted? Is it through the Judiciary or through the City Council process?

Mr. LEFSTEIN. Our budget is given—is prepared in consultation with the Mayor's office. It is handled, I think, like the vast majority of other city Government agencies and the budget then goes to the City Council as part of the overall budget of the Executive Department and then subsequently transmitted to Congress.

Obviously the Mayor's office can reduce our budget in the same way that they can reduce or raise other city government agencies.

Mr. FAUNTROY. So that you really similarly argue that you be given the status that the courts are with respect to direct submission of the budgetary forces.

Mr. LEFSTEIN. That is correct, and I think I am saying by implication that we do not like the language in the provision—in our current statute insofar as it does not really address the issue of budgetary independence, but we think it is of even more critical importance if you were going to establish this new independent agency which would have broader responsibilities and broader—a broader budget not only to cover its own staff but assign counsel to others.

Mr. FAUNTROY. Thank you.

Counsel?

Mr. LEE. Thank you, Mr. Chairman.

Mr. Murphy, in responding to a comparable question which I posed to him, suggested that funds would be there. What credence do you give the City Government's statements to that effect?

Mr. LEFSTEIN. The funds would be sufficient under the D.C. Government bill if you combined the Public Defender Service appropriation now before the Appropriation Committees and—

Mr. LEE. The question I had posed to him was precisely the issue you had raised, because it was raised on the Senate side by Judge Nibbicker.

Mr. LEFSTEIN. Oh, yes.

Mr. LEE. I am wondering what credence you give his statements that given the Sixth Amendment requirements, the creation of plans, that the funds would be made available under the city government's budget, that the priority would be sufficiently high to assure that adequate funds would be there.

Implied in your statement is that you do not trust the City Government's ability to do this and I am a little concerned about that.

Mr. LEFSTEIN. Well, I do not know that I would characterize it as a measure of trust but I do think it is implicit in our statement that we do not have the confidence that when difficult priorities must be made between a number of significant competing interests, some of which or all of which virtually are really the responsibility of the Executive Branch of Government and Defender Service is really unique, they really are not parts of the Executive or Judicial Branch of the Government. Obviously it is not a legislative function. It is really quite unique and we are concerned that in the long run if not in the short run there will be occasions when the City Government might wish to make a decision not to allow the necessary appropriation as seen by the Defender Service to go to the Congress before an Appropriation Committee.

Mr. LEE. How many other states or jurisdictions follow the kind of budgetary process you would have us follow here? What do they do elsewhere? I assume they have got the same problem.

Mr. LEFSTEIN. Well, the District of Columbia is never quite analogous to anyone else. I take it that what would happen in another jurisdiction would be that you would not have a city government in between another legislative branch so that if we were the Same Public Defender's Office transplanted to some other city and we had a private Board

of Trustees, presumably the staff together with the Board of Trustees would formulate a budget request and then would transmit it to the Legislative Branch of Government and it would make its decision. But if you are asking specifically for other jurisdictions and what their statutes say, I really cannot answer that question because I honestly do not know.

I would be prepared to say, however, that even if none of them had a system of the kind that we are proposing, we nevertheless would feel that as a matter of principle and sound policy and judgment that what we are proposing nevertheless ought to be what this committee should approve.

Mr. LEE. Have you had any experiences with the City Government in your prior—that would indicate that your budget would need this kind of, I don't want to use the word "protection" but I cannot think of another term right now.

Mr. LEFSTEIN. Well, let me—

Mr. LEE. Have you had your budget substantially cut in the past by the city government?

Mr. LEFSTEIN. We have experienced times in the past where the wishes of the Public Defender's Office have not been fully approved by the Executive Department of the City Government.

Mr. LEE. Disapprovals substantial to the effect they impaired your ability to render the kind of service you are charged to render under the Title II.

Mr. LEFSTEIN. Well, no. I certainly would not cast it in those terms. And I think in many instances the City Government has been supportive of us, but it is also fair to say that as we have seen our needs and our requests for the future that we have not been altogether satisfied. I would point out, moreover, that the Public Defender Service was created by statute in 1970 with an authorization to provide up to 60 percent of the representation. Since '70 the staff of the Public Defender Service has not grown at all. In some instances we have had approval from the City Government to go to the Congress with a request for an increased appropriation and it has not been approved in the Congress at the appropriation level. There have been other instances where we have requested the City Government to transmit to the Congress appropriation requests for an increase which they have felt that they could not transmit for us.

Mr. LEE. I have no further questions at this time, Mr. Chairman.

Mr. FAUNTROY. Counsel?

Mr. HOGAN. Thank you.

You indicate you have a statement, Mr. Lefstein, that you are going to submit?

Mr. LEFSTEIN. I will transmit it. I am sorry that we were unable to get it to you prior to this morning.

Mr. HOGAN. I assume this is the Board's statement, represents the views of the Board of Trustees?

Mr. LEFSTEIN. It does.

BUDGET CONTROL

Mr. HOGAN. Now, it does seem to me from your testimony that the Public Defender Agency wants the best of all worlds. They want to continue the control over the federal Public Defender Service; they

want to get their independence in effect; they trust the Mayor to appoint the Board of Trustees but they do not trust the Mayor to handle their budget objectively. They want Congress to review that independently.

The Bail Agency appears right next to the Public Defender System. Is there any reason why the Bail Agency should come directly to Congress and be independent of review for the same reasons the Public Defender system is?

Mr. LEFSTEIN. I think the Bail Agency really occupies a somewhat different position than the Defender.

Mr. HOGAN. Well, if the word gets out to the U.S. Attorney or to the Department of Justice they will probably want to have their budgets come up directly to Congress without going through the Office of Management and Budget.

It is somewhat a similar situation.

Mr. LEE. It might be a good idea.

Mr. LEFSTEIN. The comment I would make to that, and I do not want to belabor this, is that I think the criminal defense function is unique in the sense that it really requires independence and what we are really searching for in this discussion is a way of making certain that with public funds you nevertheless can guarantee independence, and I would submit to you or commend to you really the American Bar Association's discussion of this subject of independence for defender services, both public and assigned counsel, which appears in one of their 16 volumes on providing defense services, and there is considerable discussion of the need for independence and the notion of a Board of Trustees is put forth and I think the Bail Agency Probation Department, and others, are more an arm of the Court or of the Executive in the way defense services are really not. Defense service is a way of trying to comply with the constitutional requirements. There is the attorney-client relationship which requires some confidentiality. I think it is really different than many of the other programs that come within the Executive Department of Government. Certainly the prosecution function which is a clear responsibility of an executive.

Mr. LEE. Well, the court will submit their budget direct and yet you do not want to be involved with the court system as far as your budget is concerned either, do you? You want it independent of the court system.

Mr. LEFSTEIN. That is correct.

BOARD OF TRUSTEES

Mr. LEE. How about the appointment of the trustees, Board of Trustees, that are appointed by the Mayor. Do you want any restriction in there that they can only be residents of the District of Columbia or do you want that broadened so that they can come from outside the District?

Mr. LEFSTEIN. We really have not addressed that issue. The Board of Trustees to my knowledge has never discussed that issue. I do not want, however, to leave the impression that we are satisfied with the City Government suggestion that the Mayor should be the sole person making appointments.

Mr. Dash's statement makes clear that we think the appointment

responsibility should be diffused among several different groups, including the Executive, City Council, the judges and the Bar. We think that in that way since all of these persons have an interest and responsibility to the administration of the criminal justice system that in that way you would be likely to have a Board representative of the Bar and of the community without the Board having allegiance to any particular group, a board which is likely to be independent which is the way we feel it ought to be.

Mr. LEE. Well, is there any reason why you cannot come up to Congress when it would consider legislation in the 94th Congress and resolve some of these issues rather than jeopardize the appropriation which could well come out in the very near future? What Judge Reilly raises is a real possibility of someone raising a point of order that there is no authorization for the \$2.3 million in funds for the—for the Criminal Justice Act for next year now. You cannot handle—with your \$1.6 million that are approved in here, you certainly cannot handle it. I assume that your Board of Directors would not want to jeopardize the entire problem that is involved here by pressing their views as to their particular wishes at this particular time.

Mr. LEFSTEIN. Well, I think that is correct in the sense that we certainly agree with the courts that there must be an appropriation, there must be legislation. We would simply suggest that if the legislation to be enacted is to be along the lines of the court's bill, and they themselves concede that it is interim legislation, that we think the interim nature of that bill ought to be within the legislation itself so that there is absolutely no question but that some further focus on these problems will be brought to bear in the Congress a year from now or at some other interval soon thereafter.

Mr. LEE. The Board itself could have a significant impact on that. You were down here a year ago, I think it was April 1973 and this very same issue was brought up, about whether the local—you know, whether there shouldn't be a local criminal justice act and the resolution of the Committee at that time I thought was that the District was going to submit draft legislation, and I don't know exactly what the date was that the legislation got up here, but it was pretty close to a year later.

So they can generate from the local government, you know, the changes that they require by pushing this themselves without having any—certainly the report itself can indicate in the next Congress they can consider legislation or amendments or changes as proposed by the District Government and more particularly the elected government when it takes office in 1973.

Mr. LEFSTEIN. Well, I think that is correct.

Mr. LEE. Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you.

Mr. FREEMAN. I have one quick question.

Mr. Lefstein, if the application of the services to the federal courts and District courts goes through and your budget maintains itself at the point \$1.6 or \$1.7 million, will that not expand the percentage of cases you will be able to handle in the local courts?

Mr. LEFSTEIN. Only very minimally because we at the present time are unable to provide any significant degree of representation in the federal courts.

Mr. FREEMAN. Thank you.

Mr. FAUNTROY. Thank you so very much, gentlemen.

Our next witness is the first of three witnesses from the Bar Association of the City, and I will call Mr. Austern first of the District of Columbia Unified Bar Association, Mr. Herd, Bar Association of the District of Columbia, and Mr. Roxborough of the Washington Bar Association.

I think we will hear all three of you before we raise questions. Is Mr. Roxborough here?

STATEMENT OF DAVID AUSTERN, DISTRICT OF COLUMBIA UNIFIED BAR ASSOCIATION; ACCOMPANIED BY FRED S. HIRD, JR., BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA; AND CLAUDE ROXBOROUGH, WASHINGTON BAR ASSOCIATION

Mr. AUSTERN. Mr. Chairman, I am David Austern. I previously submitted a statement to the committee and I would ask that it be inserted in the record.

[The statement follows:]

PREPARED STATEMENT OF DAVID T. AUSTERN

My name is David T. Austern and I am an attorney in private practice in the District of Columbia.

On behalf of the 17,000 members of the unified Bar of the District of Columbia, whom I represent today in my capacity as Co-Chairperson of the District of Columbia Bar—District of Columbia Circuit Conference Joint Committee on the Representation of Indigents. I am grateful for this opportunity to appear in support of the basic aim to provide the technical authority for the Government of the District of Columbia to disburse funds appropriated by the Congress for the compensation of attorneys appointed to represent indigent defendants before the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

This administrative duty to disburse funds is presently imposed on the Administrative Office of the U.S. Courts, pursuant to the provisions of the Criminal Justice Act. For a variety of reasons, chiefly among them the Congressional reorganization of the District's local courts by virtue of the District of Columbia Court Reform and Criminal Procedure Act of 1970, that Office no longer deems it appropriate to perform that function.

STOP-GAP LEGISLATION

Regardless of the merits of the controversy which led to the necessity for consideration of the proposed legislation, it is the position of the District of Columbia Bar that the technical authority to disburse funds should be approved so that the vitally needed monies, already appropriated, are made available to ensure the proper administration of criminal justice in the local courts of the District.

It is the position of the District of Columbia Bar, however, that the proposed legislation, drafted in response to the threat of an impending crisis, should not permanently cast the framework for making funds available for indigent defendants. We believe it should serve only as a point of departure to assess, study and explore all reasonable alternatives for making needed defense services available to indigents.

BAR STUDY

To assist the Congress in this regard and to provide a basis for future legislative proposals, the District of Columbia Bar, authorized by the local courts, and the District of Columbia Judicial Circuit Conference, on behalf of the local Federal courts, have formed a joint committee to study the availability of defense services in the District of Columbia. This committee draws its membership from every organization of attorneys in the District. By next year, the Committee will have prepared and made available a comprehensive survey of the status of defense

services for indigents and the role of the Public Defender Service and the private Bar in the representation of indigent accused.

RECOMMENDATION

Until the Congress has available this report and has had the opportunity for more extensive hearings, we believe it would be precipitous to enact either H.R. 14374 or H.R. 14376 except as a temporary stop-gap measure. The District of Columbia Bar, therefore, respectfully suggests that only the technical authority for the District of Columbia Government to disburse funds be enacted at this time and that appropriate enabling legislation to that end be enacted. We further suggest that next year, your Committee hold further hearings and consider the report I mentioned as a basis for a permanent legislative framework for the delivery of defense services to indigent defendants and, thereby, the proper administration of criminal justice, in the Nation's capital.

Mr. AUSTERN. Mr. Chairman, I guess you and the other gentlemen here will be gratified to hear I am going to be very brief considering the lateness of the hour.

Mr. FAUNTROY. It is not because you are hungry; it is simply because you want to assist us, although I am very glad to hear that.

Mr. AUSTERN. I will be even briefer, Mr. Chairman.

I would like to make just two points. The statement that we have submitted indicates, as Judge Greene and Judge Reilly and Mr. Lefstein and Mr. Murphy have all indicated, that there is a committee not only of the Judicial Conference appointed by Judge Bazelon but also of the Unified Bar consisting of some 21 attorneys who represent not only all Bar Associations but all groups of attorneys in the city who are considering some of the issues that you gentlemen have raised.

STOP-GAP LEGISLATION

Basically our position is that we wish to put off any long legislation for the time being and encourage the passage merely of the technical legislation whereby the funds can be spent by the District of Columbia and selfishly reserve for ourselves the hope that you would let us return here hopefully by next March to review some of the issues that you have raised this morning.

Our committee is going to be funded from various sources. We intend to have staff and we very frankly intend to look at the entire issue of indigent defense services in the District for the purpose of answering some of the questions and other questions that have been raised.

Other than that, I think the statement speaks for itself.

I would also like to raise two other issues in response to various statements made by other witnesses and questions that were asked of them this morning with your permission.

FEDERAL PUBLIC DEFENDER

I believe there was some question about a Federal public defender and I think it was Mr. Hogan who raised the issue what would happen, what kind of legislation would be needed and would it lie in this committee to enact that kind of legislation.

There may be some disagreement about this, but as I understand it, if Section one of the present Federal Public Defender Act was eliminated, which is the section that bars it from the operation in the Dis-

trict of Columbia, then because it is open-ended legislation the District Court judges could simply decide to have a federal public defender in the District and that would be the end of it. They do not have to go back to Congress for that.

I believe the Judiciary Committee would have to eliminate the District of Columbia exemption from the Act but once that happened, I do not think there is anything else for Congress to do provided the District continues to have more than 200 cases, and the District Court judges in and of themselves decide to have a federal public defender.

BUDGET CONTROL

And secondly, I would like to make one comment and at this point I think I should say I speak for myself and not necessarily for the other committee members, about the independence of the budgetary process.

Mr. Lefstein is well tempered and a gentleman and I am neither as well tempered and it is too late for me to be a gentleman; so let me state my personal feeling on the independence of the budget in stronger terms than Mr. Lefstein did.

If the Public Defender budget is part of the Executive Branch budget, I think it flies in the face of reality to believe that the kind of clout, to put it in the local patois, that the public defender can have some influence priorities. I think that flies in the face of reality to believe that his clout will be the same as that of the police or other Executive Branch arms that have some influence over or might have some influence over that budget and my reasoning is that whatever may have happened in the past, once the Mayor and City Council more directly enter the political arena as they will after January 1, they are going to be responsive to the people in this city who can vote, and if one can believe the statistics, a lot of those people are victims of crimes and it is an exercise in futility to try and sell to those people the idea that more money should be given to those who are accused of committing crimes versus more money given to the police or others who protect them from those who commit crimes.

Our committee that is going to take a look at the indigent defense service problem has spoken in terms of defense futility because I think we are going to return with the idea that what is being spent now in this city is woefully inadequate and that I think is going to turn a lot of heads. That is for next year. Right now I think unless the Public Defender Service has an independent budget I am afraid it is going to be at the end of the priority list when that portion of the budget which is going to be spent for law enforcement generally is discussed in the Executive Branch.

Mr. FAUNTROY. Thank you so very much for your testimony. I simply have one question, and that runs to the point made by Judge Greene earlier and a point made by you here, namely, that time within the next year can and should be given to more thorough analysis of where we need to go and the presentation of a bill that could be therefore much better justified before this body.

What assurance or what reason can you give us to believe that this will take place in the coming year that would convince us that perhaps what has happened in the past year will not in effect happen again?

Mr. AUSTERN. Mr. Fauntroy, I can best articulate this by saying my

co-chairman and I, Mr. Resnick, met with at least part of the constituting authority of our committee, Chief Judge Bazelon, yesterday, and the Judicial Conference meets the later part of March, early April, of next year. He made it abundantly clear that if we were not finished by then we would have to leave town, and I think I can assure you that we are going to have a report finished by the time the Judicial Conference meets next year which is in the early spring.

Mr. FAUNTROY. I see.

Thank you.

Counsel?

Mr. LEE. Mr. Austern, if we were to accede to your recommendation that we pass out something in the interim, is that something in the interim H.R. 14376?

STOP-GAP LEGISLATION

Mr. AUSTERN. Well, I am not sure that I share Judge Greene's view that that is really only a stop-gap measure and that it only provides the kind of technical authority or the authority to spend money by the District Government that he views it as.

I can say that the position of the committee is that what was referred to as the one line legislation be passed and if it takes more than one line, of course, it does, but that the authority simply be given to authorize the District of Columbia to spend the funds. So in that regard I would have to say the committee does not really support H.R. 14376 to that extent.

Mr. LEE. Do you believe there is some language that can in fact be drafted that would be narrower in construction than H.R. 14376?

Mr. AUSTERN. Yes, I do.

Mr. LEE. Would it be possible for the Association to provide us with such language so that we may analyze it and determine whether or not it will meet the standards.

Mr. AUSTERN. We meet—the Committee meets next Wednesday or Thursday and I think that might be possible for us to do.

Mr. LEE. In that way we will have the benefit of the views of the Association at such time as those of us who will have to—

Mr. AUSTERN. Let me add what is I am sure obvious to you and that is that if we fail to get it to you by July 1, I would hope that that would not act as a bar to introducing that legislation.

BUDGET CONTROL

Mr. LEE. Let me ask one other question. This goes back to the independence of the Defender Service. H.R. 14376 obviously would make it very independent. It would be part of Title XI. Unless we make some changes along the lines that Mr. Murphy suggested, it would be untouched and untouchable. Would that satisfy the needs which you have raised and Mr. Lefstein has raised about the independence of the—if you do not want to be included under the city government budget, I take it that you may not apparently want to be included under the Court's budget either.

Mr. AUSTERN. Well, you know, that is where I come out and yet I worry about the comment that was made that pretty soon you will have every single independent agency coming up here not wanting to be included in everyone else's budget, and that is, of course, untenable.

My only answer to that would be that I think the defense services are different from other kinds of services that are offered and if the budgetary process has to be exacerbated to the extent of having a third arm heard from, the Executive, the Judiciary, and then the Public Defender, then I for one would be in favor of that.

Mr. LEE. I have no further questions at this time, Mr. Chairman.
Mr. FAUNTROY. Counsel?

Mr. HOGAN. Mr. Austern, I assume that you would—let's get back to this amendatory language to H.R. 14376 that you would like to see. What exactly is it that you would prefer to see changed?

Mr. AUSTERN. Well, it is not so much a question of change as it is a question of the legislation, apart from H.R. 14376, that would give the District the technical authority to spend appropriated money, to pay assigned counsel under the money that has already been appropriated, and I frankly do not think of that in terms of a change in H.R. 14376 but maybe just an elimination of H.R. 14376 and a much shorter statement to the appropriate to be written.

Mr. HOGAN. Now, if I understand correctly, you want to—you would like to see the Public Defender Agency have its own independent authority to come up to Congress and have their budget reviewed up here?

Mr. AUSTERN. That is correct.

Let me say that is a personal view. That is not part of my mandate.

Mr. HOGAN. I understand. I assume you would have no problem, then, with passing H.R. 14376 and coming back to Congress to have this reviewed in the next Congress.

Mr. AUSTERN. I would have no problem provided, and I realize there are legislative dangers in this, but provided that whatever gets passed, if it is going to be more than the one line technical authority, that there be something in the legislation to indicate that it will only exist for one year.

Now, I know the dangers in that; that is, if you do not get to it at the end of the year all of a sudden you are wiped out and you have nothing left. Since Senator Eagleton raised that when I made the same suggestion, he said would I settle for for 18 months and I suppose that is perhaps the compromise, but as long as whatever gets passed, if it is more than just technical authority, does have a definite ending date and the reason I say this is that I have too often appeared in this general geography with a view in mind to change something and one meets the obstacle, well, we have done it this way for a period of time and it looks all right to us, and that is the danger that I see in the passage of 14376 in its entirety without an ending date to it.

Mr. HOGAN. But the District Government would have the authority to submit anything they wish in the way of requested legislation.

Mr. AUSTERN. Clearly. I understand that.

Mr. HOGAN. But you are fearful that unless the District Government is prodded and there is an ending date that they won't get their material up here? Is that it?

Mr. AUSTERN. It certainly does force the issue and I would like to see the issue forced.

Mr. HOGAN. I am sympathetic with the reviewing of this Public Defender Service budget but there is a concern for every agency coming up here and wanting their own budget reviewed up here and cer-

tainly I do not know—I have heard or sat in on several hearings over at the Appropriations Committee and if individuals want to come up and argue this case, you know, they can go over there and appear and I seldom have known anyone who was denied an opportunity. And even though the Mayor sets the mark and the Council puts the budget together, all of those line items are reviewed over there and they can be reargued over there whether they are in the budget or not, whether they are a separate budget, and I would think as long as the criminal justice funds were put together by the court and that is independent and not reviewed, you would have some protection because if the public defender system budget were cut, obviously there would have to be some addressing of that issue by the courts when they put their budget together to pick up the slack, as it were, so that it seems to me there is some protection in the existing system such that, you know, you are much better protected probably than several agencies.

Mr. AUSTERN. I don't think the interests are opposite to each other and certainly there would be some camaraderie, as you say, to pick up the slack. Maybe it is just the appearance of it is more important than the actuality and I worry a great deal about the appearance.

Mr. HOGAN. I might point out also that pursuant to some legislation which the Chairman here chaired some time ago, there are several criminals in the District of Columbia who vote and presumably they will be voting in the upcoming elections also.

Mr. FAUNTROY. That is right. It might influence the City Council to give you more money.

Mr. FREEMAN. The question is how many men are included in that statute, though.

Mr. FAUNTROY. Thank you so much.

Now, Mr. HIRD.

Mr. HIRD. Thank you, Mr Chairman.

I will try to be even briefer.

I would like to offer the prepared statement which I have submitted for the record, with your permission.

Mr. FAUNTROY. Without objection.

[The statement follows:]

STATEMENT ON BEHALF OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA
BY FREDERICK S. HIRD, JR., CHAIRMAN, LEGISLATION COMMITTEE

The Bar Association of the District of Columbia is pleased to have the opportunity to comment on these important bills concerning provision for the representation of indigent criminal defendants. I can state some general positions of the Bar Association today. With the Committee's permission, we would like to submit a further written statement for the record concerning questions which the Subcommittee may have at this hearing, and to provide any assistance which may be useful at the mark-up session on the bill.

RECOMMENDATIONS TO AMENDMENTS PROPOSED

The subject matter of these bills has been discussed by the Board of Directors of the Bar Association, which has reached the following conclusions:

(1) Any system which involves the appointment of trustees should provide for their appointment by a panel, rather than solely by the Mayor, as is presently provided in H.R. 14374. The Bar Association recommends a panel of seven persons consisting of the Mayor, the President of the D.C. City Council, the President of the D.C. Bar, and the Chief Judges of the four courts involved, the D.C. Court of Appeals, the Superior Court, the U.S. Court of Appeals, and the U.S. District Court.

(2) Under any system adopted, appointments of counsel should be made pursuant to criteria developed by the responsible agency, which also should provide a mechanism for making the appointments, but any appointments should be subject to Court approval or rejection. This is necessary to preserve in the Court the power to control the proceedings before it, in the case of possible inadequate performance by counsel, and to permit the appointment of specially qualified counsel in exceptional cases.

(3) Any system adopted should provide for payment in the usual case by the agency, subject to judicial control where exceptional payments may be appropriate. Avoidance of direct judicial determination of compensation in the ordinary case will conserve judicial time and prevent any possible contention that appointed counsel is subject to a conflict because he is dependent upon the presiding judge for his compensation.

With these general observations, let me reaffirm that the Bar Association hopes that it can provide further assistance to the Committee and its staff subsequent to the hearing in the development of this important legislation.

Mr. HIRD. It is brief and can be condensed.

We do not at the Bar Association take a position on either of the bills before you per se. We have some suggestions we made with respect to either of them, three in particular at this time.

AMENDMENTS PROPOSED

First, any agency that is set up that would require the appointment of a Board of Trustees we think the appointing power should be in a broader group than simply the Mayor.

Secondly, insofar as the appointment of counsel generally is concerned, under either program we think it ought to be done administratively by an agency which would set the criteria and handle the mechanics of the appointing operation but we think the ultimate appointing power needs to remain in the courts so that in the case where counsel needs to be replaced during the course of a proceeding or in a special case where it is desirable to get special counsel in because of the extraordinary natures of the case or what have you, the court could enter into the action and make the appointment or make the substitute appointment as the case might be.

That combination is different from what is in either of the bills that are before you.

Similarly, we think that any system that is adopted should provide for the agency to make payments in the usual case rather than for the court to do so. We think that this would conserve judicial time and we think that it would also eliminate any question that there might be some conflict for the attorney when he is dependent upon the Judge for his compensation and his appearing before the judge on behalf of one of the parties.

Those are our specific comments and we would be pleased to offer more as the bills proceed.

Mr. FAUNTROY. Now, as I understand it, the thrust of your second recommendation runs to the point that under the present system the courts make the payments.

Is that true?

Mr. HIRD. Yes.

Mr. FAUNTROY. Thank you.

Counsel?

Mr. HIRD. In the Superior Court that is the case. I believe in the United States Court of Appeals—I am not sure about the District

Court—I think it is handled administratively and only in the exceptional case does the Court get involved where there is request for more than the normal maximum.

Mr. FAUNTROY. Thank you.

Counsel advises me that goes through Mr. Kirks' office, the Court of Appeals.

Counsel?

Mr. LEE. I have no questions of Mr. Hird.

Mr. HOGAN. Thank you, Mr. Chairman, but the time that—the individual judge approves the time, does he not? The payment is effected through the—through Roland Kirks' office, but the time is approved by the individual judge sitting on a particular case.

Mr. HIRD. Well, I believe in the Court of Appeals where the courtroom is a panel of judges I believe the time is actually reviewed by the Clerk's Office in the U.S. Court of Appeals.

Mr. HOGAN. What I am talking about is the file in the District Court.

Mr. HIRD. The trial court at this point, the Superior Court, for example, the judge himself actually makes the approval at this time.

Mr. HOGAN. Yes, but I am talking about the U.S. District Court. The trial time there and outside time, they approve the time. So in effect if they approve the time and it is \$20 outside time and \$30 inside time, what the Clerk does or the Administrative Office of the U.S. Court does is purely administered. He just adds it up, multiplies and that is it.

Mr. HIRD. I think that is right in the District, yes.

Mr. HOGAN. So if you gave the same authority either to the Administrator of the local courts, something like that, to effect the payments, as long as the judge is computing the time, there really would not be a heck of a lot of difference, would there, whether he is approving the payment or whether he is approving the time. As long as a certain rate applies what is the difference?

Mr. HIRD. I think it makes some distinction because he is looking at the time involved and it involves a little different judgment than if he simply reduces the number of dollars which is something that can happen in the present situation.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you.

Counsel?

Mr. FREEMAN. I have no questions.

Mr. FAUNTROY. Is Mr. Roxborough here? We will, of course, therefore include his statement in the record and also state that the record will remain open for an undetermined length of time at this point until we can decide when we are going to have markup and we are looking to an early date for markup.

Mr. HOGAN. It is my understanding, Mr. Chairman, for the record that the Appropriations bill might be scheduled for the Floor before the end of this month.

Mr. FAUNTROY. In which case it is likely we will have a very, very early markup, as early as Monday.

Thank you so much.

This brings to a close our hearing.

[Whereupon, at 12:40 p.m., the subcommittee adjourned.]
 (Subsequently the following material was received for the record:)

CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA,
Washington, D.C., June 25, 1974.

Hon. WALTER E. FAUNTROY,
House of Representatives, Cannon House Office Building,
Washington, D.C.

DEAR MR. FAUNTROY: I write to you in support of the provisions in H.R. 14374 and 14376 that provide for a plan to deal with the legal defense for indigent residents of the District of Columbia who are charged with crimes or juvenile offenses. As you know, for some years now the D.C. Law Students in Court program has worked intimately with the courts under the professional supervision of salaried staff attorneys and with an educational component carried on in the several law schools of the Consortium to provide adequate defense for indigent residents. The program has received significant praise from the courts, but unfortunately at the present time it is suffering from a severe shortage of funding which threatens to either curtail the program severely or perhaps terminate it during the course of the coming academic year.

The bills to which I referred above do not clearly provide for compensation to the D.C. Law Students in Court program for the services rendered to indigent D.C. residents. It would be our hope that the language of the bill might be altered to provide clearly for compensation for the Students in Court program for services rendered just as it provides for support for the Public Defenders Service and private practitioners. Provision for support for the program in the budget of the District of Columbia would not only provide the assurance that the Law Students in Court program would continue but would also insure that adequate defense counsel would be provided for those charged with crimes or misdemeanors in the District at a high professional level and a reasonable cost.

I know that we can count on your support in this regard.

I should like to take this opportunity to thank you for all that you have done toward providing for the continuance of high-quality education in the District of Columbia.

With every best wish, I am

Sincerely yours,

Rev. JOHN P. WHALEN,
Executive Director.

THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 6, 1974.

Hon. CHARLES C. DIGGS,
Chairman, Committee on District of Columbia, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN DIGGS: Recently, Mayor Washington forwarded a proposed Bill to Congress to establish the District of Columbia Defender Service. He had requested the comments of The Bar Association of the District of Columbia on the original draft which has since been modified.

On Friday, May 3, 1974, the Board of Directors voted unanimously to approve the proposed Bill of Mayor Washington, but with one major exception.

In Section III, The Bar Association of the District of Columbia would prefer to see the Trustees appointed not solely by the Mayor, but rather from a panel of seven persons consisting of the Mayor, the President of the D.C. City Council, the President of the D.C. Bar, the Chief Judge of the U.S. Court of Appeals for the District of Columbia, the Chief Judge of the D.C. Court of Appeals, the Chief Judge of the U.S. District Court for the District of Columbia, and the Chief Judge of the Superior Court for the District of Columbia.

With this exception to the Mayor's Bill, The Bar Association urges prompt attention by Congress in order that this Bill may become effective at the earliest possible moment.

Thank you for your consideration.

Sincerely,

AUSTIN F. CANFIELD, Jr.,
President.

PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA,
Washington, D.C., April 3, 1974.

HON. WALTER E. WASHINGTON,
Mayor-Commissioner,
Washington, D.C.

DEAR MAYOR WASHINGTON: On behalf of the Board of Trustees, I wish to reply to your letter of March 25 in which you request the views of the Public Defender Service concerning recommendations of your staff on the provisions of defense services for those unable to afford counsel in the District of Columbia. Following receipt of your letter, an emergency meeting of the agency's Board of Trustees was held last Thursday evening, March 28; the views expressed here represent the Board's conclusions reached during our meeting.

The Board of Trustees fully concurs in your staff's recommendation that a single agency be established to administer in a unitary fashion the provision of defense services in the District of Columbia. Combining in one agency what has heretofore been operated as several separate programs in each court (private attorneys who volunteer for appointments under the Criminal Justice Act, non-volunteer attorneys ordered to serve by the courts, and Public Defender Service staff attorneys) will inevitably lead to more consistent and better coordinated planning and oversight of the substantial task of providing counsel for nearly 20,000 indigents each year.

Moreover, since both the Federal courts and the D.C. courts are substantial partners in the administration of criminal justice in this city, it is highly desirable that the proposed unified system apply in both sets of courts. Both deal with offenses committed within the District of Columbia, both involve mainly D.C. residents as witnesses to and victims of the crimes charged, and both obtain counsel from the membership of the D.C. Bar. To eliminate the Federal courts from the scope of the program would, we believe, ignore the realities of the situation.

In addition, Congress indicated very clearly, shortly after the passage of the Court Reform Act of 1970, that the existing Public Defender Service should continue to serve both courts. When enacting modifications to the Criminal Justice Act to authorized Federal courts to establish defender programs, the District of Columbia was specifically exempted from the reach of these modifications, since there already was a defender service specifically created by Congress for the District.

Finally, as you may be aware, the Public Defender Service recently has been selected by the Law Enforcement Assistance Administration as an "exemplary project," the only defender office in the country to be so honored. The designation denotes not only a recognition of the quality of the office, but a recommendation by LEAA that other communities replicate the Service's structure and techniques. In part, this award is attributable to the high quality of lawyers which the Service has been able to attract to its employment, and we feel that the opportunity for trial experience in the Federal courts as well as the D.C. courts has been a significant factor in this regard. Of course, as your staff properly notes, there should be full reimbursement to the District of Columbia for the operations of the Service in the Federal courts.

Although it is obviously impossible here to deal with all of the issues which will arise in drafting a statute, there are four broad areas which we would like to discuss. These include (1) limitation of the agency's jurisdiction; (2) selection of the Board of Trustees; (3) budget and financing; and (4) the powers of the Board of Trustees.

LIMITATION OF THE AGENCY'S JURISDICTION

The Public Defender Service statute presently provides that "not more than sixty percentum of the persons who are annually determined to be financially unable to obtain adequate representation . . ." may be represented by the Service. The staff's recommendation that this provision be removed suggests a view that at some point the new defender service might itself represent all persons in need of assigned counsel, without participation by private attorneys. We do not believe that this is a desirable goal, and note that every major report which has dealt with the subject of defender services during the past 15 years has recognized the importance of the private bar remaining involved in providing criminal defense services. For example, the National Advisory Commission on Stand-

ards and Goals, in its report issued just last year, offered the following analysis:

While there are a number of advantages in heavy or exclusive reliance on a public defender organization, there are also a number of disadvantages. The most serious is that the private bar may lose contact with the criminal process. One of the biggest advantages of an appointment system is that it forces members of the bar to become involved in the criminal justice system and its problems. It also fosters a willingness to contribute to, and support, necessary reforms. There are positive values to be gained from the substantial participation of the organized bar. Many of the problems in the administration of criminal justice at all levels of government result in part from the absence of involvement by most lawyers in the practice of criminal law. An indispensable condition to fundamental improvement of the system is the active and knowledgeable support of the bar as a whole. *Report on Courts*, page 264, National Advisory Commission on Criminal Justice Standards and Goals (1973).

By limiting the Public Defenders Service to sixty percent of the persons determined eligible for assigned counsel, the agency statute guarantees, wisely, we think, a "mixed" system of representation consisting of private lawyers and public defenders. In large cities where there is no mixed system and public defenders handle all or nearly all of the cases, the result has sometimes been disastrous. Caseloads increase faster than the size of the staff and necessary revenues, making quality legal representation impossible. Ultimately when there is not a vigorous defense bar, the system of criminal justice suffers.

SELECTION OF THE BOARD OF TRUSTEES

We concur with your staff recommendation that the Washington Defender Service be governed by a Board of Trustees of eleven persons. We suggest, however, several important changes regarding the panel of persons designated to select the Trustees. According to your staff recommendation, the following six persons would comprise the appointment panel:

- (1) Commissioner of the District of Columbia;
- (2) Chairman of the District of Columbia Council;
- (3) Chief Judge of the District of Columbia Court of Appeals;
- (4) Chief Judge of the District of Columbia Superior Court;
- (5) Chairman of the Judicial Council of the D.C. Circuit; and
- (6) President of the Unified District of Columbia Bar.

Since the Washington Defender Service, as outlined above, would have jurisdiction to provide representation in the United States District Court, we would urge the addition to the appointment panel of the Chief Judge of the United States District Court for the District of Columbia. In addition, we are concerned that the Bar is insufficiently represented on the appointment panel. The Washington Defender Service will have a far-reaching impact on the involvement of the Bar in providing defense services; we believe, therefore, that the appointment panel should contain significant Bar representation. Accordingly, we urge that besides the President of the District of Columbia Bar, the appointment panel should include three additional Bar members elected at large by the Board of Governors of the District of Columbia Bar. Such additional representation will give the Bar an equal voice with the judiciary in selecting the new agency's Trustees.

We also commend to your attention several key provisions in the Public Defender Service statute related to the Board of Trustees. Section 2-2223 provides that "judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees," thereby enhancing the agency's independence from judicial control. Another desirable policy, we believe, is the same section's provision limiting the terms of Public Defender Service Trustees to three years and providing that no Trustee may serve more than two consecutive terms.

BUDGET AND FINANCE ISSUES

Your staff report recommends that "control of defender services [be vested] in a truly independent Board." Of course, we fully agree that such independence is essential; indeed, we believe that the rationale which justifies independence for the daily activities of the defender agency also should dictate budgetary independence comparable to that accorded the judiciary. The District of Columbia courts, as provided in the District of Columbia Court Reform Act of 1970, are

granted the authority to have their annual budgets submitted to the Congress without revision by either the District of Columbia government or the Office of Management and Budget, though each may comment on the proposal. This provision relating to budgetary independence was retained by the Congress in the recently enacted District of Columbia Self-Government and Government Reorganization Act. There occurs to us no reason why the agency with responsibility for providing all defender services in the District of Columbia should be accorded lesser budgetary freedom than the courts.

The provision of defender services within the structure of government is unique. Unlike any other District of Columbia program of which we are aware, the Washington Defender Service will not be a part of either the Executive or Judicial branches of government. The Director of the agency will be answerable to a Board of Trustees and the Trustees will be independent. This arrangement is necessary in order to assure that defender services remain free of political and judicial interferences. Although we are exceedingly pleased that the District of Columbia government recognizes the importance of such independence, we urge that it be further extended to the budget area as well.

Of course, in light of the substantial new responsibilities to be entrusted to the Washington Defender Service, we assume there will be recognition of the need for additional administrative positions, not now a part of the Public Defender Service. While these positions will be highly important in carrying out this expanded role, we do not believe that the number of such new positions will be extensive.

POWERS OF THE BOARD OF TRUSTEES

We concur in the recommendation of your staff that the Board of Trustees of the Washington Defender Service should have responsibility for developing a plan for providing representation to persons unable to afford counsel. Hence, the Board would issue guidelines for the assignment of cases to Washington Defender Service staff attorneys, and to private volunteer and non-volunteer lawyers. We believe also that the approval of vouchers submitted by assigned counsel should be undertaken by the Washington Defender Service. As Chief Judge Bazelon recently has noted, "when defense counsel's earnings flow from the pen of the judge, the principle of independent advocacy that is essential to the adversary system of justice is jeopardized." Moreover, the Washington Defender Service could develop standard guidelines for the approval of vouchers, thereby eliminating the substantial variation in the rates of approval about which private attorneys frequently have complained.

Also, the present statutory language (D.C. Code § 2-2223) directing the Board to establish general policy for the operations of the Service is, we feel, a major factor in the success and national recognition achieved by the Service. It has assisted immeasurably in insulating the staff of the Service from pressures which might otherwise be felt, given the adversary nature of defense counsel's role, and we feel strongly that such a provision should be retained.

There undoubtedly are other significant issues which must be addressed in the drafting of a comprehensive defender service's bill, including the provision of expert and investigative services, standards for determining indigency, and the rates of compensation for counsel, to mention just a few. In addition, the present Public Defender Service statute, drafted after careful consideration by the courts, the Department of Justice, the Trustees, the bar and other interested groups, is in many respects a model statute, and has many desirable provisions worthy of retention, including the provision in Section 2-2222 authorizing the Service to determine the best practicable allocation of its staff personnel to the courts where it furnishes representation, and the authorization for receipt of public grants and private contributions in Section 2-2227. However, since many of these points were not addressed in your staff's recommendation, and given the time pressures involved, we have limited our comments to the major issues discussed herein.

In concluding, let me reiterate the continued willingness of the Public Defender Service Board of Trustees and staff to be of maximum assistance to the District Government as legislation concerning defender services is prepared and introduced in the Congress. Hence, if there are any steps which we can take which will aid the citizens of the District of Columbia in securing the highest quality defense services, I trust you will not hesitate to let us know.

Sincerely,

SAMUEL DASH,
Chairman, Board of Trustees.

APPENDIX

[Under the authority previously granted, the following transcript of the committee's oversight hearing, held with respect to the operation of the Criminal Justice System in the District of Columbia, was ordered printed:]

The following 1973 hearing was an exploratory one by the Committee in order to determine the status of the operation of the criminal justice system in the Nation's Capital, and particularly the representation of local indigent defendants under the Federal Justice Act of 1974.

Hence as a valuable prelude to the 1974 hearings on proposed legislation (H.R. 14374 and H.R. 14376) drafted and introduced after the 1973 hearings, it is included herein.

THURSDAY, JUNE 28, 1973

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 1310, Longworth House Office Building, Hon. Charles C. Diggs, Jr. (chairman of the committee) presiding.

Present: Representatives Diggs (chairman), Rees, Delegate Fauntroy, Representatives Mazzoli, Rangel, Breckinridge, Nelson, Gude, Smith, Ketchum, and Taylor.

Also present: Dorothy E. Quarker Chief of Staff; Robert Washington, Chief Counsel; James T. Clark, Legal Consultant; John Hogan, Minority Counsel; Mary Watt, Counsel; Dan Freeman, Counsel; and Linda Smith, Professional Staff Member.

The CHAIRMAN. The committee will come to order.

We have called the hearings this morning to ascertain the status of the operation of the Criminal Justice System in our National Capital. Since 1966, impecunious defendants have received legal representation by court-appointed counsel pursuant to the Criminal Justice Act of 1964, as amended. Undoubtedly, these funds have been significant in establishing and maintaining a criminal justice system of the first rank.

In 1972, however, several important events occurred including the unfavorable action of a House Appropriations Subcommittee, which was subsequently adopted by the full committee and the House; adverse publicity concerning some lawyers practicing in the local courts; and the decision of the Judicial Conference of the United States not to request additional funds for the local courts of the District in the appropriations for the Federal Judiciary. Because of the above series of events and others, numerous public and private

citizens have undertaken a valiant effort to help find a permanent solution to this increasing problem.

This is not the entire situation with all of its ramifications, but I would like to add my profound concern, which is the rationale for this meeting and this hearing, that a solution must be found because if no solution is found therefore counsel is not available to all defendants. Law dictates those defendants probably would go free.

We have invited the Mayor and the Corporation Counsel, Chief Judges of the D.C. Court of Appeals and Superior Court, the Deputy Attorney General of the United States, Director of the Administrative Office of the United States, and the representatives of the General Accounting Office, the Public Defender Service, and the local bar to our proceedings.

I am hopeful that today's hearings will lead to a clearing up of some apparent disagreement and misinterpretations of the intent of Congress. While we may anticipate temporary funds to September 1973, under the present Congressional Continuing Funds Resolution, my concern extends to the entire 1974 fiscal year. It is certainly no answer to assert that we should hold all action until after the House-Senate conference. I am of the view that the citizens of this city require a more positive answer today as to what plans city officials have to grapple with this matter. Also to consider on a broader basis than just the narrow question of funding, some of the more substantive aspects of this entire matter of criminal justice and the administration of justice and the organization of the court system in this community.

If the District is to pick up this kind of a program, these kinds of considerations in proper perspective, legislative authority shall be necessary to avoid a point of order against its inclusion in the budget for fiscal year 1975.

Lastly, I would like to command all of those who have honestly worked toward a solution to the more immediate problem, Chief Judge Greene, the Bar Association, the Mayor, and his staff. We would still like to put this entire matter into perspective beyond the immediate problem because it is much larger, as I see it, than simply whether or not the continuing resolution provides funds and all the rest.

Our first witness is the distinguished Mayor of our community, accompanied by the Corporation Counsel and Comer Coppie, Director of the Office of Budget and Financial Management.

STATEMENT OF HON. WALTER E. WASHINGTON, MAYOR-COMMISSIONER, DISTRICT OF COLUMBIA; ACCOMPANIED BY C. FRANCIS MURPHY, CORPORATION COUNSEL, AND COMER S. COPPIE, BUDGET AND FINANCIAL MANAGEMENT

The CHAIRMAN. Mr. Mayor, you have a statement?

Mr. WASHINGTON. Yes, Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. WASHINGTON. My statement deals primarily with the immediate problem but the Corporation Counsel and Mr. Coppie are here and we would certainly want to entertain any questions insofar as we are concerned that gets closer to a resolution of the problem.

I want to first, on behalf of the city, thank you, Mr. Chairman and the Committee, for taking your time and concern with respect to this matter. It appears to be a matter at the moment which transcends the jurisdiction of the city in some respects, but as usual greatly affects the residents of the city in terms of ability to get this service.

Since your opening statement, Mr. Chairman, I would rather cut my statement short because it is basically a chronology which you have given up to a point. I would simply ask that my full statement be inserted in the record and hopefully I could summarize where we are at this point with respect to the funds.

[The full statement follows:]

PREPARED STATEMENT OF HON. WALTER E. WASHINGTON

Mr. Chairman, Members of the Subcommittee: The District of Columbia Government has taken an active and continuous interest in the situation surrounding funding for the Criminal Justice Act in the District of Columbia's local courts.

In order for the Committee to have a full appreciation of the position of the District Government in this matter, the following chronology of events is provided.

First, by way of preface to this chronology, the Criminal Justice Act of 1964 is a Federal statute which provides for the compensation of attorneys representing indigents in Federal courts. Since 1966, as a result of a Comptroller General decision, the provisions of the Act have applied to our local courts. Amendments to the Criminal Justice Act in 1970 further clarified the applicability of the Act to the D.C. Court System.

1. On March 7, 1972, the Director of the Administrative Office of the United States Courts requested the Comptroller General's opinion as to whether funds appropriated to the Judiciary for implementation of the Criminal Justice Act were available to pay private attorneys appointed in the D.C. Court System.

2. On May 15, 1972, the House Judiciary Appropriations Subcommittee reported out a bill which excluded CJA funds for local courts. The Chairman of the Subcommittee expressed concern that the level of CJA payments to individual attorneys was excessive. The Appropriations Committee of the House, and the House of Representatives sustained the recommendation of the Subcommittee in initial action on the fiscal 1973 appropriations bill for the Judiciary.

3. On May 19, 1972, the Board of Judges of Superior Court passed a resolution limiting the amount of CJA funds available to any one attorney to \$18,000. This action was instrumental in addressing House criticism, and in effecting a favorable conference on the Judiciary bill for 1973.

4. On May 26, 1972, the Comptroller General issued an opinion which affirmed the applicability of the Criminal Justice Act to the newly organized local courts, and instructed the Federal Judiciary to continue to budget and account for the funds in the same manner as it had in the past, and to the extent possible as it does for Federal district courts.

5. On October 25, 1972, the State, Justice, Commerce and Judiciary Appropriations Act, P.L. 92-544, was signed by the President. This Act contained a one-million dollar appropriation and limitation for CJA funds applied to the Superior Court and D.C. Court of Appeals.

6. On October 25, 1972, the Director of the Administrative Office of United States Courts, Mr. Rowland Kirks, informed Chief Judge Reilly and Chief Judge Greene that the Judicial Conference was not going to propose in the Judiciary budget funds for CJA use in the local courts.

7. On November 15, 1972, the Chief Judges of the local courts called a meeting with Mr. Rowland Kirks to discuss his letter of October 25, 1972. Also attending the meeting were Mr. Comer S. Coppie, Director of the Office of Budget and Financial Management, and representatives of OMB and the Department of Justice. At this meeting, the District of Columbia appealed the action of the Judiciary Conference with regard to 1974, and further requested that a supplemental be introduced by the Judiciary for fiscal 1973. Mr. Kirks indicated that he would return to the Judicial Conference with the request.

8. At the same meeting, it was pointed out that District assumption of funding for the CJA program in fiscal 1974 would create impossible financial difficulties for the District, as the District's budget must be fully financed, and as the 1974 budget was already in the final stages of preparation. Further, if the District were to assume responsibility for this program, it should be accomplished with sensitivity to the fact that the District's budget must be fully financed.

The District suggested that assumption of the program be done in stages, beginning with fiscal 1975, in order to give the District enough time to plan for this new responsibility.

9. On January 15, 1973, the President's Budget was transmitted to the Congress with no request for CJA funds for the District's local courts.

10. On June 1, 1973, the Mayor, in a letter to the Attorney General, indicated he was prepared to recommend that the District assume funding of the CJA program in fiscal 1975, with the understanding that the Judiciary would provide funding in fiscal 1974.

With respect to fiscal 1974, the Mayor's letter said:

"Inasmuch as the District's budget must be balanced each year, and because this issue was brought to the City's attention after the completion of financial and program planning for fiscal year 1974, the District cannot assume this additional financial responsibility in fiscal 1974. The resources simply are not available."

11. On June 26, 1973, the House of Representatives passed a continuing resolution which specifically provides for CJA funding until passage of the Judiciary Appropriations bill for 1974. Senate action on that resolution is pending, and their approval is anticipated.

This brief chronology highlights the nature of the problem being discussed by this Committee. It should also be pointed out that the District does not have substantive authority to sustain a request for an appropriation for this program. The District is prepared to propose legislation which will provide such authority for fiscal 1975.

This current impasse must be overcome. A viable recommendation to meet this problem is the proposal contained in the June 1, 1973 letter to the Attorney General. The District reaffirms its commitment to implement that proposal.

This concludes my statement, and I will be happy to respond to any questions.

BACKGROUND

Mr. WASHINGTON. On May 1972, as I recall here, the board of judges passed a resolution which limited the amount of CJA funds to one attorney to \$18,000—reading on page 2 of my statement.

On May 26 the Comptroller General issued an opinion which affirmed the applicability of the Criminal Justice Act to the newly organized local courts and instructed the Federal Judiciary to continue to budget and account for the funds in the same manner as it had in the past, and to the extent possible as it does for Federal District Courts.

In October of 1972 the State, Justice, Commerce, and Judiciary Appropriations Act was signed by the President. This act contained a \$1 million appropriation and limitation for CJA funds applied to the Superior Court and D.C. Court of Appeals.

On October 25 the Director of the Administrative Office of the U.S. Courts, Mr. Rowland Kirks, informed Chief Judge Reilly and Chief Judge Greene that the Judicial Conference was not going to propose in the judiciary budget funds for CJA use in the local courts.

On November 15, 1972, the chief judges of the local courts called a meeting with Mr. Kirks to discuss his letter of October 25, and attending that meeting were Mr. Coppie, who later reported to me on the subject. At this meeting the District appealed the action of the judiciary conference with regard to 1974 and further requested a supplemental be introduced by the judiciary for 1973.

FUNDING

At the same time, it was pointed out that the District assumption of the funding in fiscal year 1974 would create impossible financial difficulties for the District as the budget must be fully financed, and obviously at that point we had locked the budget up for 1974 and it was on its way to the council and the President; and subsequently on January 15 the President submitted a budget to Congress with no request for CJA funds for the District's local courts.

Subsequent to that, I think it is fair to say that there have been numerous meetings, dozens of meetings. The bar association, as you pointed out, has been deeply involved. Judge Greene and Judge Reilly and I have met in an effort to resolve, to see if we could resolve this problem, because I think everybody here is concerned with it.

We finally came to one source of possible remedy. The members of the bar and the courts came to me and said that perhaps if I would, could see my way clear to pick up the funding for 1975—although there was a Comptroller General's opinion that maybe we would resolve that by having the Federal judiciary pick up 1974—that would give us a chance to plan for 1975 and we could then pick it up.

At that point, on June 1 I wrote to the Attorney General and indicated that I was prepared to pick this matter up in 1975. At that time our budget was in markup by both the Senate and the House and that seemed to be a fair proposal, perhaps the only proposal we thought at the moment that would break this whole matter loose.

I said to the Attorney General that "inasmuch as the District's budget must be balanced each year, and because this issue was brought to the city's attention after the completion of financial and program planning for fiscal year 1974, the District cannot assume this additional financial responsibility."

We thought that might break the whole thing loose, and it seemed to be an orderly transition because the Federal judiciary having picked this up right up to that point, we thought another year would make sense and give us a chance to integrate this into our 1975 budget from that we were getting.

That was not acceptable, and that left us right in the position that I think we are in today, Mr. Chairman, where the matter has not been resolved except for the continuing resolution, and there is no long-standing solution except for 1975 somehow we have got to look at this as a base item in the District's budget as the only solution. That does not deal with the 1974 problem, and I think that therein we have the immediate problem. The long-term problem, of course, is going to involve funding for the courts. This will be a part of that funding.

You know the service that we now receive from the U.S. attorney is included in our budget, but just exactly how we are going to do it and how we are going to get it in on the long term is not known to us at this point. But this is what I have done to try to resolve the matter within the boundaries and the limitations also that I have.

I think from our standpoint that is where we stand today.

The CHAIRMAN. Thank you very much, Mr. Mayor.

Assuming for the moment that Congress does not appropriate funds under the authority of the Federal Criminal Justice Act for 1974, has the D.C. government devised plans for providing the necessary funds?

Mr. WASHINGTON. For 1974?

The CHAIRMAN. Fiscal year 1974.

Mr. WASHINGTON. No, sir, we have not. Of course, as of the moment you realize that even 1973 is in difficulty with the veto yesterday of the supplemental. Another thing that this committee will want to look at in terms of home rule, we are also not involved in the military spending but we are involved in that supplemental. Our 1974 budget, of course, has passed the House and is awaiting action in the Senate. So that 1974, as far as the budget itself is concerned, without some unusual action, would not provide for this sum.

DISTRICT BUDGET FOR JUDICIARY

The CHAIRMAN. What is the total District budget for judicial functions?

Mr. WASHINGTON. Mr. Coppie has that readily.

Mr. COPPIE. Mr. Chairman, the estimate for 1974 by the District government is \$34,232,800. The recommendation of the House is \$32,481,700, which is \$1,751,100 less than what the District proposed for 1974.

The CHAIRMAN. The Mayor used the expression "unusual circumstances." Would you be more explicit?

Mr. WASHINGTON. The only unusual circumstance that I can see, with the House having passed the bill, would be that the Senate in some way would consider in its markup the item as within the confines of the funds that are available to the city. Of course, that would also mean that it would be competitive with any other matter that had been either removed or cut from the budget by the House. It is not precluded from doing that.

The CHAIRMAN. In connection with the District budget, the judicial functions aspect of it, how is this amount expended? What is the breakdown?

Mr. COPPIE. Your question is the payment for the—

Mr. WASHINGTON. How is the budget broken down?

The CHAIRMAN. Yes.

Mr. COPPIE. The courts budget is broken down as follows. There are essentially six units in what we call the District of Columbia courts system. The District of Columbia Appeals Court budget for 1974 is estimated at \$1,350 million. That is the District estimate. All of these will be District estimates. The District of Columbia Superior Court, \$18,641,300. District of Columbia court system, which is the executive office of the District of Columbia court system, \$1,558,400. For the District of Columbia reimbursements to the U.S. Treasury for services provided by the U.S. court system, U.S. Attorney's Office, the estimate is \$10,125,000. Public defender service is estimated at \$1,883,000. District of Columbia bail agency is estimated at \$674,800.

The CHAIRMAN. Are there parts of this budget over which you have no control?

Mr. COPPIE. Mr. Chairman, the answer is clearly in the affirmative, in that the payment to the U.S. Treasury for the operation of the U.S. Attorney's Office is required by appropriation law. When I say appropriation law, that is being appropriation law for the Judiciary, Commerce, and State Department. We pay for 75 percent of the opera-

tion of the U.S. Attorney's Office. That payment is required by law.

As I pointed out, we make the payment to the Treasury Department upon the receipt of a voucher from the U.S. Justice Department.

The CHAIRMAN. There is \$10 million in the judicial budget involving the Justice Department, over which you have no control; you are merely a conduit?

Mr. COPPIE. That is essentially correct.

The CHAIRMAN. How do you analyze the requested amount?

Mr. COPPIE. Mr. Chairman, as a practical matter we do not. This became an issue during the hearing on the 1974 budget in the House. It was also an issue in the Senate on the 1973 supplemental.

I would like to point out that the letter that supported the District request for 1974, which came to us in October of 1972, provided the following information:

Dear Mr. Coppie: In response to your request dated July 5, 1972, you are advised that the total obligations for the office of the U.S. Attorney and the U.S. Marshal for the District of Columbia in fiscal year 1974, are estimated to be \$13,500,000. You are also advised that a request for supplemental appropriations for fiscal year 1973 has been submitted to the Congress. The latest estimate of total obligations for fiscal year 1973 is \$11,200,000.

That letter was signed by Mr. John Kaminski, Director of the Office of Budget and Accounts of the Department of Justice. The \$13.5 million figure represented a \$3 million increase over 1973.

I would point out that as a result of the problems we have had in getting the information to fully support this request, both in terms of review in the District government and before the Congress of the United States, we have had a series of exchanges between the Justice Department and the District government and a substantive review is now underway by the Justice Department pertaining to this request.

The CHAIRMAN. Within that amount that we have just talked about, are there any amounts that remain unexpended at the end of the fiscal year? What about witness fees, juror fees, or any other sorts of fees or any kind of unexpended amounts that you think about?

UNEXPENDED FUNDS

Mr. COPPIE. Any funds that are not obligated by June 30, Mr. Chairman, in fact will become lapsed funds. Normally they become lapsed funds 2 years after the end of the fiscal year in accordance with the accounting principles. I would have to look at the balances for, say, 1973, which is the fiscal year that will end on June 30, to find out to what extent there will be balances that could be, that are available. I do not have that figure here today.

The CHAIRMAN. Do you have a ballpark figure that might suggest what amount we might be talking about?

Mr. COPPIE. I would say based on experience that it is normally running half a million dollars or less for all the agencies in the public safety appropriation. For the court system it would be something less than half a million dollars.

The CHAIRMAN. Could any of these unexpended funds be used to finance the District Court Criminal Justice Act?

Mr. WASHINGTON. Are you referring to those within the court system?

The CHAIRMAN. That is correct.

Mr. COPPIE. Mr. Chairman, in developing the financial plan for a particular fiscal year, we show an opening cash balance which represents the amount that is lapsed from previous fiscal years. That is taken into consideration in 1974 in terms of our financial planning as it exists today. I am not prepared to say that figure might not be adjusted to a higher level as a result of analysis that will take place subsequent to the end of the fiscal year, but we feel that we do have a valid financial plan based on experience to date for 1974.

The experience would suggest that we do not have the financing for this purpose.

Mr. WASHINGTON. I think, Mr. Chairman, more directly—Mr. Coppie is probably using budget language—we would not presume to recommend an expenditure to the courts on the basis of our present system without the judge making a recommendation.

We have the problem in the whole budget that I think relates to the separation of powers, as he, I think, appropriately puts it, that suggests that that budget is fairly well determined by the courts and that the matter of how they dispose of the funds within that general framework is generally left in the courts.

The CHAIRMAN. I certainly appreciate your comments. My only concern is that here we are talking about a shortage that affects the capacity of local defendants to finance counsel. We have already turned up funds over which you have no control, and I am curious about unexpended amounts that could represent sources for funding in the event the Congress of the United States for one reason or another does not come forward with that money. We might be talking not about a shortage of funds but we might be talking about an administrative matter here that would suggest that the funds are available if someone would look for them.

I yield to the gentleman from Maryland.

Mr. GUDE. Thank you, Mr. Chairman.

CONTINUING RESOLUTION

As I understand it, the continuing resolution which would cover this through September has been passed?

Mr. WASHINGTON. Passed the House and pending in the Senate. That is only a short-term solution.

Mr. GUDE. That would be through September?

Mr. WASHINGTON. That would be through September; yes. It is helpful but just does not take us all the way.

Mr. GUDE. I don't know to what extent this is being addressed in the self-government bill which the Government Operations Subcommittee has, but we ought to resolve this thing once and for all. I commend the chairman for calling these meetings if we can find out what category this falls into so it does not fall in between the cracks.

Mr. WASHINGTON. Which is where it is now.

Mr. GUDE. So we bring you up here, and your valuable time, and try to resolve this thing in a crisis situation.

The CHAIRMAN. I recognize the gentleman from the District, Mr. Fauntroy.

Mr. FAUNTROY. Thank you, Mr. Chairman.

JUSTICE RECOMMENDATIONS

Mayor Washington, pursuant to the questions the chairman raised at the outset about what might be done should the funds not be forthcoming, you have, in your statement, portions of a letter which you sent to the Department of Justice, informing them while you feel that you can accommodate in the 1975 budget because we must have a balanced budget and because the news came so late, you could not include it in the 1974 budget. Have you received a response from the Department of Justice on that matter?

Mr. WASHINGTON. Yes; as I say, I received a response from the roving committee, I guess, which includes the Department of Justice and the bar association, indicating that the proposal that I have made was not acceptable, that the matter was presented, and I believe presented to the Chief Justice, as far as I know, but that it was not resolved appropriately or adequately to take care of 1974.

My commitment and my offer still stands. The question properly put is, what do we do for the balance of 1974? That is still before us. That is what the crisis is.

Mr. FAUNTROY. The fact is that the Attorney General has not responded to you?

Mr. WASHINGTON. I would say, "Yes"; verbally. I had a response to that proposal I made and it was not acceptable; yes.

Mr. FAUNTROY. Of the \$10 million that is reimbursed the U.S. Treasury, I wonder if you, Mr. Coppie, could compare our annual expenditures, say in the Public Defender Service, to that; what do we spend annually?

COST OF DEFENDER PROGRAM

Mr. COPPIE. The estimate for the Public Defender Service for 1974, Mr. Fauntroy, is \$1,883,300.

Mr. FAUNTROY. The whole CJA program?

Mr. COPPIE. The payments that we are talking about for attorneys that would represent indigents is estimated at a little better than \$2 million for 1974. That is the additional amount beyond what would be required to meet the total needs in the District of Columbia.

Mr. FAUNTROY. That includes prosecution in Federal court?

Mr. COPPIE. I believe that is correct.

Mr. FAUNTROY. We are talking about \$3.8 million?

Mr. COPPIE. That is roughly correct.

Mr. FAUNTROY. As compared to \$10 million?

Mr. COPPIE. The \$10 million, Mr. Fauntroy, is the reimbursement from the District of Columbia for the operation of the U.S. attorney's office.

Mr. FAUNTROY. On local questions?

Mr. COPPIE. That is correct.

Mr. FAUNTROY. Is it true that the lapsed funds that the chairman asked you about are really estimated and accounts for in the next fiscal year projections?

Mr. COPPIE. The lapsed funds are accounted for in our financial plan. Normally what happens is that the balance on hand on June 30 that is not obligated remains available to the operating of the Department for 2 years subsequent to the end of the immediate fiscal year. That is

open to interpretation, but the accounting procedures do provide for that.

Mr. FAUNTROY. So that in response to the chairman's question, whatever lapse funds we might be able to discover are in all likelihood absorbed in your projections for fiscal year 1974?

Mr. COPPIE. I am saying that that is essentially correct. That does not mean that we are accurate right down to the last dollar. Based on what I think is the—

Mr. FAUNTROY. It is not \$3.8 million?

Mr. COPPIE. No, sir. It is based on what I think is the intent of this discussion, as far as this issue is concerned. This will be looked at to determine whether the amount is in fact available, not what we have estimated.

Mr. FAUNTROY. Is there a possibility that the Public Defender organization can absorb additional cases?

Mr. MURPHY. Mr. Fauntroy, in the Public Defender's Office it would be utterly impossible to absorb this many cases, absolutely impossible.

Mr. FAUNTROY. Have you had funds for additional attorneys turned down this year?

Mr. MURPHY. I believe the Public Defender's Office requested additional attorneys. I do not think they were approved in the House. Mr. Coppie may know.

Mr. COPPIE. That is correct. We had requested approximately, I believe, 12 or 15 additional attorneys for the Public Defender Service in 1964, and that was denied by the House.

Mr. FAUNTROY. What other funds may be available from the city's fiscal year 1974 budget to pay for the costs of indigent defendants?

Mr. COPPIE. I believe it has been the consistent position of the city government, which is, I believe, stated specifically in the letter of the Attorney General, that there is not sufficient financing capability in the District government in 1974 to sustain the cost of this requirement.

Mr. FAUNTROY. No funds may be available, say, under revenue sharing at all?

Mr. COPPIE. That is correct, Mr. Fauntroy.

The CHAIRMAN. The Chair recognizes Mr. Ketchum.

Mr. KETCHUM. Thank you, Mr. Chairman.

PUBLIC DEFENDER SYSTEM

I have a couple of questions. Again, unfortunately new members arriving on this committee, given the vagaries of the political process, are not always familiar with what goes on in the District of Columbia. If you will, right now you have a public defender system like every other city?

Mr. WASHINGTON. That is correct.

Mr. KETCHUM. That is funded how?

Mr. WASHINGTON. By congressional appropriation.

Mr. KETCHUM. Under CJA what does that provide additionally?

Mr. WASHINGTON. In money or—

Mr. KETCHUM. No, services.

Mr. WASHINGTON. In services, that is the very problem that we are dealing with here. It provides for the indigent clients to have service.

Mr. KETCHUM. Other than the public defender?

Mr. WASHINGTON. Other than the public defender, yes. It has been a part of the total Federal applications. What we were observing earlier is that the Attorney General or the Comptroller General indicated this is an appropriate matter for the Federal judiciary to assume as it does in other Federal jurisdictions.

Mr. KETCHUM. Am I correct in assuming that an indigent defender may make a choice between a public defender or a private attorney to handle his case? Is that what we are talking about?

Mr. MURPHY. The judge generally assigns counsel to the case. He may assign it from the public defender's office or private counsel.

Mr. KETCHUM. The \$18,000 referred to in section 3 of the Mayor's testimony, that is for an attorney other than a public defender, limitation that may be paid in any 1 year?

Mr. WASHINGTON. That is correct. I think that was an action of the board of judges that I referred to. They may want to speak to that more fully. The chief judge is here. They met and that part of the chronology pointed to one attorney.

Mr. KETCHUM. For 1 year?

Mr. WASHINGTON. For 1 year.

CONTINUING RESOLUTION

Mr. KETCHUM. Right now are you funded presently under the continuing resolution?

Mr. WASHINGTON. We are funded under the continuing resolution until September. Except I am not sure where our supplemental is. We are involved in—

Mr. KETCHUM. There is nothing unusual about that. They don't know where anything is either.

Mr. WASHINGTON. We have to kind of keep the hospitals going and pick up the trash for you. It is a little more sensitive. We cannot always wait.

Mr. KETCHUM. I suppose the final question would be one of the most difficult ones to answer; that is, under this given set of circumstances, because we don't know what is going to happen in the supplemental, you are operating under a continuing resolution until September, what specifically would you want this committee to do today?

RECOMMENDATIONS

Mr. WASHINGTON. I suppose it is fair to say that I didn't come prepared to ask the committee to do anything. I came at the committee's request to discuss the matter and see if there were any alternatives. I have tried to point out what we have done in the District government. I think probably we have done under the circumstances about what everybody expected us to do. At this moment the matter is in, as Congressman Gude pointed out, because of the situation of the Federal judiciary not picking it up and our budget having gone forward, it falls between the cracks.

I think the chairman is here to not only look at the immediate problem but to see if we cannot find a means to handle this so it would not fall between the cracks in the future and we have some reasonable system for handling this.

Mr. KETCHUM. Anticipate what might happen hopefully?

Mr. WASHINGTON. Hopefully. I was complimenting the chairman for assembling the committee. I did not come to ask for anything today. I came at his request.

Mr. KETCHUM. I appreciate that.

Mr. WASHINGTON. To join in the discussion and to also say that to the extent that the city has any facilities, whether it is in lapse or anything, we are prepared to offer what we can to meet the problem. Up to now I have offered, even in view of the Comptroller General's opinion, to pick up the matter continuously from 1975 on the basis that our present budget is still going through the Congress and is in markup in the Senate. That is just about bound there.

Mr. KETCHUM. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from California raises a very cogent point, and really that is one of the reasons, among others, that we invited the Mayor here, in a sense to find out if there are any restrictions, any kind of limitations which restrict the city from using funds that might be available for such purposes, whether or not the city needs any congressional authority through this committee to require reprogramming, or whether or not if you wanted to do something and had these kinds of restrictions, whether or not we might end up having to increase the Federal payment as a result.

These three things are what the gentleman from California is trying to get at.

Mr. WASHINGTON. We might speak to all of those, Mr. Chairman.

SUBSTANTIVE AUTHORITY NEEDED

Mr. MURPHY. I think essentially, Mr. Chairman, if we found some moneys that were available for reprogramming, we would still have to first have the substantive authority from the Congress to make the payments to lay a foundation for reprogramming. I think each of these categories when you are looking at any funds coming, the possibilities of funds coming from the District, it would have to be preceded by subsequent legislation setting up the program within the framework of the District government.

The CHAIRMAN. Because of the \$25,000 limitation on your reprogramming?

Mr. MURPHY. No; because there would be no substantive authority in which the reprogramming could be requested.

Mr. WASHINGTON. I think, too, Mr. Chairman, I think there is a continuous alluding to what we may do within the elements of the court system. I think I didn't want to get too far into that because what I have assumed, whether right or wrong, is that the separation of powers has this provision. The judges have held very firmly to that, and we have not challenged, I will say, this with respect to the entire court budget.

This has been workable. I have talked to Judge Greene from time to time prior to getting the budget together, and we have negotiated a position with respect to the budget. He has been very fair in this area—and finally, I needed half a million dollars. He was very willing to work with me to get a mark that I could deal with. I don't want to have the committee appear to doubt whether we want to discuss it.

I think the matter there is one as to what is in that budget and where we see any possible recommendations and fairness should come from Judge Greene.

I was trying to reserve that for him without, I wouldn't call it intruding, but without opening it up so that you could get a full response.

The CHAIRMAN. The gentleman from Missouri, Mr. Taylor.

Does the gentleman from Missouri, Mr. Taylor, desire recognition?

Mr. TAYLOR. Thank you, Mr. Chairman. I have no questions.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions, Mr. Chairman, only to welcome my good friend the mayor here and to advise him that he did get me into trouble; he invited me over for the reception for President Tolbert of the Republic of Liberia and the bells rang. I hurried and hurried but I got to the door after the door had been closed, so I got a very nasty letter from somebody back home saying, "You missed the vote; you are to blame for it." But I thank you for inviting me. It was a nice party.

Mr. WASHINGTON. I would like to say, Mr. Chairman, that I certainly regret that. I want you to know that you struck a blow for international peace.

Mr. NELSEN. That is good. In the event a change were made putting this under the District, it would then come under you. As presently in operation, it is federally appropriated?

Mr. WASHINGTON. That is right, Federal Judiciary appropriation.

Mr. NELSEN. If a change were made putting it under the District Government, you would add it to the District budget?

Mr. WASHINGTON. Yes, sir.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rees?

Mr. REES. No questions.

The CHAIRMAN. Mr. Mazzoli?

Mr. MAZZOLI. No; thank you.

The CHAIRMAN. Thank you very much, Mr. Mayor.

If any of your counsel can remain in case there are any other questions, we would appreciate that.

Mr. WASHINGTON. I would like to have both the Budget Officer and the Corporation Counsel remain.

The CHAIRMAN. We would appreciate that. Of course, you are welcome, but we understand you have plans.

Mr. WASHINGTON. I have a few matters but I regard this as a matter of very serious concern. The Bar Association representatives are here and they will testify that I have been at their disposal. Judge Greene has worked hard and I have been at his disposal in an effort to try to resolve this matter, and in the confines of the deliberation if any opportunity develops, I am more than happy to do what I can to cooperate to resolve this matter. You have my pledge on that, and that, of course, obtains for 1975. But if there is anything within the parameters that comes through on 1974, we are prepared to deal with it.

The CHAIRMAN. Thank you. Judge Greene and Judge Kelly, will you step forward.

Judge Harold H. Greene, Chief Judge of the Superior Court, and the Hon. Catherine B. Kelly, Acting Chief Judge of the District of Columbia Court of Appeals.

STATEMENTS OF HON. HAROLD H. GREENE, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, AND HON. CATHERINE B. KELLY, ACTING CHIEF JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

The CHAIRMAN. Judge Greene, you have a prepared statement? You may proceed.

Judge GREENE. Mr. Chairman, I have a prepared statement, but with the permission of the Chair I would ask that it be inserted in the record without my reading it. Perhaps I can summarize what is in that statement. There is attached to the statement a 9- or 10-page chronology of the events leading up to this impasse, which both Chief Judge Reilly of the Court of Appeals and I signed, and I would ask that also be included as part of my statement.

Finally, in regard to the statement, I have one correction on page 5. There is an error, and we have submitted 20 copies of a corrected page 5. I would submit the additional copies at some time today so that the statement will be accurate as of that time.

The CHAIRMAN. Proceed in that fashion.

[The statement follows:]

PREPARED STATEMENT OF CHIEF JUDGE HAROLD H. GREENE

Mr. Chairman and members of the committee: I am delighted to be here to testify before the Committee concerning the threatened crisis in the continued availability of counsel under the Criminal Justice Act for indigent criminal defendants in the local court system of the District of Columbia. Since 1966, pursuant to an order in the case of *U.S. v. Walker* and a subsequent ruling of the Comptroller General of the United States, the Criminal Justice Act has applied in the District of Columbia courts. Criminal Justice Act payments have been made routinely for appointed attorneys in the District of Columbia courts in the same manner as in federal courts throughout the country and funds needed for this program has been included routinely in the Criminal Justice Act appropriation requests of the Federal Judiciary and have been so approved.

During the time when the Court Reform and Criminal Procedure Act of 1970 was pending before the Congress, the question of the applicability of the Criminal Justice Act to the reorganized D.C. Court System was explicitly raised. At that time the Criminal Justice Act was amended (18 U.S.C. 3006A(1)) in several respects, including an amendment of Section (1) of the Act to provide that "the provisions of this Act, other than Subsection (h) of Section (1), shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals." The legislative history of this amendment fully supports the conclusion that it was the intent of Congress that the Criminal Justice Act continue to be applicable in the reorganized local court system for the purpose of providing compensation to counsel who are appointed to represent indigent defendants. Moreover, unless it had been intended that the Act would be applicable within the local court system there would be no reason whatsoever for requiring that the CJA plan for the District of Columbia be approved by the District of Columbia Court of Appeals, since that court is a local rather than a federal court.

Notwithstanding this statutory language the Administrative Office of the United States Courts asked the Comptroller General of the United States for an opinion concerning the continued applicability of the Criminal Justice Act in the local court system in view of court reorganization. In a formal opinion, issued on May 26, 1972, the Comptroller General ruled that "the Administrative Office of the U.S. Courts should handle the administration of, and budgeting for, the Criminal Justice program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal District courts."

In early 1972 there was publicity concerning the fact that some attorneys practicing in the local courts had received what were considered to be inordinately large amounts of CJA funds during previous fiscal years. Although the local courts began an immediate review of this problem and quickly took action to remedy any abuses, the Subcommittee on the Federal Judiciary of the House Appropriations Committee inserted a rider in the 1973 appropriation eliminating the District of Columbia courts from any further participation in CJA funding. This rider was subsequently modified and a \$1 million ceiling for CJA expenditures for the District was substituted. It should be noted, however, that during FY 1972 \$1,570,000 in CJA funds were expended in the local courts and that thereafter the jurisdiction of the D.C. Court System was greatly increased and the rates payable under the Criminal Justice Act were doubled. All estimates of the funding needed for operation of the Criminal Justice Act in the local court system during FY 1973 had indicated that the cost would probably exceed \$2 million and it was clear at the time the \$1 million ceiling was imposed that this amount would not be adequate to finance CJA operations in the local court system throughout FY 1973.

At roughly the same time, during the Spring of 1972, the Judicial Conference of the United States, apparently acting at the request of the Administrative Office of the U.S. Courts, directed that the Administrative Office thereafter discontinue including funds for the operation of the CJA program in the District of Columbia in the budget submitted on behalf of the Federal Judiciary.

The imposition of the \$1 million ceiling for FY 73 and the refusal of the Administrative Office, acting pursuant to the direction of the U.S. Judicial Conference, to include funds for the D.C. Courts in its appropriation request for FY 74 gave rise to both immediate and long-term problems. The local courts immediately set in motion the machinery to request a supplemental appropriation for FY 1973 and the Administrative Office cooperated in submitting a supplemental appropriation request in the amount of \$543,000. Additionally, the courts began immediately to attempt to avert the crisis which it was clear would occur unless a means were found to finance the operation of the Criminal Justice Act in the District of Columbia in FY 74 and thereafter. A detailed chronology of efforts to find a solution to this problem is attached, but these efforts included meetings with representatives of the Administrative Office, the Chief Justice, Congressional staff members, Mayor Washington and local budget officials, representatives of the Department of Justice, and leaders of the local Bar. Although many of these persons have made outstanding efforts to help find a permanent solution to this problem, and all have voiced their concern about the problem and their desire to cooperate in reaching a solution, the problem is, as yet, unsolved.

As indicated, the local courts took immediate action to investigate and curb any abuses which had occurred in the operation of the CJA program in the District of Columbia. Among the steps taken by the Board of Judges of the Superior Court were: The appointment of a committee of judges to investigate the operation of the Criminal Justice Act in the Superior Court; the adoption of a resolution limiting individual attorney payments in the Superior Court under the Criminal Justice Act to \$18,000 and calling for increased utilization of the Public Defender Service in the defense of indigent defendants in juvenile and criminal cases; the imposition of a requirement that CJA vouchers submitted in the Superior Court include detailed time records; an amendment of the Superior Court rules to provide for increased use of law students in the representation of indigent defendants, including the assignment of all pretrial diversion cases to third year law students; the development of procedures for obtaining increased contributions from CJA defendants; and the establishment of a new system whereby a single judge examines and passes upon CJA vouchers in all nontrial cases. Moreover, a procedure was developed to provide for disciplinary action against any attorneys who falsify CJA vouchers.

I have made this relatively detailed account of the history of the Criminal Justice Act crisis and the efforts of the local courts to tighten CJA procedures and to avert this crisis to underline how seriously the Court regards this problem. Indeed, it is clear that a failure to find a permanent solution to the dispute over the question of funding for this program will result in a serious crisis in the administration of justice in the District of Columbia. In the event funds are not forthcoming the Court can seek to conscript, on an unpaid basis, private attorneys to provide legal counsel to indigent defendants. As you may be aware, a few days ago I directed the Public Defender Service and the Unified Bar of the

District of Columbia to seek to implement such a system, beginning on July 1, 1973. The Board of Governors of the Unified Bar responded to me that they felt such a system would raise severe constitutional problems both from the point of view of the defendants represented and from the point of view of the lawyers conscripted, particularly if such conscription were limited to the relatively small number of local attorneys with previous criminal trial experience. I am quite sympathetic to the position taken by the Bar, indeed, I myself have questioned in the past whether such a system could constitutionally be developed. Moreover, I am in wholehearted accord with their view that any effort to provide free attorneys from among the private Bar for more than 300 defendants per week would be administratively impossible.

Conceivably the Court could return to the system which existed before 1966 when criminal representation was handled by a few attorneys who entered guilty pleas or not, depending solely upon the ability of a defendant or his family to pay. Such a system, of course, promotes practices which are sordid in the extreme and are intolerable in a system which seeks to provide justice, in appearance and in fact, to the defendants coming before it.

It has been suggested that this problem could be resolved by requiring that the Public Defender Service represent a larger proportion of the indigents coming before the Court. The Public Defender Service presently handles approximately 25% of the Superior Court's criminal and juvenile cases involving indigent defendants, and handled a total of 1,971 cases in the Court last year; it cannot handle a larger percentage of the cases without additional attorneys. In any event, the Public Defender Service is limited, by statute, to providing representation in 60% of the local cases involving indigent defendants. This statutory limitation, included in the Court Reorganization Act, reflects the apparent feeling of the Congress, with which I agree, that a mixed system of providing representation to indigent defendants is preferable to relying solely upon Defender services.

In 1972 51,435 defendants in federal trial courts throughout the United States were represented by attorneys appointed pursuant to the Criminal Justice Act, including 12,405 defendants so represented in the Superior Court. This means that in 1972 local CJA appointments constituted 24% of the total appointments in the United States, whereas only approximately 9% (\$1,536,000) of the entire Criminal Justice Act appropriation for FY 1973 went to pay for CJA activities in the local courts. Moreover, during FY 1972 the average CJA payment to attorneys in U.S. District courts was \$271, whereas the average payment in the Superior Court of the District of Columbia was \$126. I am advised that the average per case cost of representation has always been and continues to be lower in the Superior Court than in U.S. District Courts. Further, it should be noted that well over 25% of the total prosecutions brought in the name of the United States each year are brought in the Superior Court of the District of Columbia. Thus the cost of defense services in the local courts is not disproportionate in view of the number of federal prosecutions in that court.

The Constitution, as interpreted by the Supreme Court, requires that every defendant in a criminal or juvenile delinquency proceeding be represented by counsel. If counsel is not available, as appears likely unless this impasse is resolved, the Court will ultimately have to discontinue the conduct of criminal and juvenile delinquency proceedings. Whether this action would mean that all individuals affected would be held in confinement until counsel were found or, as appears more likely, that they would be released pending solution of this problem, both alternatives are highly unpalatable.

The Superior Court is in a position, perhaps unique among urban court systems, of having little or no backlog and of trying juvenile and criminal cases in a matter of weeks after they are filed, despite the fact that a very substantial number of the cases in the Court are disposed of by trial rather than by enforced plea bargaining. It is clear that the present system of paid counsel for indigent defendants has contributed significantly to the success of the operation of D.C.'s criminal justice system and its present status as a model for the nation. I am deeply concerned that what appears to be basically a jurisdictional dispute over the source of funding for a necessary program should threaten to wipe out the progress which has been made over the last several years toward the goal of fair and efficient operations in the local court system, and I sincerely hope that steps will be taken to permit the Court to continue to be a model of how criminal justice should be administered.

STATEMENT

On June 30, 1973, the end of the fiscal year, current Criminal Justice Act funding for legal representation for indigents ends with respect to the District of Columbia courts. While efforts still being made to provide specific congressional appropriations for fiscal year 1974 may yet prove to be successful, and without prejudice to such legal arguments as may be made that the Constitution or substantive statutory law form a basis for a continuation of Criminal Justice Act payments in the District of Columbia, arrangements have been announced today for an alternate method of providing representation for indigents in our courts. We believe this to be an appropriate time for summarizing for the record the efforts we have made, in conjunction with others, to provide continued Criminal Justice Act appropriations for the District of Columbia.

1. On March 7, 1972 the Administrative Office of the United States Courts requested the opinion of the Comptroller General of the United States as to whether, in view of the reorganization of the local courts in the District of Columbia, funds appropriated under the Criminal Justice Act would continue to be available to pay attorneys appointed to represent indigent defendants in the D.C. Court System. On May 26, 1972, the Comptroller General issued a written opinion (#B-175429) holding that "... subsection (1) of the CJA, as added by Public Law 91-447, clearly and unequivocally makes the CJA applicable to prosecutions brought in the D.C. Superior Court and the D.C. Court of Appeals with regard to those prosecutions brought in the name of the United States..." Moreover, the opinion stated that "the Administrative Office of the United States Courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal district courts..."

2. On October 25, 1972 we were informed by Mr. Rowland Kirks, Director of the Administrative Office of the U.S. Courts, that the Judicial Conference of the United States had decided that its budget submission for fiscal year 1974 would not include a request for Criminal Justice Act payments to counsel in the local courts of the District of Columbia, and that this item should, instead, be included in the D.C. budget submission. The District of Columbia courts were given no opportunity to explain to the Judicial Conference, either orally or in writing, the difficulties that this action would create for the administration of justice in the District, nor were they given an opportunity to present to the Conference whatever factual or legal bases there might have been in opposition to the Judicial Conference action.

3. On November 15, 1972 we arranged for a meeting with Mr. Kirks. That meeting was also attended by representatives of the Department of Justice. After considerable discussion, Mr. Kirks suggested that, should the District of Columbia agree to assume Criminal Justice Act financing for the period beginning on July 1, 1973, his Office would seek to obtain from the Congress, by way of a supplemental appropriation, the funds necessary to carry CJA operations in the District of Columbia courts to June 30, 1973. The participants at the conference concluded that before this proposal could be agreed to, it was subject to approval by, among others, Mayor Washington, the D.C. Court of Appeals, the Superior Court, and the committees of the Congress having jurisdiction, but they agreed that the proposal was a reasonable effort to resolve the matter and they stated they would seek to implement the proposal.

4. On December 5, 1972 a meeting was held by the undersigned Mr. Barrett Prettyman, President of the Unified Bar of the District of Columbia, representatives of other bar associations in the District of Columbia, Mr. Norman Lefstein and Mr. J. Patrick Hickey of the Public Defender Service, Mr. Charles Work of the Office of the U.S. Attorney, and others to discuss the feasibility of implementing the Kirks proposal. It was the unanimous conclusion of those present that this proposal did not represent a basis upon which agreement could be reached. A principal obstacle, which was extensively discussed, was the fact that the enabling legislation, both on its face also as construed by the Comptroller General, placed responsibility for local CJA funding on the Federal Judiciary, and that therefore any effort to fund the program through the District of Columbia budget might require new substantive legislation as well as appropriations, and, hence approval by four separate congressional committees. The group also considered the fact that the District of Columbia courts had no authority to give up a statutory right granted to criminal defendants in the

District simply in order to assure emergency funding for the remainder of the fiscal year, and the fact that, in view of the congressional requirement that the District of Columbia budget be balanced, a condition which is not true of funding through the Federal Judiciary, Criminal Justice Act payments would henceforth, under the Kirks proposal, constitute a constant and permanent drain on District resources, and a threat to other important District programs.

5. Numerous meetings were held thereafter between the undersigned leaders of the organized Bar, Congressional staff members, Mayor Washington, and others in an effort to resolve the problem. Despite repeated expressions of concern, no dispositive action was taken.

6. On February 7, 1973, Mr. Rowland Kirks submitted to the Executive Office of Management and Budget a supplemental appropriation request for fiscal year 1973 in the amount of \$543,000, to be used for the payment of counsel appointed under the Criminal Justice Act in the District of Columbia court system. This amount was to take care of those CJA payments in excess of the \$1 million ceiling which had been placed by the Congress on CJA expenditures in the local court for FY 73. In his transmittal letter to Mr. Roy Ash, the Director of the Office of Management and Budget, Mr. Kirks noted that no funds were included in the budget estimates of the Judiciary for fiscal year 1974 for use in connection with the operation of the Criminal Justice Act in the local court system.

7. On March 5, 1973 the undersigned secured a meeting with the Chief Justice of the United States to explain the situation to him. The Chief Justice gave the matter thorough consideration, he was sympathetic and expressed his desire to be helpful, but he indicated that, insofar as funding through the budget of the Federal Judiciary was concerned, he was bound by the Judicial Conference resolution and that accordingly he could not help in that regard.

8. Subsequent to these developments a committee of distinguished attorneys with congressional experience was appointed by Mr. E. Barrett Prettyman on behalf of the District of Columbia Bar, to attempt to persuade the Congress to take appropriate action to solve the local CJA crisis. This committee was headed by former Maryland Senator Joseph Tydings. Parallel efforts were made by Mr. Bernard Nordlinger and members of the D.C. Bar Association.

9. On March 13, 1973 Chief Judge Reilly wrote to Mr. Roy Ash, Director of the federal Office of Management and Budget requesting that the budget estimate of the Federal Judiciary for FY 74 be amended to include an additional sum of \$2,259,000 for CJA expenditures for services performed in the Superior Court and the Court of Appeals of the District of Columbia.

10. On April 10, 1973 the Judicial Conference of the District of Columbia Circuit was apprised of the current status of efforts to obtain continued Criminal Justice Act funding for the local courts. The Conference unanimously adopted a resolution urging continuing funding for this purpose and calling attention to the critical nature of the problem which would face the District of Columbia in the event no source of funding was found.

11. On April 12, 1973 the undersigned and Mr. E. Barrett Prettyman and Mr. Charles Duncan, the President and President-Elect of the District of Columbia Bar, held a press conference to apprise the public of the current status of efforts to obtain continued Criminal Justice Act funding and the potential crisis confronting the city in that event these efforts were not successful.

12. On April 13, 1973 the Judicial Conference of the United States again voted not to request funds for the payment of CJA expenses in the D.C. Court System in its FY 74 budget.

13. On April 18, 1973 the undersigned wrote to the Chairman of the House and Senate Appropriations Committee as well as the Subcommittee on the District of Columbia and on the Federal Judiciary outlining the history of the applicability of the Criminal Justice Act to the District of Columbia Court System and requesting their assistance in resolving the jurisdictional conduct, and in averting the threatened crisis in CJA funding and therefore in court operations in the District of Columbia.

14. On April 25, 1973 Mr. Ash advised the court system that, because of the separation of powers, the Office of Management and Budget was unable to propose any amendment to the budget submission of the Judicial Branch.

15. On May 3, 1973 the House Appropriation Subcommittee, chaired by Congressman John Rooney, stated its agreement with the position taken by the Judicial Conference of the United States and announced its opposition to any effort to fund local CJA activities in fiscal year 1974 through any source other than the budget of the District of Columbia.

16. On May 3, 1973 Chief Judge Reilly, in the course of his testimony on the appropriation request of the D.C. Court of Appeals, brought the District of Columbia Subcommittee of the House Appropriations Committee up to date on the courts' efforts and emphasized the need for urgent action.

17. On May 16, 1973 Chief Judge Reilly reiterated his concern to the District of Columbia Subcommittee of the Senate Appropriations Committee, and Chief Judge Greene, in response to questions, underlined Judge Reilly's position. During the same hearings, while the Director of the Public Defender Agency was testifying, Chairman Birch Bayh and Senator Mathias expressed their support for the judicial system's needs in this regard, and expressed the opinion that funds for this purpose should come from the budget of the Federal Judiciary.

18. On May 30, 1973 Mayor Walter Washington informed Chief Judge Greene that insofar as he was concerned, the District would be prepared to include a request for compensation for the defense of indigents in its budget, beginning with fiscal year 1975, but that the inclusion of this program was not possible with respect to fiscal year 1974. He suggested that efforts should be made once more to induce the Federal Judiciary to continue its funding through fiscal year 1974.

19. On June 5, 1973 Senator Joseph Tydings and Mr. E. Barrett Prettyman, Jr., urged this course of action upon the Chief Justice of the United States, but they were again informed that the Chief Justice would not support this position, in view of the two Judicial Conference resolutions opposing continued federal funding for local CJA matters.

20. On June 4, 1973 Deputy Attorney General Sneed directed the Law Enforcement Assistance Administration to explore the possibility of funding the indigent defense program for the District for fiscal year 1974. At a meeting held on June 6, 1973, which was attended by representatives from the Office of the Deputy Attorney General, representatives from LEAA, Senator Tydings, Mr. Charles Duncan, representatives of the Mayor's Office, and by the undersigned, it was agreed that Chief Judge Greene's Office would prepare and submit an application for an LEAA grant for this purpose. Such an application has been prepared. However, thereafter the undersigned were advised that the grant would not be approved, apparently because of Subcommittee representations that such a grant was not favored.

21. On June 8, 1973 Senator Tydings and Chief Judge Greene discussed the desirability of holding one more meeting of principals to determine whether a legislative or executive solution could be found prior to the June 30 deadline. Accordingly, a meeting was held on June 13, 1973 in Senator Mathias' Office which was attended by Senator Tydings, Deputy Attorney General Sneed, representatives of the Mayor, Mr. Charles Duncan, members of the Bar Committee working on this matter, and the undersigned. It was the consensus of this meeting that legal and practical problems precluded fiscal year 1974 funding through the District of Columbia budget, and that in view of the action of the Department of Justice on the LEAA request, the most feasible avenue was 1974 funding through the Federal Judiciary appropriation. Those present concluded that this course could reasonably be urged in view of the cooperative attitude of the Mayor with respect to funding beginning in 1975. A number of those present, including the Deputy Attorney General, undertook to persuade key congressional leaders that the minimal step on one-year funding by way of the Federal Judiciary budget should be undertaken.

22. On June 14, 1973, the Deputy Attorney General advised that the Attorney General could not successfully carry out the assignment undertaken at the previous day's meeting. Subsequently, Deputy Attorney General Sneed advised the undersigned that the question of funding local CJA operation through the Federal Judiciary appropriation for fiscal year 1974 had been further explored and that it was impossible for the Department of Justice to be of further assistance to the local court system in this matter.

23. The undersigned met on June 20, 1973 with Mr. Prettyman, Mr. Duncan, Mr. Lefstein and Mr. Coppie and formally requested that the District of Columbia Bar and the Public Defender Service undertake the necessary arrangements to provide, from among the members of the local Bar, adequate numbers of attorneys to service all indigent defendants beginning on July 1, 1973.

24. It should be made very clear that the local court system has received the highest level of cooperation, throughout several months of attempts to find a solution to the problem of criminal justice operation, from the District of Columbia Bar, the Public Defender Service, the Mayor and numerous private individuals. Moreover, throughout this period of uncertainty private attorneys have continued to faithfully appear in the local courts and accept assignments to represent indigent criminal defendants even during those periods when it appeared unlikely that they would be appropriately compensated for their efforts. Every possible effort has been made both by the court and by other concerned parties to find a solution to what initially appeared to be a relatively simple problem. As the months have passed it has become clear, however, that—despite widespread verbal commitments to the necessity of continued funding for the Criminal Justice Act in the local courts—no one is willing to undertake the responsibility for budgeting the amount necessary to continue this program. It is indeed regrettable that an extremely well functioning criminal justice system, perhaps the only urban system in the United States with no backlog despite a high level of trials as opposed to guilty pleas, is being threatened by this administrative imbroglio. Clearly it is central to the continued efficient functioning of the local court system that the elements of the adversary process be maintained and that trial counsel and appellate counsel and transcripts be provided for both indigent and non-indigent defendants. The Superior Court has sought the assistance of the Bar Association and the Public Defender Service in an effort to provide attorneys for each defendant and it has been assured of the continued cooperation of these agencies in seeking to meet this goal. The courts will do everything within their power to continue to operate an efficient criminal justice system and to guarantee justice to all participants in the system.

HAROLD H. GREENE,

Chief Judge, District of Columbia Superior Court.

GERARD D. REILLY,

Chief Judge, District of Columbia Court of Appeals.

Judge GREENE. Mr. Chairman, very briefly, the matter arose in 1966. The Criminal Justice Act was enacted in 1964. It was then assumed that it did not apply to the District of Columbia courts, it applied only to the U.S. district courts and the U.S. Court of Appeals proper.

In 1966 I happened to be instrumental in a decision accompanied by a rather lengthy opinion which held for basic logical protection grounds the act must be construed to apply to the D.C. courts. Otherwise it would be unconstitutional. Otherwise our defendants, the same as defendants in the same U.S. district courts, are being prosecuted by the U.S. Attorney in the name of the United States.

I will submit a copy of that opinion for the record, as well as the other papers which bear on this chronology, if I may.

The Administrative Office of the U.S. Courts disagreed with that view, challenged that interpretation.

We prevailed upon them, and they did submit the matter then to the Comptroller General of the United States. The Comptroller General of the United States ruled that the Criminal Justice Act did apply to the D.C. courts, essentially within the reasoning that the defendants in the District of Columbia courts were being prosecuted by the United States.

I would like to submit that decision of the Comptroller General.

The CHAIRMAN. Without objection, these statements will be included in the record.

[The information follows:]

District of Columbia Court of General Sessions

Criminal Division

CRIMINAL ACTION NO. 363-66

UNITED STATES OF AMERICA, PLAINTIFF,

v.

FRANK WALKER, JR., DEFENDANT

OPINION

I have this day approved the payment of compensation under the Criminal Justice Act of 1964 to Mr. Sol Z. Rosen, Esq., a member of the D.C. Bar, for his representation of the defendant in the above-entitled case. Since this case is one charging a misdemeanor in violation of the District of Columbia Code and since the question of the application of the Act to such cases when tried in this Court is as yet unsettled, a memorandum of explanation is in order.

The Criminal Justice Act was enacted on August 20, 1964. It grew out of a study made by the Attorney General's Committee on Poverty and the Administration of Criminal Justice chaired by Prof. Francis A. Allen of the University of Michigan Law School. The Report submitted by the Committee found widespread dissatisfaction with the methods of appointing counsel in United States courts, and quoted with approval from a Harvard Law Review study that:

.... The typical assigned counsel is little versed in the technicalities of the criminal law or the questioning of accused persons, and has had little if any previous courtroom experience. But use of inexperienced lawyers seems almost inevitable under a noncompensatory system . . .¹

In the view of the Allen Committee, the most effective means to remedy the situation and to assure that defendants in criminal cases would receive the legal assistance to which they are entitled was to establish a comprehensive system of paid legal assistance for each federal district. The Committee recommended that each federal district court be required to adopt for its district a plan for legal representation from among the following options: (1) representation by compensated private attorneys, (2) representation by a public defender, (3) representation by attorneys from legal aid agencies, or (4) combination of these alternatives.

The Report of the Allen Committee became the basis of legislation submitted by the President to the Congress in March 1963. The Congress had already extensively studied the problem, and a number of bills calling for reform had been introduced by individual members of Congress. The Judicial Conference of the United States and several U.S. Attorneys General had also recommended legislation in this field for many years.

After careful consideration of the Allen Report and the Executive recommendations, and after holding extensive hearings, the Congress passed and the President signed what is now the Criminal Justice Act of 1964.

The statute as enacted eliminates the public defender option but otherwise follows the general outline of the Allen Committee recommendations. It requires each United States District Court to adopt and place in operation by August 20, 1965, a plan for that district which will accomplish the statutory objective of providing compensation for attorneys for indigent defendants.

On December 3, 1964, a committee of judges of the U.S. District Court for the District of Columbia submitted a plan for this District, as required by the Act. That plan, after being modified by the Judicial Council for the District of Columbia, has since become the statutory plan for this district.

II

A review of the language of the statute and its legislative history reveals no definitive resolution of the status under the Act of defendants tried in the District of Columbia Court of General Sessions. What materials there are on this issue, however, point more strongly than not to the conclusion that such defendants were intended to receive the benefits of the statute.

¹ Report of the Attorney General's Committee, p. 25.

The most relevant portion of the Act itself is section 1(a) (18 U.S.C. 3006A(a)).² That section provides in pertinent part that each United States district court shall place in operation "throughout the district" a plan for furnishing representation for defendants "charged with felonies or misdemeanors, other than petty offenses." It is important to note that the statute does not confine the application of the plan to the District Court but makes it applicable on a geographical basis—"throughout the district." That language tends to support the conclusion that the Act is applicable to defendants tried in this Court; for this Court is located within a district to which the statute plainly has application and it tries misdemeanors prosecuted by the United States.

What little there is in the legislative history on this issue tends to support the same conclusion. A number of times during the hearings, the debates, and in the reports, reference was made to the "federal" courts and the need for better representation of indigents in such courts. The Court of General Sessions is not a part of the federal court system as such and these references may therefore be taken as indicating a negative view of the issue here under discussion.³ When read in context, however, and with an understanding of the essence of the testimony of the witnesses who referred to the courts to be covered as "federal," it is fair to conclude that these witnesses simply never considered the status of this Court, but merely spoke in general about the federal court system—admittedly the focus of the legislation. Any negative inference is contradicted, moreover, by the discussion of the application of the Act to the District of Columbia found in the Report of the Senate Committee on the Judiciary on the bill which became the Criminal Justice Act,⁴ where it is said that "Inclusion of the District will enable all appointed counsel in the trial and appellate courts to be compensated on a basis comparable to lawyers in other Federal districts."⁵ The use of the plural implies a recognition that the Act would apply in the District of Columbia to more than one trial court and more than one appellate court—and that could mean only the D.C. Court of General Sessions and the D.C. Court of Appeals (the only trial court and the only appellate court other than the U.S. District Court and the U.S. Court of Appeals to which the statement could conceivably have application).

In my view, these fragments from the statute and the legislative history are not conclusive one way or the other. While they are suggestive of a congressional purpose to include this Court, they obviously do not do so clearly and unambiguously. Since the matter is thus in doubt, resort must be had to general rules of statutory constructions.

The most pertinent rule applicable to the instant problem is this—where a law is susceptible of two different interpretations, one of which will render it unconstitutional and the other which will save it, the courts will, if at all possible, adopt the construction which will save the constitutionality of the statute. *United States v. C. I. O.*, 335 U.S. 206 (1948); *Lynch v. Overholser*, 369 U.S. 705 (1962); *Guessefeldt v. McGrath*, 324 U.S. 308 (1951); *United States v. National Dairy*, 372 U.S. 29 (1963); *Greene v. McElroy*, 360 U.S. 464 (1959).

As will now be shown, any interpretation of the Criminal Justice Act which excludes persons tried in this Court from the benefits of the Act would raise serious doubts concerning the constitutionality of the statute. Accordingly, such a construction should be avoided, and the ambiguities in the statutory language and the legislative history should be resolved in favor of inclusion of defendants tried in this Court.

² Sec. 1(a) mentions only claims for compensation for representation before the district court and the U.S. Commissioner. However, this may not be taken literally, for, as will be shown hereinafter, everyone is agreed that this Court is included at least with respect to some of its functions.

³ Occasionally, the reference is to "courts of the United States." See statement of the Managers on the Part of the House appended to the conference report (H.R. No. 1709, 88th Cong., 2d sess.), p. 5. The District of Columbia Court of General Sessions is a "court of the United States." Cf. *Benson v. Henkel*, 198 U.S. 1 (1905); *Harlan v. Harlan*, 281 Fed. 602 (District of Columbia Cir. 1922). The court was established by Congress. Its judges are appointed by the President and confirmed by the Senate. They may be removed only in the manner and for the causes provided for the removal of Federal judges. District of Columbia Code, sec. 11-902 (supp. V).

⁴ S. Rept. No. 346, 88th Cong., 1st sess. (1963).

⁵ *Ibid.*, p. 4.

III

The Criminal Justice Act was not designed to aid needy lawyers or to provide financial rewards to members of the legal profession generally; it is focused on *defendants* in criminal cases. Its purpose is to assure that all accused who are unable to pay legal fees will receive adequate legal representation comparable to that afforded the more affluent defendants.

It is significant to note in this connection that almost 20% of all crimes prosecuted by the United States anywhere in the country are tried right here in the Court of General Sessions.⁸ It would be a strange anomaly if this Act designed to improve the quality of justice wherever the government of the United States claims that its laws have been violated neglected one-fifth of all proceedings and assured better justice only in the remaining four-fifths of the cases. Remedial legislation is not normally construed so niggardly.⁷

The Allen Committee, the Attorney General,⁸ and the Congress all demonstrated their awareness that the same quality of representation could not be expected from unpaid, appointed counsel as was furnished by retained paid lawyers. As the Senate Judiciary Committee noted.⁹

The inadequacy of the representation furnished by [court-appointed lawyers in federal criminal cases] is widely recognized. * * * The fact that no compensation is provided for the time a lawyer necessarily spends on the defense and no reimbursement is allowed for his expenses is not so much a matter of professional distress as it is of public concern. Such limitations do not work so much a hardship on the lawyer as they do on the defendant. While in many instances the response of the bar has been in the finest traditions, nevertheless far too often the result for the accused has been unfair.

That is not to say that many individual attorneys have not given and are not giving devotedly of their time and energy in uncompensated cases. The legal profession is often given too little credit for its labors on behalf of the indigent and the helpless. Yet it still is true that on a mass basis it is simply unrealistic to expect that the quality of uncompensated service will be equal to that provided by lawyers who are being paid.

Congress enacted the Criminal Justice Act because it believed that the provision of compensated counsel to those unable to pay a lawyer's fee was necessary in order to effectuate the constitutional guarantees of equal protection and due process. The Attorney General, in his statement before the Senate Committee, relied heavily upon *Powell v. Alabama*, 287 U.S. 45 (1932), and *Gideon v. Wainwright*, 372 U.S. 335 (1953), both landmark fair trial cases dealing with the need for effective assistance of counsel. The congressional hearings and debates were likewise greatly influenced by due process and equal protection considerations. See, e.g., S. Rep. No. 346, *supra* pp. 4-5.

In short, it may be taken for granted that the Criminal Justice Act represented an effort by the Congress to implement the mandates of both the Fifth¹⁰ and the Sixth Amendments that equal justice be afforded to defendants in criminal cases by providing adequate legal and related services to those unable to pay for them

⁸ In 1964, the Federal courts disposed of approximately 33,000 criminal cases. About 7,000 defendants accused of misdemeanors were tried or their cases otherwise disposed of in this court in 1965. In addition, this court sat as committing magistrate during that year in approximately 1,200 cases; 13 judges handle civil and criminal cases (other than domestic relations cases) in the court of general sessions. The Federal system has approximately 20 times as many trial judges.

⁷ The act may be even more vitally necessary here than elsewhere, because those who in the court of general sessions are accused of assault or shoplifting have more need of competent assigned counsel than defendants in Federal antitrust or fraudulent securities cases.

⁸ Attorney General Kennedy advised the Senate Judiciary Committee that a recent Justice Department study "showed that pleas of guilty are entered much more frequently—in some areas three times as often—by defendants with assigned counsel than those represented by paid private counsel who have both the facilities and the incentive to make independent investigations. Defendants with appointed counsel, the study also showed, had less chance to get charges against them dismissed, less chance of acquittal when they went to trial, and greater chance, if convicted, of being sent to jail instead of being placed on probation." Hearings before the Senate Judiciary Committee on S. 63 and S. 1057, 88th Cong., 1st sess. (1963), pp. 8-9.

⁹ S. Rep. No. 356, 88th Cong., 1st sess., pp. 2, 5.

¹⁰ Cf. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Schneider v. Rusk*, 377 U.S. 163 (1964).

It is thus in the tradition of such judicial recognitions of the same principle as *Griffin v. Illinois*, 351 U.S. 12 (1956) and *Gideon v. Wainwright*, *supra*.¹¹

By its enactment of the Criminal Justice Act Congress evidently deemed that these ideals could properly be realized only by paid counsel—a conclusion which seems eminently reasonable. See *infra*.

The question arises whether, if in enacting this legislation Congress was in fact implementing deep-rooted equal protection and due process concepts, it could be presumed to have intended to exclude defendants tried in this Court from the general scheme of the statute. Beyond that, if such a presumption could be indulged in, the question may be asked whether the Congress had the power to make a distinction between cases tried in this Court and cases tried in courts to which the Act plainly applies.

When dealing with criminal procedure, the legislation lacks the authority to make distinctions between persons or groups of persons when those being so distinguished are similarly situated. This is so even where the procedure involved is a benefit rather than a right. See *Griffin v. Illinois*, 351 U.S. 12 (1956) where the Supreme Court declared that the State of Illinois lacked power to deny effective appellate review to those too poor to purchase trial transcripts while granting such review to those able to make the purchase—even though appellate review itself was a benefit which the State was not obligated to grant in the first place.

There can be no difference in treatment, unless there is a rational distinction between the classes affected. Or, to put it another way, where no rational distinction exists between two persons or classes, the law must treat them alike. As Mr. Justice Black stated in *Griffin v. Illinois*, 351 U.S. 12 at 17-18:

... our own constitutional guarantees of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, "stand on an equality before the bar of justice in every American court."

Any law which fails to abide by that basic principle of American jurisprudence is, of course, unconstitutional and hence void.

The relevance of these general principles to the issue here under discussion is clear. If no rational distinction can be drawn between cases tried in this Court and cases tried in courts to which the Act clearly applies, then the Criminal Justice Act must be construed to apply also to the cases tried here in order to save the statute from possible unconstitutionality. And, as will be demonstrated hereinafter, there is no reasonable basis for distinguishing between the cases over which this Court has jurisdiction and the cases to which the Criminal Justice Act has been applied elsewhere. In order to save it from unconstitutionality, therefore, the statute should be interpreted to apply also to the defendants in this Court.

The D.C. Court of General Sessions was created by the Congress. The criminal cases it hears are, in the main, offenses against the United States.¹² Like the instant case, they are prosecuted by the United States Attorney in the name of the

¹¹ The Court stated in *Gideon v. Wainwright*, 372 U.S. at 796-7:

Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That Government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our State and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

¹² The court also has jurisdiction over traffic cases and violations of District of Columbia regulations. These cases are heard in branches of the Court separate and apart from those set aside for trials of offenses against the United States. They are prosecuted by the District of Columbia as distinguished from the United States, and on the basis of the reasoning in the body of this opinion the Criminal Justice Act would not apply to these "D.C." cases.

United States. Most of these cases involve violations of the District of Columbia Code; others represent prosecutions under sections of the United States Code. But whatever the specific violation, all of them are cases in which the United States has such an interest that it has provided for their prosecution in its own name through its own prosecutor. D.C. Code § 23-101.¹³ As concerns the sovereignty which is involved, then, these criminal cases are exactly like criminal cases which the United States prosecutes elsewhere. If it is unfair for the United States to prosecute a defendant in, for example, the District of Montana or the Southern District of New York, without affording him a reasonable chance for presenting his defense through effective counsel, then it is equally unfair to have the United States prosecute defendants in this Court for violations of its laws without providing similar protection.

Even more important, and indeed crucial to the entire question before the Court, is the fact that if the Act were not read to apply to defendants tried in this Court, there would be many who would be tried without paid counsel who, but for the accident of geography or worse, would clearly be entitled to the benefits of the Criminal Justice Act. Four situations will illustrate this point.

(1) Misdemeanor violations of the United States Code which occur in the District of Columbia are in the main prosecuted in the Court of General Sessions. On the other hand, when such a violation occurs anywhere else in the United States (say, in Alexandria, Virginia) it is prosecuted in the U.S. District Court in that community, and the Criminal Justice Act clearly applies. There is no distinction whatever between the two types of cases except the fact of geography—and that fact is legally irrelevant. See *Gray v. Saunders*, 372 U.S. 368 (1963).

(2) Concededly, most offenses prosecuted in Court of General Sessions are misdemeanor violations of the District of Columbia Code rather than violations of the United States Code. But any attempted distinction between District of Columbia offenses and "federal" crimes would be equally irrational. The Act clearly applies and has been construed by the U.S. District Court for the District of Columbia (which drafted the plan applicable to this District) and by the Judicial Council for this Circuit (which approved the plan) to apply to violations of the D.C. Code which are prosecuted and heard in the District Court for the District of Columbia. If the Act applies to such violations at all, it must apply alike to felony violations of that Code and to misdemeanors, for the Criminal Justice Act makes no distinction (except as to the amount of payment) between felonies and misdemeanors. Indeed, by expressly excluding petty offenses, the Act reaffirms the congressional design that felonies and misdemeanors are to be treated exactly alike. To hold that the Act applies to D.C. Code felonies but not to D.C. Code misdemeanors violates that mandate.¹⁴

(3) The alternative that has been suggested is to make the applicability of the Act depend upon the original charge: if the original charge is a felony the Act would apply even if it were subsequently reduced to a misdemeanor; but if the case begins and ends as a misdemeanor it would not. Aside from the intrinsic irrationality of this kind of distinction, such a system would vest more power in the United States Attorney than it is prudent to give to a prosecuting official. Many of the offenses involved (e.g., grand larceny vs. taking property without right; housebreaking vs. unlawful entry) may be charged either as felonies or misdemeanors. The choice of charge is essentially up to the prosecutor, and his exercise of the choice depends generally upon nothing more tangible than his assessment of the circumstances surrounding the offense and the exercise of his general prosecutorial discretion. To permit the prosecutor to determine, by his unfettered choice of the initial charge, whether or not the defendant will enjoy the benefits of the Criminal Justice Act is too vast a grant of power. An unscrupulous prosecutor could well in one case initially bring (and then "reduce") the more serious felony charge (thereby assuring representation to the defendant under the Act) while starting out in another case with a misdemeanor charge (thus depriving the accused of the advantages of paid representation).

¹³ "All criminal prosecutions [other than those for which the D.C. Corporation Counsel is responsible] shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia or his assistants."

¹⁴ There is also practical reason to avoid any interpretation of the statute which excludes misdemeanors but includes felonies. In a great many cases, the original complaint charges a felony, but this is subsequently reduced by the United States Attorney to a misdemeanor (and tried in this Court as such). This reduction as often as not is the result of efforts of defense counsel. By restricting coverage of the Act to felonies, it would provide an incentive to attorneys not to attempt such a reduction, for if they are unsuccessful in their efforts to have the charge reduced, they would receive payment under the Act; if they are successful, they would receive no payment.

(4) Finally, the utter unreasonableness of distinguishing on this basis between the District Court and the Court of General Sessions is revealed when it is considered that the two courts share jurisdiction over all misdemeanors, D.C. Code § 11-963(a) (Supp. V). Under that section, misdemeanors which constitute violations of the D.C. Code may be prosecuted either in the District Court or the Court of General Sessions.¹⁵ To include under the Act misdemeanor violations of the D.C. Code prosecuted in District Court while excluding those prosecuted in the Court of General Sessions is wholly without reason. It subjects the defendants' rights to the whims of the prosecutor who decides where to bring the case and of the judge who determines whether or not to entertain it in his court.

As in the operation of any law—at least a law dealing with important procedural rights of persons accused of crime—the Criminal Justice Act must operate according to a rational pattern. A construction which exempted persons tried in this Court from the advantages of the Act would be incompatible with any rational pattern.

The pattern could not be that of a distinction between misdemeanors and felonies—for not only is such a distinction negated by the very terms of the Act but the statute clearly has been applied to misdemeanors tried in the U.S. District Courts.

The pattern could not be that of a distinction between U.S. Code offenses and D.C. Code offenses—for the District of Columbia plan proceeds on exactly the opposite assumption.

Finally, the pattern could not even be that of a distinction between D.C. Code misdemeanors, on the one hand, and all other offenses, on the other—for D.C. Code misdemeanors are included when tried by the U.S. District Court for the District of Columbia.

The only discernible pattern by which the defendants tried in this Court could be excluded would be one that focused on the court which tries the case rather than on the defendant who is being tried and on the offense for which he is being tried. And even that pattern could not be followed to its logical conclusion, for that would mean excluding from the Act defendants whose preliminary hearings in felony cases are held in this Court.¹⁶

The true focus of the consideration must be on the parties—the defendant, whose rights should not be made to depend upon the fortuitous circumstances of the court involved or the place of the trial; and the sovereign in whose name the prosecution is brought and who should be held to the same standard everywhere.

In sum, any construction of the Criminal Justice Act which excludes defendants tried in the Court of General Sessions from the advantages of the Act would be irrational¹⁷ and would grant to and withhold benefits from defendants upon the basis of considerations having no support in logic or reason. Under the decisions cited *supra*, such an irrational construction must be avoided if at all possible. Since the Act itself and its legislative history provide ample justification for construing the statute as applying to persons tried in the Court of General Sessions of offenses against the United States, including misdemeanors under the D.C. Code, it is my conclusion that the Act should be so applied.

The U.S. District Court for the District of Columbia and the Judicial Council for this Circuit have adopted and placed in operation a plan for furnishing representation to defendants in criminal cases, as required by the Criminal Justice Act.

V

The following portions of the District of Columbia plan are relevant to the problem here under discussion:

The plan shall apply to the appointment of counsel for those financially unable to obtain adequate legal representation in the following proceedings:

* * * Criminal proceedings before the District of Columbia Court of General Sessions.

¹⁵ As a matter of practice, such misdemeanors are brought in the Court of General Sessions; but the law does not compel this practice.

¹⁶ It would also mean excluding U.S. Code misdemeanors for which, under the D.C. plan, counsel may now be appointed by this Court pursuant to the Criminal Justice Act.

¹⁷ Since appeals from this Court are ultimately taken to the U.S. Court of Appeals for this Circuit, and since the Act is clearly applicable at that stage, exclusion of defendants tried in this Court would give rise to the further anomaly that the accused would have effective representation on appeal but not where errors should be avoided—at the trial level.

* * * * *

The Coordinator [of Appointments] shall prepare and maintain a panel of attorneys to receive appointments to all felony and United States Code Offenses in the Court of General Sessions. * * * If any felony charges pertinent to the attorney's representation are reduced to misdemeanors prior to indictment but after the attorney's initial interview, the attorney shall be entitled in all cases to compensation to the maximum hourly rate under 18 U.S.C. § 3006A, but the total amount shall not exceed \$50.00 unless extraordinary circumstances warranting a greater amount are demonstrated to the Chief Judge. This provision shall govern whether the reduced charges are thereafter terminated by trial or a plea of guilty.

If the case proceeds to trial in the Court of General Sessions and the defendant is convicted, the attorney shall advise the defendant of his right to appeal and of his right to counsel on appeal and shall inquire as to whether the defendant desires to appeal. If the defendant desires to appeal, the attorney shall note an appeal and file Form _____ in the District of Columbia Court of Appeals, said form being prepared by the Coordinator subject to the approval of the Court.

* * * * *

In all cases where a defendant is originally charged with a misdemeanor in violation of the District of Columbia Code, appointments of counsel shall be made pursuant to Rule 24 of the Court of General Sessions. The Coordinator shall supplement the panel of attorneys available for appointment in these cases in the manner provided in Section VI. A. He shall maintain necessary records and provide the court information regarding violations of the attorney reports requirements of Rule 24. An attorney in violation of Rule 24, or who fails to file the Coordinator's Report Form, will be subject to the judicial imposition of the sanctions provided in Rule 24, and may be removed from all panels receiving appointment to proceedings compensable under 18 U.S.C. § 3006A. The Coordinator shall make recommendations of removal, when necessary, to the Board of Trustees. The Board of Trustees shall make recommendations to the courts.

As these excerpts indicate, the plan unquestionably provides for application of the Act to this Court when the charge is a violation of the United States Code, whether felony or misdemeanor, and to felony violations of the District of Columbia Code. It is not apparent, however, whether the plan also contemplates appointments under the Act when the charge is a District of Columbia Code misdemeanor. The plan states in that connection that in such cases appointments "shall be made pursuant to Rule 24 of the Court of General Sessions"; but the language does not reveal whether this is intended to mean appointments pursuant to the Criminal Justice Act (i.e., with the compensation provided by the Act) or appointments outside the Act.

There is evidence in the plan to support either position. A footnote states that the Act should be applied to the Court of General Sessions insofar as it sits as a committing magistrate in felony cases, implying that the plan does not otherwise apply. On the other hand, if it were not intended to have any application to District of Columbia Code misdemeanors prosecuted in the Court of General Sessions it would have been easy to say so explicitly. The fact that this was not done; the fact that such cases are specifically referred to in the plan (the sole purpose of which was to implement the Criminal Justice Act;) and the fact that there is provision for inclusion on the misdemeanor panel¹⁸ of attorneys on the list maintained by the Coordinator (a Plan Official)—all lend weight to the conclusion that persons accused in the Court of General Sessions are covered under the Plan. This conclusion is strengthened by the unreasonableness of any other interpretation of the Act as demonstrated *supra*.

For these reasons, I conclude that the plan envisages and permits the appointment of attorneys by this Court in misdemeanor cases.

¹⁸ A list of attorneys for this Court has been submitted to the District Court Coordinator. It may be that this panel has been approved by the District Court. If it has not yet been approved the District Court may, of course, grant its approval at any time. I understand moreover that the District Court panel itself has not yet formally been approved but payments are nevertheless being made. In any event, Mr. Rosen, the attorney appointed in this case is on the District Court list and he is thus fully approved for purposes of the Act. He is also on the list of attorneys from this Court which was submitted to the District Court.

VI

The District of Columbia plan provides for approval by the District Court of claims for compensation relating to proceedings before this Court. The District Court will hardly be in a position to evaluate what services have been rendered in cases which are tried and completely disposed of in this Court. Particularly in view of the maximum fee of \$50.00 presently allowed for a misdemeanor offense, it does not seem appropriate to submit vouchers concerning such cases to the District Court for approval, which in any case could do little more than rubberstamp the determination made by a judge of this Court. For that reason the voucher for this case is being submitted directly to the Administrative Office of the U.S. Courts. Should it ultimately be determined that the signature of a District Judge is essential, then my approval of the voucher may be considered as a recommendation to the District Court to approve the expenditures, and the Administrative Office may directly submit the voucher to the District Judge having jurisdiction for his consideration.

VII

Dissatisfaction has been expressed from time to time with some of the representation provided to criminal defendants in this Court. In my view, most of the lawyers practicing regularly before this Court are competent and honorable men not subject to censure of any kind. Yet, as in the criminal courts everywhere, uncompensated counsel do not always render the most effective service. It was this consideration which gave rise to the enactment of the Criminal Justice Act and it is precisely for that reason that the Act is especially well designed to remedy the situation here just as it is doing elsewhere.

There are three basic approaches to the problem of representation of defendants in courts with a large volume of relatively minor criminal cases.

The first is to rely wholly upon uncompensated, volunteer counsel drawn primarily from the large, affluent law firms. While this will produce excellent representation in individual cases, experience has shown that this will not suffice to meet the incessant need for providing a lawyer for every defendant who requires one. Where this approach has been tried, it has simply meant that most defendants go to trial without any legal representation whatever.

The second approach is that used in the Court of General Sessions—a Bar composed of lawyers who are available every day for appointments for indigents as well as non-indigents. While this has the advantage of providing representation to every defendant, it, too, has its shortcomings. These shortcomings may be traced primarily to the temptations this course offers to a few to bring excessive pressure to bear upon those defendants who are suspected of having funds, and to give less than adequate representation to those who have no money whatever.

The third approach involves a government subsidy of some kind, either by way of a public defender system or through such devices as the Criminal Justice Act. This approach, which need not displace but may simply supplement other means of representation seems the most hopeful solution to many of the problems now existing in this field.

Application of the Criminal Justice Act to this Court will encourage attorneys to practice here who have refrained from doing so in the past because they did not feel able to make the financial sacrifice that this entailed; it will provide an incentive to those now regularly practicing in this Court to render more effective service; and it will enable the Court to provide more systematic, more effective, and fairer means of supervision of appointed counsel and the services they render than has been possible in the past by the other means available.

The District of Columbia Criminal Justice Act plan imposes upon its Coordinator the duty to maintain panels of attorneys eligible for appointment under the Act. The plan further provides that the "composition of panels should reflect the experience and skill of the attorneys." Moreover, "membership upon any panel is not a matter of right. The coordinator shall, when necessary, make recommendations for removal from the panels to the Board of Trustees. The Board of Trustees shall make recommendations to the courts."¹⁹ These pro-

¹⁹ Subsection (f) of the Criminal Justice Act provides that:

Whenever the court finds that funds are available for payment from or on behalf of a defendant, the court may authorize or direct that such funds be paid to the appointed attorney . . . Except as so authorized or directed, no such person . . . may request or accept any payment or promise of payment for assisting in the representation of a defendant.

visions will enable the Court, as a Court, to deal with any contingencies that may arise.

The use of the Criminal Justice Act in this Court can significantly assist in elevating the caliber of representation here just as it is doing elsewhere. It should be used for that purpose.

Nor is the cost likely to be exorbitant. \$3.5 million have been appropriated for the first year's operation of the Criminal Justice Act. As noted, *supra*, over 7,000 persons are annually accused of misdemeanors in the Court of General Sessions. Assuming that one-half of these were afforded counsel under the Act,²⁰ and assuming further that the present \$50.00 maximum expenditure is maintained, the cost to the United States of the representation feature alone would be about \$175,000.²¹ Even if the cost of other services is added, the expenditure will still be substantially below \$350,000. This is one-tenth of what it costs to administer the Act in the country as a whole. Considering the stake the United States has in assuring fair representation in this Court, that is not too high a price to pay.

(Signed) HAROLD H. GREENE,
Judge.

[Decisions of the Comptroller General]

[B-156932]

COURTS—CRIMINAL JUSTICE ACT OF 1964—PROCEEDINGS IN THE DISTRICT OF
COLUMBIA COURT OF GENERAL SESSIONS

As defendants charged with felonies or misdemeanors under the United States Code or the District of Columbia Code can be at the option of the United States proceeded against in the United States District Court for the District of Columbia or the United States Branch of the District of Columbia Court of General Sessions, both courts having concurrent original jurisdiction over the criminal cases which may properly be heard in the Court of General Sessions, except violations of police or municipal ordinances, the Criminal Justice Act of 1964 (18 U.S.C. 3006A), providing for representation at all stages of persons charged with commission of Federal crimes, may be applied to proceedings in the United States Branch of the Court of General Sessions, and the expenses of counsel and other related services paid from fund appropriated to the Judiciary, even though traditionally the Court of General Sessions has not been considered a part of the Federal court system, the rights conferred by the act being directed to defendants not to courts nor lawyers, a defendant's entitlement to representation should not depend on the choice of court, nor is the federally supported Legal Aid program established for the District of Columbia intended to substitute for the act.

TO THE DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
JUNE 15, 1966

By letter of April 7, 1966, you requested our decision on two questions concerning application of the provisions of the Criminal Justice Act of 1964, 18 U.S.C. 3006A, to proceedings in the District of Columbia Court of General Sessions. The first question is stated to arise by virtue of the adoption by the Judicial Conference of the following report of its Committee to Implement the Criminal Justice Act of 1964:

The Chief Judge of the District of Columbia Circuit is of the view that a judge of the Court of General Sessions, sitting as a committing magistrate in federal cases, may appoint an attorney to represent a defendant in a preliminary hearing in a case which may subsequently be tried in the District Court, within the purview of the CJA. The Committee has been of the opposite view. However, at the request of Chief Judge Bazelon, the Committee has authorized the Director of the AO to submit a proper voucher as a test to the Comptroller General, with all available material.

Pursuant to this report you enclosed copies of a voucher signed by District Court Judge Leonard P. Walsh approving a claim for compensation of an attor-

²⁰ This appears to be the rate in the U.S. District Courts.

²¹ This figure is probably high. About 1,200 of the cases here are "no papered" by the U.S. Attorney; many of the defendants involved in such cases will not require an attorney. Many other defendants will still retain their own counsel. In cases not necessitating a trial, a fee of less than \$50 might be awarded; in other cases, the maximum might be exceeded.

ney appointed by Court of General Sessions Judge Thomas C. Scalley in his capacity as a committing Magistrate for the District of Columbia and asks whether:

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. 3006A) may a judge of the District of Columbia Court of General Sessions, sitting as a committing magistrate, appoint an attorney to represent a defendant in a preliminary hearing in a case which may subsequently be tried in the United States District Court, and is a voucher for compensation of such attorney properly payable by this Office from funds appropriated to the United States Courts for administration of that Act?

A related but broader question arises out of presentation by Judge Harold H. Greene of the Court of General Sessions of a voucher approving payment to an attorney appointed by him to represent a defendant in a misdemeanor trial in his court. You have also enclosed this voucher together with an opinion by Judge Greene in the case of *United States v. Frank Walker, Jr.*, Criminal Action No. 363-66, setting forth his reasons for concluding that the Criminal Justice Act of 1964 is applicable to the District of Columbia Court of General Sessions and you present for our consideration the following specific question:

Is there legal authority to pay compensation to counsel appointed by Judges of the District of Columbia Court of General Sessions, and to pay for other related services performed on behalf of the defendants whom they represent in that Court, from funds appropriated to the Judiciary for implementation of the Criminal Justice Act of 1964?

You point out that upon receipt of Judge Greene's opinion you had your staff review the matter. Two memoranda, enclosed with your letter, addressed to the broader question raised in Judge Greene's opinion reach the conclusion that neither in the express language of the Criminal Justice Act of 1964, nor in its legislative history, nor in the pertinent reports of the appropriation committees of the Congress is there any support for the proposition that the act was intended to apply to the District of Columbia Court of General Sessions. You state that you are drawn to this conclusion on the basis of the text and history of the act and, further, in light of the fact that both prior to and after enactment of the Criminal Justice Act of 1964, the Court of General Sessions was served by the Legal Aid Agency, a federally supported program for attorney representation in the District of Columbia.

We have carefully reviewed the provisions of the act, its legislative history, Judge Greene's opinion, and the memoranda of law which you furnished. Also, we have considered the views of the Deputy Attorney General who has expressed his concurrence in Judge Greene's decision.

The act is intended to provide adequate representation at all stages for persons charged with the commission of Federal crimes. In making such provision, the act was framed in terms of the Federal court system of which the District of Columbia Court of General Sessions has traditionally not been considered a part. But, while the Court of General Sessions has traditionally been considered as being outside the Federal court system as such, it is significant with respect to the purposes of the Criminal Justice Act of 1964 that the United States District Court for the District of Columbia has concurrent jurisdiction over all criminal cases which may properly be heard in the Court of General Sessions. D.C. Code § 11-521(a)(2), 11-963(a). And all criminal cases heard in the Court of General Sessions other than those involving violations of police or municipal ordinances or regulations are prosecuted by a United States attorney in the name of the United States. D.C. Code § 23-101. Prosecutions by United States attorneys in the name of the United States are conducted in the "United States Branch" of the Court of General Sessions.

The Criminal Justice Act, and the rights it confers, are directed not to courts nor to lawyers, but to defendants. The act requires that the plan for every Federal district provide representation throughout the district, in the form of counsel and services other than counsel, at the expense of the United States, to all defendants charged with felonies or misdemeanors, other than petty offenses, who are financially unable to obtain an adequate defense. In the District of Columbia, defendants charged with felonies or misdemeanors, either under the United States Code or the District of Columbia Code, can at the option of the United States be proceeded against in either of the two courts. In felony cases, their initial appearances may take place either before the United States Commissioner, or before a judge of the United States Branch of the Court of General Sessions carrying out responsibilities identical with those of a United States Commissioner. In misdemeanor cases, they may be tried either by a judge

of the United States District Court, or by a judge of the United States Branch of the Court of General Sessions carrying out responsibilities identical with those of a district judge. Concurrent original jurisdiction of "offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less" is vested in both of these courts.

We understand that as a matter of practice, most misdemeanor cases brought by the United States are prosecuted in the Court of General Sessions. These include misdemeanors under both the District of Columbia Code and the United States Code. This means that some defendants are prosecuted in General Session for offenses under the United States Code which in any other Federal district in the United States would be prosecuted in the United States District Court. In addition, under current practice a defendant charged with a misdemeanor under either the United States Code or the District of Columbia Code will be tried and sentenced in the United States District Court if the misdemeanor is prosecuted along with a felony charge. In short, factors over which a defendant has no control will determine whether he is tried or sentenced for a misdemeanor in General Sessions or in District Court.

It is difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another. Moreover, in light of the fact that ultimate appeal of cases brought in the United States Branch of the Court of General Sessions lies with the United States Court of Appeals for the District of Columbia where the act plainly applies, such a distinction would be inconsistent with the stated purpose of the act to provide representation " * * * at every stage of the proceedings from * * * initial appearance before the United States commissioner or court through appeal."

The legislative history of the Criminal Justice Act is silent on the question before us; it reveals no intention on the part of the Congress to exclude some misdemeanor defendants in the District of Columbia and some felony hearings in the District of Columbia from its coverage. Nor does the act or its history suggest any basis for distinguishing in the District of Columbia between Federal and local offenses. The District Court and the General Sessions Court both handle both kinds of cases. In fact, many criminal cases prosecuted in the District Court involve purely local offenses. These cases are plainly covered by the Criminal Justice Act. Because of its concurrent jurisdiction, the District Court is presently empowered to try all of the cases involving local offenses which are now prosecuted in the United States Branch of General Sessions. If this were done, all defendants now prosecuted in that part of General Sessions would automatically come within the Criminal Justice Act. This may in fact be the only remaining alternative if Judge Greene's suggestion is correct that the denial of Criminal Justice Act benefits to defendants in his court may invalidate their convictions on constitutional grounds.

Because of the anomalous situations described above, Judge Greene concludes that there is no rational basis for excluding defendants prosecuted in the United States Branch of the Court of General Sessions from the benefits of the Criminal Justice Act of 1964 and that if the language of the act can reasonably be viewed as encompassing the United States Branch it should be so construed, particularly in the light of constitutional issues which would otherwise be raised. See in this connection the recent decision of the United States Court of Appeals in *Tate v. United States*, No. 19177 (D.C. Cir. March 28, 1966) holding that financially disabled defendants prosecuted by the United States are equally entitled to transcripts on appeal in cases arising from General Sessions or District Court.

Your office has presented two broad arguments to show that the Congress did not intend the Court of General Sessions to be covered by the Criminal Justice Act of 1964—that the text of the act itself shows an intention to exclude the Court of General Sessions and that the legislative history of the act reinforces such indication of intent as the statutory language conveys.

We would agree that neither the act nor its legislative history provides any positive indication that the Court of General Sessions was specifically intended to be covered by the terms of the act. But a review of the legislative history does not disclose any intention, either, that this court was specifically intended to be excluded. The real question it seems to us is whether the language of the act was chosen by meditated design to limit operation of the act to the courts referred to or whether the language employed was deemed appropriate to carry out the

fundamental purposes to which the Congress was addressing itself without focusing on the peculiar court structure in the District of Columbia.

The basic purpose of the act is to promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases *in the courts of the United States*. Within the context of this purpose there is no question but that a defendant in the District of Columbia is in exactly the same position whether the United States decides to prosecute him in the United States Branch of the Court of General Sessions or in the District Court. And with respect to such a defendant there is ample precedent as well as obvious reason for considering the United States Branch of the Court of General Sessions a United States court. See *Moss v. United States*, 23 App. D.C. 475 (1904); *Keane v. Chamberlain*, 14 App. D.C. 84 (1899); *Harlan v. Harlan*, 281 Fed. 602 (C.A. D.C. 1922); *Clemmer v. Alexander*, 205 F. 2d 176 (C.A. D.C. 1961); *Tipp v. District of Columbia*, 102 F. 2d 264 (C.A. D.C. 1939); *United States v. Mills*, 11 App. D.C. 500 (1897); *Page v. Burnstine*, 102 U.S. 664 (1880). If we conclude, as we believe we must, that the courts in which the Criminal Justice Act is implemented are of secondary importance to the individuals for whom its benefits were intended, there would not appear to be any reason, in the absence of a specific indication of congressional intent to the contrary, for not conferring those benefits on the ground that a particular defendant is to be prosecuted in the United States Branch of the Court of General Sessions rather than in the District Court.

Your office relies heavily upon the argument that since the Congress in 1960 created a Legal Aid Agency for the District of Columbia to provide legal representation of indigents in judicial proceedings in the District of Columbia, it could not have intended in subsequently enacting the Criminal Justice Act to bring the District of Columbia Court of General Sessions within a second federally funded program providing for legal representation. In our opinion, this argument must fail for two reasons. First, the District of Columbia Legal Aid Act, 74 Stat. 229, deals only with assuring legal representation for indigent defendants who must swear to their inability to pay modest attorney's fees. The benefits of the Criminal Justice Act are not restricted to indigent defendants and they go beyond the mere furnishing of counsel in that they include investigative, expert and other services necessary to an adequate defense. While the two acts are complementary in the District of Columbia, it cannot reasonably be maintained that the Legal Aid Act is an adequate substitute for the Criminal Justice Act of 1964 in the District of Columbia. Second, to hold that the Criminal Justice Act is not applicable in the Court of General Sessions because of the Legal Aid Agency program would require the conclusion that the act likewise is not applicable in the District Court, since defendants appearing in the District Court are also served by the Legal Aid Agency. Such a conclusion is clearly untenable and would be in direct conflict with the following statement at page 4 of Rept. No. 346, 88th Con., 1st sess., of the Senate Committee on the Judiciary on S. 1057, the bill ultimately enacted:

Although the District of Columbia is now served by the Legal Aid Agency established under Public Law 86-531, the committee considered it essential to include the District within the coverage of this statute in order to extend to the District the benefits which this act provides. The agency handles only one-half of the nearly 700 district court criminal cases annually assigned and has no specific provision for furnishing expert services or representation in appellate cases. Inclusion of the District will enable all appointed counsel in the trial and appellate courts to be compensated on a basis comparable to lawyers in other Federal districts. Since the agency qualifies as a local defender organization within the meaning of subsection (a) (3) and (g) of proposed section 3006A of title 18, the committee considers that it can be incorporated in any plan adopted by the District, without modification of its present statutory authority. The Legal Aid Agency of the District of Columbia would, therefore, for example, qualify to receive additional compensation provided for under proposed section 3006A to the extent that the plan for the District may so provide.

Turning now to the language of the act itself, it is evident as we have previously suggested, that the Congress was not specifically contemplating the Court of General Sessions. The following excerpts quoted from one of the enclosures to your letter make this clear:

Subsection (i) of Section 3006A provides:

(i) *Districts included.*—The term "district court" as used in this section includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code.

Section (a) provides that "Each United States district court" with the approval of the judicial council of the circuit shall place in operation throughout the district a plan for representation of defendants who are financially unable to obtain an adequate defense. Other successive references are made in subsection (a) to "the district court."

Subsection (b) providing for appointment of counsel refers to such appointments being made by "the United States commissioner or the court" except in the final sentence which refers to "Counsel appointed by the United States commissioner or a judge or the district court" who "shall be selected from a panel of attorneys designated or approved by the district court."

Subsection (a) relating to payment for representation provides, *inter alia* that "A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States commissioner or that court, and to each appellate court before which the attorney represented the defendant."; that "For representation of a defendant before the United States commissioner and the district court" specified compensation is to be paid; and that in certain extraordinary circumstances, payment in excess of the limits stated may be made "if the district court" certifies as to its necessity and the amount of excess payment "is approved by the chief judge of the circuit."

Subsections (g) and (h) provide.

(g) *Rules and reports.*—Each district court and judicial council of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Court in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(h) *Appropriations.*—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

Further provision is made in Section 3 of the Act relating to the submission of a plan for representation by "Each district court" to "the judicial council of the circuit" and Section 3 further provides for the formulation of rules and regulations in respect to such plans "by the Judicial Conference of the United States" (the D.C. Court of General Sessions is not represented in or within the administrative jurisdiction of the Judicial Conference (28 U.S.C. 331)).

Notwithstanding the overall impression gained from the phrasing of the act in terms of the Federal court system, we do not believe that application of the Criminal Justice Act to the Court of General Sessions is inconsistent with the statute's definition of a "district court." The statute plainly does not limit its provisions for representation to district courts. What it does with respect to district courts is to specify that each of them is to devise and, after approval or modification by the judicial council of the circuit, to place in operation a plan for adequate representation "throughout the district." Unless the plan for the district embraces all places in the district where criminal proceedings by the United States are conducted, it will violate the statute's command that each defendant who has not waived counsel "shall be represented at every stage of the proceedings from his initial appearance before the United States Commissioner or court through appeal." That mandate cannot be complied with in the District of Columbia unless the statute is construed as providing adequate representation for defendants in the United States Branch of the Court of General Sessions.

Except with respect to specifying the coverage of the act as extending throughout the district of each district court, use of the term "district court" throughout the act is in connection with matters related to administration rather than in any substantive sense designating the act's coverage. In light of our conclusion that since the Criminal Justice Act was enacted for defendants in the courts of the

United States it necessarily follows that it applies to defendants in the United States Branch of the Court of General Sessions, and since in reaching this conclusion we, in effect, attribute the failure to specifically provide for the Court of General Sessions to an oversight on the part of the Congress rather than design, we would further conclude that the language of the act should not be read as precluding the formulation of a plan for the District of Columbia which embraces the United States Branch of the Court of General Sessions and provides for its administration with respect to that court in a practicable manner consistent with the overall requirements of the act.

For the reasons stated herein, we agree with Judge Greene's opinion that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the Court of General Sessions and that any plan covering application of the act in the District of Columbia should include that Branch. Accordingly, the vouchers referred to in your letter may be paid. So far as concerns the administrative processes to be required precedent to payment in the future, we would not question payment pursuant to determinations made by Judges of the Court of General Sessions until such time as the District Court for the District of Columbia and the judicial council of the circuit might provide otherwise.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 24, 1970.

Hon. HAROLD H. GREENE,
Chief Judge, Court of General Sessions,
District of Columbia.

DEAR JUDGE GREENE: Your letter of June 16, 1970, raises a question concerning payment for transcripts for indigent litigants.

The facts and circumstances giving rise to the matter as disclosed by your letter are set forth below.

On January 22, 1970, the United States Court of Appeals for the District of Columbia Circuit held in *Lee v. Habib*, No. 22,203, that "the United States must pay for transcripts for indigent litigants allowed to appeal in *forma pauperis* to the District of Columbia Court of Appeals if the trial judge or a judge of the DCCA certifies that the appeal raises a substantial question the resolution of which requires a transcript." Judge Edmund Daly of the District of Columbia Court of General Sessions has now entered an order in *Pickett v. Williams*, C.A. No. L&T 74757-69, in connection with an appeal taken in that action ordering the preparation of a transcript at Government expense pursuant to the *Lee* decision.

You are presently attempting to make the administrative arrangements necessary for the execution of this order and other similar orders which may be expected to be entered in other actions. You advise that a preliminary search of applicable documents and consultations with appropriate officials have disclosed no appropriation specifically earmarked for payments by the United States of the cost of transcripts in civil cases arising in the Court of General Sessions. You state, however, that the decision of the United States Court of Appeals is quite specific in requiring that such payment be made, and insofar as the District of Columbia Court of General Sessions is concerned, the mandate of the Court of Appeals must, of course, be carried out.

In light of the foregoing, you request our decision—

"* * * on this issue, specifically as to the appropriation that is or may be made available for the payments of transcripts in civil actions litigated in the District of Columbia Court of General Sessions, and as to the method that may be employed by the Court or by the parties to effect payment for such transcripts out of appropriated funds to the respective court reporters."

The basis for the holding of the United States Court of Appeals in the *Lee* case was that 11 D.C. Code 935 makes 28 U.S.C. 753(f) applicable to the District of Columbia Court of General Sessions.

Insofar as payment for transcripts by the United States for indigents in civil proceedings in United States district courts is concerned, 28 U.S.C. 753(f) provides, in part, as follows:

"Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of

court. Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in *forma pauperis* shall be paid by the United States out of money appropriated for that purpose. * * * *Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).* The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States." (Emphasis supplied.)

As to 11 D.C. Code 935 making 28 U.S.C. 753(f) applicable to the Court of General Sessions so as to entitle an indigent litigant to a transcript at the expense of the United States, in B-153485, dated March 17, 1964, we pointed out that this code section (11 D.C. Code 935) merely authorizes the General Sessions Court reporter to charge the United States for transcripts furnished and that it does not literally or by implication enlarge the authority of 28 U.S.C. 753(f) with respect to the furnishing of transcripts at Federal expense. We are still of this view.

In support of its holding in the *Lee* case the court cited *Tate v. United States*, 123 U.S. App. D.C. 261, 359 F. 2d 254 (1966). In the *Tate* case the United States Court of Appeals for the District of Columbia held that 11 D.C. Code 935 makes the fee provision in 28 U.S.C. 753(f) applicable to the Court of General Sessions, and that, hence, a defendant prosecuted in the United States side of the Court of General Sessions who is allowed to appeal in *forma pauperis* to the District of Columbia Court of Appeals is entitled to a transcript at the expense of the United States. In the *Tate* case, however, the court made the following statement:

"* * * We make it clear at the outset that we confine our discussion to prosecutions brought by and in the name of the United States."

In light of the *Tate* case we held in 48 Comp. Gen. 569 (1969) that the Administrative Office of the United States may use appropriations available to it to pay costs incurred pursuant to the authority in 28 U.S.C. 753(f) to pay for transcripts for defendants prosecuted by and in the name of the United States in the United States Branch of the District of Columbia Court of General Sessions. Although not so stated therein, our decision in 48 Comp. Gen. 569 was based primarily on the fact that in the *Tate* case the United States not only brought the prosecution but chose the court in which the case would be tried, i.e., the Court of General Sessions rather than the United States District Court. Thus, insofar as 28 U.S.C. 753(f) is concerned, we followed somewhat the same reasoning in 48 Comp. Gen. 569 as we did in 45 Comp. Gen. 785 (1966), wherein we held the Criminal Justice Act of 1964 applicable to the United States Branch of the District of Columbia of General Sessions. That is to say one of the premises for our holding in the last-cited decision was that the United States determined whether a defendant in a criminal case was to be tried in the United States District Court or the Court of General Sessions. In that decision we stated that it was difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another. The same reasoning would seem to apply to 28 U.S.C. 753(f) insofar as criminal prosecutions are concerned.

Insofar as civil cases are concerned there is not a United States Branch of the District of Columbia Court of General Sessions. Moreover, in civil cases in the District of Columbia involving private parties the United States has no choice as to which court such case will be tried. If there is any choice as to which court in the District of Columbia a civil case involving private litigants may be tried, the discretion appropriately would be in one of the parties to the litigation.

Thus, while 28 U.S.C. 753(f) (as well as the Criminal Justice Act of 1964) may reasonably be considered applicable to the United States Branch of the District of Columbia Court of General Sessions, in our opinion the cited code provision is not applicable to civil cases involving private litigants where the Court of General Sessions exercises the functions of a local or municipal court without any Federal involvement whatsoever.

Further, in connection with the matter, we have been advised by the Director of the Administrative Office of the United States Courts that "there is no authority to use the Federal Judicial appropriations as the source of funds to pay for transcripts furnished indigents" in cases such as the instant one, and that the Administrative Office does not budget for such costs.

Since, in our opinion, 28 U.S.C. 753(f) is not applicable to civil cases (or to criminal cases to which the United States is not a party) brought in the District of Columbia Court of General Sessions, costs of transcripts for indigent litigants involved in such cases may not be paid from Federal funds. Moreover, the financing of these costs in such cases would appear to be more closely related to the District of Columbia Government than to the Federal Government.

While we recognize that the case in question and others like it might present problems, we cannot overlook the fact that the appropriation and use of public funds, including revenues of the District of Columbia, are constitutional prerogatives of the Congress; and we have found no appropriation of the Federal Government or of the District of Columbia Government which appears available for the purpose in question.

The question presented is answered accordingly.

Sincerely yours,

ELMER B. STAATS,
Comptroller General
of the United States.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., March 7, 1972.

HON. ELMER B. STAATS,
Comptroller General of the United States,
General Accounting Office,
Washington, D.C.

DEAR MR. STAATS: Your opinion is requested as to whether in light of the reorganization of the local courts in the District of Columbia pursuant to Public Law 91-358, 84 Stat. 473, the funds appropriated to the Federal Judiciary for the implementation of the Criminal Justice Act (18 U.S.C. 3006A), are available to pay attorneys and experts appointed in the District of Columbia Superior Court in cases where exclusive jurisdiction over the criminal offense charged is vested in that court. Second, if it is your decision that such funds may be so applied, in what categories of cases could such attorneys and experts be compensated?

The background of these problems may be described as follows:

A. APPLICATION OF THE CRIMINAL JUSTICE ACT IN THE UNITED STATES BRANCH OF THE OLD D.C. GENERAL SESSIONS COURT

In a letter to this office of June 15, 1966, you held that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the Court of General Sessions (43 Comp. Gen. 785). We believe that the basic points on which your decision was founded were: that the local offense jurisdiction of the United States District Court and the General Sessions Court was then concurrent; the United States Attorney could opt to have the case tried in either court; and that, therefore, a case in the United States Branch of the D.C. General Sessions Court could be considered as tantamount to a criminal case in a district court as defined in the Act.

This "United States Case" or "concurrent jurisdiction" principle was later extended to the Juvenile Court by the Judicial Conference of the United States in adopting the following portion of its committee's report at its March 1969 session, viz. (Jud. Conf. Ann. Rep. (1969), p. 37):

"Judge Johnson advised the Conference that, pursuant to a communication from Chief Judge Bazelon of the District of Columbia Circuit, the Committee had studied the question of the applicability of the Criminal Justice Act to the Juvenile Court of the District of Columbia. The Committee noted that just as there are United States Cases in the Court of General Sessions, so also the Juvenile Court has jurisdiction over certain United States Cases. Accordingly, the Committee was of the view that the reasoning of the Comptroller General in his opinion of June 12, 1966 relating to United States Cases in the Court of General Sessions was also applicable to counsel assigned in any United States Case in the Juvenile Court of the District of Columbia provided that the plan for the District of Columbia encompasses representation for defendants charged with felonies or misdemeanors, other than petty offenses, in the Juvenile Court."

In a letter to Chief Judge Greene of September 24, 1970 (B-153485) you articulated the reasoning of your earlier opinions as follows:

"Although not so stated therein, our decision in 48 Comp. Gen. 569 was based primarily on the fact that in the *Tate* case the United States not only brought the prosecution but chose the court in which the case would be tried, i.e., the Court of General Sessions rather than the United States District Court. Thus, insofar as 28 U.S.C. 753(f) is concerned, we followed somewhat the same reasoning in 48 Comp. Gen. 569 as we did in 45 Comp. Gen. 785 (1966), wherein we held the Criminal Justice Act of 1964 applicable to the United States Branch of the District of Columbia Court of General Sessions. That is to say one of the premises for our holding in the last-cited decision was that the United States determined whether a defendant in a criminal case was to be tried in the United States District Court or the Court of General Sessions. In that decision we stated that it was difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another."

B. FORMATION OF THE NEW DISTRICT OF COLUMBIA SUPERIOR COURT

Reformation of the local D.C. courts in the D.C. Court Reform and Criminal Procedures Act of 1970 (P.L. 91-358), (84 Stat. 473) has had the following consequences:

(1) The three local courts—General Sessions, Juvenile and D.C. Tax Court—were merged into a new Superior Court (11 D.C. Code 901). The Superior Court is given exclusive jurisdiction by 11 D.C. Code 923(b) (2) "of any criminal case under any law applicable exclusively to the District of Columbia", except those already commenced in the U.S. District Court or those filed there during an 18-month transition period.

(2) A District of Columbia Public Defender Service is established by Title III (Secs. 301-309) of Public Law 91-358. This Service is manned by a local board of trustees and can furnish legal and defense services to up to 60% of D.C. defendants, but "may furnish technical and other assistance" to private attorneys appointed to represent such persons. The Act authorizes appropriations to the District to implement Title III of the Act establishing the D.C. Public Defender Service to be disbursed by the Administrative Office (Sec. 307(a) of P.L. 91-358).

(3) The former pro rata contributions made from D.C. appropriations for the maintenance of the U.S. District Court and the U.S. Court of Appeals is being phased out to zero per Sec. 173(b) and (c) of Public Law 91-358.

C. 1970 AMENDMENTS TO THE CRIMINAL JUSTICE ACT (PUBLIC LAW 91-447)

In the virtual rewriting of the Criminal Justice Act (18 U.S.C. 3006A) in 1970, Congress did not disturb the section defining the "district courts" to which the Act is applicable. The term still includes (18 U.S.C. 3006A(K)):

"... the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code".

The bill, however, adds in a new subsection (1):

"The provisions of this Act other than subsection (h) of Section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

This language was added as an amendment to the Act, apparently in recognition of the fact that the District of Columbia was at that time being provided with a Public Defender Service by Title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358) and would not be entitled to the Federal Public Defender authorized by 18 U.S.C. 3006(A) (h) (2).

Congress had, however, apparently rejected an amendment proposed by the U.S. Attorney General which would have extended the Act (except subsection (h) in the District of Columbia to:

"Defendants prosecuted by the United States Attorney in any court having jurisdiction of offenses against the United States . . ." and

"Children charged by the District of Columbia with an act which, if committed by an adult would be a criminal offense prosecuted by the United States Attorney" (see Hearings of June 18 and 25, 1970 before Subcommittee No. 3 of the House Judiciary Committee, page 102, which includes the statement of Deputy Attorney General Kleindienst).

This proposal was a matter of discussion in Committee by Mr. Santarelli of the Department with Representative Kastenmeier (Ibid pp. 112-113) with Representative Poff (p. 117), and with Representative Hutchinson (pp. 130-132). The Committee did not adopt the proposal perhaps because of the creation of the Public Defender Service prior to the passage of the CJA Amendment Act. House Report 91-1546 (91st Congress, 2nd Session) on the bill that amended the Criminal Justice Act explains:

"Amendment No. 11 provides that except for subsection (h) involving defender organizations, the provisions of the Criminal Justice Act apply in the District of Columbia. The District already (sic) a Public Defender Service (title III, Public Law 91-358)."

The extent to which the amended Act (18 U.S.C. 3006A) was intended to apply to the appointment and compensation of private counsel in the courts of the District of Columbia, municipal and federal, was not further explained.

D. PRESENT PROBLEM

It seems apparent that the D.C. Superior Court, having been vested with both misdemeanor and felony criminal jurisdiction of local application has assumed much of the character of a state court. In fact, a three-judge court panel of the U.S. District Court in *North v. The Honorable Harold H. Greene*, C.A. 413-71, dated March 18, 1971, found that Congress intended to create a local court outside and independent of the federal system. The opinion of the three judges states (slip op. p. 3, footnote 4):

"The distinction drawn in terms by Congress in the 1970 Court Reform Act is between 'Federal Courts' and 'District of Columbia Courts,' established respectively under Article III and Article I of the Constitution. An informed and expert observer of the legislative deliberations from which this Act emerged has characterized it as 'manifesting the intent of Congress to create a judicial branch of the local government of the District of Columbia akin to the judicial branch of state governments and similarly independent of, and operating outside of, the federal judicial branch (footnote omitted).' Williams, *District of Columbia Court Reorganization, 1970*, 59 Geo. L.J. 477, 490 (1971)."

It also seems clear that two of the major premises of your original opinions finding the Criminal Justice Act applicable to the D.C. General Sessions Court are now eliminated. There is no longer concurrent jurisdiction shared by the local court and the United States, and thus trial jurisdiction is no longer "dependent upon whether the United States should choose to prosecute him in one court rather than another" (see quote from decision B-153485, *supra*).

We are, therefore, left only with two clear propositions. The Criminal Justice Act is applicable in the two federal courts in D.C., and in the Superior Court under 11 D.C. Code 923(c) (2) when acting as a committing court of cases triable in the federal court.

We should appreciate your advice, therefore, as to what extent, if any, federal judicial appropriations would be further available to compensate private attorneys, and persons furnishing services other than counsel (per Sec. 3006A(e)) in the D.C. Superior Court and the D.C. Court of Appeals, either in criminal cases, or other cases within the ambit of the Criminal Justice Act (18 U.S.C. 3006A(a) and (g)). If in your opinion you find that the Criminal Justice Act applies to any cases peculiar to the local jurisdiction of the D.C. Superior Court and the D.C. Court of Appeals, what responsibility do the Judicial Conference of the United States and the Administrative Office have over the administration of and budgeting for the program in these municipal courts (see: 28 U.S.C. 604, 605, 610; 18 U.S.C. 3006A(i) and (j); sections 306 and 307 of the D.C. Court Reform and Criminal Procedure Act of 1970, P.L. 91-358)?

Sincerely,

CARL H. IMLAY,
General Counsel.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 5, 1974.

HON. ELMER B. STAATS,
Comptroller General of the United States,
General Accounting Office, Washington, D.C.

DEAR MR. STAATS: Thank you for your letter of April 25, 1972; to Mr. Arnold Malech, Executive Officer of the D.C. Courts, transmitting a request from the

Director of the Administrative Office of the United States Courts for a reopening of the question of the applicability of the Criminal Justice Act to the District of Columbia courts. I respectfully suggest (1) that there is no sound legal basis for this request and (2) that the practical effect of any decision to declare the Criminal Justice Act inapplicable to cases in the Superior Court would be highly detrimental to the administration of justice in the District of Columbia.

As you are no doubt aware, the Administrative Office has consistently opposed the use of Criminal Justice Act funds in the District of Columbia courts. When I decided in 1966 in *United States v. Walker* that the Criminal Justice Act was applicable to misdemeanors prosecuted in the District of Columbia Court of General Sessions, the Administrative Office objected to this interpretation and sought a contrary decision from your Office. Your Office ruled at that time that the requirements of the Constitution and the purposes of the Criminal Justice Act mandated its applicability in General Sessions misdemeanor cases (45 Comp. Gen. 785). Now, for no apparent reason except a general opposition to the spending of Criminal Justice Act monies in the District of Columbia Court system, and without any prior consultation with or even contemporaneous or subsequent notice to this court, the Administrative Office has again sought to have the Criminal Justice Act declared not to apply within the District of Columbia courts.

(1) I believe that this question is dispositively answered in the Criminal Justice Act itself. Section (1) of the Act provides that "The provisions of this Act, other than subsection (h) of Section (1), shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals." This language was added to the Act in 1970, at a time when the District of Columbia Court Reform and Criminal Procedure Act of 1970 was pending before the Congress, and when, both on the floor and during House and Senate hearings on the amendments to the Criminal Justice Act, the question of the Act's applicability to the reorganized District of Columbia Court system was explicitly raised. Had it not been the clear congressional intent for the Criminal Justice Act to apply to the D.C. Court system, there would, of course, have been no reason whatever for requiring that the Criminal Justice Act plan for the District of Columbia be approved by the District of Columbia Court of Appeals, a local court without strictly "federal" responsibilities.

The legislative history fully supports this conclusion. On April 30, 1970, on the floor of the Senate, Senator Hruska introduced an amendment to make provisions of the Criminal Justice Act applicable in the District of Columbia. At the time he introduced the amendment he made the following statement:

Mr. President, the amendment that I have offered would make the provisions of the Criminal Justice Act, as amended by S. 1461, fully applicable to the District of Columbia.

This amendment is needed to clarify the application of the act to appointed counsel appearing before the court of general sessions or any other courts of general jurisdiction, now or in the future, in the District of Columbia. The Criminal Justice Act of 1964, as originally enacted, omitted any reference to the District of Columbia Court of General Sessions, although the Comptroller General ruled in 1966 that the act does extend to certain classes of cases prosecuted in that Court. As I recall, that was also the intent of the 1964 act.

Since the Constitutional Rights Subcommittee began consideration of S. 1461, and other proposed amendments to the 1964 act, legislation has been proceeding through the Senate and House District Committees that would significantly reorganize the Federal courts of the District. That legislation is now before a conference committee.

The concurrent jurisdiction of the District of Columbia District Court and the District of Columbia Court of General Sessions over certain offenses against the United States would end under that legislation, and the court systems would be greatly changed. It is the concurrent jurisdiction, however, upon which the Comptroller General based his opinion of coverage under the 1964 act.

Therefore, to insure coverage of the Criminal Justice Act in the District, whether or not the court reorganization bill is enacted, for those classes specified in the 1964 act as amended by S. 1461 as reported by the full Judicial Committee, this amendment is offered (Congressional Record—Senate, April 30, 1970, S6500).

The amendment was agreed to by the Senate and was subsequently accepted in the House with additional amendments after the Justice Department noted that the language of the Senate amendment left unclear the applicability of the defender organization provisions of the Act within the District of Columbia and the question of compensation of counsel appointed to represent juveniles. (Hear-

ings before Subcommittee Number 3 of the House Judiciary Committee, June 18 and 25, 1970, Page 86 et. seq., 99). The Department proposed specific language which it felt would deal with these problems, but the House saw fit simply to amend the Senate amendment only to provide that the defender organization provisions of the bill were not applicable to the District of Columbia. The reason given for this amendment was, "The District already [sic] a public defender service (Title III, Public Law 91-358)."

In testifying before the House Committee on the bill and on the amendment suggested by the Department of Justice, Associate Deputy Attorney General Donald Santarelli stated, "We want the Act to be applicable to the courts of the District of Columbia for the purpose of compensation of counsel who are appointed to represent indigent defendants." (House Hearing, *ibid.*, page 112). Mr. Santarelli went on to point out, in response to questions, that the concern of the Justice Department was that a defender service might be set up in competition with the newly created Public Defender Service unless the Act were clarified and that, unless limiting language were added, the Act might be interpreted as being applicable to all juvenile proceedings in the District of Columbia, where the Department felt that compensation in juvenile proceedings should be limited to juvenile delinquency matters. (*Ibid.*, pages 112-113, 130-132). Following this discussion, the House Committee amended the bill to exempt the District of Columbia from the defender organization provisions of the Criminal Justice Act within the District of Columbia courts. The Senate accepted the House amendment.

Thus, both the statutory language and the legislative history show a clear intent to make the provisions of the Criminal Justice Act (excepting only those provisions relating to the formation of defender organizations) applicable to all courts operating in the District of Columbia. Although there would appear to be no need to go beyond this history to settle the question of the applicability of the Act to the local courts, there are other considerations which support the position that the Act ought be applied in the Superior Court.

(2) The Criminal Justice Act was enacted by the Congress to fulfill the requirements of the Fifth and Sixth Amendments to the Constitution that equal justice must be afforded to all defendants in criminal cases brought by the United States by providing, wherever necessary, adequate legal services to defendants who cannot themselves afford to purchase such services. The crucial point made both in the 1966 decision of your Office and in the opinion in *Walker* is that the Criminal Justice Act and the representation it establishes are directed not to courts, but to certain categories of defendants, i.e., those charged with offenses by the United States. Although the Court of General Sessions has now been replaced by the Superior Court, which has a significantly broader jurisdiction, the method of prosecuting criminal offenses in that court remains unchanged. The Court Reorganization Act (D.C. Code 23-101(c), as amended by the reorganization legislation) provides that, "All other criminal prosecutions [except for prosecutions of police and municipal regulations, prosecutions for disorderly conduct, and prosecutions for lewd, indecent, or obscene acts] shall be conducted in the name of the United States by the United States Attorney for the District of Columbia or his assistants . . ."

The Act also provides [D.C. Code 11-502(3)] that the United States District Court for the District of Columbia has jurisdiction over "any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any federal offense." Unless the Criminal Justice Act is applicable within the Superior Court, the result which your Office found unacceptable in 1966 will still occur with some frequency, that is, whenever defendants charged with local offenses are prosecuted in the Federal District Court because of this jurisdictional provision, they will receive appointed counsel and investigative and other services under the Criminal Justice Act, while defendants charged with the identical offenses but prosecuted in the Superior Court of the District of Columbia will not receive Criminal Justice Act assistance. I respectfully suggest that such a result cannot be logically or legally sustained and that it would be likely to subject the statute to a successful constitutional challenge.

(3) The Administrative Office apparently finds some suggestion that the Criminal Justice Act should not be applicable in the Superior Court because of the creation of the District of Columbia Public Defender Service pursuant to the

Court Reform and Criminal Procedure Act of 1970. As I indicated earlier, Congress specifically considered this question and dealt with it by exempting the District from Section 1(h) of the Criminal Justice Act. Moreover, this argument was effectively disposed of in your 1966 decision when it was made with reference to the Public Defender Service's predecessor, the Legal Aid Agency. As you pointed out, if indeed the Criminal Justice Act is inapplicable to the District of Columbia courts because of the existence of the Public Defender Service, then it would equally be inapplicable in the United States District Court for the District of Columbia, because the Public Defender Service also represents defendants in that court.

(4) In addition to the fact that there appears to be no legal basis for the position advocated by the Administrative Office, there are compelling policy reasons for continuing to pay lawyers who represent defendants in the Superior Court from Criminal Justice Act funds. The Criminal Justice Act is responsible for greatly improving the quality of the operations of the District of Columbia courts by bringing to the Court of General Sessions and the Superior Court a corps of effective and ethical lawyers. The shortcoming of the system of representation in effect prior to the time when the Criminal Justice Act was applied to the District of Columbia courts, as I pointed out in my *Walker* opinion, "may be traced primarily to the temptations this course offers to a few to bring excessive pressure to bear upon those defendants who are suspected of having funds, and to give less than adequate representation to those who have no money whatever." It can easily be argued that the bulk of the criminal bar which practiced in the Court of General Sessions prior to 1966 was principally distinguished for its ability to extract money from the friends or relatives of prisoners and to enter pleas of guilty, whether justified or not, where such monies were unavailable. Such a situation could not possibly have given to individual defendants or to the community any sense that just or fair treatment was being dispensed by the criminal justice system.

Yet a ruling that the Criminal Justice Act is no longer applicable in the Superior Court would inevitably return us rapidly to the situation which prevailed prior to 1966, and many of the advances which have been achieved painfully and with great effort to upgrade the quality of justice in the District would be effectively undermined. That situation would be only slightly alleviated by the availability of the Public Defender Service, which is statutorily prohibited from taking more than 60% of the cases involving indigent defendants and which, on the basis of its budget, can take a far smaller percentage of the caseload than that, or by the possibility that a relatively few criminal cases could be assigned with compensation to lawyers specializing in other fields.

The presence in the court of the sincere and capable attorneys who now practice here, largely because they can expect payment for their services through the Criminal Justice Act, has been a key factor in fostering a growing public confidence in the court system in the District of Columbia and in the improvement of the operations of the court itself. Thus, it is with dismay that I note that the Administrative Office is taking an initiative which will have the inevitable effect of drastically lowering the standard of representation and thus the quality of operations in the chief trial court in the Nation's Capital at a time when the President, the Chief Justice of the United States, and the Congress have shown considerable and urgent interest in improving the standards and operations of the administration of justice.

(5) I might note in passing that there are indications that during the past year a very small number of individual attorneys have received Criminal Justice Act funds which might be regarded as unreasonably high in the aggregate when viewed in the context of the entire program. To the extent that this constitutes a problem, machinery has been set up through a special committee of the Superior Court and through the Public Defender Service to monitor and scrutinize the operation of the Criminal Justice Act program of the District of Columbia on a constant and continuing basis, and thus to insure that in the future no abuses of this kind will occur.

Mention has also been made of the fact that 29% of the total appropriated Criminal Justice Act funds are disbursed to District of Columbia courts. The implication of overpayment is answered by the simple statistic that all federal courts throughout the nation handle annually an aggregate of 43,157 criminal

cases prosecuted by the United States, while the Superior Court of the District of Columbia disposes during the same period of 36,749 cases prosecuted by the United States, or 46% of the total number of 79,906 cases to which the Criminal Justice Act applies.

(6) In response to the inquiry of the Administrative Office as to the reach of the Criminal Justice Act in the District, I respectfully suggest that the statute be interpreted so as to encompass, in addition to the defendants now covered, the so-called "Persons In Need of Supervision." Section (a) (4) of the Act provides for the appointment of counsel for any person "for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires that appointment of counsel." In the House Report on this amendment it is stated that, "Within the District of Columbia children would also be covered by Section 1(a) (4) insofar as the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358), (approved July 29, 1970) required the appointment of counsel for them in cases in which they face loss of liberty. (House Report Number 91-1546, Page 3). Thus it appears that the Congress intended coverage for additional juvenile proceedings, and I respectfully suggest that the statute be so construed.

For all the above reasons I strongly urge you to direct the Administrative Office to continue to budget for and to pay out of funds appropriated to it, Criminal Justice Act vouchers submitted from the District of Columbia courts for representation in any case prosecuted in the Superior Court or in the District of Columbia Court of Appeals in the name of the United States, and to pay Criminal Justice Act vouchers in the expanded category of juvenile proceedings mentioned above.

Sincerely,

HAROLD H. GREENE,
Chief Judge.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 26, 1972.

Hon. ROWLAND F. KIRKS,
Director, Administrative Office of the U.S. Courts.

DEAR MR. KIRKS: Your letter of March 7, 1972, requests our opinion as to whether, in light of the reorganization of the local courts in the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, Public Law 91-358, 84 Stat. 473, the funds appropriated to the Federal Judiciary for the implementation of the Criminal Justice Act (CJA), 18 U.S.C. 3006A, are available to pay attorneys and experts appointed in the District of Columbia Superior Court as well as pay for other services, in cases where exclusive jurisdiction over the criminal offense charged is vested in that court; and if it is our decision that such funds may be so applied, in what categories of cases could such attorneys and experts be compensated. You also ask what responsibilities the Judicial Conference of the United States and your office would have over the administration of, and budgeting for, the CJA program in the District of Columbia (D.C.) Superior Court and the District of Columbia (D.C.) Court of Appeals if we determine that CJA applies to cases peculiar to the local jurisdiction of those courts. We wrote to the Executive Officer of the D.C. Courts for his views on these matters, and in response thereto The Honorable Harold Greene, Chief Judge of the Superior Court of the District of Columbia furnished us the views of the District of Columbia courts.

In 45 Comp. Gen. 785 (1966)—referred to in your letter—we stated that the Criminal Justice Act is intended to provide adequate representation at all stages for persons charged with the commission of felonies or misdemeanors, other than petty offenses as defined in section 1 of title 18, United States Code, who are financially unable to obtain an adequate defense. We noted that in making such provision, the act was framed in terms of the Federal Court System of which the District of Columbia Court of General Sessions has traditionally not been considered a part. However, we pointed out that with respect to the purposes of the Criminal Justice Act of 1964, the United States District Court for the District

of Columbia had concurrent jurisdiction over all criminal cases which could properly be heard in the "United States Branch" of the D.C. Court of General Sessions, and that all criminal cases heard in the Court of General Sessions—other than those involving violations of police or municipal ordinances or regulations—were prosecuted by a United States attorney in the name of the United States. We stated that since the United States determined whether a defendant in a criminal case was to be tried in the United States District Court or in the Court of General Sessions, it was difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another. Thus, we concluded that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the D.C. Court of General Sessions and that any plan covering application of the act in the District of Columbia should include that Branch. See also our decisions of September 24, 1970, B-153485 and 48 Comp. Gen. 569 (1969).

On July 29, 1970, the District of Columbia Court Reform and Criminal Procedure Act of 1970, Public Law 91-358, 84 Stat. 473 (henceforth referred to as the D.C. Court Reform Act) was enacted into law. Among other things, that act merged the three local courts—the Court of General Sessions, the Juvenile Court, and the D.C. Tax Court—into a new Superior Court. The Superior Court is given exclusive jurisdiction "of any criminal case under any law applicable exclusively to the District of Columbia" except for those already commenced in the United States District Court or those filed there during an 18-month transition period. The D.C. Court Reform Act also established the District of Columbia Public Defender Service and phased out over a 30-month period the former pro rata contributions made from District of Columbia appropriations for the maintenance of the United States District Court and the United States Court of Appeals.

You state that the D.C. Superior Court, having been invested with both misdemeanor and felony criminal jurisdiction of local application, has assumed much of the character of a State court. You further state that it appears that two of the major premises of our original opinions finding the Criminal Justice Act of 1964 applicable to the D.C. General Sessions Court are now eliminated; first, there is no longer concurrent jurisdiction shared by the local court and the United States Court and second, the trial jurisdiction is no longer dependent upon whether the United States should choose to prosecute a defendant in one court rather than another.

On October 14, 1970, shortly after the enactment of the D.C. Court Reform Act, there was enacted Public Law 91-447, 84 Stat. 916, amending 18 U.S.C. 3006A (the CJA), which amendment you describe as a "virtual rewriting of the Criminal Justice Act." While in this act the Congress did not disturb the section (18 U.S.C. 3006A(k)) defining the United States "District Courts" to which CJA is applicable, it added a new subsection (1) to the CJA, which subsection provides:

"(1) *Applicability in the District of Columbia.*—The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

This language (except for the phrase "other than subsection (h) of section 1") was initially introduced on April 30, 1970, on the floor of the Senate, by Senator Hruska as an amendment to the bill which amended the CJA. At the time the amendment was introduced, Senator Hruska made the following statement:

"Mr. President, the amendment that I have offered would make the provisions of the Criminal Justice Act, as amended by S. 1461, fully applicable to the District of Columbia."

"This amendment is needed to clarify the application of the act to appointed counsel appearing before the court of general sessions or any other courts of general jurisdiction, now or in the future, in the District of Columbia. The Criminal Justice Act of 1964, as originally enacted, omitted any reference to the District of Columbia Court of General Sessions, although the Comptroller General ruled in 1966 that the act does extend to certain classes of cases prosecuted in that court. As I recall, that was also the intent of the 1964 act."

"Since the Constitutional Rights Subcommittee began consideration of S. 1461, and other proposed amendments to the 1964 act, legislation has been proceeding through the Senate and House District Committees that would significantly reorganize the Federal courts of the District. That legislation is now before a conference committee.

"The concurrent jurisdiction of the District of Columbia District Court and the District of Columbia Court of General Sessions over certain offenses against the United States would end under that legislation, and the court systems would be greatly changed. It is the concurrent jurisdiction, however, upon which the Comptroller General based his opinion of coverage under the 1964 act.

"Therefore, to insure coverage of the Criminal Justice Act in the District, whether or not the court reorganization bill is enacted, for those classes specified in the 1964 act as amended by S. 1461 as reported by the full Judicial Committee, this amendment is offered." (Congressional Record—Senate, April 30, 1970, S6500, Temp. Ed.)

Senator Hruska's amendment making the CJA applicable in the local courts of the District of Columbia was agreed to by the Senate. It was subsequently accepted by the House, with additional amendments after the Department of Justice noted that the language of the Senate amendment left unclear the applicability of the public defender organization provisions of the act within the District of Columbia and the question of compensation of counsel appointed to represent juveniles. (See the Hearings before Subcommittee No. 3 of the House Judiciary Committee, June 18, and 25, 1970, pages 96 to 99.) While the Department of Justice proposed specific language to deal with these problems, the House Committee merely amended the bill to exempt the District of Columbia from the public defender organization provisions of the CJA within the District of Columbia courts. Thus, House Report No. 91-1546, 91st Congress, explains:

"Amendment No. 11 provides that except for subsection (h) involving defender organizations, the provisions of the Criminal Justice Act apply in the District of Columbia. The District already [sic] a Public Defender Service (title III, Public Law 91-358)."

The House and the Senate both accepted this further amendment of Senator Hruska's amendment.

Further, we note that section 210(a) of the D.C. Court Reform Act revises, codifies, and enacts the general and permanent laws of the District of Columbia relating to criminal procedure. That section revises title 23, D.C. Code, and provides, in effect, that all criminal prosecutions—except (in most cases) for prosecutions for violations of all police or municipal ordinances or regulations and for violation of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, or prosecutions for violations of section 6 of the act of July 29, 1892 (D.C. Code, section 22-1107), relating to disorderly conduct, and for violations of section 9 of that act (D.C. Code, section 22-1112), relating to lewd, indecent, or obscene acts—shall be conducted in the name of the United States by the United States attorney for the District of Columbia, or his assistants. In other words, most, if not all, criminal prosecutions formerly brought by the United States attorney in the name of the United States in the "United States Branch" of the Court of General Sessions or in the United States District Court for the District of Columbia will now be brought by the United States attorney in the name of the United States in the D.C. Superior court. Application of the CJA to these cases in the Superior Court would accomplish the stated purpose of the sponsor of subsection (1) of the CJA that CJA coverage in the District under the 1970 amendments should include those classes of cases which were covered by the 1964 act prior to the reorganization of the D.C. Court System.

Moreover, the intent to make applicable the CJA to the District of Columbia courts is obvious from the wording of subsection (1) of the CJA. As noted above, the last sentence of that subsection provides:

"The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

We agree with Judge Greene's interpretation of this sentence that:

"* * * Had it not been the clear congressional intent for the Criminal Justice Act to apply to the D.C. Court system, there would, of course, have been no reason whatever for requiring that the Criminal Justice Act plan for the District of Columbia be approved by the District of Columbia Court of Appeals, a local court without strictly 'federal' responsibilities."

We agree that the rationale of our former decisions making the CJA—prior to the 1970 amendments thereto—applicable to the D.C. Court of General Sessions (i.e., the concurrent jurisdiction shared by the local court and the United States District Court for the District of Columbia and the fact that the choice of forum was up to the United States) no longer applies to the D.C. courts as reorganized by the D.C. Court Reform Act. However, it is our opinion that except as to subsection (h) of the CJA relating to public defender systems, subsection (1) of the CJA, as added by Public Law 91-447, clearly and unequivocally makes the CJA applicable to prosecutions brought in the D.C. Superior Court and the D.C. Court of Appeals with regard to those prosecutions brought in the name of the United States, and we so hold.

As to the application of the CJA to juvenile proceedings, section 3006(a) of title 18, United States Code, provides, in effect, that the CJA will cover:

"* * * any person financially unable to obtain adequate representation (1) who is charged with * * * juvenile delinquency by the commission of an act, which if committed by an adult, would be such a felony or misdemeanor * * * or, (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. * * *"

House Report 91-1546, dated September 30, 1970, states on page 3 that the purpose of 18 U.S.C. 3006A is to:

"* * * render explicit the coverage [under section 3006(A) (1)] of persons charged with juvenile delinquency. Within the District of Columbia, children would also be covered by section [3006A(a) (4)], insofar as the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358, approved July 29, 1970) requires the appointment of counsel for them in cases in which they face loss of liberty * * *"

In other words, the provisions of 18 U.S.C. 3006A(a) (1) are applicable in the District of Columbia, as in all the other CJA covered jurisdictions, to persons charged with juvenile delinquency by the commission of an act which, if it had been committed by an adult, would be a felony or misdemeanor (Other than a petty offense as defined by 18 U.S.C. 1) or with violation of probation covered by the provisions of the CJA, and the provisions of 18 U.S.C. 3006A(a) (4) cover persons charged in juvenile proceedings in the District of Columbia for whom the Sixth Amendment of the Constitution requires the appointment of counsel, or for whom, in a case in which the juvenile faces loss of liberty, any Federal law—including, in particular, the D.C. Court Reform Act—requires the appointment of counsel.

As to your final question, the Administrative Office of the United States Courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal district courts, except, of course, that the administration of, budgeting for, and financing of, the District of Columbia Public Defender Service should be in accordance with sections 306 and 307 of the D.C. Court Reform Act. Except for the aforementioned, this decision should not be construed to increase or decrease the responsibilities of the Judicial Conference of the United States or the Administrative Office of the United States Courts under sections 604, 605, and 610 of title 28, United States Code with respect to the D.C. Superior Court and the D.C. Court of Appeals.

Copies of this decision are being sent to the Executive Director of the District of Columbia Courts and to the Chief Judge of the Superior Court of the District of Columbia.

Sincerely yours,

(Signed) R. F. KELLER,
Deputy Comptroller General
of the United States.

U.S. DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
Washington, D.C., June 27, 1973.

Hon. HAROLD H. GREENE,
Chief Judge, Superior Court of the District of Columbia,
Washington, D.C.

DEAR JUDGE GREENE: Thank you for your grant proposal to provide for compensation to court appointed counsel for indigents in the District of Columbia. I submitted your grant proposal to the Office of General Counsel, Law Enforcement Assistance Administration, requesting an advisory opinion as to the potential for use of LEAA funds to support your program. I have been advised that LEAA may not award funds to replace other sources for court-appointed counsel in the District of Columbia. Responsibility for the court-appointed counsel program has been fixed elsewhere by statute. Funding of the application would be in direct conflict with the Congressional appropriation process.

I appreciate the effort made by the Superior Court in developing the grant proposal and regret that I am unable to give favorable consideration to your proposed project.

Sincerely,

DONALD E. SANTARELLI,
Administrator.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 25, 1973.

Hon. GERARD D. REILLY,
Chief Judge, District of Columbia Court of Appeals,
Washington, D.C.

DEAR JUDGE REILLY: Thank you for your letter of April 4, 1973, detailing the situation concerning implementation of the provisions of the Criminal Justice Act, 18 U.S.C. 3006A, for the District of Columbia. We are sympathetic to the circumstances the District Court system finds itself in. However, the separation of the Executive and Judiciary branches in the Federal Government prevents our taking any action on the budget submission of the Judicial Branch. Therefore, we cannot propose alteration of amendment to the budget request submitted by the Administrative Office of the U.S. Courts.

In view of the seriousness of this matter, I have asked that members of my staff work with you, the District of Columbia government and the U.S. Courts in developing an appropriate solution to this problem.

Sincerely,

ROY L. ASH,
Director.

CRIMINAL JUSTICE IN A METROPOLITAN COURT

THE PROCESSING OF SERIOUS CRIMINAL CASES IN THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Procedure for bringing cases to court

When an arrest is made, the police officer presents the facts of the case to an Assistant in the U.S. Attorney's Office. With the Assistant's approval of the charges noted, the officer turns the papers over to a Deputy U.S. Marshal, who prepares them for court. They become designated at that time as the complaint or information,¹ and are given by the Marshal to the Assistant U.S. Attorney assigned to the court on that day. Meanwhile, the police officer remains in the courtroom until the case is called.

Duties of the U.S. branch

(1) Appointment of counsel

When the case is reached on the calendar,² the Marshal calls the defendant into court, where he is advised of the charges against him and asked if he has

¹ If a felony is charged, a complaint is used; informations are filed in misdemeanor cases.
² For a description of the way the calendar is drawn and maintained, see App. B, explaining the Marshal's List. For an illustrated description of the steps taken in processing a misdemeanor case through the court, see App. C.

a lawyer. Almost invariably the defendant is without counsel, and the court appoints one, usually from a group of attorneys regularly present in the courtroom awaiting assignment.³ The defendant and his attorney then retire to a small room behind the courtroom where a number of other attorneys and defendants may also be discussing their cases.

The conference is usually over in 3 or 4 minutes, and the defendant returns to court where, ultimately, his case is recalled. At this point, the case might be disposed of. The defendant charged with a misdemeanor may plead guilty and be sentenced, or his case may be continued for later sentencing. Or if the defendant is charged with a felony, he might waive his right to a preliminary hearing and be bound over to the grand jury. Usually the cases disposed of at the first appearance in the manner just mentioned are of three types: those in which the defense deems it wise to enter an immediate plea in order to take advantage of a lenient judge in U.S. Branch; those in which the defendant is anxious to see a hopeless case resolved; and, perhaps most important, those in which the attorney sees no likelihood of obtaining a fee either now or in the future.

Rule 24 of the court requires defense attorneys who receive appointments at the court to file with the court in each case a statement indicating what fee was charged the defendant, what fee was paid, or what arrangements were made for payment. The rule does not except cases in which an indigent defendant paid no fee. Although this rule has been in effect for several years, it has not been complied with, and no efforts have been made to secure compliance. The result is that the court has no record of whether appointed counsel was in fact "assigned" to represent an indigent or "referred" to a client who was able to pay. There are no announced standards for indigency, and it is open to defense attorneys to obtain whatever fees they can, regardless of the financial status of the defendant. The only exception is in cases handled by the Legal Aid Agency, which must, according to law, take only cases of indigent defendants. Frequently their determination of indigency is accepted without question by the court. There are some judges, however, who attempt to make their own determinations, based on the facts presented by the Agency lawyers.

Until recently there has been no reason (aside from the unenforced Rule) for private attorneys, who handle almost all of the cases, to advise the court of the financial status of the defendant. In August 1964, however, the Criminal Justice Act was passed.⁴ That Act may change considerably the situation just described, and it therefore seems important to describe its impact on the court.

Briefly, the Act provides for compensation of attorneys who represent persons who cannot afford to hire their own. The Act applies in all criminal cases brought before a Commissioner or a Federal court. Up to \$500 is allowed for felony trials and \$300 for misdemeanors. Pursuant to the Act, the District Court devised a plan for appointment of counsel which the Judicial Council for the District of Columbia Circuit revised and approved. The plan stated that when the Court of General Sessions exercised committing powers in cases cognizable in the District Court, compensation could be granted as if the proceeding were before a U.S. Commissioner. Thus it provided for compensation in General Sessions Court in all cases in which financially unable defendants were charged with violations of the U.S. Code or with felonies under the D.C. Code. In the latter, the maximum felony case compensation applied only if the case were actually bound over to the District Court. If the felony charge were broken to a misdemeanor, the maximum fee was set at \$50.

The plan also provided for the appointment of a Coordinator, who was to be responsible for administration of the Act in both the District Court and General Sessions. He was also charged with the duty of administering Rule 24 of the Court of General Sessions. From the list of attorneys qualified under the Rule the Coordinator was to supervise the creation of a panel of attorneys who volunteered for appointment under the Criminal Justice Act and who agreed to comply with the rules established in the plan for the District. Before attorneys on the panel could qualify under the Act, they had to be approved by the Court of General Sessions and by the District Court. Authorization for payment of attorneys' fees under the Act had to be obtained from the District Court.

The Coordinator was also charged with the responsibility of making initial determination of financial ability to obtain counsel.

³ Each attorney who registers with the court has his name placed in a card file. The cards are picked on a more or less rotating basis.

⁴ 18 U.S.C. 3006A. The effective date of the Act was Aug. 20, 1965.

As of November 1965, a panel of about 125 attorneys had volunteered for appointment. The panel was approved by the Court of General Sessions and the District Court. The Coordinator had, as of the end of 1965, investigated the financial status of some 180 defendants and found 48 qualified under the Act.

A number of serious practical problems arose soon after the General Sessions plan was made effective. In the first place, there was little explanation of the requirements of the Act to defense counsel, and the judges appeared to be somewhat confused about it as well. Second, no staff was provided to assist the Coordinator with his several tasks: administering Rule 24, determining financial status in the scores of cases which flood the U.S. Branch each morning, and coping with the paperwork required for payment under the Act. Other practical problems which arose seem to stem directly from the fact that the Criminal Justice Act does not expressly deal with the unique status of the General Sessions Court in the Federal system. Some attorneys have refused to volunteer under the Act because the plan required them to follow felony cases to the District Court, a locale entirely unfamiliar to them. In addition, since the Act provides for greater payment in felony cases than in misdemeanor cases, there were fears that some attorneys might be less enthusiastic than they had been about attempting to have felony charges reduced to misdemeanors. Most important, however, the original interpretation of the Act contained in the plan approved by the Judicial Council precluded compensation for misdemeanor cases under the D.C. Code, except in cases in which felony charges have been reduced to misdemeanors after the initial appearance of the defendant.

In February 1966 the plan's exclusion of D.C. Code misdemeanors from coverage under the Act was attacked in *United States v. Walker*.⁵ Judge Greene of the General Sessions Court agreed that these offenses should not be excluded. He held that while the legislative history of the Act was inconclusive on the coverage of General Sessions cases, it was consistent with the purpose of the Act to allow compensation. The Act, he stated, was intended to benefit all defendants in Federal cases who could not afford counsel. To exclude defendants in U.S. Branch cases—all of whom are charged with offenses against the United States, and are prosecuted by the United States—would not serve the ends sought by Congress and would, moreover, raise serious constitutional questions. There was, he said, no rational distinction between defendants charged with misdemeanors under the U.S. Code, both of which categories are covered). He concluded that denial of the benefits of the Act to defendants solely on the basis of the court in which they were to be tried might well constitute denial of equal protection to them.

United States v. Walker is a significant decision which should lead to a substantial improvement in the quality of justice in the Court of General Sessions. In addition, it might well make that court unique among lower criminal courts in the country. In cities where compensation to private counsel is provided at all, it is almost always limited to felony cases. Extension of such compensation to misdemeanor cases demonstrated a recognition of their importance in the criminal process. Moreover, it might well alter radically the quality and composition of the defense bar which in General Sessions as in similar courts, is one of the greatest problems in the process.⁶

On June 15, 1966 the *Walker* opinion was endorsed by the Comptroller General, whose ruling authorized the Administrative Office of U.S. Courts to make payments under the Act for U.S. Branch cases.

In July 1966 the judges of the General Sessions Court drew up a revised plan, which has been submitted to the Judicial Council for approval. The proposed plan has the following main provisions. First, it calls for the creation of a panel of attorneys who would volunteer for appointment, and gives the judge sitting in U.S. Branch wide discretion in selecting attorneys from that list. Second, it calls for the creation of an alternate list which, if necessary, would be used to compel attorneys who had practiced in other branches of the court to represent persons unable to afford counsel. It also establishes a simple procedure for making appointments, the mechanics of which would be handled by the Coordinator. Part of the responsibility of the Coordinator would be to insure against favoritism in appointment. Finally, the plan sets the following guidelines for compensation: misdemeanor cases, \$100; negligent homicide cases tried by jury, \$150; and preliminary hearings in felony cases, \$25. The plan

⁵ No. 363-66, D.C. Ct. Gen. Sess., Feb. 1966.

⁶ For further discussion of the impact of the Criminal Justice Act at the court, see p. 124, *infra*.

recognizes that payments might, on the approval of a committee of judges, be made in individual cases in greater amounts, i.e., up to the maximum allowed by the Act, but indicates that the stated amounts were adequate for the general run of cases.

(2) *Calendar management—the problem of delay*

Dispositions on the defendant's first day in court are fairly common.⁷ In many of these cases the disposition process is accelerated by the defense attorney's request that the case be passed for a short time so that he might take it "downstairs" for a hearing in the U.S. Attorney's Office. With the prosecutor's consent this is almost always allowed, the judge rescheduling the case for later in the day. This hearing is, as we have noted, primarily for the purpose of plea bargaining.

In cases where no settlement is reached, defense counsel will either request a continuance to some later date in the U.S. Branch or demand a jury trial.⁸ In the former situation, the case is reset for about two weeks later. In the latter, because of the great volume of jury demands, initial delays are invariably from four to six weeks.

CHAPTER V—DEFENSE SERVICES

The regular bar

Representation of most defendants in General Sessions Court is conducted by a relatively small group of private attorneys. Part of this group—about 25 to 35 attorneys—have practices outside of General Sessions Court and appear there once or twice each month. Another part—perhaps a dozen in all—have little practice outside the criminal side of the court and appear there every day. The latter part, widely known as the "Fifth Street Bar," handle by far the largest number of cases.

Except in the rare case when a defendant comes to court with an attorney he has retained, or when steps are taken prior to the court appearance to obtain assistance from the Legal Aid Agency, he will appear in U.S. Branch without counsel. When his case is called, the judge will, almost without exception, call on one of the attorneys present in court to interview him. At the start of the day, there may be anywhere from 10 to 20 attorneys present.⁹ Each of them has filed a card with the court as required by the court's Rule 24 indicating his willingness to be appointed. The judge goes through the cards on a rotating basis, and when an attorney's name is called, he goes to the bench where the Marshal gives him the official papers containing the charges. On these papers will be the name of the arresting officer, and frequently the attorney will call out the name of the officer in the courtroom. If, as is usually the case, the officer is present, the attorney will ask him to step out in the hall to discuss the charges. Some defense counsel and prosecutors feel that the attorney can obtain a good deal of information about the facts of the case in this way. The police are generally cooperative, and neither they nor the prosecutor's office object to assisting the defense in the ordinary case. After obtaining whatever information he can from the police, the attorney,² holds a brief conference with the defendant. If the defendant is free on bail (generally after making bail at the stationhouse), the conference takes place in the hallway outside of the courtroom. In the typical case, however, the defendant has been detained overnight and is not permitted to leave the courtroom. Instead, he is taken to a small room behind the courtroom, where the attorney meets him. With the large number of appointments made each day, it is common to see six or seven such conferences going on at once. The physical setting of the conference and its subject matter have been described by one attorney as follows:

This room is divided by a partition with glass from the waist up, a narrow shelf at the middle, and wood down to the floor. The partition is further divided into small stalls, approximately 18 inches wide. There are five of these stalls. Upon entering the interview room the lawyer looks for

⁷ During the two-week survey of court business, 336 new cases reached the court. Of these, 113, or about 30 percent, were disposed of the same day. The manner of disposition was as follows: felonies bound over to the grand jury, 54 (49.5 percent); plea of guilty, 35 (29.5 percent); nolle or dismissed for want of prosecution, 22 (19 percent); found not guilty, 2 (2 percent).

⁸ Of the 336 new cases referred to, 84, or 25 percent, were continued in U.S. Branch, and in 141 (42 percent), jury trials were demanded. The total percentage of new cases continued, therefore, was 67 percent.

⁹ One or two Legal Aid Agency lawyers may also be present.

² See p. 68, supra.

an empty stall to use while interviewing his client. On an average day, he walks sideways to get past the other gesticulating attorneys to the single empty stall; once here he shouts his client's name who then emerges from the back of the bullpen. Squeezing into the empty stall, he has to shout above the babble. Typically, the initial subject for conversation concerns the financial resources of the accused: Does he have any money on his person; does he have a bank account, employer, wife, or mother? The latter is a particularly fruitful source when all else fails. A not uncommon scene is the lawyer with his arm slithered through the small circular hole in the glass partition, commanding in a harsh tone, "Come on, give me the money." One dollar or ten dollars, nothing is spared.³

Not all members of the regular defense bar are as zealous in their search for a fee as the ones just described. It appears, however, that among those attorneys who depend almost entirely on fees in criminal cases in General Sessions, the quest for money pervades their contracts with their clients. Collection of a fee is humorously called "Rule 1" of the court, and some attorneys appear to go to great lengths to comply with it. Some attorneys are said to advise defendants in detention that their release will depend upon raising a fee. And the "Rule 1 continuance" is a well-recognized part of the defense practice at the court. The purpose of this continuance is to give the defendant time to raise his fee. It has also been observed that if the defendant has money in his possession at the time of the arrest, the attorney invariably will learn of it. Apparently the word reaches the courtroom from the jail, where the defendant is searched, and at times the attorneys in court—as well as the bondsmen there—will know precisely what assets the defendant has. One Legal Aid attorney reports periodic complaints from private attorneys that Legal Aid lawyers are taking cases where the defendant had money in his possession at the time of arrest. This writer observed a bondsman making a similar complaint to a representative of the Bail Project, who arranged for release on recognizance of a defendant with \$67 in his pocket, enough to cover the bond premium.

Some observers at the court believe that there is a marked distinction in the kind of representation a defendant receives when he is able to pay his attorney and when he is not. In the former case, the attorney will make a vigorous effort to negotiate a favorable disposition and will, if the defendant is to plead guilty, or is convicted, attempt to maneuver the case before the most lenient judge and will argue on his behalf at the time of sentencing. A somewhat less vigorous defense is said to be provided in the case of the truly indigent defendant. Frequently he will be pleaded guilty at the first opportunity. The issue, because it may affect a large number of defendants in General Sessions Court cases, deserves further investigation. We were not able to gather statistical data during our study, primarily because the court keeps no records as to which defendants were indigent and which had some resources.⁴

It is difficult in a report of this kind to assess the quality of representation provided by a group of 30 or 40 lawyers. Any generalizations are bound to be inaccurate in specific cases. Certain conclusions, however, do seem justified. In the first place, it seems fair to say that most defense attorneys in most cases do not make any efforts to investigate their clients' cases. Frequently they will not even see their clients between court appearances. Recently a few attorneys have begun to use the services of the Legal Aid Agency's investigators,⁵ but most do not. Second, many attorneys do not prepare for court appearances, in the sense of familiarizing themselves with the known facts of the case and the law governing the offense charged. The writer has observed a case where defense counsel did not know his client's name or the exact charge against him—and this during a jury trial. Some, however, have obviously researched the law and have put before the court many facts helpful to the defendant's case. Third, while the technical competence of many of the attorneys seems to be lower than in the U.S. District Court, it should be noted that attorneys in regular attendance at General Sessions Court can, because of their familiarity with the system, often serve their clients effectively. The finest trial lawyer may miss an opportunity to aid his client if he does not know that he could ask the court pass

³ Shadoan, "Criminal Justice in the Court of General Sessions," Georgetown Law Center (1961), pp. 3-4.

⁴ See p. 69, *supra*.

⁵ See 98, *infra*.

his case so that a compromise can be worked out in a bargaining session with the prosecutor.⁶

The regular defense bar at General Sessions, then, is composed for the most part of attorneys who, while they spend little time in preparation and display only infrequently the qualities of expert criminal trial lawyers, perform many invaluable services for their clients. Moreover, they provide representation for thousands of defendants who have no representation at all in similar courts throughout the country. Perhaps as the Criminal Justice Act is implemented in General Sessions Court cases, these attorneys will lose what one judge has described as their "predatory" nature, and will provide their clients with better representation. It is also possible that more attorneys will participate in criminal cases at the court. Barring this, or an enormous expansion of the Legal Aid Agency, it appears that the system will continue to rely upon the kind of representation these attorneys provide.

There are, however, a few attorneys operating regularly in the court who do much to hurt the image of the court and of the other members of the bar. Recently, one judge in fact refused appointment to six or seven attorneys whose competence or ethical standards were in question. But the court itself has in the past taken no such action.⁷ Another judge of the court has established machinery for reviewing charges made against attorneys, disposing of relatively minor complaints himself and referring others to the grievance committee of the District Court. But at no time in the past does it appear that much headway has been made, even in enforcing the court's own rules concerning the reporting of fees. It may be that the administrators of the Criminal Justice Act at the court will assist in scrutinizing defense counsel in these matters and in terms of the quality of representation itself.

Legal Aid Agency

The Legal Aid Agency had two Agency lawyers permanently assigned to General Sessions Court to represent indigents. These lawyers were not, however, available every day to handle incoming cases.⁸ The Agency has felt that its attorneys could not do an adequate job if they had a caseload of 40 or 50 defendants. At General Sessions such a caseload is built up in no time at all. Moreover, they frequently raise complex legal problems and demand jury trials. These matters require a good deal more time than is usually taken to dispose of cases at General Sessions Court. Thus, when the attorneys acquire a caseload of 10 or 12 cases, they no longer appear.

To give an idea of the quantity of work handled by the Legal Aid Agency at General Sessions Court, assignments for a one-month period were sampled. In 715 cases in which the names of the attorneys are noted in the court records, Legal Aid Agency attorneys were assigned in 32 cases, or about 3 percent. This rate appears to be above normal. In fiscal 1965, the Agency was assigned in 139 cases in General Sessions Court, little more than one percent of the total. Only 67 were misdemeanor cases, and only 26 of these went to trial.

The quality of Legal Aid representation appears as a general rule to be better than that provided by the regular bar. Trials, and especially jury trials, are better prepared, better presented, and better argued. The Agency lawyers work hard for their clients and do a creditable job for them in bargaining as well as in court; the experienced Agency attorney will use the informal processes of the court to the same advantage as do others.

With the advent of the Criminal Justice Act, the Agency has made more attorneys available in General Sessions Court. Moreover, the Agency is sensitive to the need for permanent attorneys to handle misdemeanor cases. Current plans are to assign, on a rotating basis, one attorney, and perhaps two, to the court exclusively for misdemeanor cases. Several others would appear regularly to handle felony cases. Even this increase will not allow representation in a large percentage of cases by the Agency. If the Agency were to assume a

⁶ Some experienced defendants at court apparently recognize this. Recently, in an effort to improve the quality of representation at General Sessions, a judge appointed two very prominent members of the bar, neither possessed of a working acquaintance with the criminal process at the court, to defend two indigents there. In both cases the defendants refused the appointments and asked instead to be represented by one of the regulars, in whose hands they apparently felt safer.

⁷ Several regulars have long drunk records and appear for assignment only between terms at the drunk farm (Occoquan) or the mental hospital, St. Elizabeth's. Not all of these have attained sobriety at the time of their appearance in court. One judge, in fact, put an attorney in the "tank" to sober up but subsequently appointed him to a case that same day.

⁸ See District of Columbia Legal Aid Agency, Sixth Annual Report, 1966, p. 22ff.

major role in defense work at the court, a much greater number of attorneys would be required. While efforts are currently under way to expand the Agency operation in General Sessions Court,⁹ there are some who have felt that the Agency's mission should not be to take a much larger role in defense work, but rather to improve the quality of representation at the court by setting an example for others to follow and by providing legal and technical assistance for the expanding number of attorneys who would appear. In the two years since the Agency began operations at the court, it concedes that there has been little progress toward this goal.

Officials of the Agency feel that whatever the number of its attorneys appearing there, it is important that they be permitted to alternate between General Sessions and District Court. Agency attorneys point out that while the quality of the proceedings in the two courts is often the same, it is substantially lower in General Sessions when Agency attorneys must appear before certain judges who frequently sit in criminal cases. Extended periods of time before such judges, they feel, tend to cause a lack of precision in the approach of their attorneys to cases. Arguments on technical points of law and on evidentiary matters, for example, are seldom engaged in. Moving Agency attorneys in and out of General Sessions tends to keep them sharp.

Judge GREENE. Since that time, the Criminal Justice Act has fully applied to the District of Columbia courts as it has to Federal courts throughout the country, until sometime about a year and a half ago, I guess it was, when the Judicial Conference of the United States passed a resolution stating that it would no longer be responsible for the District of Columbia courts and would no longer request moneys to compensate attorneys representing indigent defendants in the District of Columbia courts.

May I say the reasoning essentially was that because of court reorganization, the District of Columbia courts had become more akin to State courts and therefore this was a District of Columbia matter rather than a matter for the Federal judiciary.

The administrative office of the U.S. courts again requested an independent opinion of the GAO as to whether its reasoning in that regard was correct.

COMPTROLLER GENERAL'S OPINION

The Comptroller General again ruled that the act applied to the District of Columbia, and ruled specifically, if I may just read perhaps one sentence from the decision of the Comptroller General, Mr. Chairman—that is a decision of May 26, 1972—there the Comptroller General ruled: "That the administrative officer of the U.S. courts should handle the administration of and budgeting for the CJ program in the District of Columbia local courts generally in the same manner as it has in the past, and to the extent possible as it administers and budgets the programs for the Federal district courts," except for the public defender service. Notwithstanding that ruling of the Comptroller General, the administrative office of the U.S. court has determined that it was bound by the ruling of the Judicial Conference of the United States and refused to include funds for the District of Columbia courts in its general appropriation request to the Congress.

By that time there was no request for these funds in the D.C. budget, simply because the Mayor and the courts had relied on the Comptroller General's decision and had assumed that the Judicial Conference would follow the Comptroller General's decision and therefore

⁹ See p. 124, *infra*.

there would be no need for including those funds in the D.C. budget.

The result was that the District had not included the request for the funds, and since the administrative office of the U.S. courts refused to include a request for those funds, no request for funds was pending before the Congress.

OTHER FUNDING EFFORTS

We made a great many efforts, which are detailed in the appendix to my statement, to get someone to change his position. We even submitted a request of our own which went to the Office of Management and Budget. We made a request to the Law Enforcement Assistance Administration to see if they could provide interim funding. But all of that turned out to be futile. The Law Enforcement Assistance Administration ruled that they could not fund the program that was otherwise subjected to be funded through Congressional appropriations.

Mr. Ash of the Office of Management and Budget expressed his sympathy but said he could not amend the budget of the Federal judiciary.

NONPAID COUNSEL

The fact was that up until a week ago there was simply no source of funding at all. At that point the superior court initiated a program of providing free counsel for defendants in the D.C. courts as of July 1 on the assumption that if there are no funds available we were dutybound to do everything we can or could to try to make the system work and not have a breakdown completely.

I say "breakdown completely" advisedly because it seems clear to me, as it seems clear to the rest of our judges, that if we cannot provide counsel for indigent defendants we are not permitted under the Constitution as interpreted by the Supreme Court to try those persons at all. Since the public defender is not equipped to handle more than about 25 to 30 percent of the indigent defendants, the remainder, if no counsel is available for them, would simply have to be in a state of limbo. They could not be tried.

Ultimately I suppose they might have to be released notwithstanding that changes against them were outstanding. That, in brief, is the history of this controversy. Of course, the continuing resolution apparently is being adopted, subject to whatever other problems may exist, and that would permit us to function until the 1974 budget is approved, whenever that will be. The month of September has been mentioned. I am not sure that September is the time. This committee is better equipped to know that than I.

Whenever the 1974 budget is approved, the continuing resolution obviously expires, and if the 1974 budget does not include any funds, we will then be right back to where we were a week ago, namely, that we would have no counsel for the indigent defendants unless a free program, a program of attorneys who would get no compensation, could be made to work, which I consider doubtful, together with the leaders of the bar.

We will not be able to try and convict or acquit about two-thirds of the defendants who are brought to the courts by the police and by the prosecutor.

The CHAIRMAN. Thank you very much, Judge.

Judge Kelly, do you have any supplemental remarks to make?

Judge KELLY. No, I do not, sir.

UNEXPENDED FUNDS

The CHAIRMAN. How much money is returned to the Federal Treasury at the end of a fiscal year unobligated?

Judge GREENE. I am informed that there are no unexpended funds. There are no funds left in the fund that is earmarked for juror fees. A possibility exists that from all the sources combined that exist in the court that something in the neighborhood of \$200,000 may be left over at the end of the fiscal year, but I would think that figure is high, too, because I remember less than a week ago the problem came up of someone making a trip and I was told that \$105 for the trip was not available. I do not believe there are any unexpended funds.

The CHAIRMAN. What would be required either administratively to utilize these funds for the program for this indigent defendant program?

Judge GREENE. Are you talking about the \$10 million?

The CHAIRMAN. Any unexpended funds.

Judge GREENE. Of course, first we would have to know whether the District has unexpended funds in the amount of approximately \$2 million available. Assuming that those funds are available two things would be required, as I see it: No. 1, the Appropriations Committees of the Senate and the House would have to permit reallocation or reprogramming of those funds because they are in excess of \$25,000. No. 2, there probably would have to be substantive legislation to permit these funds to be expended for Criminal Justice Act purposes. Because as I read the statute, at the moment the legislative authority for the expenditure of funds for the representation of indigents lies within the Criminal Justice Act, which is an act administered by the Federal judiciary rather than the District of Columbia.

The CHAIRMAN. The gentleman from Maryland, Mr. Gude.

Mr. GUDE. I have no questions.

The CHAIRMAN. Mr. Fauntroy.

NONPAID COUNSEL

Mr. FAUNTROY. I simply have one question, Judge Greene, in your testimony that really a volunteer program to handle 300 defendants per week is administratively impossible.

Judge GREENE. My original statement, for which I substituted that particular phrase, I said in there it was administratively impossible. I think that is perhaps too strong a statement.

The statement I would like to substitute is that it is probably likely it will be impossible to administer. I cannot say that it is administratively impossible because we have not tried it, and we don't know. I would not give up hope that it could be made to work since the alternative is so grim.

The problem with administering a program of that kind is that we need 54 lawyers per day, most of them at least—the vast majority—totally unfamiliar with either criminal processes or criminal law, or

indeed where the courthouse is located, and all of them having civil practices of their own to which they must attend.

The logistical problem of getting 54 antitrust lawyers or patent lawyers, or whatnot, down to the courthouse every day in time for the arraignment and bond setting and preliminary hearings and so on and have them stay there whatever hours may be required I think would be almost impossible. But I do not want to say it is impossible because I feel we have the court system and the bar have an obligation to exhaust every possibility before we throw up our hands and say that two-thirds of the criminals in the District will be turned loose because they cannot be tried.

Before we do that I feel we have an obligation to make every effort and this would be a last ditch effort.

Mr. FAUNTROY. It is true that assuming what you feel is probably impossible does in fact prove to be impossible that the alternatives are frightening, namely, simply not being able to try, although it might relieve the problem at Lorton.

Judge GREENE. Yes; it might relieve the problem at Lorton. It might somewhat aggregate the problem in the District of Columbia.

Mr. FAUNTROY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Taylor.

PUBLIC DEFENDER SYSTEM

Mr. TAYLOR. Mr. Chairman, am I to understand, Judge, that in your opinion the public defender system can only handle 25 to 30 percent of the cases?

Judge GREENE. The public defender is limited by statute to handling 60 percent of the cases. The staff which the public defender has enables him to handle only about 25 to 30 percent of the cases.

Mr. FAUNTROY. That is all, Mr. Chairman.

The CHAIRMAN. The gentleman from California, Mr. Rees.

Mr. REES. Thank you very much, Mr. Chairman.

FINANCING THE LOCAL COURTS

What part of the court system is funded directly by the D.C. budget? You have two functions. I am just trying to equate your court function with a court function in Los Angeles, Calif., where we have a superior court, a municipal court, and a Federal court on top of that. The Federal court deals strictly with Federal matters and the breaking of Federal law.

The superior and municipal courts deal specifically with State law and municipal matters. The Federal court is financed 100 percent through the Federal budget; the local courts through the local budget. Do you have any comparable breakdown in the District of Columbia? Has the function been analyzed in specific areas or is it all lumped together?

Judge GREENE. Prior to court reorganization we had a mixed system where the Federal courts handled local matters as well as Federal matters, generally of the more aggravated variety of criminal cases and higher level of damages in civil cases and the court of general sessions handled mostly local matters and the court of first jurisdiction would do.

When the courts were organized in 1970 that pattern was changed. We now have a system as it would be in California or anywhere else; namely, that the Federal court handles only Federal matters and the superior court handles all local matters. We do not have a two-tier or three-tier local system as in some States. We have only one local trial court which handles everything from traffic and small claims matters on up to the most serious felonies, murder, rape, and so on.

As of August 1, that will include unlimited civil jurisdiction and everything else. The answer is that the superior court handles all local matters, civil, criminal, juvenile, family, everything else, and it is financed in full by the District of Columbia budget.

Mr. REES. The superior court has one appeals court.

Judge GREENE. Yes. That appeals court similarly is the only appeals court in the District and the only appeal from there is to the Supreme Court of the United States.

Mr. REES. The Federal court function is handled by a fully financed Federal court.

Judge GREENE. That is correct.

Mr. REES. The criminal justice funds for the defense of indigents would then go the Federal function court just as it would in every other Federal court throughout the country.

FEDERAL CRIMINAL JUSTICE ACT

Judge GREENE. No, not entirely. The Criminal Justice Act applies both to the Federal court as it does to the Superior Court; the reason for that being, of course, the relatively unique statute of the District of Columbia with its Federal interest. The cases in the Superior Court, although it is a local court, are prosecuted by the United States. They are prosecuted by the U.S. attorney who is under the Department of Justice, and therefore is a Federal official. For that reason both the Congress and the Comptroller General have recognized that the Criminal Justice Act would apply fully to the District of Columbia courts as to the Federal court itself.

If I may, Congressman Rees, just to point this up, in 1970, I believe—on October 14, 1970—Congress amended the Criminal Justice Act, and at that time a new subsection, (1) was added to title XVIII of the United States Code, section 3006(a) subsection (1) reads as follows:

The provisions of this Act other than subsection (h) of Section 1—which deals with public defender—shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.

It is quite clear from the legislative history, from the remarks of Senator Hruska and others that was meant to perpetuate the previous system, namely, that the Criminal Justice Act was to continue to the District of Columbia courts.

Mr. REES. I read Senator Hruska's amendment and I read the opinion by the Attorney General and I also read the language in the Appropriations Act, and the decisions of the Appropriations Committee. My question was: In the Federal function court in the District of Columbia there are no restrictions on their funds, but the restrictions or on the funds in your court on matters dealing with local jurisdiction.

Judge GREENE. That is correct. The Federal District Court continues to participate in the Criminal Justice Act program. We do not participate, as I see it, notwithstanding the clear mandate of positive substantive law simply because the Appropriations Committees thus far have not appropriated funds.

APPROPRIATIONS COMMITTEES

Mr. REES. The language of the Appropriations Committee says:

The committee does not concur in the Comptroller General position that funds for this purpose should be included in the budget of the Federal Judiciary but it is believed these payments should be made out of funds appropriated to the D. C. Government and their estimates should be subject to the review and approval of the District of Columbia Appropriations Committees. The local courts should defend their own budget estimates and should assume for the responsibility for the administration and control of the funds appropriated.

In light of that language in the appropriations bill for the fiscal year ending this week, did you make a presentation before the Appropriations Subcommittee for the District for the funds to defend indigents?

Judge GREENE. Yes, we did. Chief Justice Reilly of the District of Columbia Court of Appeals and I both made a representation before the Senate Committee on Appropriations for the District of Columbia and the House Committee. We also wrote letters to the chairman of the two Appropriations Committees, and the chairman of the two subcommittees—of the four subcommittees—the District of Columbia Subcommittee and the Federal Judiciary Subcommittees—saying inasmuch as it was clear substantively that these funds ought to be made available to indigents appearing in District of Columbia courts, and everyone agrees they ought to be made available—the Chief Justice agrees, the Mayor agrees, the Comptroller General agrees, everyone agrees, the only problem it appears is in whose budget should it be placed.

So we suggested to the various appropriations committees that inasmuch as others could not agree in which this budget should appear, this was a matter for Congress to resolve.

We have taken no position as to which budget it should come in, but our concern obviously is that the program be funded in some way.

Mr. REES. Was there any statement made by the District of Columbia Appropriations Subcommittees of either the Senate or the House on your request for approximately \$2.2 million?

Judge GREENE. The House Subcommittee report has a statement in it. I do not have the exact language in mind, but it is approximately along the lines that inasmuch as the various agencies who are supposed to request the funds cannot get together and cannot decide how they should be requested and from whom they should be requested, the committee was not going to authorize the funds.

Mr. REES. You stated that all the agencies were together and they did testify before the District of Columbia Appropriations Subcommittee in both Houses.

Judge GREENE. They are together in principle, Congressman Rees, except that the Chief Justice of the United States and the Judicial Conference say that this is a matter for the District of Columbia.

The Mayor has stated that it is not a matter for the District of Columbia because of the language in the statute just quoted and besides it was too late for him to include it in the statute. There is also the problem of the District of Columbia Appropriations Committee who may not approve any such request at such a late date. So while everyone agrees in principle this should be done, we are between the cracks as to the two factions both stating, yes, it should be done by the other party.

Mr. REES. What if immediately after the 1973 budget was passed with the restrictive language all of you had agreed and asked for \$2.259 million in the District of Columbia budget and gone to the District of Columbia budget subcommittees in both Houses, as a unified group—the city and the Judicial Conference—do you think that you would have gotten the \$2.259 million?

Judge GREENE. I do not know, Congressman Rees. In the first place the restrictive language was not put in until quite late, or until October. I may have the date slightly wrong—October or November. At that time the only thing that was put into the bill was a \$1 million ceiling on expenditures for the District of Columbia courts.

The appropriation bill never said that the District of Columbia courts were to be excluded from the Criminal Justice Act. But we did, to make sure that this was not so initiate efforts to have the Comptroller General make a ruling as to where the funds should come from.

The Comptroller General said the funds should come from the Federal Judiciary.

It would have been foolish of us in light of that determination to try to pursue some other route.

Mr. REES. The language of the appropriations bill for the fiscal year 1973 says:

Provided that none of the funds contained in this title shall be available for the compensation, reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia.

Doesn't that certainly have jurisdiction over what the Comptroller General might say or anybody else?

This is restrictive language in an appropriation bill.

Judge GREENE. Congressman Rees, that was not the language that was finally included in the bill. The Senate disagreed with that position and a compromise position was adopted and the ultimate bill simply had a \$1 million ceiling on expenditures in the District of Columbia courts. That language was not contained in the bill as it ultimately passed the Congress.

Mr. REES. Judge, part of my feeling is that there should have been a greater effort in October and November of last year when the District of Columbia budget was made up. I think the language in the report which I read to you is very strong language. I might not agree with it but I am not on the Appropriations Committee. There should have been some type of unified front to pick that money up through the District of Columbia Budget and Appropriations Committee. Now we find ourselves 3 days away from the beginning of the next fiscal year, and again all our committee can do is to authorize—we cannot appropriate—and so now we have the situation of where do you pick up \$2.259 million and the only place to pick up \$2.259 mil-

lion is for this committee to pass a tax bill to pick up that money. I don't see any other way. We certainly cannot tell the Appropriations Committee what to do.

Judge GREENE. Congressman, I must respectfully differ with the suggestion that a sufficient effort was not made. The chronology attached to my statement shows that dozens and dozens and dozens of meetings and efforts were made to iron this situation out. We finally came to the conclusion that because of the language in the Criminal Justice Act itself, and because of the decision of the Comptroller General, the chances of having the program funded were better by a request through the Federal judiciary budget than the District of Columbia budget, one reason being that there is no, as yet, substantive legislative authorization.

I suggest, Congressman, if we had gone before Senator Bayh or Congressman Natcher's committee and asked for the \$2.2 million in the absence of legislative authorization, and in the face of the Comptroller General's decision we would have been laughed out of that committee. We felt after long discussions and thorough consideration that the most prudent course would be to follow the statute and follow the interpretation of the Comptroller General.

There is no reason whatever to believe, and there is every reason to disbelieve, that an effort to ask for those funds from the District of Columbia Appropriations Committee would have been more successful.

Mr. REES. I think your confidence is several steps removed from reality. I am in complete sympathy with the judge. I am also a Congressman somewhat familiar with the legislative process of the Congress of the United States. It seems to me, if there was total agreement, and if you had gone to Mr. Natcher and Senator Bayh's subcommittees, and told them of the restrictive language in the report of Mr. Rooney's subcommittee and also the subsequent action of the Judicial Conference in not asking for money for the District of Columbia you might have been given money to make sure that indigents can be adequately defended.

Judge GREENE. We made that request in spite of the fact that we felt that the statute required the expenditure to be made through the Federal judiciary budget. Nevertheless, we made that request of the District of Columbia subcommittees and we were turned down. We made the request orally in defense of our budget.

Chief Judge Reilly wrote a letter directly to the various committee chairmen, including Chairman Mahon of the full Appropriations Committee to ask assistance in trying to work it out. We did just what you suggested we do, although we always felt in view of the fact that legislative authorization existed and the Comptroller General's decision existed, it would be probably easier to obtain the money in this manner.

The Mayor was very accommodating in agreeing that the city would pick up this money as of fiscal year 1975. It was our feeling that in view of that it would not be asking too much of the Federal judiciary to continue this program, which they had carried for 6 or 7 years for 1 more year until the District could make its own arrangements.

That was our reasoning. But as I say, Congressman Rees, although we felt that the best avenue was through the Federal judiciary budget

and the most feasible avenue, we nevertheless asked the District of Columbia committees as well out of an abundance of caution.

Mr. REES. Didn't you state that the report of the District of Columbia Subcommittee stated that there was disagreement and until that disagreement was ironed out they were not going to act.

Judge GREENE. That is what the committee said. There still is disagreement. The Mayor has indicated he sees no way of supporting a request for the funds for 1974, and the Judicial Conference still says that they have no way of asking for the money at all after fiscal year 1973 runs out. In spite of dozens of efforts, the bar has been most helpful, a special committee headed by Senator Tydings was appointed to contact members of the Appropriations Committee, Mr. Duncan, the president of the bar contacted innumerable Congressmen and Senators on both Appropriations Committees in both Houses in order to get them to resolve this. They were simply unsuccessful.

Mr. REES. I suspect if you had come to this committee—I remember hearing about the problem when you came up here several months ago at the beginning of the session—for an authorizing bill you would have gotten it out right away, which would have helped you in any appropriations process. Let me ask you: What are your plans? Fiscal 1974 will have to be solved one way or the other. I suspect that the only way this committee can act is to pass an authorization and to tie in some source of revenue. This seems about the only way we can act in this type of situation. It is analogous to the police, fire salary raises of last year.

PLAN FOR 1975

What do you plan for fiscal 1975?

Will there be some agreement?

Judge GREENE. The Mayor has agreed that he would submit as part of his appropriation request for 1975 a request for payment for attorneys in the District of Columbia courts, and that is fine and that is agreeable.

He may also require authorizing legislation conceivably but I think there is enough time to do that.

May I make just one comment on your previous statement about this committee passing authorization legislation. I obviously am not an expert on congressional procedures, but it might be appropriate perhaps to undertake to determine whether the two Appropriations Subcommittees, that is in the Senate and the House that deal with District of Columbia affairs, will and would then on the basis of such authorizing legislation, provide the appropriations.

AUTHORITY FOR APPROPRIATIONS

I think it would be a disaster if this legislation were introduced and were ultimately passed and then it turned out that the Appropriations Committee would not appropriate the funds, because then we would be worse off than we are now.

Mr. REES. That happens every day around here.

Judge GREENE. It does not happen to me every day.

Mr. FAUNTROY. If the gentleman will yield, the gentleman from California undertook a significant effort this year to put together an omnibus authorization which passed on the floor of the House and which now must be acted upon in the Senate.

The 1974 fiscal concerns notwithstanding, I wonder what might be done by you and all of us to have that authorization included in the omnibus bill which passed.

Mr. REES. The problem is that the omnibus bill, which was requested by the District authorizing appropriation, was a perfect vehicle for your authorization. It has already passed the House. I do not know if the Senate has taken any action. But they would have to put that authorization in their bill for it to be before us in a conference committee.

I suspect the only thing that can be done in terms of a very quick authorization, and this would be a continuing authorization, as reauthorized by the Mayor and City Council and not Congress, is to have the equivalent committee in the Senate when they are working on the like bill, include this, and then it would be before us in the conference committee and we might be of help.

Mr. FAUNTROY. I was suggesting that might be something we ought to pursue now, beginning this afternoon. I just wonder what your reaction to your undertaking that as a continuing effort would be.

Judge GREENE. That would be very helpful, but the emergency is the 1974 appropriation.

The sooner the 1975 problem and thereafter is settled the better.

Mr. FAUNTROY. The authorization would be there if we can catch the Senate action on the House passed bill before tomorrow.

Mr. REES. The only thing lacking is \$2,259,000.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from New York, Mr. Smith.

Mr. SMITH. Judge Greene, thank you for your testimony.

FUNDS REQUIRED

I take it the amount we are talking about is about \$2,259,000.

Judge GREENE. That is correct.

Mr. SMITH. For the fiscal year 1974.

Judge GREENE. That is correct.

Mr. SMITH. The amount for fiscal 1973 was \$1,400,000.

Judge GREENE. That is correct.

The difference is accountable by the fact that in the interim two things happened. No. 1, the Superior Court was given additional jurisdiction. The more serious felonies were transferred from the U.S. District Court to the Superior Court. In the interim those trials are longer and more complicated and require more fees. The Criminal Justice Act hourly rate was increased from \$15 for out of court time to \$20 for time in court to \$20 and \$30 respectively for the country as a whole.

Those two things combined account for the difference.

REFUNDING TO JUSTICE DEPARTMENT

Mr. SMITH. Judge Greene, in order that we might have a complete story, is it correct that although the U.S. Attorneys prosecute criminal cases in the superior court and appeals in the District of Columbia Court of Appeals, the District in each year repays to the Department of Justice the expense of the Department in prosecuting in the amount of about \$10 million, I think.

Judge GREENE. That is right. It is slightly in excess of \$10 million.

As a matter of fact, the provision in the law is that the District of Columbia must pay 75 percent of the cost of operating the U.S. Attorney and the U.S. Marshal's Office which comes to \$10,175,000.

Mr. SMITH. That is 75 percent of the cost which is allocated to the superior court in the District of Columbia Court of Appeals.

Judge GREENE. No. My understanding is that is the entire cost of the U.S. Attorney and U.S. Marshal in servicing both the Federal court and the superior court in the District of Columbia.

Mr. SMITH. Thank you very much.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Chief Judge Greene, following up on Congressman Rees' statement, I assume that a local Criminal Justice Act with some tax or revenue raising provision contained in that would resolve the issue for the District of Columbia.

Judge GREENE. Would resolve the issue if the appropriations are forthcoming pursuant to the act.

Mr. HOGAN. That is the problem that would ensue whether it were included in a technical amendment covering the authorization or whether you had the local Criminal Justice Act in and of itself.

Judge GREENE. That is right.

Mr. HOGAN. If you had a local Criminal Justice Act passed by this committee that would set up a local criminal justice system with some revenue raising provisions in it, I assume that by and large that could resolve the problem.

Judge GREENE. Yes.

Mr. HOGAN. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman.

INDIGENCY DETERMINATION

Judge, how does the District or do your courts judge the indigency on the part of a prospective client?

Judge GREENE. Indigency is basically determined by a unit in the public defender's office. They interview the defendants when they first come in the cell block of the court and the public defender or some of their people try to determine their jobs, income, property and so on. On the basis of standards which I cannot recall at the moment they make a determination or at least make a recommendation to the judge as to whether or not the defendant is indigent.

Mr. MAZZOLI. First, I would like, if you can supply to me, and probably to the committee the basis upon which indigency is established and the criteria. I think it would help me to decide really what sort of problem we have here.

You mentioned that the public defender, which I now find out does the preliminary investigations and the screening, is not big enough to take care of the final activities on behalf of those adjudged to be indigent, and therefore clients.

It would help me a great deal to determine the extent of our problem to have this information.

Judge GREENE. We certainly can supply that. I might say that someone from the public defender's office is here scheduled to be a witness and may have it.

Mr. MAZZOLI. You say that the judges receive a recommendation. Is it a pro forma acceptance of their recommendation? You do not make any separate investigation?

Judge GREENE. That is right.

Mr. MAZZOLI. Would you say how many would be before you that would be classified as those under the CJA?

Judge GREENE. Again I would have to guess. I would say that indigents would probably be in the neighborhood of 90 percent of the defendants appearing before us.

Mr. MAZZOLI. Ninety percent of all criminal defendants are in the category of indigent.

Judge GREENE. As I say, I am not positive but that is an impression I have. I could certainly supply the exact figures.

Mr. MAZZOLI. May I ask you to do that?

[The information requested was not received in time to be included in the record.]

Mr. MAZZOLI. Also, to perhaps clear me up, I thought the District of Columbia was one of the highest earning areas in the entire country. Probably they had the highest per capita income of any State or city or district of plantation in the whole country. How does that figure in with 90 percent of the people who appear before the bar would be indigent? Is that a possibility?

Judge GREENE. Criminals are not among the high income groups.

Mr. MAZZOLI. They are not average for the community. Is there that much distortion in the figures?

FEES PAID ATTORNEYS

Judge GREENE. Apparently. As I say, all we can do is to try to determine on the basis of whatever objective criteria can be developed who is not indigent.

If I may I would elaborate somewhat on the point that you touched and that is how does the District compare with other jurisdictions throughout the United States on this Criminal Justice Act problem?

There has been some talk about many defendants being given pre-counsel, and large fees being paid. The average payment for district courts throughout the United States under the Criminal Justice Act was \$271 per attorney.

The average payment in the Superior Court for the District of Columbia was \$126 per attorney, less than half of what is being paid to attorneys in the Federal district courts throughout the country. I might also say on the same subject that the numbers of persons who are involved here we are talking about 12,405 indigents who would be represented in the District of Columbia in the Superior Court.

There were 51,435 indigent defendants who were represented in Federal district courts throughout the United States. The District of Columbia represented 24 percent of all persons prosecuted by the United States in the United States, although the payments to the District of Columbia Courts, lawyers appointed, amounted to only 9 percent. We had 24 percent of the defendants and only 9 percent of the payments. So any implication or understanding that in the District of Columbia vast sums of money are being paid out, more so than elsewhere, is totally in error.

Mr. MAZZOLI. I thank you, Judge.

If a great many people are judged to be indigent in this District who would not be judged to be indigent in other States, we have one distortion. Also as I recall my days of practicing the law we are much awed and concerned about coming into the Federal district court than we were by going into what we called our circuit courts in Kentucky. There is a difference of degree. And that possibly might account for the difference in payment to lawyers.

Let me follow on one last thing and I yield to the Chairman and thank him for his time.

JURISDICTION DISPUTE

First, I think we have here a judicial dispute. I think there was a certain degree of Everybody sitting on top of their pride, if you will, and that prohibited or prevented or inhibited some agreement being made long before now. This is really the twelfth hour and I think it is probably late to come in and make these adjustments.

The last thing is that we are talking about \$2 million, if I understand the figures, which of a District budget of \$1 billion is one-fifth of 1 percent of the money. It occurs to me if this is a good program, in fact, with good results from it that fulfills a need that there would seem to be some money somewhere, even if by loan or by grant or by something, that could fund the program. I thank the Chairman.

Judge GREENE. I agree with you 100 percent. It is absurd that in regard to a \$2 million item as far as the budget of the United States or even the budget of the District of Columbia is concerned is an infinitesimal amount we are here faced with the possibility that our criminal justice system and our criminal court system will for all intents and purposes shut down. That cannot be. There must be some solution to it.

The CHAIRMAN. The gentleman from New York, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman. It is good to see you again, Judge Greene. Your voice has been heard in connection with the problem. It is my understanding that this is the first legislative forum in which your problem has been expressed.

I know you appeared before the Crime Committee which has no authorization jurisdiction. But have you appeared before congressional committees before?

Judge GREENE. We did. Chief Judge Reilly and I did bring this matter to the attention of the Senate Committee on Appropriations on the District of Columbia, Senator Bayh's committee and to the attention of Mr. Natcher's committee, the equivalent House committee. We testified to some degree, as much as was possible, on this issue, yes, sir.

Mr. RANGEL. What was their response?

AUTHORITY REQUIRED

Judge GREENE. Their response in essence was that since no budgetary request from the District of Columbia was before them and inasmuch as the statute appeared—the substantive legislation—appeared to point elsewhere, namely, to the Federal Judiciary, they didn't feel they should do anything.

Mr. RANGEL. It has been suggested by Congressman Fauntroy and others that you immediately return to the Senate counterpart of the District of Columbia Committee. But you have been there and you have not received any additional tools since the last time you appeared, have you?

Judge GREENE. No; we have been everywhere and we have not received the funds. All we have received from everyone is the assurance that they understand the significance of this problem, they feel it is very important, it must be continued, it is inconceivable that it should not be continued but for one reason or another it was not their particular province. To some extent the problem lies in the separation of powers. We wrote to the Office of Management and Budget, Mr. Roy Ash, and asked them if they could adjust this difference between two Government agencies, as it were, the Judicial Conference of the United States and the District of Columbia, but his office replied that inasmuch as the Federal Judiciary is independent, it was not like some other Government department, they could not mediate or arbitrate this dispute and they were powerless to act.

It is one of those strange situations where everyone is powerless to do anything. The only body that I can see that has the authority and the power to do something is the Congress. It seems to me that is where the decision ought to be made.

Mr. RANGEL. I can assure you that the members of this committee and the Chair will be assisting you and working with you when and if you have to go before another forum.

REQUEST FOR LEAA FUNDS

I assume that you and the major have explored the policy of LEAA funds being made available to this.

Judge GREENE. Mr. Chairman, we submitted an application for LEAA funds which were sent over to LEAA over my signature, and I received a reply today from Mr. Santarelli, the Administrator of LEAA, which we had expected because we had previously received informal word to that effect; the letter states:

I have been advised that LEAA may not award funds to replace other sources for court appointed counsel in the District of Columbia. Responsibility for the court-appointed counsel program has been fixed elsewhere by statute. Funding of the application would be in direct conflict with the congressional appropriation process.

Mr. RANGEL. So that knocks out LEAA. It is rumored on the Hill that your courts have something called a witness fund.

Judge GREENE. There are no funds available. The jury fund is exhausted; the witness fund is exhausted. We do not have any funds that are available. I would not claim that there are zero funds left over, but there is nothing left over from the 1973 appropriation that even approximates the kind of things needed.

BAR ASSOCIATIONS' RESPONSE

Mr. RANGEL. You made a special appeal to the bar associations to assist you during this crisis. What has been their response?

Judge GREENE. The bar has been most cooperative. I could not express highly enough the responsiveness of the bar.

Mr. Prettyman, who was president of the unified bar, and Mr. Duncan, now the president of the bar, have met with me many times. They have testified; they have written letters. They have organized special committees of lawyers with legislative experience.

I mentioned the committee chaired by former Senator Tydings. They have contacted Congressmen and Senators and their staffs on the various appropriations committees, and they have tried in every conceivable way to assist us.

Mr. RANGEL. Is there any truth in the fact that they intend or have instituted a civil action in order to see that this program is funded?

Judge GREENE. I wrote to Mr. Duncan, the president of the bar, as a last resort that we would institute a program of requiring attorneys to serve free. He wrote a rather lengthy letter which included expressions of cooperation and so on, but also included the statement that the bar was contemplating or would file a civil suit.

Mr. RANGEL. How long ago was that?

Judge GREENE. This was 3 or 4 days ago.

Mr. RANGEL. Lastly, I assume that the legal assistance to the poor project would be excluded by law.

Judge GREENE. Yes.

Mr. RANGEL. Thank you very much.

Judge GREENE. Thank you, Congressman.

Mr. RANGEL. I yield back the balance of my time.

The CHAIRMAN. The gentleman from Kentucky, Mr. Breckinridge.

Mr. BRECKENRIDGE. I have no questions.

The CHAIRMAN. Thank you very much, Judge, for your enlightenment of the committee. I think the hearing today should produce some consensus that would be helpful. We appreciate your cooperation. We are going to hear some others who are here, but we did want to make that statement. If you care to remain, and if there is anything said subsequently that you would like to respond to, we will accord you that privilege and to your associate at the witness table.

Judge GREENE. I would like to say that we are most appreciative, Mr. Chairman, of the concern of this committee and the interest of the committee in trying to solve this problem. I will, of course, remain in case further matters are necessary.

If I may leave those documents with the court reporter so they can be included.

COUNSEL QUALIFICATIONS

Mr. RANGEL. Mr. Chairman, if I may ask one question: Chief Judge Greene, do you see any legal problems coming, assuming that the bar association has to come to your assistance while we are trying to get the funds? Do you see any legal problems where defendants have been assigned lawyers that have no experience in the practice of criminal law? There is a general feeling among laymen if you are a lawyer, you are a lawyer for all purposes, which certainly is not true.

What kind of lawyers will you be getting? Has the bar association said they will be sending you lawyers that have experience in the criminal justice system?

Judge GREENE. Just as we sat down to decide how we were going to implement the matter, we got word of the continuing resolution, and we decided to defer specifics until next week so we could discuss this more calmly.

I do see legal constitutional problems. I am told there will be 700 lawyers in the District of Columbia who have substantial trial experience, and there are 12,000 or 14,000 lawyers total. If only the 700 lawyers with trial experience are used, they would probably have to give up perhaps as much as one-third of their regular practice to this free representation plan, and that might well constitute taking of property without compensation. On the other hand, if we use all 12,000 whether they have experience or not, there may well appear to be problems of ineffective assistance of counsel on the part of lawyers who do not have trial experience and no criminal experience at all. So there are significant legal problems; yes, sir.

Mr. RANGEL. Thank you, Judge.

Mr. MAZZOLI. Mr. Chairman, I am reminded of one question: Judge, is there a breakdown of the number of cases that are required to be handled on behalf of indigents on felonies or high misdemeanors? Are we talking about 90 percent of the people being charged with serious crime, or is there less than serious crime that could be handled by other lawyers not experienced by trial work?

Judge GREENE. Petty offenses are excluded. The offenses we are talking about are offenses having a maximum penalty of 1 year or more.

Mr. MAZZOLI. That is the only case the Supreme Court has designated would be required to have representation?

Judge GREENE. Yes. These cases involve serious misdemeanors or felonies.

Mr. FAUNTROY. I have one additional question: Judge Greene, you indicated that while the Comptroller General ruled that we would be entitled to the funds under the Federal program, the Judicial Conference has stated if the money were appropriated, it would not be made available to us. Therefore, apparently the House has acted on that premise. What possibility is there that the Senate might act on, or that the Justice Department proposal might be amended at this late date, to be consistent with the Comptroller General's assessment that we are entitled, and that might become a part of at least the Senate action?

Judge GREENE. We have reason to believe that the Senate, at least those Senators from whom we have heard, would be prepared to support and to include in their bill appropriations under the Criminal Justice Act, and the Senate would be sympathetic to that approach and would proceed on it.

I should amend your question slightly. I do not believe that the Judicial Conference has said that if the money were appropriated they would not spend it. They simply said they would not ask for it.

If the Congress in its wisdom were to appropriate anywhere, I have no reason to believe that the Judicial Conference would then refuse to spend it.

Mr. FAUNTROY. There might be just a little light there, Mr. Chairman, if we put a little more energy to it.

The CHAIRMAN. Thank you very much.

Judge GREENE. Thank you.

The CHAIRMAN. The next witness is the Deputy Attorney General, Joseph T. Sneed.

The gentleman has a short statement. You may proceed.

**STATEMENT OF HON. JOSEPH T. SNEED, DEPUTY ATTORNEY
GENERAL OF THE UNITED STATES**

Mr. SNEED. Thank you, Mr. Chairman. The statement is a very short statement. I will read it and then be happy to respond in any way that I can to your questions.

I want to thank you, Mr. Chairman, for the opportunity to appear before your committee to support the need for making funds available to provide representation of indigent persons accused of crime in the District of Columbia for the fiscal year 1974.

The Department of Justice for a number of months has been aware of the fact that the Criminal Justice Act funding for the District of Columbia for fiscal year 1974 was not being requested by either the District of Columbia or the Administrative Office of the U.S. courts. Repeated efforts have been made to urge that such funding be made available by one or the other of these sources. Recently these efforts have been intensified but to no avail.

In addition to the foregoing efforts, the Department has examined the legality of making funds available for these purposes through the Law Enforcement Assistance Administration. This examination indicates that it is beyond the legal power of LEAA to provide the required funding. Also, the Department has considered the feasibility of requesting that funds be made available directly to it for the purpose of funding the District of Columbia's indigent representation program. Our judgment at the present time is that the Department should urge that the District of Columbia or the judiciary seek the required appropriation. Each appears to us to be a more appropriate agency than does Justice. Should it be the will of Congress that such funds be made available to the Department of Justice, we would disburse them in a manner consistent with the objectives of the program.

Let me close this brief statement by observing that although there may be flaws in the manner in which indigent criminal defendants are provided legal services within the District of Columbia, we in the Department of Justice fully support the purposes served by this program and are prepared to continue to assist others in a joint effort to provide funding for this program during the 1974 fiscal year.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Sneed.

LEAA FUNDS

Is it your understanding that a request from the Administrative Office is required to trigger a LEAA grants?

Mr. SNEED. Mr. Chairman, let me respond to that by going back to what seems to me to be the bedrock problem that we have here. In subsection J of the 1970 amendments of the Criminal Justice Act we have this language. The subsection is captioned "Appropriations" and reads:

There are authorized to be appropriated to the United States courts out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in the appropriation act, such

appropriation shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

That is the authorization for the program that exists, as I understand it. The Law Enforcement Assistance Administration in evaluating the grant requests determined in my opinion quite correctly, so the program of which we speak is authorized by the language of that particular provision and it would be inappropriate and beyond the power of LEAA to make a grant to fulfill a purpose so authorized.

For that reason we decline to make the grant. There is another problem relating to the one-third matching funds for salary that is also involved in determining whether an LEAA grant should be made. In the course of this, the grant so submitted would not meet that requirement.

The CHAIRMAN. Mr. Smith?

Mr. SMITH. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Hogan?

Mr. HOGAN. No questions.

The CHAIRMAN. Mr. Fauntroy.

Mr. FAUNTROY. Mr. Chairman, I have one question; that is, pursuant to the gentleman's last sentence in the statement.

Is the Justice Department prepared to help fight for restoration of funds in the CJA situation in the Senate?

Mr. SNEED. For the appropriation of funds to the judiciary in the Senate?

Mr. FAUNTROY. Yes.

Mr. SNEED. Mr. Fauntroy, our position on that is that we are glad to assist. We do not wish to be put in the position of making the initial approach, or, to use the vernacular, leading the charge.

Mr. FAUNTROY. You certainly would not object to an inquiry from the Senate committee?

Mr. SNEED. Of course not.

Mr. FAUNTROY. Responding by saying that you—

Mr. SNEED. No, sir, not at all.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Thank you for your assistance, Mr. Chairman. I think it is a little more likely. Tomorrow we might do it.

The CHAIRMAN. Mr. Rees?

Mr. REES. Mr. Chairman, I think this whole thing sounds like catch 22. We have been running around here for the last 6 or 7 months saying we have to protect indigents and if we don't get them adequate counsel we are going to have to let them go. You have to have adequate counsel in all phases of their trial.

Now there is a restriction on the Criminal Justice Act which was put into the report by the Appropriations Committee, but then the Law Enforcement Assistance Administration says that they are allowed to go through the Criminal Justice Act, so we cannot get any money from the LEAA. I feel sorry for an indigent in the District of Columbia who wants adequate representation. I am really rather appalled that this kind of catch 22 situation prevails.

Mr. SNEED. Mr. Rees, I don't think there is any way to get out of this dilemma. In listening to your earlier questioning, it led me to believe that you knew the way out of the dilemma. I would suggest,

I would agree with the direction of your earlier questioning, that namely, it seems to me that the District of Columbia Code has got to be amended so as to authorize appropriations for this particular activity. That amendment having been made, which in effect being a later congressional enactment, would permit the Appropriations Committee for the District to make the appropriations and we go forward.

AUTHORITY REQUIRED

Mr. REES. I will have authorization language drafted within the next week to authorize these funds, but the problem is we can authorize funds but cannot appropriate funds. The decision whether we have to tax the people of the District of Columbia, or if we follow the legal opinion as to where the money should come from, the opinion is it should come from the Criminal Justice Act funds?

Mr. SNEED. I think that is clear, so long as that subsection J, I read remains the last expression of congressional will. I am suggesting that I thought you earlier were suggesting that what we need is a more up-to-date expression of that will, at which point the Appropriations Committee for the District can move in and make the funds available.

Mr. REES. My subcommittee deals with authorizations and when we come back after the July 4 recess there will be an authorizing bill introduced. I am only sorry it could not have been introduced 6 or 7 months ago.

Mr. SNEED. I am, too.

Mr. REES. This dry period we are starting on Friday, I am afraid of that.

Mr. SNEED. I regret that very much. Speaking now personally and not institutionally, I got into this matter I think about 3 or 4 weeks ago, before I began to understand exactly what was involved.

Mr. R. WASHINGTON. It is a question of substantive authorization, as Mr. Rees said before. We are talking about appropriations and we are still in a crunch. There is a determination about 1974. I take it it is the Mayor's position for fiscal year 1975 they are going to localize the criminal justice system in the District. We are talking about 1974. Your earlier suggestion was that Chief Judge Greene ought to see our counterparts on the Senate side to add section 29 to 8250 of it adopted in conference if it is the wisdom of this committee. What are we going to do about the appropriation after that?

Mr. REES. We might find ourselves in another constitutional crisis. We have them every day now. There is a Cambodian cutoff on the continuing resolution. So the continuing resolution is going to be vetoed.

The CHAIRMAN. Mr. Mazzoli.

Mr. MAZZOLI. I have no questions.

The CHAIRMAN. Mr. Rangel?

Mr. RANGEL. No questions.

Mr. HOGAN. I wonder if, in line with this, the District government could provide the staff of the committee with draft legislation that would provide for a local criminal justice or local justice bill so we have that?

The CHAIRMAN. That certainly is legitimate as a request. Would the Corporation Counsel be happy to respond?

Mr. MURPHY. Happy to provide that.

The CHAIRMAN. Thank you very much, Mr. Sneed.

Mr. SNEED. Thank you.

The CHAIRMAN. The Chair would now like to call Mr. Socolar, the Deputy General Counsel for the General Accounting Office. The gentleman has a prepared statement. If he can summarize it, it would better serve our hearing at this point. I will let him use his own judgment.

**STATEMENT OF MILTON J. SOCOLAR, DEPUTY GENERAL COUNSEL,
GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY HOWARD
LEVY, ATTORNEY ADVISER, OFFICE OF GENERAL COUNSEL**

Mr. SOCOLAR. First I would like to introduce my colleague, Howard Levy, Attorney Adviser, Office of General Counsel.

The prepared statement that I have pretty well tracks the chronology that Judge Greene went through, so I would like to introduce it into the record.

The CHAIRMAN. Without objection, the full statement will be included.

[The statement follows:]

PREPARED STATEMENT OF MILTON J. SOCOLAR, DEPUTY GENERAL COUNSEL

Mr. Chairman and members of the committee: On March 7, 1972, Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts requested a ruling from the Comptroller General of the United States as to whether funds appropriated to the Federal Judiciary for the implementation of the Criminal Justice Act are available to cover cases in the Superior Court of the District of Columbia. Mr. Kirks also asked whether the Judicial Conference of the United States and the Administrative Office of the United States Courts have responsibility for administration of, and budgeting for Criminal Justice Act expenditures by the Superior Court of the District of Columbia and the District Court of Appeals.

The Criminal Justice Act of 1964 did not in its specific terms apply to the District of Columbia Court of General Sessions, as the D.C. court was named. The Comptroller General ruled, however, in a decision dated June 15, 1966, that Criminal Justice Act was intended to cover all persons criminally prosecuted by the United States and that, therefore, the act did apply with regard to cases brought in the so-called United States Branch of the D.C. Court of General Sessions. The Comptroller General pointed out that although the act was framed in terms of the Federal Court System of which the District of Columbia Court of General Sessions traditionally had not been considered a part, the United States District Court for the District of Columbia had concurrent jurisdiction over all criminal cases which could properly be heard in the United States Branch and that all serious criminal cases heard in the Court of General Sessions were prosecuted by a United States attorney in the name of the United States. The United States thus had the choice of trying a defendant in either court, and the Comptroller General concluded that the Congress could not have intended a defendant's entitlement under the Criminal Justice Act to rest upon the choice made.

On July 29, 1970, the District of Columbia Court Reform and Criminal Procedure Act of 1970 was enacted into law. Among other things, that act merged the three local courts—the Court of General Sessions, the Juvenile Court and the D.C. Tax Court—into a new District of Columbia Superior Court. After an 18-month transition period, the Superior Court took exclusive jurisdiction over “any criminal case under any law applicable exclusively to the District of Columbia.” This act eliminated the concurrent jurisdiction between the local

court and the United States Court. Trial jurisdiction in the District of Columbia is no longer dependent upon a choice made by the United States. However, the class of criminal prosecutions formerly tried in the Court of General Sessions are still tried in the local D.C. Superior Court by a U.S. Attorney in the name of the United States.

On October 17, 1970, about two and one-half months after the enactment of the D.C. Court Reform Act, Congress enacted Public Law 91-447 which, in effect, rewrote the Criminal Justice Act of 1964. That act added a new section (1) to the Criminal Justice Act providing:

"(1) *Applicability in the District of Columbia.*—The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

This provision was sponsored on the Senate floor by Senator Hruska who stated that he wished to insure continued coverage of the Criminal Justice Act in the District for those classes of persons covered—under prior Comptroller General decisions—by the Criminal Justice Act of 1964.

Accordingly, in a decision dated May 26, 1972, B-175429, we stated that except as to subsection (h) of the Criminal Justice Act relating to public defender systems, subsection (1) of the Criminal Justice Act as amended in 1970 by Public Law 91-447, together with its legislative history clearly and unequivocally makes the Criminal Justice Act applicable to prosecutions brought in the D.C. Superior Court and the D.C. Court of Appeals with regard to those prosecutions brought in the name of the United States.

In this decision we also addressed Mr. Kirk's question concerning the responsibilities of the Administrative Office of the United States Courts, and the Judicial Conference of the United States, with respect to the administration of, and budgeting for, the Criminal Justice Act Program in the District of Columbia. We noted that subsection (j) of the Criminal Justice Act authorizes appropriations to the United States Courts to carry out the provisions of that act and provides that payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts. We also noted that there is nothing in the 1970 amendments to the Criminal Justice Act which would indicate that the Congress intended to change the existing procedure of having the Administrative Office administer and budget for this program within the District of Columbia. Therefore, since the Director of that Office supervises payments made from Criminal Justice Act appropriations, it appeared that he was to have the responsibility and authority for administering and budgeting as to the District's program.

Thus, we held in our decision that except with respect to the District of Columbia Public Defender Service, the Administrative Office of the United States Courts should continue to handle the administration of, and budgeting for, the Criminal Justice Act program in the District of Columbia's local courts.

I might add at this time that if the Congress deemed it desirable, the General Accounting Office would have no objection to a change from the current structure for administering the District's program. However, if the Congress should decide to appropriate funds directly to the District, consideration might be given to relieving the Director of the Administrative Office of his supervisory responsibilities with respect to the program in these local courts.

I would like to introduce into the record copies of Mr. Kirks' letter and of the two Comptroller General decisions to which I referred.

Mr. Chairman, that completes my prepared statement. I will be happy to answer any questions the Committee may have.

Mr. SOCOLAR. The statement simply goes into the rationale of the two decisions that were rendered in this area by the Comptroller General. I would state briefly that the first offender was based on the interrelationship of the Federal court system to the District court system back in 1966, and on the basis of that relationship concluded that the Congress in effect must have intended that the Criminal Justice Act did apply to the local court structure in the District.

With the reform of the District court system, the initial interpretation on which the earlier Comptroller General's opinion was based

was removed, but by the time the Comptroller General was called to rule on the matter again, the Criminal Justice Act itself had been amended and specifically provided for its application to the District of Columbia courts.

I recall that Judge Greene introduced the earlier opinion of the Comptroller General into the record. I would like at this time to suggest that the later opinion, together with the Administrative Office of the U.S. Courts' letter, to which it responded, be introduced in the record.

The CHAIRMAN. Without objection, those exhibits will be made a part of the record.

[The information follows:]

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 3, 1969.

DEAR MR. ATTORNEY GENERAL: Letter dated October 10, 1968, from the Assistant Attorney General for Administration (Assistant Attorney General) presents for our decision two questions relating to payments for transcripts for indigent defendants.

The facts and circumstances giving rise to the questions presented, as disclosed by the Assistant Attorney General's letter, are set forth below.

In *Tate v. United States*, 123 U.S. App. D.C. 261, 359 F.2d 245 (1966), it was held that an indigent defendant (one allowed to sue, defend or appeal *in forma pauperis*) prosecuted by the United States in the Court of General Sessions is entitled on appeal to the District of Columbia Court of Appeals to a transcript at the expense of the United States. Following that decision, the Court of General Sessions began ordering transcripts at Government expense and, in accordance with our decision in 46 Comp. Gen. 93 (B-156932), payment therefor is made from appropriations of the Administrative Office of the United States Courts.

Although the Criminal Justice Act is applicable to felony and misdemeanor cases in the Court of General Sessions, a question has arisen as to the interpretation of section 3006A(a), title 18, United States Code, which states that each United States district court shall place in operation a plan for furnishing representation for defendants charged with felonies or misdemeanors, *other than petty offenses*, as defined in 18 U.S.C. 1, who are financially unable to obtain an adequate defense. This latter code section states that a misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense.

A number of offenses prosecuted by the United States in the Court of General Sessions fall within the classification of petty offenses. In one of these cases, the indigent appellant has requested a transcript. The Administrative Office of the United States Courts has indicated that its funds are not available for such payments since the Criminal Justice Act is inapplicable to petty offense cases. If the court orders a transcript, at Government expense, the reporter will not prepare the transcript without assurance it will be paid for.

In light of the foregoing, the Assistant Attorney General requests—

"* * * instructions as to how payment for transcripts under these circumstances may be made. If it is your view that payments may be made from government funds, are funds available to the Department of Justice or the Administrative Office of the U.S. Courts to be used for this purpose?"

"A second problem which may occur concerns cases where the cost of the transcript may exceed \$300. Services other than counsel fees under the Criminal Justice Act are limited to this amount. In the event we have a case in which the transcript costs exceed the sum of \$300, we would appreciate your instructions as to how such amounts are to be paid."

The Criminal Justice Act of 1964, 18 U.S.C. 3006A, reads, in pertinent part, as follows:

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for defendants charged with felonies or misdemeanors, *other than petty offenses as defined in section 1 of this title*, who are financially unable to obtain an adequate defense. *Representation under each plan shall include counsel and investigative, expert, and other services necessary to an adequate defense.* * * *" (Emphasis added.)

There is specifically excluded from the "representation" authorized by section 3006A (a) for defendants who are financially unable to obtain an adequate defense, defendants charged with petty offenses as defined in 18 U.S.C. 1. Further, inasmuch as "representation" is defined in section 3006A(a) as including counsel, investigative, expert "and other services necessary to an adequate defense," it is obvious that "representation," as used therein, includes "transcripts" and the cost thereof.

It is clear from the foregoing that "petty offenses" as defined in 18 U.S.C. 1 do not come within the scope of the Criminal Justice Act of 1964, and that "transcripts" are included in the term "representation" as used in that act. Hence, defendants prosecuted by the United States for petty offenses—as defined in 18 U.S.C. 1 in the District of Columbia Court of General Sessions are not entitled on appeal to the District of Columbia Court of Appeals to a transcript at the expense of the United States under the Criminal Justice Act of 1964. Accordingly, appropriations made to the Administrative Office of the United States Courts to enable it to carry out the provisions of the Criminal Justice Act of 1964 would not be available to pay for transcripts for indigent defendants charged with petty offenses, whether such defendants are prosecuted in the United States branch of the District of Columbia Court of General Sessions or in the United States District Court for the District of Columbia, nor are we aware of any appropriation of the Department of Justice which appears to be available for such purpose.

Insofar as payment for transcripts under authority other than the Criminal Justice Act of 1964 is concerned, 28 U.S.C. 753(f) reads in pertinent part as follows:

"(f) * * * Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose. * * *

In the *Tate* case mentioned above the United States Court of Appeals for the District of Columbia held, in effect, that 11 D.C. Code 935 makes 28 U.S.C. 753(f) applicable to the Court of General Sessions, and that, hence, a defendant prosecuted in the United States side of the Court of General Sessions who is allowed to appeal *in forma pauperis* to the District of Columbia Court of Appeals is entitled to a transcript at the expense of the United States. There is no distinction made in either 11 D.C. Code 935 or 28 U.S.C. 753(f) between defendants charged with felonies and misdemeanors other than petty offenses, and those charged with petty offenses. Accordingly, in view of the decision of the Court of Appeals in the *Tate* case, we would not object to the Administrative Office of the United States Courts using the appropriations available to it to pay costs incurred pursuant to the authority in 28 U.S.C. 753(f) to pay for transcripts for defendants prosecuted in the United States side of the Court of General Sessions who are allowed to appeal *in forma pauperis* to the District of Columbia Court of Appeals.

As to cases prosecuted in the Court of General Sessions where the cost of the transcript exceeds \$300, as indicated in the Assistant Attorney General's letter, services other than counsel fees under the Criminal Justice Act of 1964 are limited to \$300. However, since appropriations are made to the Administrative Office of the United States Courts for costs incurred under 28 U.S.C. 753(f), in view of the decision of the United States Court of Appeals in the *Tate* case, we would not object to the Administrative Office of the United States Courts paying for transcripts for defendants allowed to appeal *in forma pauperis*—as distinguished from those financially unable to obtain an adequate defense—prosecuted in the United States side of the Court of General Sessions in the same manner it pays for transcripts for such defendants prosecuted in United States district courts in cases where the cost of the transcript exceeds \$300.

The questions presented are answered accordingly.

To the extent our decision of March 17, 1964, B-153485, is contrary to the foregoing, it need no longer be followed.

We are sending a copy of this decision to the Director, Administrative Office of the United States Courts.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

[B-156932]

COURTS—CRIMINAL JUSTICE ACT OF 1964—PROCEEDINGS IN THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

As defendants charged with felonies or misdemeanors under the United States Code or the District of Columbia Code can be at the option of the United States proceeded against in the United States District Court for the District of Columbia or the United States Branch of the District of Columbia Court of General Sessions, both courts having concurrent original jurisdiction over the criminal cases which may properly be heard in the Court of General Sessions, except violations of police or municipal ordinances, the Criminal Justice Act of 1964 (18 U.S.C. 3006A), providing for representation at all stages of persons charged with commission of Federal crimes, may be applied to proceedings in the United States Branch of the Court of General Sessions, and the expenses of counsel and other related services paid from funds appropriated to the Judiciary, even though traditionally the Court of General Sessions has not been considered a part of the Federal court system, the rights conferred by the act being directed to defendants not to courts nor lawyers, a defendant's entitlement to representation should not depend on the choice of court, nor is the federally supported Legal Air program established for the District of Columbia intended to substitute for the act.

To the Director, Administrative Office of the United States Courts, June 15, 1966: By letter of April 7, 1966, you requested our decision on two questions concerning application of the provisions of the Criminal Justice Act of 1964, 18 U.S.C. 3006A, to proceedings in the District of Columbia Court of General Sessions. The first question is stated to arise by virtue of the adoption by the Judicial Conference of the following report of its Committee to Implement the Criminal Justice Act of 1964:

The Chief Judge of the District of Columbia Circuit is of the view that a judge of the Court of General Sessions, sitting as a committing magistrate in federal cases, may appoint an attorney to represent a defendant in a preliminary hearing in a case which may subsequently be tried in the District Court, within the purview of the CJA. The Committee has been of the opposite view. However, at the request of Chief Judge Bazelon, the Committee has authorized the Director of the AO to submit a proper voucher as a test case to the Comptroller General, with all available material.

Pursuant to this report you enclosed copies of a voucher signed by District Court Judge Leonard P. Walsh approving a claim for compensation of an attorney appointed by Court of General Sessions Judge Thomas C. Scalley in his capacity as a committing Magistrate for the District of Columbia and asks whether:

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. 3006A) may a judge of the District of Columbia Court of General Sessions, sitting as a committing magistrate, appoint an attorney to represent a defendant in a preliminary hearing in a case which may subsequently be tried in the United States District Court, and is a voucher for compensation of such attorney properly payable by this Office from funds appropriated to the United States Courts for administration of that Act?

A related but broader question arises out of presentation by Judge Harold H. Greene of the Court of General Sessions of a voucher approving payment to an attorney appointed by him to represent a defendant in a misdemeanor trial in his court. You have also enclosed this voucher together with an opinion by Judge Greene in the case of *United States v. Frank Walker, Jr.*, Criminal Action No. 363-66, setting forth his reasons for concluding that the Criminal Justice Act of 1964 is applicable to the District of Columbia Court of General Sessions and you present for our consideration the following specific question:

Is there legal authority to pay compensation to counsel appointed by Judges of the District of Columbia Court of General Sessions, and to pay for other related services performed on behalf of the defendants whom they represent in that Court, from funds appropriated to the Judiciary for implementation of the Criminal Justice Act of 1964?

You point out that upon receipt of Judge Greene's opinion you had your staff review the matter. Two memoranda, enclosed with your letter, addressed to the broader question raised in Judge Greene's opinion reach the conclusion that neither in the express language of the Criminal Justice Act of 1964, nor in its legislative history, nor in the pertinent reports of the appropriation committees

of the Congress is there any support for the proposition that the act was intended to apply to the District of Columbia Court of General Sessions. You state that you are drawn to this conclusion on the basis of the text and history of the act and, further, in light of the fact that both prior to and after enactment of the Criminal Justice Act of 1964, the Court of General Sessions was served by the Legal Aid Agency, a federally supported program for attorney representation in the District of Columbia.

We have carefully reviewed the provisions of the act, its legislative history, Judge Greene's opinion, and the memoranda of law which you furnished. Also, we have considered the views of the Deputy Attorney General who has expressed his concurrence in Judge Greene's decision.

The act is intended to provide adequate representation at all stages for persons charged with the commission of Federal crimes. In making such provision, the act was framed in terms of the Federal court system of which the District of Columbia Court of General Sessions has traditionally not been considered a part. But, while the Court of General Sessions has traditionally been considered as being outside the Federal court system as such, it is significant with respect to the purposes of the Criminal Justice Act of 1964 that the United States District Court for the District of Columbia has concurrent jurisdiction over all criminal cases which may properly be heard in the Court of General Sessions. D.C. Code § 11-521(a) (2), 11-963(a). And all criminal cases heard in the Court of General Sessions other than those involving violations of police or municipal ordinances or regulations are prosecuted by a United States attorney in the name of the United States. D.C. Code § 23-101. Prosecutions by United States attorneys in the name of the United States are conducted in the "United States Branch" of the Court of General Sessions.

The Criminal Justice Act, and the rights it confers, are directed not to courts nor to lawyers, but to defendants. The act requires that the plan for every Federal district provide representation throughout the district, in the form of counsel and services other than counsel, at the expense of the United States, to all defendants charged with felonies or misdemeanors, other than petty offenses, who are financially unable to obtain an adequate defense. In the District of Columbia, defendants charged with felonies or misdemeanors, either under the United States Code or the District of Columbia Code, can at the option of the United States be proceeded against in either of the two courts. In felony cases, their initial appearances may take place either before the United States Commissioner, or before a judge of the United States Branch of the Court of General Sessions carrying out responsibilities identical with those of a United States Commissioner. In misdemeanor cases, they may be tried either by a judge of the United States District Court, or by a judge of the United States Branch of the Court of General Sessions carrying out responsibilities identical with those of a district judge. Concurrent original jurisdiction of "offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less" is vested in both of these courts.

We understand that as a matter of practice, most misdemeanor cases brought by the United States are prosecuted in the Court of General Sessions. These include misdemeanors under both the District of Columbia Code and the United States Code. This means that some defendants are prosecuted in General Session for offenses under the United States Code which in any other Federal district in the United States would be prosecuted in the United States District Court. In addition, under current practice a defendant charged with a misdemeanor under either the United States Code or the District of Columbia Code will be tried and sentenced in the United States District Court if the misdemeanor is prosecuted along with a felony charge. In short, factors over which a defendant has no control will determine whether he is tried or sentenced for a misdemeanor in General Sessions or in District Court.

It is difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another. Moreover, in light of the fact that ultimate appeal of cases brought in the United States Branch of the Court of General Sessions lies with the United States Court of Appeals for the District of Columbia where the act plainly applies, such a distinction would be inconsistent with the stated purpose of the act to provide representation " * * * at every stage of the proceedings from * * * initial appearance before the United States commissioner or court through appeal."

The legislative history of the Criminal Justice Act is silent on the question before us; it reveals no intention on the part of the Congress to exclude some misdemeanor defendants in the District of Columbia and some felony hearings in the District of Columbia from its coverage. Nor does the act or its history suggest any basis for distinguishing in the District of Columbia between Federal and local offenses. The District Court and the General Sessions Court both handle both kinds of cases. In fact, many criminal cases prosecuted by the District Court involve purely local offenses. These cases are plainly covered by the Criminal Justice Act. Because of its concurrent jurisdiction, the District Court is presently empowered to try all of the cases involving local offenses which are now prosecuted in the United States Branch of General Sessions. If this were done, all defendants now prosecuted in that part of General Sessions would automatically come within the Criminal Justice Act. This may in fact be the only remaining alternative if Judge Greene's suggestion is correct that the denial of Criminal Justice Act benefits to defendants in his court may invalidate their convictions on constitutional grounds.

Because of the anomalous situations described above, Judge Greene concludes that there is no rational basis for excluding defendants prosecuted in the United States Branch of the Court of General Sessions from the benefits of the Criminal Justice Act of 1964 and that if the language of the act can reasonably be viewed as encompassing the United States Branch it should be so construed, particularly in the light of constitutional issues which would otherwise be raised. See in this connection the recent decision of the United States Court of Appeals in *Tate v. United States*, No. 19177 (D.C. Cir. March 1966) holding that financially disabled defendants prosecuted by the United States are equally entitled to transcripts on appeal in cases arising from General Sessions or District Court.

Your office has presented two broad arguments to show that the Congress did not intend the Court of General Sessions to be covered by the Criminal Justice Act of 1964—that the text of the act itself shows an intention to exclude the Court of General Sessions and that the legislative history of the act reinforces such indication of intent as the statutory language conveys.

We would agree that neither the act nor its legislative history provides any positive indication that the Court of General Sessions was specifically intended to be covered by the terms of the act. Also a review of the legislative history does not disclose any intention either, that this court was specifically intended to be excluded. The real question it seems to us is whether the language of the act was chosen by meditated design to limit operation of the act to the court referred to or whether the language employed was deemed appropriate to carry out the fundamental purposes to which the Congress was addressing itself without focusing on the peculiar court structure in the District of Columbia.

The basic purpose of the act is to promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases *in the courts of the United States*. Within the context of this purpose there is no question but that a defendant in the District of Columbia is in exactly the same position whether the United States decides to prosecute him in the United States Branch of the Court of General Sessions or in the District Court. And with respect to such a defendant there is ample precedent as well as obvious reason for considering the United States Branch of the Court of General Sessions a United States court. See *Moss v. United States*, 23 App. D.C. 475 (1904); *Keane v. Chamberlain*, 14 App. D.C. 84 (1899); *Harlan v. Harlan*, 281 Fed. 602 (C.A. D.C. 1922); *Clemmer v. Alexander*, 295 F. 2d 176 (C.A. D.C. 1961); *Tipp v. District of Columbia*, 102 F. 2d 264 (C.A. D.C. 1939); *United States v. Mills*, 11 App. D.C. 500 (1897); *Page v. Burnstine*, 102 U.S. 664 (1880). If we conclude, as we believe we must, that the courts in which the Criminal Justice Act is implemented are of secondary importance to the individuals for whom its benefits were intended, there would not appear to be any reason, in the absence of a specific indication of congressional intent to the contrary, for not conferring those benefits on the ground that a particular defendant is to be prosecuted in the United States Branch of the Court of General Sessions rather than in the District Court.

Your office relies heavily upon the argument that since the Congress in 1960 created a Legal Aid Agency for the District of Columbia to provide legal representation of indigents in judicial proceedings in the District of Columbia, it could not have intended in subsequently enacting the Criminal Justice Act to bring the District of Columbia Court of General Sessions within a second federally funded program providing for legal representation. In our opinion, this

argument must fail for two reasons. First, the District of Columbia Legal Aid Act, 74 Stat. 229, deals only with assuring legal representation for indigent defendants who must swear to their inability to pay modest attorney's fees. The benefits of the Criminal Justice Act are not restricted to indigent defendants and they go beyond the mere furnishing of counsel in that they include investigative, expert and other services necessary to an adequate defense. While the two acts are complementary in the District of Columbia, it cannot reasonably be maintained that the Legal Aid Act is an adequate substitute for the Criminal Justice Act of 1964 in the District of Columbia. Second, to hold that the Criminal Justice Act is not applicable in the Court of General Sessions because of the Legal Aid Agency program would require the conclusion that the act likewise is not applicable in the District Court, since defendants appearing in the District Court are also served by the Legal Aid Agency. Such a conclusion is clearly untenable and would be in direct conflict with the following statement at page 4 of Rept. No. 346, 88th Cong., 1st sess., of the Senate Committee on the Judiciary on S. 1057, the bill ultimately enacted:

Although the District of Columbia is now served by the Legal Aid Agency established under Public Law 86-531, the committee considered it essential to include the District within the coverage of this statute in order to extend to the District the benefits which this act provides. The agency handles only one-half of the nearly 700 district court criminal cases annually assigned and has no specific provision for furnishing expert services or representation in appellate cases. Inclusion of the District will enable all appointed counsel in the trial and appellate courts to be compensated on a basis comparable to lawyers in other Federal districts. Since the agency qualifies as a local defender organization within the meaning of subsections (a) (3) and (g) of proposed section 3006A of title 18, the committee considers that it can be incorporated in any place adopted by the District, without modification of its present statutory authority. The Legal Aid Agency of the District of Columbia would, therefore, for example, qualify to receive additional compensation provided for under proposed section 3006A to the extent that the plan for the District may so provide.

Turning now to the language of the act itself, it is evident as we have previously suggested, that the Congress was not specifically contemplating the Court of General Sessions. The following excerpt quoted from one of the enclosures to your letter make this clear:

Subsection (1) of Section 3006A provides:

(1) **DISTRICTS INCLUDED.**—The term "district court" as used in this section includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code.

Section (a) provides that "*Each United States district court*" with the approval of the judicial council of the circuit shall place in operation throughout the district a plan for representation of defendants who are financially unable to obtain an adequate defense. Other successive references are made in subsection (a) to "*the district court*."

Subsection (b) providing for appointment of counsel refers to such appointments being made by "*the United States commissioner or the court*" except in the final sentence which refers to "*Counsel appointed by the United States commissioner or a judge of the district court*" who "*shall be selected from a panel of attorneys designated or approved by the district court.*"

Subsection (d) relating to payment for representation provides, *inter alia* that "*A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States commissioner of that court, and to each appellate court before which the attorney represented the defendant;*" that "*For representation of a defendant before the United States commissioner and the district court*" specified compensation is to be paid; and that in certain extraordinary circumstances, payment in excess of the limit stated may be made "*if the district court*" certifies as to its necessity and the amount of excess payment "*is approved by the chief judge of the circuit.*"

Subsection (g) and (h) provide:

(g) **RULES AND REPORTS.**—Each district court and judicial council of the circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(h) APPROPRIATIONS.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

Further provision is made in Section 3 of the Act relating to the submission of a plan for representation by "Each district court" to "the judicial council of the circuit" and Section 3 further provides for the formulation of rules and regulations in respect to such plans "by the Judicial Conference of the United States" (the D.C. Court of General Sessions is not represented in or within the administrative jurisdiction of the Judicial Conference (28 U.S.C. 331)).

Notwithstanding the overall impression gained from the phrasing of the act in terms of the Federal court system, we do not believe that application of the Criminal Justice Act to the Court of General Sessions is inconsistent with the statute's definition of a "district court." The statute plainly does not limit its provisions for representation to district courts. What it does with respect to district courts is to specify that each of them is to devise and, after approval or modification by the judicial council of the circuit, to place in operation a plan for adequate representation "throughout the district." Unless the plan for the district embraces all places in the district where criminal proceedings by the United States are conducted, it will violate the statute's command that each defendant who has not waived counsel "shall be represented at every stage of the proceedings from his initial appearance before the United States Commissioner or court through appeal." That mandate cannot be complied with in the District of Columbia unless the statute is construed as providing adequate representation for defendants in the United States Branch of the Court of General Sessions.

Except with respect to specifying the coverage of the act as extending throughout the district of each district court, use of the term "district court" throughout the act is in connection with matters related to administration rather than in any substantive sense designating the act's coverage. In light of our conclusion that since the Criminal Justice Act was enacted for defendants in the courts of the United States it necessarily follows that it applies to defendants in the United States Branch of the Court of General Sessions, and since in reaching this conclusion we, in effect, attribute the failure to specifically provide for the Court of General Sessions to an oversight on the part of the Congress rather than design, we would further conclude that the language of the act should not be read as precluding the formulation of a plan for the District of Columbia which embraces the United States Branch of the Court of General Sessions and provide for its administration with respect to that court in a practicable manner consistent with the overall requirements of the act.

For the reasons stated herein, we agree with Judge Greene's opinion that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the Court of General Sessions and that any plan covering application of the act in the District of Columbia should include that Branch. Accordingly, the vouchers referred to your letter may be paid. So far as concerns the administrative processes to be required precedent to payment in the future, we would not question payment pursuant to determinations made by Judges of the Court of General Sessions until such time as the District Court for the District of Columbia and the judicial council of the circuit might provide otherwise.

[B-158948]

PAY—RETIRED—GOOD CONDUCT CITATION—ENTITLEMENT

A United States Coast Guard Reserve member retired November 1, 1965 under 14 U.S.C. 755(e), a section amended by the act of September 25, 1965 to provide the same retirement rights, benefits, and privileges prescribed for enlisted members of the Regular Coast Guard for Reserve enlisted members who request retirement on the basis of years of active service, is not entitled to the additional 10 percent formerly authorized for good conduct marks in the computation of retired pay, the saving provisions in the act of September 6, 1963, which eliminated the authorization, having no application, the member although on active duty at the time had no right to the increase in retired pay to preserve, his retirement benefits based on those prescribed for enlisted members of the Naval Reserve not including a 10 percent increase in retired pay on account of good conduct marks, and neither is the member eligible to payment of the increase

under 14 U.S.C. 755(e), amended by the 1965 act, the increase having been eliminated prior to the 1965 act.

To Florence B. Zelder, United States Coast Guard, June 15, 1966: Further reference is made to your letter of April 13, 1966, requesting decision as to entitlement of Mr. Clifford M. Lomax, 2044 306 PSI, U.S. Coast Guard Reserve, retired, to an additional 10 percent for good conduct in the computation of his retired pay.

An enlisted member of the Regular Coast Guard who was retired by reason of 14 U.S.C. 755(e) which section, as amended by the act of September 25, 1965, Public Law 89-200, 79 Stat. 834, provides that enlisted members of the Coast Guard Reserve requesting retirement on the basis of years of active service shall be entitled to the same retirement rights, benefits and privileges as prescribed by law for enlisted members of the Regular Coast Guard. His service totals 26 years 10 months and 2 days, of which 21 years 2 months and 23 days represent active service. Under 14 U.S.C. 423 the percentage multiple to be used in computing his retired pay is 67½.

An enlisted member of the Regular Coast Guard who was retired by reason of 20 years of service was entitled under 14 U.S.C. 357(c) 1958 Ed.) to have his retired pay increased by an amount equal to 10 percent of the active duty pay and permanent additions thereto of the grade or rating with which retired if he had been cited for extraordinary heroism in line of duty or if his average marks in conduct during his service in the Coast Guard were not less than 97½ percent of the maximum. That section was amended by Public Law 88-114, approved September 6, 1963, 77 Stat. 144, to eliminate the authorization.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 26, 1972.

DEAR MR. KIRKS: Your letter of March 7, 1972, requests our opinion as to whether, in light of the reorganization of the local courts in the District of Columbia pursuant to the District of Columbia Court Reform and Criminal procedure Act of 1970, Public Law 91-358, 84 Stat. 473, the funds appropriated to the Federal Judiciary for the implementation of the Criminal Justice Act (CJA), 18 U.S.C. 3006A, are available to pay attorneys and experts appointed in the District of Columbia Superior Court as well as pay for other services, in cases where exclusive jurisdiction over the criminal offense charged is vested in that court; and if it is our decision that such funds may be so applied, in what categories of cases could such attorneys and experts be compensated. You also ask that responsibilities the Judicial Conference of the United States and your office would have over the administration of, and budgeting for, the CJA program in the District of Columbia (D.C.) Superior Court and the District of Columbia (D.C.) Court of Appeals if we determine that CJA applies to cases peculiar to the local jurisdiction of those courts. We wrote to the Executive Officer of the D.C. Courts for his views on these matters, and in response thereto The Honorable Harold Greene, Chief Judge of the Superior Court of the District of Columbia furnished us the views of the District of Columbia courts.

In 45 Comp. Gen. 785 (1966)—referred to in your letter—we stated that the Criminal Justice Act is intended to provide adequate representation at all stages for persons charged with the commission of felonies or misdemeanors, other than petty offenses as defined in section 1 of title 18, United States Code, who are financially unable to obtain an adequate defense. We noted that in making such provision, the act was framed in terms of the Federal Court System of which the District of Columbia Court of General Sessions has traditionally not been considered a part. However, we pointed out that with respect to the purposes of the Criminal Justice Act of 1964, the United States District Court for the District of Columbia had concurrent jurisdiction over all criminal cases which could properly be heard in the "United States Branch" of the D.C. Court of General Sessions, and that all criminal cases heard in the Court of General Sessions—other than those involving violations of police or municipal ordinances or regulations—were prosecuted by a United States attorney in the name of the United States. We stated that since the United States determined whether a defendant in a criminal case was to be tried in the United States District Court or in the Court of General Sessions, it was difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another. Thus, we concluded that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the D.C.

Court of General Sessions and that any plan covering application of the act in the District of Columbia should include that Branch. See also our decisions of September 24, 1970, B-153485 and 48 Comp. Gen. 569 (1969).

On July 29, 1970, the District of Columbia Court Reform and Criminal Procedure Act of 1970, Public Law 91-358, 84 Stat. 473 (henceforth referred to as the D.C. Court Reform Act) was enacted into law. Among other things, that act merged the three local courts—the Court of General Sessions, the Juvenile Court, and the D.C. Tax Court—into a new Superior Court. The Superior Court is given exclusive jurisdiction “of any criminal case under any law applicable exclusively to the District of Columbia” except for those already commenced in the United States District Court or those filed there during an 18-month transition period. The D.C. Court Reform Act also established the District of Columbia Public Defender Service and phased out over a 30-month period the former pro rata contributions made from District of Columbia appropriations for the maintenance of the United States District Court and the United States Court of Appeals.

You state that the D.C. Superior Court, having been invested with both misdemeanor and felony criminal jurisdiction of local application, has assumed much of the character of a State court. You further state that it appears that two of the major premises of our original opinions finding the Criminal Justice Act of 1964 applicable to the D.C. General Sessions Court are now eliminated: first, there is no longer concurrent jurisdiction shared by the local court and the United States Court and second, the trial jurisdiction is no longer dependent upon whether the United States should choose to prosecute a defendant in one court rather than another.

On October 14, 1970, shortly after the enactment of the D.C. Court Reform Act, there was enacted Public Law 91-447, 84 Stat. 916, amending 18 U.S.C. 3006A (the CJA), which amendment you describe as a “virtual rewriting of the Criminal Justice Act.” While in this act the Congress did not disturb the section (18 U.S.C. 3006A(k)) defining the United States “District Courts” to which CJA is applicable, it added a new subsection (1) to the CJA, which subsection provides:

“(1) *Applicability in the District of Columbia.*—The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.”

This language (except for the phrase “other than subsection (h) of section 1”) was initially introduced on April 30, 1970, on the floor of the Senate, by Senator Hruska as an amendment to the bill which amended the CJA. At the time the amendment was introduced, Senator Hruska made the following statement:

“Mr. President, the amendment that I have offered would make the provisions of the Criminal Justice Act, as amended by S. 1461, fully applicable to the District of Columbia.

“This amendment is needed to clarify the application of the act to appointed counsel appearing before the court of general sessions or any other courts of general jurisdiction, now or in the future, in the District of Columbia. The Criminal Justice Act of 1964, as originally enacted, omitted any reference to the District of Columbia Court of General Sessions, although the Comptroller General ruled in 1966 that the act does extend to certain classes of cases prosecuted in that court. As I recall, that was also the intent of the 1964 act.

“Since the Constitutional Rights Subcommittee began consideration of S. 1461, and other proposed amendments to the 1964 act, legislation has been proceeding through the Senate and House District Committees that would significantly reorganize the Federal courts of the District. That legislation is now before a conference committee.

“The concurrent jurisdiction of the District of Columbia District Court and the District of Columbia Court of General Sessions over certain offenses against the United States would end under that legislation, and the court systems would be greatly changed. It is the concurrent jurisdiction, however, upon which the Comptroller General based his opinion of coverage under the 1964 act.

“Therefore, to insure coverage of the Criminal Justice Act in the District, whether or not the court reorganization bill is enacted, for those classes specified in the 1964 act as amended by S. 1461 as reported by the full Judicial Committee, this amendment is offered.” (Congressional Record—Senate, April 30, 1970, S6500, Temp. Ed.)

Senator Hruska's amendment making the CJA applicable in the local courts of the District of Columbia was agreed to by the Senate. It was subsequently ac-

cepted by the House, with additional amendments after the Department of Justice noted that the language of the Senate amendment left unclear the applicability of the public defender organization provisions of the act within the District of Columbia and the question of compensation of counsel appointed to represent juveniles. (See the Hearings before Subcommittee No. 3 of the House Judiciary Committee, June 18 and 25, 1970, pages 96 to 99.) While the Department of Justice proposed specific language to deal with these problems, the House Committee merely amended the bill to exempt the District of Columbia from the public defender organization provisions of the CJA within the District of Columbia courts. Thus, House Report No. 91-1546, 91st Congress, explains:

"Amendment No. 11 provides that except for subsection (h) involving defender organizations, the provisions of the Criminal Justice Act apply in the District of Columbia. The District already [sic] a Public Defender Service (title III, Public Law 91-358)."

The House and the Senate both accepted this further amendment of Senator Hruska's amendment.

Further, we note that section 210(a) of the D.C. Court Reform Act revises, codifies, and enacts the general and permanent laws of the District of Columbia relating to criminal procedure. That section revises title 23, D.C. Code, and provides, in effect, that all criminal prosecutions—except (in most cases) for prosecutions for violations of all police or municipal ordinances or regulations and for violation of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, or prosecutions for violations of section 6 of the act of July 29, 1892 (D.C. Code, section 22-1107), relating to disorderly conduct, and for violations of section 9 of that act (D.C. Code, section 22-1112), relating to lewd, indecent, or obscene acts—shall be conducted in the name of the United States by the United States attorney for the District of Columbia, or his assistants. In other words, most, if not all, criminal prosecutions formerly brought by the United States attorney in the name of the United States in the "United States Branch" of the Court of General Sessions or in the United States District Court for the District of Columbia will now be brought by the United States attorney in the name of the United States in the D.C. Superior Court. Application of the CJA to these cases in the Superior Court would accomplish the stated purpose of the sponsor of subsection (1) of the CJA that CJA coverage in the District under the 1970 amendments should include those classes of cases which were covered by the 1964 act prior to the reorganization of the D.C. Court System.

Moreover, the intent to make applicable the CJA to the District of Columbia courts is obvious from the wording of subsection (1) of the CJA. As noted above, the last sentence of that subsection provides:

"The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

We agree with Judge Greene's interpretation of this sentence that:

"* * * Had it not been the clear congressional intent for the Criminal Justice Act to apply to the D.C. Court system, there would, of course, have been no reason whatever for requiring that the Criminal Justice Act plan for the District of Columbia be approved by the District of Columbia Court of Appeals, a local court without strictly 'federal' responsibilities."

We agree that the rationale of our former decisions making the CJA—prior to the 1970 amendments thereto—applicable to the D.C. Court of General Sessions (i.e., the concurrent jurisdiction shared by the local court and the United States District Court for the District of Columbia and the fact that the choice of forum was up to the United States) no longer applies to the D.C. courts as reorganized by the D.C. Court Reform Act. However, it is our opinion that except as to subsection (h) of the CJA relating to public defender systems, subsection (1) of the CJA, as added by Public Law 91-447, clearly and unequivocally makes the CJA applicable to prosecutions brought in the D.C. Superior Court and the D.C. court of Appeals with regard to those prosecutions brought in the name of the United States, and we so hold.

As to the application of the CJA to juvenile proceedings, section 3006A(a) of title 18, United States Code, provides, in effect, that the CJA will cover:

"* * * any person financially unable to obtain adequate representation (1) who is charged with * * * juvenile delinquency by the commission of an act, which if committed by an adult, would be such a felony or misdemeanor * * *

or, (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. * * *

House Report 91-1546, dated September 30, 1970, states on page 3 that the purpose of 18 U.S.C. 3006A is to:

"* * * render explicit the coverage [under section 3006A(a)(1)] of persons charged with juvenile delinquency. Within the District of Columbia, children would also be covered by section [3006A(a)(4)], insofar as the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358, approved July 29, 1970) requires the appointment of counsel for them in cases in which they face loss of liberty * * *"

In other words, the provisions of 18 U.S.C. 3006A(a)(1) are applicable in the District of Columbia, as in all the other CJA covered jurisdictions, to persons charged with juvenile delinquency by the commission of an act which, if it had been committed by an adult, would be a felony or misdemeanor (other than a petty offense as defined by 18 U.S.C. 1) or with violation of probation covered by the provisions of the CJA, and the provisions of 18 U.S.C. 3006A(a)(4) cover persons charged in juvenile proceedings in the District of Columbia for whom the Sixth Amendment of the Constitution requires the appointment of counsel, or for whom, in a case in which the juvenile faces loss of liberty, any Federal law—including, in particular, the D.C. Court Reform Act—requires the appointment of counsel.

As to your final question, the Administrative Office of the United States Courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal district courts, except, of course, that the administration of, budgeting for, and financing of, the District of Columbia Public Defender Service should be in accordance with sections 306 and 307 of the D.C. Court Reform Act. Except for the aforementioned, this decision should not be construed to increase or decrease the responsibilities of the Judicial Conference of the United States or the Administrative Office of the United States Courts under sections 604, 605, and 610 of title 28, United States Code with respect to the D.C. Superior Court and the D.C. Court of Appeals.

Copies of this decision are being sent to the Executive Director of the District of Columbia Courts and to the Chief Judge of the Superior Court of the District of Columbia.

Sincerely yours,

R. F. KELLER,
*Deputy Comptroller General
of the United States.*

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., March 7, 1972.

B-175429.

Hon. ELMER B. STAATS,
*Comptroller General of the United States,
General Accounting Office, Washington, D.C.*

DEAR MR. STAATS: Your opinion is requested as to whether in light of the reorganization of the local courts in the District of Columbia pursuant to Public Law 91-358, 84 Stat. 473, the funds appropriated to the Federal Judiciary for the implementation of the Criminal Justice Act (18 U.S.C. 3006A), are available to pay attorneys and experts appointed in the District of Columbia Superior Court in cases where exclusive jurisdiction over the criminal offense charged is vested in that court. Second, if it is your decision that such funds may be so applied, in what categories of cases could such attorneys and experts be compensated?

The background of these problems may be described as follows:

A. APPLICATION OF THE CRIMINAL JUSTICE ACT IN THE UNITED STATES BRANCH OF
THE OLD D.C. GENERAL SESSIONS COURT

In a letter to this office of June 15, 1966, you held that the Criminal Justice Act of 1964 should be construed as covering the United States Branch of the

Court of General Sessions (45 B-15693 Comp. Gen. 785). We believe that the basic points on which your decision was founded were: that the local offense jurisdiction of the United States District Court and the General Sessions Court was then concurrent; the United States Attorney could opt to have the case tried in either court; and that, therefore, a case in the United States Branch of the D.C. General Sessions Court could be considered as tantamount to a criminal case in a district court as defined in the Act.

This "United States Case" or "concurrent jurisdiction" principle was later extended to the Juvenile Court by the Judicial Conference of the United States in adopting the following portion of its committee's report at its March 1969 session, viz. (Jud. Conf. Ann. Rep. (1969), p. 37) :

"Judge Johnsen advised the Conference that, pursuant to a communication from Chief Judge Bazelon of the District of Columbia Circuit, the Committee had studied the question of the applicability of the Criminal Justice Act to the Juvenile Court of the District of Columbia. The Committee noted that just as there are United States Cases in the Court of General Sessions, so also the Juvenile Court has jurisdiction over certain United States Cases. Accordingly, the Committee was of the view that the reasoning of the Comptroller General in his opinion of June 12, 1966 relating to United States Cases in the Court of General Sessions was also applicable to counsel assigned in any United States Case in the Juvenile Court of the District of Columbia provided that the plan for the District of Columbia encompasses representation for defendants charged with felonies or misdemeanors, other than petty offenses, in the Juvenile Court."

In a letter to Chief Judge Greene of September 24, 1970 (B-153485) you articulated the reasoning of your earlier opinions as follows :

"Although not so stated therein, our decision in 48 Comp. Gen. 569 was based primarily on the fact that in the *Tate* case the United States not only brought the prosecution but chose the court in which the case would be tried, i.e., the Court of General Sessions rather than the United States District Court. Thus, insofar as 28 U.S.C. 753(f) is concerned, we followed somewhat the same reasoning in 48 Comp. General 569 as we did in 45 Comp. Gen. 785 (1966), wherein we held the Criminal Justice Act of 1964 applicable to the United States Branch of the District of Columbia Court of General Sessions. That is to say one of the premises for our holding in the last-cited decision was that the United States determined whether a defendant in a criminal case was to be tried in the United States District Court or the Court of General Sessions. In that decision we stated that it was difficult to reach the conclusion that the Congress intended a defendant's entitlement under the Criminal Justice Act to be dependent upon whether the United States should choose to prosecute him in one court rather than another."

B. FORMATION OF THE NEW D.C. SUPERIOR COURT

Reformation of the local D.C. courts in the D.C. Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358), 84 Stat. 473) has had the following consequences :

1. The three local courts—General Sessions, Juvenile and D.C. Tax Court—were merged into a new Superior Court (11 D.C. Code 901). The Superior Court is given exclusive jurisdiction by 11 D.C. Code 923(b) (2) "*of any criminal case under any law applicable exclusively to the District of Columbia*", except those already commenced in the U.S. District Court or those filed there during an 18-month transition period.

2. A District of Columbia Public Defender Service is established by Title III (Secs. 301-309) of Public Law 91-358. This Service is managed by a local board of trustees and can furnish legal and defense services to up to 60% of D.C. defendants' but "may furnish technical and other assistance" to private attorneys appointed to represent such persons. The Act authorizes appropriations to the District to implement Title III of the Act establishing the D.C. Public Defender Service to be disbursed by the Administrative Office (Sec. 307(a) of P.L. 91-358).

3. The former pro rata contributions made from D.C. appropriations for the maintenance of the U.S. District Court and the U.S. Court of Appeals is being phased out to zero per Sec. 173(b) and (c) of Public Law 91-358.

C. THE 1970 AMENDMENTS TO THE CRIMINAL JUSTICE ACT (P.L. 91-447)

In the virtual rewriting of the Criminal Justice Act (18 U.S.C. 3006A) in 1970, Congress did not disturb the section defining the "district courts" to which the Act is applicable. The term still includes (18 U.S.C. 3006A(K)) :

"... the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code".

The bill, however, adds in a new subsection (1):

"The provisions of this Act other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

This language was added as an amendment to the Act, apparently in recognition of the fact that the District of Columbia was at that time being provided with a Public Defender Service by Title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358) and would not be entitled to the Federal Public Defender authorized by 18 U.S.C. 3006A (h) (2).

Congress had, however, apparently rejected an amendment proposed by the U.S. Attorney General which would have extended the Act (except subsection (h)) in the District of Columbia to:

"defendants prosecuted by the United States Attorney in any court having jurisdiction of offenses against the United States . . ." and

"children charged by the District of Columbia with an act which, if committed by an adult would be a criminal offense prosecuted by the United States Attorney" (see Hearings of June 18 and 25, 1970 before Subcommittee No. 3 of the House Judiciary Committee, page 102, which includes the statement of Deputy Attorney General Kleindienst).

This proposal was a matter of discussion in Committee by Mr. Santarelli of the Department with Representative Kastenmeier (*Ibid* pp. 112-113) with Representative Poff (p. 117), and with Representative Hutchinson (pp. 130-132). The Committee did not adopt the proposal perhaps because of the creation of the Public Defender Service prior to the passage of the CJA Amendment Act. House Report 91-1546 (91st Congress, 2nd Session) on the bill that amended the Criminal Justice Act explains:

"Amendment No. 11 provides that except for subsection (h) involving defender organizations, the provisions of the Criminal Justice Act apply in the District of Columbia. The District already [sic] a Public Defender service (title III, Public Law 91-358)."

The extent to which the amended Act (18 U.S.C. 3006A) was intended to apply to the appointment and compensation of *private counsel* in the courts of the District of Columbia, municipal and federal, was not further explained.

D. THE PRESENT PROBLEM

It seems apparent that the D.C. Superior Court, having been vested with both misdemeanor and felony criminal jurisdiction of local application has assumed much of the character of a state court. In fact, a three-judge court panel of the U.S. District Court in *North v. The Honorable Harold H. Greene*, C.A. 413-71, dated March 18, 1971, found that Congress intended to create a local court outside and independent of the federal system. The opinion of the three judges states (slip op. p. 3, footnote 4):

"The distinction drawn in terms by Congress in the 1970 Court Reform Act is between 'Federal Courts' and 'District of Columbia Courts,' established respectively under Article III and Article I of the Constitution. An informed and expert observer of the legislative deliberations from which this Act emerged has characterized it as 'manifesting the intent of Congress to create a judicial branch of the local government of the District of Columbia akin to the judicial branch of state governments and similarly independent of, and operating outside of, the federal judicial branch (footnote omitted).' Williams, *District of Columbia Court Reorganization*, 1970, 59 Geo. L. J. 477, 490 (1971)."

It also seems clear that two of the major premises of your original opinions finding the Criminal Justice Act applicable to the D.C. General Sessions Court are now eliminated. There is no longer concurrent jurisdiction shared by the local court and the United States, and thus trial jurisdiction is no longer "*dependent upon whether the United States should choose to prosecute him in one court rather than another*" (see quote from decision B-153485, *supra*).

We are, therefore, left only with two clear propositions. The Criminal Justice Act is applicable in the two federal courts in D.C., and in the Superior Court under 11 D.C. Code 923(c) (2) when acting as a committing court of cases *triable in the federal court*.

We should appreciate your advice, therefore, as to what extent, *if any*, federal judicial appropriations would be further available to compensate private attorneys, and persons furnishing services other than counsel (per Sec. 3006A (e)) in the D.C. Superior Court and the D.C. Court of Appeals, either in criminal cases, or other cases within the ambit of the Criminal Justice Act (18 U.S.C. 3006A (a) and (g)). If in your opinion you find that the Criminal Justice Act applies to any cases peculiar to the local jurisdiction of the D.C. Superior Court and the D.C. Court of Appeals, what responsibility do the Judicial Conference of the United States and the Administrative Office have over the administration of and budgeting for the program in these municipal courts (see: 28 U.S.C. 604, 605, 610; 18 U.S.C. 3006A (i) and (j); sections 306 and 307 of the D.C. Court Reform and Criminal Procedure Act of 1970; P.L. 91-358)?

Sincerely,

CARL H. IMLAY,
General Counsel.

The CHAIRMAN. Does Mr. Levy have any supplemental remarks?
Mr. SOCOLAR. No, sir.

The CHAIRMAN. Is it the position of the Comptroller General as of now that the Administrative Office of the U.S. Courts continue to handle the administration of and budget for the indigent defendants program?

Mr. SOCOLAR. Yes, sir, I think the current position of the Comptroller General is that the state of the law as it exists today places that function in the Administrative Office of the U.S. Courts.

The CHAIRMAN. Mr. Smith?

Mr. SMITH. No questions.

The CHAIRMAN. Mr. Fauntroy?

Mr. FAUNTROY. No questions.

The CHAIRMAN. Mr. Rees?

Mr. REES. No questions.

Mr. RANGEL. No questions.

The CHAIRMAN. Thank you very much.

The next witness is Mr. Sweeney, Assistant Director for Management Affairs, Administrative Office of the U.S. Courts.

STATEMENT OF WILLIAM R. SWEENEY, ASSISTANT DIRECTOR FOR MANAGEMENT AFFAIRS, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. SWEENEY. Mr. Chairman, I appreciate the opportunity to be here. I must preface my statement by saying that the Director of the Administrative Office of the U.S. Courts, Rowland F. Kirks, was unable to cancel appearances at the Eighth and Tenth Circuit Judicial Conference. The Deputy Director was unable to cancel a session at the District Court for the Southern District of New York, and I am here as a substitute. I do not confess to as deep a knowledge of this subject as either of those two gentlemen, so I must ask leave, sir, simply to read the statement that Mr. Kirks has prepared.

Mr. FAUNTROY. Without objection, Mr. Chairman—

The CHAIRMAN. First of all, the statement of the gentleman has many exhibits. The statement is 6½ pages and then the exhibits, which, without objection, will be made a part of the record.

[The information follows:]

PREPARED STATEMENT OF ROWLAND F. KIRKS, DIRECTOR, ADMINISTRATIVE OFFICE
OF THE UNITED STATES COURTS

I am Rowland F. Kirks, Director of the Administrative Office of the United States Courts. I am submitting the following statement at the request of the Honorable Charles C. Diggs, Chairman of the District of Columbia Committee of the House of Representatives.

The question before the committee, as I understand it, is not whether counsel appointed in the local courts of the District of Columbia, namely the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, shall be paid for services rendered pursuant to the Criminal Justice Act of 1964, as amended, but rather whether they shall be paid out of an appropriation for the District of Columbia court system or from the appropriation for the Federal Judiciary.

My duties as Director of the Administrative Office of the United States Courts are set forth in sections 604 and 605 of Title 28, United States Code, which make it clear that I operate under the supervision and direction of the Judicial Conference of the United States and that in presenting budget estimates I do so only with the approval of the Judicial Conference. Heretofore the budget requests for payments under the Criminal Justice Act which I have submitted included requests for the implementation of the Act in the local courts of the District of Columbia.

The Judicial Conference of the United States, at its October 1972 session, however, instructed me to delete this request from the submission for the budget for fiscal year 1974. The Conference noted that the District of Columbia Court Reorganization Act (Public Law 91-358, approved July 29, 1970) provides in Chapter 17 that the Joint Committee on Judicial Administration in the District of Columbia, composed of the Chief Judge of the District of Columbia Court of Appeals, an associate judge of that court, the Chief Judge of the Superior Court of the District of Columbia and two associate judges of that court, shall among other things have the responsibility of submitting annual budget requests for the District of Columbia court system.

At the hearing before the Subcommittee on Appropriations for the Departments of State, Commerce, and Justice and the Federal Judiciary in 1972, the Chairman of the subcommittee questioned the appropriateness of including a request for the local courts of the District of Columbia in the appropriation for the Federal Judiciary. The House Appropriations Committee deleted this item from the fiscal year 1973 appropriation reported to the House of Representatives. In so doing the committee pointed out that reformation of the local District of Columbia courts clearly established the local criminal jurisdictions of the courts of the District of Columbia. These courts have no federal jurisdiction; on the other hand, they do have a public defender service which, at that time, was seeking a request of nearly two million dollars from the Appropriations Subcommittee for the District of Columbia. The excerpt from the House Committee Report is attached hereto as Exhibit A.

The House concurred in the committee report. The Senate took a contrary view and in conference it was agreed to restore one million dollars to the appropriation for the Federal Judiciary for the local courts of the District of Columbia. (See Exhibit B.)

The Judicial Conference of the United States, at its October 1972 session took note of the views of the House of Representatives and expressed its concurrence therewith in approving the budget estimates for fiscal year 1974 and I so notified the Chief Judges of the District of Columbia Court of Appeals and of the Superior Court. Excerpts from the report of the Judicial Conference Committee on the Budget are attached hereto as Exhibit C. The report, as I have stated, was approved by the Judicial Conference (see Exhibit E).

I am also attaching as Exhibit D my letter of October 25, 1972 to Chief Judge Reilly, in his capacity as Chairman of the Joint Committee on Judicial Administration for the District of Columbia.

Subsequently I met with Chief Judge Reilly and Chief Judge Green, as is reflected in Exhibits G, H and I attached hereto. It became apparent that the one million dollars appropriated for the local courts of the District of Columbia for payment of claims under the Criminal Justice Act for fiscal year 1973 would not be adequate and I agreed with Chief Judge Reilly and Chief Judge Green

that I would be willing, despite the mandate of the Judicial Conference to seek a supplemental appropriation for fiscal year 1973 if I could be assured that they would proceed with the requests for fiscal year 1974 and subsequent years.

My letter to Chief Judge Reilly of January 19, 1973 is attached as Exhibit L and Judge Reilly's response of January 26 is attached as Exhibit M. On February 7 I wrote to the Director of the Office of Management and Budget carrying out my part of the agreement and my letter is attached as Exhibit N. Assistant Director Sweeney, on the same date, wrote to Chief Judge Reilly concerning the volume of appointments and projections and his letter is attached as Exhibit O. Judge Reilly also wrote to the Director of the Office of Management and Budget on March 13 and his letter is attached as Exhibit Q.

Meanwhile the Attorney General of the United States on January 15, 1973, wrote to the Chief Justice concerning this matter (see Exhibit J) and the Chief Justice responded on January 19, pointing out that he, as Chairman of the Judicial Conference, was likewise bound by the vote of the Conference (Exhibit K). At the April session of the Judicial Conference, Chief Judge David L. Bazelon of the United States Court of Appeals for the District of Columbia Circuit, requested the Judicial Conference to rescind its earlier action relating to the appropriation for the local courts of the District of Columbia (Exhibit R), and the action of the Conference rejecting this motion is attached hereto as Exhibits S and T. Subsequently Mr. E. Barrett Prettyman, President of the District of Columbia Bar Association, wrote to the Chief Justice on the same subject (Exhibit W) and the response of the Chief Justice is attached hereto as Exhibit X.

In the meanwhile, it may be pointed out that in the report of the Committee on Appropriations of the House of Representatives (Report No. 93-164—Exhibit U), that committee recommended that \$400,000 be made available as a supplemental appropriation for the local courts of the District of Columbia for fiscal year 1973 and, in so doing, stated that the committee is in agreement with the position of the Judicial Conference regarding the funding of this item in future years. In the report of June 22, 1973 of the Subcommittee on the Departments of State, Justice and Commerce, the Judiciary and related agencies (Report No. 93-321—Exhibit Y), the committee pointed out that no funds were requested by the judiciary and none have been provided for the compensation or reimbursement for the expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia for fiscal year 1974. The committee report continues, "the committee reiterates its agreement with the position of the Judicial Conference regarding the funding for this purpose for these courts."

So far as I am aware, Mr. Chairman, the Chief Judges of the two local courts of the District of Columbia have been aware for a period of some nine months of the restriction placed upon me by the Judicial Conference of the United States. I have no information as to whether they have sought an appropriation through the District of Columbia Subcommittee on Appropriations. The problem appears to me to be essentially one to be resolved by the Congress. My office will, of course, abide by whatever conclusions Congress reaches. Meanwhile, contrary to some press reports, I am confident that the Bar of the District of Columbia will continue to fulfill its obligations to those financially unable to retain counsel. In this connection I should like to quote the first report to the Judicial Conference by its Committee to Implement the Criminal Justice Act, when it said on January 6, 1965:

"It should be emphasized that the responsibility of members of the Bar to accept appointments and to serve in these cases is the same as it traditionally has been and that the passage of the Criminal Justice Act of 1964 in no way lessens the responsibility of members of the Bar to accept these appointments. The payment of compensation to counsel under the Act will in most cases be something less than compensatory. Service of counsel under the Act will continue to require a substantial measure of dedication and public service."

Respectfully submitted.

ROWLAND F. KIRKS, *Director.*

CORRESPONDENCE AND OTHER MATERIAL RELATING TO APPOINTMENTS OF COUNSEL IN THE LOCAL COURTS
FOR THE DISTRICT OF COLUMBIA

Exhibit	Date	Description
A.....	May 5, 1972.....	Report of House Committee on Appropriations on the Judiciary Appropriation bill for fiscal year 1973.
B.....		Text of appropriation for "Representation by Court-Appointed Counsel and Operation of Defender Organizations" as contained in the Judiciary Appropriation Act, 1973.
C.....	September 1972.....	Report of the Judicial Conference Committee on the budget which was circulated to the members of the conference and approved by vote slip.
D.....	Oct. 25, 1972.....	Letter from Mr. Kirks to Chief Judge Reilly informing him of the action of the conference.
E.....	Oct. 26, 1972.....	Report of the proceedings of the Judicial Conference.
F.....	Nov. 1, 1972.....	Letter from Chief Judge Reilly to Mr. Kirks requesting a conference on the matter.
G.....	Nov. 2, 1972.....	Letter from Mr. Kirks to Chief Judge Reilly agreeing to a conference.
H.....	Nov. 13, 1972.....	Letter from Mr. Sweeney, Assistant Director of the Administrative Office, to Chief Judge Reilly re compliance with statutory limitation.
I.....	Nov. 28, 1972.....	Letter from Mr. Hicks to Chief Judge Reilly agreeing to submit a request for a supplemental appropriation for fiscal year 1973 with the understanding that he (Judge Reilly) would attempt to secure an appropriation through District of Columbia channels for fiscal year 1974.
J.....	Jan. 15, 1973.....	Letter from Hon. Richard G. Kleindienst to the Chief Justice requesting that the Judicial Conference reassess its position.
K.....	Jan. 19, 1973.....	Letter from the Chief Justice to Mr. Kleindienst re action of the conference and agreement to seek supplemental based on the assumption that the local courts are seeking an appropriation for fiscal year 1974 through the normal budgeting process of those courts.
L.....	Jan. 19, 1973.....	Letter from Mr. Kirks to Chief Judge Reilly requesting a detailed estimate of expenditures and justifications in support of supplemental request.
M.....	Jan. 26, 1973.....	Letter from Chief Judge Reilly to Mr. Kirks requesting supplemental appropriation of \$543,000; \$43,000 for the District of Columbia Court of Appeals and \$500,000 for the District of Columbia Superior Court.
N.....	Feb. 7, 1973.....	Letter from Mr. Kirks to Hon. Roy Ash, Director of OMB, submitting supplemental request for \$543,000.
O.....	do.....	Letter from Mr. Sweeney to Chief Judge Reilly on the volume of appointments and status of the funds for representation in the local courts during the 1st half of the year.
P.....	Mar. 6, 1973.....	Letter from the Chief Justice Judge Reilly (subsequent to a meeting with Judge Reilly and Judge Greene) stating that he and the Director of the Administrative Office were bound by the action of the Judicial Conference and that the "best course is to amend your budget".
Q.....	Mar. 13, 1973.....	Letter from Chief Judge Reilly to the Director of OMB requesting an appropriation of \$2,213,000 for fiscal year 1974.
R.....	Apr. 4, 1973.....	Letter from Chief Judge Bazelon of the U.S. Court of Appeals for the District of Columbia to the Chief Justice stating "that the Conference's position should be considered".
S.....	Apr. 6, 1973.....	Excerpt from Report of the Proceedings of the Judicial Conference re the rejection of the motion by Chief Judge Bazelon that it rescind the action taken at the October, 1972 session.
T.....	do.....	Press release re action of the Conference and endorsement of request for a supplemental appropriations for fiscal year 1973.
U.....	May 3, 1973.....	Report of the House Committee on the 2d Supplemental Appropriation bill, 1973.
V.....	May 4, 1973.....	Letter from Mr. Gilbert L. Bates, Administrative Office of the U.S. Courts, to Chief Judge Reilly regarding the reduction of \$143,000 by the House in the supplemental bill and an appeal to the Senate for restoration of the funds denied.
W.....	May 29, 1973.....	Letter from the President of the District of Columbia Bar to the Chief Justice re proposed compromise solution—namely, "that funds would continue to be allocated to the District under the Criminal Justice Act for fiscal 1974 on the condition that the City would seek appropriate funds under its own budget for fiscal 1975".
X.....	June 7, 1973.....	Letter from the Chief Justice to the President of the District of Columbia Bar stating "I do not see how I can arbitrarily countermand the decision of the Judicial Conference for fiscal year 1974".
Y.....	June 22 1973.....	House Appropriation Committee Report on the Judiciary Appropriation bill for fiscal year 1974. The Committee reiterated its agreement with the position of the Judicial Conference.

EXHIBIT A.—EXCERPT FROM REPORT OF HOUSE COMMITTEE ON APPROPRIATIONS (REPORT NO. 92-1065) ON THE JUDICIARY APPROPRIATION BILL FOR FISCAL YEAR 1973 (H.R. 14989)

Representation by court-appointed counsel and operation of defender organizations.—The amount included in the bill for this item is \$13,500,000. This is a reduction of \$1,583,000 below the budget estimate and is a decrease of \$1,000,000 below the total appropriated for the current fiscal year.

Pages 161 and 162 of Part I of the Subcommittee hearings set forth the earnings of some of the court-appointed counsel in the District of Columbia during calendar year 1971, with payments as high as \$51,510 in one year to one individual attorney.

The Committee recommends the following proviso:

Provided, That none of the funds contained in this title shall be available for the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia.

Reformation of the local District of Columbia courts was accomplished by the D.C. Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358). The Act clearly established the criminal jurisdictions of the courts in the District of Columbia. The D.C. Court of Appeals and the D.C. Superior Court have no Federal jurisdiction. The District of Columbia has a Public Defender Service, for which an appropriation of \$1,611,000 was made for the current fiscal year and for which a request of \$1,934,000 is now pending before the District of Columbia appropriations subcommittee.

EXHIBIT B.—TEXT OF THE APPROPRIATION FOR "REPRESENTATION BY COURT-APPOINTED COUNSEL AND OPERATION OF DEFENDER ORGANIZATIONS" AS CONTAINED IN THE JUDICIARY APPROPRIATION ACT, 1973, PUBLIC LAW 92-544, APPROVED OCTOBER 25, 1972

REPRESENTATION BY COURT-APPOINTED COUNSEL AND OPERATION OF DEFENDER ORGANIZATIONS

84 Stat. 916. For the operation of Federal Public Defender and Community Defender organizations, and the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964 (18 U.S.C. 3006A, as amended by Public Law 91-447, October 14, 1970), \$14,500,000: *Provided*, That not to exceed \$1,000,000 of the funds contained in this title shall be available for the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia.

EXHIBIT C.—EXCERPTS FROM THE REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON THE BUDGET WHICH WAS CIRCULATED TO THE MEMBERS OF THE CONFERENCE AND APPROVED BY VOTE SLIP IN SEPTEMBER, 1972

The Director of the Administrative Office be authorized to write the Executive Officer of the District of Columbia Courts and other appropriate officials of the District of Columbia Government informing them that the Judiciary budget estimates for fiscal year 1974 will not include any provision for the representation of persons in the District of Columbia Court of Appeals or the Superior Court and that any funds required for that purpose should be included in the budget of the District of Columbia Government for consideration and approval by the District of Columbia Appropriations Committees.

CRIMINAL JUSTICE ACT

The sum of \$16 million is included in the budget for "Representation by Court-Appointed Counsel and Operation of Defender Organizations," which represents an increase of \$2.5 million over the amount approved by the House for fiscal year 1973. The increase is to cover the cost of representation in petty offense cases when, in the opinion of the judge or magistrate, the defendant faces the likelihood of a prison sentence if convicted. It is estimated that as a result of the Supreme Court decision in *Argersinger v. Hamlin*, June 12, 1972, 407 U.S.C., an additional 10,000 persons will be represented by court-appointed counsel in the United States courts of appeals and district courts. As previously indicated, the House allowance for 1973 excluded funds for compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia. The Senate restored the funds, but at this juncture the issue pertaining to the District of Columbia has not been resolved.

The estimate for fiscal year 1974 does not include any funds for representation of defendants in the local courts for the District of Columbia. The Comptroller General of the United States has ruled that Public Law 91-447 "clearly and

unequivocally makes the CJA applicable to prosecutions brought in the D.C. Superior Court and the D.C. Court of Appeals with regard to those prosecutions brought in the name of the United States, * * *." He also held that, "the Administrative Office of the United States Courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal district courts, * * *." The Comptroller General went on to say that, "Except for the aforementioned, this decision should not be construed to increase or decrease the responsibilities of the Judicial Conference of the United States or the Administrative Office of the United States Courts under sections 604, 605, and 610 of title 28, United States Code with respect to the D.C. Superior Court and the D.C. Court of Appeals." A copy of the Comptroller General's decision is included herein as Exhibit F.

The Budget Committee does not take issue with the Comptroller General insofar as the intent of the Congress that the attorneys appointed in the local courts be compensated and reimbursed their out-of-pocket expenses pursuant to the Criminal Justice Act.

The Committee does not, however, concur in his position that funds for this purpose should be included in the budget of the Federal Judiciary. We believe that these payments should be made out of funds appropriated to the District of Columbia Government and that their estimates should be subject to the review and approval of the District of Columbia Appropriations Committees. The local courts should defend their own budget estimates and should assume responsibility for the administration and control of the amounts appropriated.

It is recommended that the Judicial Conference go on record to that effect and that the Director of the Administrative Office be authorized to write to the Executive Officer of the District of Columbia Courts and to appropriate officials of the D.C. government informing them of the action taken and requesting that they make provision in their budget for fiscal year 1974.

EXHIBIT D

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., October 25, 1972.

HON. GERARD D. REILLY,
Chairman of the Joint Committee on Judicial Administration, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: Responsibility for the implementation of the Criminal Justice Act of 1964, providing for the payment of fees and expenses to court-assigned counsel for persons financially unable to pay, has rested, as you undoubtedly know, with the Judicial Conference of the United States and the Administrative Office of the United States Courts.

The enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970, establishing "local courts" for the District of Columbia (i.e. the Superior Court and the D.C. Court of Appeals), led the Conference and this office to raise with the Comptroller General of the United States the question of the applicability of the Criminal Justice Act to proceedings in these local courts of the District of Columbia. By Opinion B-175429, contained in a letter to me of May 26, 1972, the Comptroller General ruled that the Administrative Office shall continue to handle the administration of the Criminal Justice Act program in the District of Columbia local courts, as well as in the United States District Court and the United States Court of Appeals here in the District of Columbia.

In the appropriation bill for fiscal year 1973, as passed by the House of Representatives, appropriations for the implementation of the Criminal Justice Act for the local courts of the District of Columbia were deleted.

In statements made from the floor of the House, the Chairman of the Subcommittee on Appropriations for the Federal Judiciary expressed the view that it was not proper to pay for the fees and expenses of counsel appointed under the Criminal Justice Act in the local courts of the District of Columbia out of an appropriation entirely devoted to the federal judiciary. He expressed the view that the funds for payment of counsel under the Criminal Justice Act should be sought in the appropriation for the local courts for the District and hence be provided for in the District of Columbia appropriation. The bill, as reported out of the House-Senate Conference and approved by the President, does not carry out the House-passed version of the bill but does limit the amount of the appropriation which may be expended for fees and expenses of counsel in the local courts of the District of Columbia to one million dollars for fiscal year 1973.

The Judicial Conference of the United States has taken the position, in view of the strong feelings by members of the House of Representatives and particularly the Subcommittee on Appropriations for the Federal Judiciary, that in preparing the budget request for fiscal year 1974, it is not proper to include a request for payment of counsel under the Criminal Justice Act in the local courts of the District of Columbia but rather that this request should be included in the budgetary estimates for the District of Columbia. I am writing to convey this information to you with the thought that you may wish to incorporate such requests in your budget estimates for fiscal year 1974 and thus, in the future, avoid the problem which was raised in the House of Representatives. This will avoid jeopardizing the payment of fees and expenses to counsel appointed in the local courts of the District of Columbia.

Let me assure you that the intent of the Judicial Conference of the United States is not simply to tidy up the accounting systems or to quibble over details. Rather, there is a most important principle involved. As things stand, the Judicial Conference is empowered by Title 18, Section 3006A, "to issue rules and regulations governing the operation of plans" . . . under the appropriate section of the Criminal Justice Act. The Administrative Office of the U.S. Courts is charged with supervision of the plans. The result of the statute is to deny the District of Columbia government and its courts the authority to control their own activities. With the D.C. Court Reorganization Act now in effect, and with the D.C. Courts now independent of the Federal Judiciary in all other affairs, it seems only proper that they should be equally independent in the very important matter of providing counsel to individuals charged with a criminal offense who are unable to afford adequate representation.

I should be glad to confer with you or your representatives at any time if you consider this desirable in view of the action of the Judicial Conference of the United States.

Sincerely,

ROWLAND F. KIRKS, *Director.*

EXHIBIT E.—EXCERPT FROM THE REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, OCTOBER 26, 27, 1972

Judge Weinman advised that the 1973 Appropriation Act provided a limitation of \$1,000,000 for the fees and expenses of counsel appointed under the Criminal Justice Act by the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. As a result thereof and in view of the fact that the House Appropriations Committee had originally denied any funds under the Criminal Justice Act for these two courts, Judge Weinman proposed that in the future the Director of the Administrative Office confer with the appropriate court officials of the District of Columbia government so that appropriations for the appointment of counsel in these local courts be requested through the District of Columbia appropriations.

EXHIBIT F

DISTRICT COURT OF APPEALS,
Washington, D.C., November 1, 1972.

HON. ROWLAND F. KIRKS,
*Director, Administrative Office of the U.S. Courts, Supreme Court Building,
Washington, D.C.*

DEAR MR. KIRKS: I have your letter of October 25, with respect to the views of the Judicial Conference on the budget request for fiscal 1974. The Joint Committee of our Court and the Superior Court is greatly concerned at the prospect of your exclusion of any estimate for payment of counsel fees under the Criminal Justice Act to attorneys appearing in the District of Columbia courts, as we had thought this matter settled by the opinion of the Comptroller General, to which you referred.

Chief Judge Greene, of the Superior Court, and I, would welcome an opportunity to confer with you about this matter. As our budget request to the District of Columbia Government was prepared without knowledge of this proposed action, an early date for such a conference would be appreciated.

Faithfully yours,

GERARD D. REILLY, *Chief Judge.*

EXHIBIT G

NOVEMBER 2, 1972.

HON. GERARD D. REILLY,

Chairman of the Joint Committee on Judicial Administration, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: Upon my return to the city next week I would be most happy to visit with you and Chief Judge Greene relative to the Criminal Justice Act matter about which I wrote you on October 25th. I will call your chambers when I get back to Washington and we can arrange a mutually convenient time to get together.

With kindest regards,
Sincerely yours,

ROVLAND F. KIRKS, *Director.*

EXHIBIT H

HON. GERARD D. REILLY,

Chairman of the Joint Committee on Judicial Administration, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: On October 25, 1972, Mr. Kirks informed you of the position of the Judicial Conference of the United States, that the District of Columbia include in its budget for fiscal year 1974 provision for the payment of fees and expenses of counsel appointed by the local courts. I am writing with particular reference to the limitation of \$1 million on the amount that we can pay for such representation in the current fiscal year.

This office does not have any control over the number of appointments or the amount approved for payment in each case. Likewise, we have no control over the ratio of cases assigned to private attorneys versus the Public Defender Service. Therefore, we must look to you to enforce compliance with the statutory limitation. I am sure you realize that an over-obligation on the part of the courts will result in a violation of the Anti-Deficiency Act (31 U.S.C. 665).

The Comptroller General of the United States has held that the appointment of an attorney constitutes a contractual obligation and, accordingly, payment of his claim is to be made out of the appropriation current at the time of the appointment. Since our role is limited to the issuance of checks, you can see that it will not help you with your problem. There is a considerable time lag between the dates attorneys are appointed and the dates they submit their claims. As of September 30, 1972, there were more than 3,000 outstanding claims payable out of the 1972 appropriation.

Our records show that in fiscal year 1972, private attorneys were appointed to represent 12,353 persons in the Superior Court (including the Family Division) and 181 appellants in your court. The projected total cost of such representation, including investigative, expert, and other services (transcripts) is \$1.6 million. The following table shows actual payments to attorneys and reserves for outstanding claims as of September 30, 1972.

	Superior Court			Court of Appeals		
	Number of cases	Total cost	Average cost	Number of cases	Total cost	Average cost
Payments to counsel.....	8,867	\$1,083,825	\$122	46	\$15,430	\$335
Reserve for outstanding claims.....	3,486	426,175	122	135	44,570	330
Projected cost (excluding investigative, expert, and other services).....	12,353	1,510,000	122	181	60,000	331

Cumulative payments out of the 1972 appropriation as of September 30, 1972, for transcripts, experts and other services, were \$36,163. There may be some outstanding claims for such services, but we expect that the amounts involved will be nominal.

We have received 3,741 orders of appointment during the period July 1 through October 31, 1972: 60 for the representation of appellants in your court and the

others (3,681) for representation in the Superior Court. In all probability, there were some appointments made late in October that were not received and included in our count as of October 31, 1972. The volume of appointments apparently has not diminished. To date we have received only 250 claims in the aggregate amount of \$21,148 which are payable out of the 1973 appropriation. These claims average \$85 per case, however, based on past experience, claims received early in the year usually are lesser in amount than those that are submitted later in the year.

In order to comply with the congressional mandate, it appears that there are but two alternatives, reducing the volume of appointments or the average cost per case. It may be possible for the Public Defender Service to take on more cases. This certainly would reduce the number of private attorneys being appointed. As for the cost per case, you may want to consider reducing the hourly rates of compensation for services in and out of court. I offer these suggestions as possible solutions to the problem. The determination as to how the funds are to be allocated and the controls that are to be employed is within the discretion of the Joint Committee on Judicial Administration. Naturally we will cooperate and assist you in every way possible. If you desire any additional information, please do not hesitate to call on me.

With kind regards, I am

Sincerely yours,

WILLIAM R. SWEENEY.

EXHIBIT I

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., November 28, 1972.

HON. GERARD D. REILLY,
Chairman of the Joint Committee on Judicial Administration, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: The more I reflect upon our meeting with you, Chief Judge Harold Greene, and others on the 15th, the more confident I am that it was an extremely productive meeting. It certainly gave me a better grasp of your problems; I hope you understand ours.

Unfortunately, neither Mr. Sweeney nor myself can recollect any timetable for action. It was left, as we remember, that you would attempt to secure an appropriation through District of Columbia channels for fiscal year 1974 and would let me know how we could support your efforts in that direction. In turn, I agreed to follow up such D.C. appropriation action with an appeal for a supplemental to the Judiciary's appropriation for fiscal year 1973 when you had worked out the 1974 problem.

You and Chief Judge Greene reinforced my convictions that the District of Columbia should be independent of the Federal Judiciary's appropriation for implementing the Criminal Justice Act. Perhaps, upon reflection, it will develop that your Courts presently have adequate substantive authority for such independence.

Sincerely,

ROWLAND F. KIRKS, *Director.*

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., January 15, 1973.

HON. WARREN E. BURGER,
Chief Justice of the Supreme Court of the United States, Washington, D.C.

MY DEAR MR. CHIEF JUSTICE: One of President Nixon's priorities for improvements in crime control and criminal justice has been the District of Columbia program. Crucial to that program is the effective operation of the new courts. Success of the new system has been outstanding. One small problem has occurred within that otherwise generally well operating system.

As you know, the availability of competent counsel for indigent defendants is an essential prerequisite to the disposition of cases in the criminal justice system of the District of Columbia. At the present time, funds for indigent defendants in the Superior Court of the District of Columbia are disbursed by the Administrative Office of the United States Courts pursuant to the provisions of the Criminal Justice Act.

The applicability of the Criminal Justice Act to cases in the District's Superior Court is well settled. In 1966, the Chief Judge of the then District of Columbia

Court of General Sessions held that the Act was applicable to the local courts of the District. But the Administrative Office sought a contrary ruling from the Comptroller General. On June 14, 1966, the Comptroller General concluded, however, that the Act was applicable to misdemeanor cases prosecuted by the United States in the District's local courts.

On April 30, 1970, shortly before the enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970, the Senate agreed to an amendment to the Criminal Justice Act which made that Act expressly applicable to the courts which were about to be created pursuant to the then pending court reform legislation. This amendment was agreed to by the House and became part of P.L. 91-447, 84 Stat. 916, amending 18 U.S.C. 3006A (the Criminal Justice Act).

At the time the amendment was introduced, its sponsor, Senator Hruska, made the following statement:

"Mr. President, the amendment that I have offered would make the provisions of the Criminal Justice Act, as amended by S. 1461, fully applicable to the District of Columbia.

"This amendment is needed to clarify the application of the act to appointed counsel appearing before the court of general sessions or any other courts of general jurisdiction, now or in the future, in the District of Columbia. The Criminal Justice Act of 1964, as originally enacted, omitted any reference to the District of Columbia Court of General Sessions, although the Comptroller General ruled in 1966 that the act does extend to certain classes of cases prosecuted in that court. As I recall, that was also the intent of the 1964 act.

"Since the Constitutional Rights Subcommittee began consideration of S. 1461, and other proposed amendments to the 1964 act, legislation has been proceeding through the Senate and House District Committee that would significantly reorganize the Federal courts of the District. That legislation is now before a conference committee.

"The concurrent jurisdiction of the District of Columbia District Court and the District of Columbia Court of General Sessions over certain offenses against the United States would end under that legislation, and the court systems would be greatly changed. It is the concurrent jurisdiction, however, upon which the Comptroller General based his opinion of coverage under the 1964 act.

"Therefore, to insure coverage of the Criminal Justice Act in the District, whether or not the court reorganization bill is enacted, for those classes specified in the 1964 act as amended by S. 1461 as reported by the full Judicial Committee, this amendment is offered." (Congressional Record—Senate, April 30, 1970, S6500, Temp. Ed.)

On March 7, 1972, the Administrative Office again requested a ruling from the Comptroller General, now contending that the Criminal Justice Act was no longer applicable to the District's local courts because of the enactment of the Court Reform Act. On May 26, 1972, however, the Comptroller General informed Director Kirks once again that in his opinion the Criminal Justice Act was applicable to cases before the District's Superior Court. The Comptroller General further advised Director Kirks that "the Administrative Office of the United States Courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal district courts. . . ."

On May 18, 1972, the House of Representatives approved H.R. 14989, which contained the appropriations for expenditures under the Criminal Justice Act. The committee report accompanying the bill contained a proviso that no funds appropriated to implement the Criminal Justice Act could be used to compensate attorneys for indigents appointed in the District's local courts. The justification for the proviso as stated in the report, virtually restated the propositions advanced by the Administrative Office in its letter of March 7, 1972, to the Comptroller General, which the latter rejected on May 26, 1972. However, the bill as reported out of the House-Senate Conference and approved by the President, did not carry out the House-passed version of the bill but did limit the amount of the appropriation which may be expended for counsel for indigents in the local courts to one million dollars for fiscal year 1973.

On October 25, 1972, the Administration Office informed Chief Judge Reilly of the District of Columbia Court of Appeals that the Judicial Conference of the United States had taken the position that in preparing the budget request for fiscal year 1974, it would not be "proper" to include a request for payment of

counsel for indigents appointed in the District's local courts. On November 14, 1972, Director Kirks met with Chief Judge Reilly and other persons including a member of my staff. At this meeting, Director Kirks indicated that he would take no action to ask for a reconsideration of the position taken by the Judicial Conference. Moreover, Director Kirks indicated that he would take no action to lift the one million dollar ceiling on expenditures for fiscal year 1973, unless the local courts of the District sought to obtain legislation transferring the CJA program from the Administrative Office.

The Department of Justice has explored the feasibility of implementing the suggestion made by Director Kirks. Despite the great urgency of the problem created—in view of the fact that the present level of CJA expenditures authorized is estimated to be reached in February, 1973—it is our feeling that it is not in the best interest of the administration of justice to seek the legislative changes suggested by the Administrative Office. The Congress has expressly provided that the local courts are to share in the funds appropriated under the Criminal Justice Act and has expressly provided for the propriety of the arrangement whereby the Administrative Office administers and budgets for the program.

We think it in the best interest of justice to continue to find the entire criminal justice act program from the same appropriation. To transfer this function to the less certain route of the District of Columbia budgetary process would render the program for the District of Columbia subject to pressures that do not now impinge upon it. In short, we believe we should continue the program as it presently exists and seek to impress upon the Congress our reasons for continuing it.

The Department of Justice is aware that unless immediate steps are taken by the Administrative Office to obtain supplemental appropriations for fiscal year 1973, the justice system of the District of Columbia is likely to be faced with problems of nightmarish proportions. It is conceivable and even likely, that literally thousands of cases in the Superior Court involving defendants too poor to retain counsel will not be processed. It is apparent that such a state of affairs would be unjust to the public and unfair to indigent defendants. Indeed, the only solution to the problem may be for the local U.S. Attorney to prosecute cases wherever possible in the U.S. District Court for the District of Columbia, where Criminal Justice Act funds continue to be available. We believe, however, that such a solution would be unduly burdensome to the Federal court and would be contrary to the Congressional mandate expressed in the Court Reform Act that local offenses should be prosecuted in the local courts.

In view of the importance of this problem to indigent accused and to the successful implementation of the Administration's criminal justice program in the District of Columbia, we would request the Judicial Conference to reassess its position with respect to the budgeting of Criminal Justice Act funds for fiscal year 1974. To prevent any undue interruption in the CJA program, we would ask the cooperation of the Administrative Office to ensure the availability of CJA funds in the local courts of the District of Columbia for the remainder of fiscal year 1973.

Sincerely,

RICHARD G. KLEINDIENST.

EXHIBIT K

JANUARY 19, 1973.

HON. RICHARD G. KLEINDIENST,
Attorney General of the United States, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Upon receipt of your letter of January 15, 1973, concerning appropriations for implementation of the Criminal Justice Act in the local courts of the District of Columbia, I discussed the matter with Mr. Kirks, the Director of the Administrative Office.

Mr. Kirks advises me that at the October 25 meeting, at which a representative of the Department of Justice was present, he agreed with Chief Judge Reilly and Chief Judge Greene that he would seek a supplemental appropriation to implement the program through fiscal year 1973, on the understanding that for future years they would seek their own appropriation through their own budgeting process. This is in line with the views of the Judicial Conference of the United States and its Committee to Implement the Criminal Justice Act which, as you know, gives policy guidance in these matters to the Administrative Office. The Committee has long been concerned with the anomalous situation existing as to the two local courts in the District of Columbia. In all the federal courts, as you

know, the Judicial Conference has authority to set down guidelines and standards and furnish direction to the courts in the implementation of the Criminal Justice Act.

Mr. Kirks has assured me, however, that he is proceeding to seek a supplemental appropriation for the District of Columbia courts in order to carry on the assigned counsel program in the District of Columbia courts through the close of fiscal year 1973. Mr. Kirks tells me that he has had no further communication of any sort from either Chief Judge Reilly or Chief Judge Greene since the October 25 meeting and that the Administrative Office, accordingly, is proceeding on the assumption that these courts are seeking the appropriation for fiscal year 1974 through the normal budgeting process of those courts.

Cordially,

EXHIBIT L

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 19, 1973.

HON. GERARD D. REILLY,

Chairman of the Joint Committee on Judicial Administration, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: We are now prepared to go forward with a supplemental appropriation for fiscal year 1973 for payment of counsel fees and other expenses for Criminal Justice Act cases brought in your court and the D.C. Superior Court.

As you know, this also involves requesting the Congress to remove an expenditure limitation on those funds.

Accordingly, we must present the best possible case. Would you, therefore, supply us as soon as possible with a detailed estimate of expenditures and the justifications necessary to give us the proper arguments to be advanced to the Congressional Appropriations Committees?

Thank you for your cooperation.

Very truly yours,

ROWLAND F. KIRKS, *Director.*

DISTRICT OF COLUMBIA COURT OF AMERICA,
Washington, D.C., January 26, 1973.

ROWLAND F. KIRKS, Esq.

*Director, Administrative Office of the U.S. Courts,
Washington, D.C.*

DEAR MR. KIRKS: I wish to thank you for your letter of January 19, 1973, requesting the Joint Committee on Judicial Administration in the District of Columbia to submit an estimate for a supplemental appropriation to cover the remainder of Fiscal 1973, necessary payment of counsel fees, and other expenses for indigent defendant cases in the District of Columbia Court of Appeals and in the Superior Court.

In view of the \$1,000,000 limitation in the 1973 appropriation act for such expenditures by the District of Columbia Courts, it appears that at the present rate of appointments this sum by next month will be fully obligated. Unless Congress removes this limitation or appropriates additional funds to carry out this program for the last five months of the fiscal year, we shall be unable to provide proper representation to indigent defendants under the provisions of the Criminal Justice Act.

Our most conservative estimate is that an additional \$543,000 will be needed for the balance of the current fiscal year, of which \$500,000 will be required by the Superior Court and \$43,000 by the D.S. Court of Appeals.

In the Court of Appeals, we are presently making about 20 appointments of counsel each month under the Criminal Justice Act. By reducing the claimed fees by approximately 20% in the vouchers submitted to us, the court finds that the average cost per case is about \$300. Hence, at the rate of 20 cases a month, averaging \$360 a case, the projected cost for the last five months of fiscal 1973 is \$43,000.

Enclosed is a chart breaking down the figures for this year and the preceding three years and projecting these figures on the basis of current and expected caseload to fiscal 1973 and 1974. The total payments for the first five months of this year is a somewhat misleading figure, for many lawyers who briefed and argued cases in this court during such period have not as yet submitted bills.

The Superior Court is faced with a situation in which 4500 defendants in the

Criminal Division will require counsel appointed under the Act from February 1, 1973 through June 30, 1973, and with 2,020 such cases in the Juvenile Branch. The average voucher is \$136 in adult cases and \$108 in juvenile cases. Consequently it needs an additional \$500,000 to enable the court to continue operations to the end of this fiscal year. A justification of this estimate by Chief Judge Greene, together with a description of some of the economy measures being taken, is enclosed.

I am sorry not to have transmitted this estimate to your office earlier, but with the unexpected holiday and the necessary absence of the Superior Court judges because of the previously scheduled Sentencing Institute, this has not been possible.

Both Chief Judge Greene and I will be available next week if you deem further material necessary.

Faithfully yours,

GERARD D. REILLY.

Enclosures.

DISTRICT OF COLUMBIA COURT OF APPEALS—CRIMINAL JUSTICE ACT PLAN COSTS

[Criminal Justice Act Plan summary chart (a comparison of statistics of U.S. Court of Appeals for District of Columbia Circuit and District of Columbia Court of Appeals)]¹

	Fiscal year 1970		Fiscal year 1971		Fiscal year 1972		July–November, Fiscal year 1973		Projected, fiscal year 1973 District of Columbia Court of Appeals	Projected, fiscal year 1974 District of Columbia Court of Appeals
	U.S. Court of Appeals	District of Columbia Court of Appeals	U.S. Court of Appeals	District of Columbia Court of Appeals	U.S. Court of Appeals	District of Columbia Court of Appeals	U.S. Court of Appeals	District of Columbia Court of Appeals		
Total number of cases (civil and criminal).....	1,192	371	1,079	548	1,164	662	534	360	1,080	1,200
Criminal cases only.....	440	193	462	264	456	315	195	179	540	600
Percentage of total which are criminal.....	36	52	42	48	39	47	36	49	50	50
Criminal Justice Act cases.....	249	110	387	126	251	167	56	63	240	300
Percentage of criminal cases under Criminal Justice Act plan.....	56	56	83	47	55	53	28	35	44	50
Average cost per Criminal Justice Act case.....	\$382	\$211	\$503	\$293	\$681	\$235	-----	\$363	\$360	\$360
					Fiscal year 1973		Fiscal year 1974			

Projected number of criminal cases and Criminal Justice Act costs in District of Columbia Court of Appeals:

Average cost per case times number of projected Criminal Justice Act cases equals..... $\$360 \times 240 = \$86,400$ $\$360 \times 300 = \$108,000$.
 Projected number of criminal cases under the Criminal Justice Act for the period from Feb.–June 30, 1974; 120 cases at \$360 a case = \$43,200.

¹ Figures from U.S. Court of Appeals (District of Columbia Circuit) have been taken from statistics of the Administrative Office of the U.S. Courts.

MEMORANDUM

To: Chief Judge Reilly
 From: Chief Judge Greene
 Re: Criminal Justice Act Appointments and Funds

This memo is in response to the January 19, 1973 letter from Mr. Roland Kirks concerning the additional appropriation needed for Criminal Justice Act payments for the District of Columbia Court system.

As you are aware in Fiscal Year 1972 the Administrative Office obtained \$1,570,000 for use in the D.C. Court of Appeals and the D.C. Superior Court. Since that time, of course, the jurisdiction of the D.C. Court system has greatly increased, and the rates payable under the Criminal Justice Act have doubled.

By conservative estimate there will be 4,500 defendants who will require counsel appointed under the Criminal Justice Act in the Criminal Division of the Superior Court from February 1, 1973 through June 30, 1973. During the same period 2,020 respondents in the Juvenile Branch of the Court will need CJA representation. The average voucher for adult cases thus far this year has been \$136.24; the average voucher for juvenile cases \$108.39. Clearly, therefore, a substantial addition sum is necessary to enable the court to continue operations through Fiscal Year 1973.

In view of the present emergency the Superior Court has taken emergency measures to restrict the outflow of CJA funds, and the Court, the Public Defender Service and the Bar of the District of Columbia are prepared to take additional measures to provide defense representation to indigent defendants in this city. Thus, the Public Defender Service will be asked to represent a greater proportion of indigent defendants during the remainder of FY 1973 and the private bar will be asked to provide increased defense services on a pro bono publico basis. Additionally, the individual judges of the Superior Court will scrutinize vouchers even more closely in an effort to cut down per case expenditures as much as possible.

With these extraordinary efforts for the present emergency, an additional appropriation of \$500,000 would be adequate to carry the Criminal Justice Act appointment program through June 30, 1973, and Mr. Kirks should be requested to seek a supplemental appropriation in that amount, in addition to whatever is needed for the D.C. Court of Appeals. Please note that the emergency measures listed above could not be continued indefinitely, and that the fiscal year 1974 appropriation may have to show an increase in funds for the D.C. Court system.

EXHIBIT N

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
 SUPREME COURT BUILDING,
 Washington, D.C., February 7, 1973.

Hon. Roy Ash,
 Director, Office of Management and Budget,
 Washington, D.C.

DEAR MR. ASH: I submit herewith, for your consideration and transmittal to the Congress, a request for a supplemental appropriation for fiscal year 1973 in the amount of \$543,000 which will be required for payment of the fees and expenses of court-appointed counsel in the District of Columbia Court of Appeals and in the Superior Court. This request is in addition to the proposed supplemental appropriation of \$4 million which has already been transmitted to the Congress. The request that I refer to is contained in Title I, Part III, of the 1974 Budget Appendix, under the heading, "Representation by Court-Appointed Counsel and Operation of Defender Organizations."

The Congress, in the Judiciary Appropriation Act, 1973 (Public Law 92-544, approved Oct. 25, 1972), placed a limitation of \$1 million on the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia. Hon. Gerard D. Reilly, Chief Judge of the D.C. Court of Appeals and the Chairman of the Joint Committee on Judicial Administration in the District of Columbia, has informed us that at the present rate of appointments the funds will be fully obligated this month and that, unless the Congress removes the limitation or appropriates additional funds, the local courts in the District

of Columbia will not be able to provide representation to indigent defendants under the provisions of the Criminal Justice Act.

We have agreed to submit this request for a supplemental appropriation with the understanding that these courts, for future years, would seek their own appropriations through their own budgetary process. The budget estimates of the Judiciary for fiscal year 1974 do not include any funds for this purpose. The Judicial Conference of the United States has taken the position, in view of the strong feelings by members of the House of Representatives and particularly the Subcommittee on Appropriations for the Federal Judiciary, that funds for payments to counsel and other expenses under the Criminal Justice Act in the local courts of the District of Columbia should be included in the budget of the District of Columbia Government and that the local courts should defend their own estimates and assume responsibility for the administration and control of the amounts appropriated.

The present limitation does create a very serious problem for the local courts and it is imperative that additional funds be provided at the earliest possible date. Therefore, it would be greatly appreciated if you would give this matter your prompt attention.

Sincerely yours,

ROWLAND F. KIRKS, *Director.*

cc: Hon. Gerard D. Reilly, Chairman, Joint Committee on Judicial Administration in the District of Columbia.

EXHIBIT O

FEBRUARY 7, 1973.

HON. GERARD D. REILLY,

Chairman of the Joint Committee on Judicial Administration, Chief Justice, District of Columbia, Court of Appeals, Washington, D.C.

DEAR CHIEF JUDGE REILLY: For our recent phone conversation, this is to inform you that during the first half of fiscal year 1973 we received 6,380 orders of appointment, 6,242 for representation of persons in the Superior Court (including the Juvenile Branch) and 138 for the representation of appellants in your court.

The volume of appointments has increased compared with the first half of fiscal year 1972, but we have noted a slight reduction in the average cost per case for services rendered in the Superior Court. As of December 31, 1972, we had not settled any claims for services in your court. Since we have paid claims in only a small percentage of the cases, we do not consider it a reliable basis upon which to make any projections.

The following table shows the number of appointments and the average cost per case (exclusive of transcripts and other services) during the first six months of fiscal years 1972 and 1973:

DISTRICT OF COLUMBIA COURT OF APPEALS

	Number of appointments	Claims paid	Total cost	Average cost
Fiscal year 1972 (6 mo).....	76	1	\$80	\$80
Fiscal year 1973 (6 mo).....	138			

DISTRICT OF COLUMBIA SUPERIOR COURT (INCLUDING JUVENILE BRANCH)

	Number of appointments	Claims paid	Total cost	Average cost
Fiscal year 1972 (6 mo).....	6,037	1,331	\$139,387	\$105
Fiscal year 1973 (6 mo).....	6,242	926	84,965	92

Payments for transcripts, investigative, expert, and other services rendering under the Criminal Justice Act during the first half of fiscal year 1973 aggregated \$8,941 compared with only \$7,868 paid during the first half of fiscal year 1972. This increase is the primarily to a greater demand for transcripts.

I trust that the information contained herein will serve your purpose.

Sincerely yours,

WILLIAM H. SWEENEY.

EXHIBIT P

MARCH 6, 1973.

Hon. GERARD D. REILLY,
Chief Judge,
District of Columbia Court of Appeals,
Washington, D.C.

DEAR JUDGE REILLY: Since the conversation on Monday afternoon with you and Chief Judge Greene of the Superior Court, I have undertaken to review the background of the problem of your budgeting of the cost of the Superior Court and District of Columbia Court of Appeals compliance with the Criminal Justice Act under Title 18 § 3006(a). I note that subparagraph (1) provides that the Criminal Justice Act shall apply to the District of Columbia Superior Court and the District of Columbia Court of Appeals. Offhand, I would read subparagraph (1) as the commitment by Congress to the principle that counsel is to be provided in all cases in the newly created local courts for the District of Columbia in the same manner as is provided for all the federal courts.

You are already aware, of course, from the correspondence that passed between you and the office of the Director of the Administrative Office of the United States Courts that the Judicial Conference of the United States has explicitly directed that no provision be made in the budget of federal courts for the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in terms of compliance with the Criminal Justice Act. The Director of the Administrative Office is, of course, bound by the Judicial Conference action and I am equally bound by that action. For that reason, the budget of the Administrative Office presently under consideration by the House Subcommittee does not include any provision for the local courts. Hearings have already been concluded on that budget.

I am also familiar with the expressions of the Comptroller General of the United States under date of May 26, 1972, that the "Administrative Office of the United States Courts should handle the administration of and budgeting for the Criminal Justice Act Program in the District of Columbia's local courts generally in the same manner that it has been in the past and to the extent possible." The views of the Comptroller General are entitled to respect but the statutes do not support his construction, and the Judicial Conference action to the contrary is, of course, binding on me, as I have noted.

Although this matter is not within the jurisdiction of the Judicial Conference of the United States, I feel bound to say that it is hardly conceivable that Congress will allow the crucial problem of representation of indigents to fall "between two stools." I am not clear why this cost was not included in the budget presented to Congress for your two courts since it is a District expenditure. However, you are now confronted with a hard practical problem, and it seems to me your best course is to amend your budget request and assume that ultimately the plain intent of Congress in the Criminal Justice Act will find expression in the budget appropriation for the District. The Nation's Capital, as a "showplace," can hardly fail to give the same protection to accused persons as the Congress has provided for all strictly federal courts.

Cordially,

EXHIBIT Q

DISTRICT OF COLUMBIA COURT OF APPEALS,
Washington, D.C., March 13, 1973.

Re request for funds to administer the Criminal Justice Act in the District of Columbia.

Mr. ROY L. ASH,
Director, Office of Management and Budget,
Washington, D.C.

DEAR MR. ASH: Pursuant to D.C. Code 1967, § 11-1743 (Supp. V, 1972), the Joint Committee on Judicial Administration in the District of Columbia (id. § 11-1701), requests that the budget estimate submitted to Congress for an appropriation to carry out the provisions of the Criminal Justice Act, 18 U.S.C. 3006A, for the fiscal year 1974, include an additional amount in the sum of \$2,259,000 for expenditures made under such act for services performed in the Superior Court and the Court of Appeals for the District of Columbia. The

budget request submitted by the Administrative Office of the United States Courts to Congress for fiscal 1974 omits any budget estimate for the District of Columbia judicial system, despite subparagraph 8(2)(1) of the Act reading as follows:

"The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals. (18 U.S.C. 3006A, as amended by Pub. L. No. 91-447, 84 Stat. 916)."

In prior fiscal years, the Administrative Office of the Federal Courts pursuant to the foregoing paragraph of the statute has included an estimate for the applicability of the Act to the District of Columbia in its requests. This year the Administrative Office discontinued this practice because of directions issued by the United States Judicial Conference. The Chief Justice of the United States has informed our Joint Committee that both he and the Director of the Administrative Office are bound by this action of the Judicial Conference, notwithstanding an earlier opinion by the Comptroller General to the contrary. (The letter of the Chief Justice and the opinion of the Comptroller General are attached hereto.)

The omission of such an item for the local court system means that unless this request of the Joint Committee is transmitted to Congress promptly, the House subcommittee on appropriations now considering the State, Justice, Commerce, and Judiciary appropriations bill, will provide no funds for the payment of fees and expenses to court-appointed counsel for indigent criminal defendants after June 30, 1973, although the appointment of such counsel will still be mandatory under the Criminal Justice Act. Obviously, this was not the intent of the statute.

Inasmuch as the obligation to make such payments stems not from any enactment peculiar to the District of Columbia but from a federal statute, the appropriations to carry it out should be included in the same appropriation act which has previously been the source of such funds.

In fiscal 1974, funds required to compensate attorneys and pay transcript fees in this jurisdiction under the Criminal Justice Act total \$2,213,000:

	Attorneys fees	Transcript fees	Total
District of Columbia Court of Appeals.....	\$120,000	\$5,000	\$125,000
Superior Court.....	2,029,000	59,000	2,088,000
Total.....	2,149,000	64,000	2,213,000

In view of the fact that the Federal Administrative Office is no longer willing to audit and disburse such fees, internal administration will be handled by the Executive Office of the Joint Committee. It is estimated that \$46,000 will be required for such purpose. Approximately \$5,000 for nonrecurring costs is needed to establish this function in the District of Columbia courts. Accordingly, the total amount needed by the D.C. Courts in fiscal 1974 is \$2,259,000.

As to attorneys' fees, the District of Columbia Court of Appeals averages between 20 to 25 cases per month which fall under the provisions of the Criminal Justice Act. The average cost per case is \$400. Based on 300 cases a year at \$400 a case, \$120,000 is needed in fiscal 1974 for the compensation program in the Court of Appeals. The Superior Court has projected approximately 13,530 Criminal Justice Act cases in fiscal 1974 and has averaged these cases at \$150 per case (the national average is \$199).

Transcript cost estimates were developed on prior fiscal year spending levels, plus appropriate percentages of transcript expenses previously incurred in the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

Since the number of eligible attorney fee cases in the District of Columbia Courts processed by the Administrative Office of the United States Courts represents approximately one-third of the Administrative Office's workload, administrative costs and the size of the staff were projected on this basis.

Sincerely yours,

GERARD D. REILLY,
*Chairman, Joint Committee on Judicial
Administration in the District of Columbia.*

EXHIBIT R

U.S. COURT OF APPEALS,
Washington, D.C., April 4, 1973.

The CHIEF JUSTICE,
The Supreme Court,
Washington, D.C.

MY DEAR MR. CHIEF JUSTICE: Following my letter to you of March 27, 1973, concerning difficulties in the administration of the Criminal Justice Act, I received from Chief Judge Greene of the Superior Court a memorandum concerning the status of the Act in that court and the District of Columbia Court of Appeals. As the memorandum indicates, the limitation on CJA funds in those courts for fiscal year 1973 has resulted in the absence of adequate funds to compensate attorneys during this year. Moreover, the elimination of the District of Columbia courts from the proposed fiscal year 1974 budget for the Criminal Justice Act raises the real possibility that the District will be left with no funds to pay attorneys appointed in criminal cases after July 1 of this year.

I supported the action of the Judicial Conference directing the Administrative Office to exclude the District of Columbia courts from their budget submission. However, in light of the circumstances outlined in Chief Judge Greene's memorandum, I believe that the Conference's position should be reconsidered. The substantial impact on the administration of criminal justice in Washington if the Superior Court and the District of Columbia Court of Appeals were compelled to rely on uncompensated and largely inexperienced attorneys leads me to believe that federal funding should be continued at least until adequate arrangements are made to insure the provision of funds from other sources.

I am enclosing a copy of Chief Judge Greene's memorandum, which I understand was also made available to Judge Thomsen of the Committee on the Implementation of the Criminal Justice Act. I would hope this matter can be discussed at the Judicial Conference with the other issues regarding the administration of the Act, as outlined in my earlier letter.

With best personal regards,

DAVID L. BAZELON.

EXHIBIT S

EXCERPT FROM THE REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF
THE UNITED STATES, APRIL 5-7, 1973

The Conference rejected the motion of Chief Judge Bazelon that it rescind the action taken at the October 1972 session (Conf. Rept., p. 32) relating to Criminal Justice Act appropriations for the local courts of the District of Columbia.

EXHIBIT T

[Press release, Apr. 6, 1973]

JUDICIAL CONFERENCE OF THE UNITED STATES,
Supreme Court Building,
Washington, D.C.:

The Judicial Conference of the United States today reaffirmed its decision of last October not to include in its future annual appropriation requests to the Congress funds to pay fees and expenses of lawyers appointed to serve defendants in criminal cases in the Superior Court and Court of Appeals for the District of Columbia. At the same time the Conference urged Congress to pass a supplemental appropriation in the amount of \$543,000 to carry the present program through June 30th of this year and to give court officials in the District sufficient time to request the necessary funds in the appropriations for the courts of the District of Columbia.

The payment of the expenses for the defense of indigent defendants charged with crime in the federal courts and in the courts of the District of Columbia is authorized by the Criminal Justice Act of 1966. Last year the appropriations subcommittee in the House of Representatives deleted the CJA funds from the

budget for the federal courts, indicating that funds for this purpose should be included in the request for court funds for the District of Columbia courts. The funds were subsequently restored, but a limitation of \$1,000,000 was placed on expenditures during the current year.

EXHIBIT U

93d CONGRESS <i>1st Session</i>	}	HOUSE OF REPRESENTATIVES	}	REPORT No. 93-164
------------------------------------	---	--------------------------	---	----------------------

SECOND SUPPLEMENTAL APPROPRIATIONS BILL, 1973

MAY 3, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MAHON, from the Committee on Appropriations,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7447]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

SUPPORT OF U.S. PRISONERS

An additional amount of \$2,500,000, is also included to pay for an increased number of Federal prisoners held in State and local facilities.

DEPARTMENT OF COMMERCE

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

The bill includes \$350,000 for this item to meet increased costs resulting from the dollar devaluation. This amount, which is \$62,000 less than the request, relates to planned overseas trade promotion activities.

PARTICIPATION IN U.S. EXPOSITIONS

The sum of \$6,500,000 is included in the bill for participation in the International Exposition on the Environment to be held in Spokane, Washington, in 1974. This amount, together with the \$3,500,000 previously appropriated, will provide a total of \$10,000,000 for the exposition.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

PRINTING AND BINDING SUPREME COURT REPORTS

The additional sum of \$87,000 is provided to cover higher printing costs and an increased number of volumes. Of the total amount allowed, \$26,000 is for fiscal year 1972 and \$61,000 is for fiscal year 1973 costs.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES OF JUDGES

The additional amount of \$500,000, the budget estimate, is recommended for this item, necessitated as a result of an increase in the number of senior judges.

REPRESENTATION BY COURT-APPOINTED COUNSEL AND OPERATION OF DEFENDER ORGANIZATIONS

The additional sum of \$2,900,000 is included in the bill for "Representation by court-appointed counsel and operation of defender organizations". Of the amount allowed, \$1,000,000 is for appointments of counsel in petty offense cases when, in the opinion of the judge or magistrate, the defendant faces the likelihood of a prison sentence. (Supreme Court decision in *Argersinger v. Hamlin*, June 12, 1972, 407 U.S. 25). In addition, the sum of \$1,500,000 is provided for liquidation of obligations incurred in prior years.

There is also included not to exceed \$400,000 for the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals and by judges of the Superior Court of the District of Columbia. This additional amount, together with the \$1,000,000 previously appropriated, makes a total of \$1,400,000 available for the current fiscal year. The Committee is in agreement with the position of the Judicial Conference regarding the funding of this item in future years as stated below:

"The Judicial Conference of the United States has taken the position that funds for this purpose should be included in the budget of the District of Columbia Government and that the local courts should defend their own estimates and assume responsibility for the administration and control of the amounts appropriated."

COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM
OF THE UNITED STATES

The sum of \$240,000 is included in the bill to provide for the necessary expenses of the Commission on Revision of the Federal Court Appellate System of the United States. This Commission was created by the Act of October 13, 1972 (Public Law 92-489).

RELATED AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

The additional sum of \$18,000, the full amount requested, is recommended to provide for increased cost of supplies resulting from the devaluation of the dollar.

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

The bill includes \$128,000 additional for this Commission to provide for funds for the added work load resulting from the assumption of jurisdiction for civil rights violations caused by denial of equal protection of the laws on account of sex, as provided in Public Law 92-496.

The supplemental budget request was based on the premise that the funds would be available by April 1, 1973. The amount allowed will provide funding for the entire request based upon June 1, 1973 availability as indicated on page 224, part 2 of the Supplemental hearings.

COMMISSION ON INTERNATIONAL RADIO BROADCASTING

INTERNATIONAL RADIO BROADCASTING ACTIVITIES

The additional sum of \$1,650,000 is included for "International Radio Broadcasting Activities" to provide for increased costs overseas for Radio Free Europe and for Radio Liberty resulting from the devaluation of the dollar. A proviso is included which makes this appropriation available only upon the enactment into law of authorizing legislation.

EXHIBIT V

MAY 4, 1973.

HON. GERARD D. REILLY,
Chief Judge, District of Columbia Court of Appeals,
Washington, D.C.

DEAR JUDGE REILLY: Reference is made to your telephone conversation with Mr. Kostishak this date, regarding the reduction of \$143,000 by the House as reported in the Second Supplemental Appropriation Bill for fiscal year 1973 for the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia under the heading "Representation by Court-Appointed Counsel and Operation of Defender Organizations."

It is my understanding that you wish us not to appeal the \$143,000 reduction at this time, but rather to wait until next week. This will allow your accounting staff time to review your current position and projected caseload for the balance of the fiscal year. Mr. Kostishak, Mr. Garabedian, and myself will assist you as best we can in this effort. We look forward to a meeting early next week with you and/or members of your staff in order to determine the best approach for an appeal to the Senate Committee.

With kind regards, I am
Sincerely yours,

GILBERT L. BATES,
*Chief, Division of
Business Administration.*

EXHIBIT W

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., May 29, 1973.

HON. WARREN E. BURGER,
*Chief Justice, U.S. Supreme Court,
Washington, D.C.*

DEAR MR. CHIEF JUSTICE: This letter is being written at the suggestion of Deputy Attorney General Sneed and Mayor Washington, in advance of a call you will soon receive either from the Attorney General or from the Deputy Attorney General.

As you well know, a committee of the District of Columbia Bar under the chairmanship of Joe Tydings has been working hard to resolve the problem of providing funds for the representation of indigents in the District. When our committee met with Mr. Sneed, a compromise solution was proposed—namely, that funds would continue to be allocated to the District under the Criminal Justice Act for fiscal 1974 on the condition that the City would seek appropriate funds under its own budget for fiscal 1975.

Our committee met today with Mayor Washington, and he agreed to make the necessary request of the Congress for fiscal 1975. He has transmitted that decision by phone to Mr. Sneed. It is my understanding that the Attorney General or Mr. Sneed will be in touch with you shortly, seeking your approval for funding under the Criminal Justice Act beginning July 1, in the light of Mayor Washington's decision.

May I simply add that while the District of Columbia Bar believes that all funding for the program should be under the Criminal Justice Act, it recognizes the exigencies of the present impasse and therefore strongly supports the plan outlined above as the only reasonable alternative to the breakdown of the criminal justice system in the District. In our view, the appointment of as many as 75 attorneys a day, which would be necessary if no funds were available from any source, not only would be administratively impossible to carry out but would raise serious constitutional problems as well.

Thank you very much for your continued interest and concern in this matter of such vital importance to all of us.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
President.

EXHIBIT X

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 7, 1973.

E. BARRETT PRETTYMAN, Jr., Esquire,
*President, the District of Columbia Bar,
Washington, D.C.*

DEAR BARRETT: This will acknowledge your letter of May 29, 1973, on the subject of funds for payment of fees and expenses for counsel appointed by the judges of the District of Columbia Court of Appeals and the District of Columbia Superior Court.

In a letter of March 6, 1973, to Chief Judge Reilly of the District of Columbia Court of Appeals, I stated in part: " * * * the Judicial Conference of the United

States has explicitly directed that no provision be made in the budget of federal courts for the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in terms of compliance with the Criminal Justice Act. The Director of the Administrative Office is, of course, bound by the Judicial Conference action and I am equally bound by that action. For that reason, the budget of the Administrative Office presently under consideration by the House Subcommittee does not include any provision for the local courts. Hearings have already been concluded on that budget."

While I appreciate your problems and your position and am happy to note the decision of Mayor Washington for fiscal year 1975, I do not see how I can arbitrarily countermand the decision of the Judicial Conference for fiscal year 1974. Even should the Judicial Conference be willing to reconsider its position, it does not convene until September, which would be too late to handle your immediate problem.

Further, I understand that the Appropriations Committees of the Congress are presently considering whether funds for fiscal year 1974 should be added to the existing request of the Judiciary or for that of the District of Columbia. It would be improper of me to intervene in those deliberations since the hearings on the Judiciary are closed and a Committee report should be imminent.

I sincerely hope that you will understand the reasons for and the necessity of my position.

Cordially,

WARREN E. BURGER.

EXHIBIT Y

93D CONGRESS	{	HOUSE OF REPRESENTATIVES	{	REPORT
1st Session				No. 93-321

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, FISCAL YEAR 1974

JUNE 22, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROONEY of New York, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 8916]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year 1974.

INDEX TO BILL AND REPORT

	Bill page	Report page
Department of State.....	2	2
Department of Justice.....	14	8
Department of Commerce.....	22	11
Federal Prison Industries, Inc.....	50	21
The Judiciary.....	32	14
American Battle Monuments Commission.....	39	17
Arms Control and Disarmament Agency.....	40	18
Commission on American Shipbuilding.....	40	18
Commission on Civil Rights.....	40	18
Equal Employment Opportunity Commission.....	41	18
Federal Maritime Commission.....	41	18
Foreign Claims Settlement Commission.....	41	19
International Radio Broadcasting.....	42	19
Marine Mammal Commission.....	42	19
National Commission for the Review of Federal and State Laws Relating to Wire Tapping and Electric Surveillance.....	43	19
Small Business Administration.....	43	19
Special Representative for Trade Negotiations.....	45	20
Tariff Commission.....	45	20
U.S. Information Agency.....	46	20

The estimates contained in the 1974 budget for the departments and agencies covered in the bill have been amended by House Documents Nos. 93-90 and 93-104. The estimates do not include requests for increased pay costs resulting from Executive Order 11619.

SUMMARY OF THE BILL

The following table summarizes the amounts recommended in the bill in comparison with the budget estimates for fiscal year 1974 and the appropriations for fiscal year 1973.

Department or agency	New budget (obligational) authority, fiscal year 1973 (enacted to date) ¹	Budget esti- mates of new (obligational) authority, fiscal year 1974	New budget (obligational) authority recommended in bill	Bill compared to—	
				New budget (obligational) authority, fiscal year 1973	Budget esti- mates of new (obligational) authority, fiscal year 1974
(1)	(2)	(3)	(4)	(5)	(6)
Department of State.....	\$587,185,650	\$609,050,000	\$595,571,000	+\$8,385,350	—\$13,479,000
Department of Justice.....	1,778,078,000	1,836,349,000	1,808,112,000	+30,034,000	—28,237,000
Department of Commerce.....	1,612,074,500	973,546,000	961,804,000	—650,270,500	—11,742,000
The Judiciary.....	193,642,600	205,529,000	199,561,000	+5,918,400	—5,968,000
Related agencies.....	2,608,113,100	610,606,000	585,095,000	—2,023,018,100	—25,511,000
Total.....	6,779,093,850	4,235,080,000	4,150,143,000	—2,628,950,850	—84,937,000

¹ Includes amounts in 2d supplemental appropriation bill, 1973, as agreed to in conference.

The total amount recommended in the accompanying bill in new obligational authority is \$4,150,143,000 which is a reduction of \$84,937,000 in the total amount of the budget estimates. The amount allowed is a decrease of \$2,628,950,850 below the total appropriated for the current fiscal year (including funds contained in the Second Supplemental Appropriation Bill, 1973). The decrease below the total appropriation for the current fiscal year is attributable in large part to the fact that a total of \$1,855,000,000 was appropriated in fiscal year 1973 for the Disaster loan fund of the Small Business Adminis-

tration and for which no additional funds have been requested as yet for fiscal year 1974.

In addition to the new obligational authority, there is also included in the bill a total of \$221,515,000 to liquidate contract authorizations. This amount is \$10,485,000 below the appropriation for this purpose for the current fiscal year.

The action of the Committee as set forth in the bill will reduce expenditures projected for fiscal year 1974 by approximately \$54,000,000.

* * * * *

TITLE II—DEPARTMENT OF JUSTICE

The budget estimates for the Department of Justice for fiscal year 1974 total \$1,836,349,000. The Committee recommends \$1,808,112,000 which is an increase of \$30,034,000 over the total appropriated for the current fiscal year for this Department.

LEGAL ACTIVITIES AND GENERAL ADMINISTRATION

A total of \$193,937,000 is provided in the bill in the six appropriation items under this general heading.

General administration.—Included in the bill is the sum of \$19,100,000 to provide for the expenses of the Office of the Attorney General, Deputy Attorney General, Pardon Attorney, Board of Parole, Board of Immigration Appeals, Office of National Narcotics Intelligence, Office for Drug Abuse Law Enforcement, Library and Administrative Division. The amount allowed is a decrease of \$593,000 below the budget request and is an increase of \$4,900,000 over the appropriation in this item for the current fiscal year. However, the increase is due primarily to transfers from other accounts which total over \$3,000,000 and so-called uncontrollable increases which total over \$1,300,000.

General legal activities.—The Committee recommends \$47,200,000 to provide for the operating expenses of the following: Office of Solicitor General, Tax Division, Criminal Division, Civil Division, Land and Natural Resources Division, Office of Legal Counsel, and the Civil Rights Division. The amount allowed is an increase of \$400,000 over the appropriation for the current fiscal year.

The 12 additional positions requested (for the Tax Division) have been approved.

Antitrust Division.—The Committee has again approved the full amount of the budget estimate, \$13,019,000, to provide for necessary expenses for the effective enforcement of antitrust and kindred laws.

United States Attorneys and Marshals.—A total of \$99,300,000 is provided for the necessary expenses of the United States Attorneys and Marshals. This amount is an increase of \$5,640,000 over the appropriation for the current fiscal year. A large portion of the increase is for annualization of positions allowed last year, within grade increases, temporary and part-time employment, litigation expenses, space acquisition, and reduction of lapse.

Of the 100 additional positions requested (Office of United States Attorneys), 75 have been allowed of which 50 are attorney and 25 are clerical positions.

* * * * *

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

The Committee has included in the bill the sum of \$866,000,000 for the Law Enforcement Assistance Administration. The amount allowed is an increase of \$24,603,000 over the 1973 funding level and a decrease of \$25,124,000 from the budget estimate.

Under the Omnibus Crime Control and Safe Streets Act of 1968 as amended, the Law Enforcement Assistance Administration is charged with the responsibility for assisting State and local governments in reducing crime and improving the quality of the criminal justice system.

The Committee is not specifying at this time the amount to be allocated to each of the various activities inasmuch as the legislation extending the authorization of the Law Enforcement Assistance Administration has not yet been enacted into law.

* * * * *

TITLE IV—THE JUDICIARY

Appropriations under this title provide the funds for operation of the Federal Courts, including salaries of judges, judicial officers and employees, and other expenses of the Federal Judiciary.

The budget requests of the Judiciary are submitted to the Congress without revision by the Office of Management and Budget in accordance with the provisions of the Budget and Accounting Act of 1921, as amended.

The total amount of the estimates for fiscal year 1974 as prepared and presented by the Judicial branch is \$205,529,000. The Committee recommends a total of \$199,561,000, which is a reduction of \$5,968,000 in the total request and is an increase of \$5,918,400 over the total appropriated for the current fiscal year.

The action of the Committee with respect to the individual items under this title is described in the following paragraphs.

SUPREME COURT OF THE UNITED STATES

A total of \$6,217,000 is recommended in the six appropriation items in the bill for the Supreme Court of the United States. This represents an increase of \$510,400 over the appropriation for the current fiscal year and a reduction of \$69,000 below the total request.

The action as to each of the appropriation items follows.

Salaries.—The sum of \$3,964,000 is recommended for this item. This is the full amount of the budget request and is an increase of \$180,000 over the appropriation for the current fiscal year.

Printing and binding Supreme Court reports.—The full amount of the budget estimate, \$515,000, is recommended for this item.

Miscellaneous expenses.—The sum of \$560,000, the full amount of the budget request, is included for this item. The increase over the current fiscal year is primarily to provide for computer costs.

Automobile for the Chief Judge.—Also included in the bill is the sum of \$15,000 to provide for the lease, exchange, driving, maintenance and operation of an automobile for the Chief Justice of the United States.

Books for the Supreme Court.—The sum of \$63,000, the full amount of the request, is recommended for this item.

Care of the building and grounds.—The sum of \$1,100,000 is included in the bill for the care of the building and grounds.

COURT OF CUSTOMS AND PATENT APPEALS

The sum of \$677,000 is recommended for the salaries and expenses of the Court of Customs and Patent Appeals. While the amount recommended is \$15,000 below the budget estimate and is \$7,000 below the appropriation for the current fiscal year, it is the full amount requested by the Chief Judge of the Court when he appeared before the Committee.

CUSTOMS COURT

The bill provides \$2,341,000 for the salaries and expenses of the Customs Court. This is the same amount as was appropriated for the current fiscal year.

COURT OF CLAIMS

The sum of \$2,154,000, the full amount of the budget estimate, is included in the bill for salaries and expenses of the Court of Claims.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

A total of \$191,994,000 was requested for fiscal year 1974 in the nine appropriation items carried under this heading. The sum of \$186,172,000 is recommended, a reduction of \$5,822,000 in the total requested and an increase of \$5,370,000 over the total appropriated for the current fiscal year.

Salaries of judges.—The full amount of the budget estimate, \$27,300,000, is recommended for the payment of salaries of all United States circuit and district judges, and all justices and judges who have retired or resigned pursuant to law, as well as annuities to widows of Supreme Court Justices.

The amount allowed will provide for the salaries and related benefits of 648 judges and for the payment of annuities to six widows of Supreme Court justices.

Salaries of supporting personnel.—The bill includes \$81,278,000 to provide for the salaries of supporting personnel required to assist the judges in the conduct of hearings, trials, and other judicial functions and to man the component offices of the courts including the Federal probation system. The amount allowed is an increase of \$4,070,000 over the amount appropriated for the current fiscal year and is a decrease of \$4,048,000 below the budget estimate.

The increase allowed will provide for within grade salary advances, reduction of lapses (difference between full and part year cost of personnel authorized in fiscal year 1973 and secretarial and legal assistance for senior judges), an additional \$115,000 for the United States Court of Appeals for the Fifth Circuit, reclassification of certain positions in the Probation service consistent with the recommendation of the Civil Service Commission, reclassification of 10 positions in the large and medium Clerk's Offices in the Court of Appeals, promotions for newly appointed probation officers pursuant to the

Judiciary salary plan, as well as 322 additional positions. The new positions are as follows:

- 20 deputy clerks for Courts of Appeals
- 31 deputy clerks for District Courts
- 170 probation officers
- 100 probation clerk stenographers
- 1 interpreter for the Southern District of Texas

Representation by court-appointed counsel and operation of defender organizations.—The amount included in the bill for this item is \$15,500,000 which is a reduction of \$500,000 below the amount of the budget estimate.

No funds were requested by the Judiciary for fiscal year 1974 and none have been provided for the compensation and reimbursement of expenses of attorneys appointed by judges of the District of Columbia Court of Appeals or by judges of the Superior Court of the District of Columbia. The Committee reiterates its agreement with the position of the Judicial Conference regarding the funding for this purpose for these Courts, to wit:

The Judicial Conference of the United States has taken the position that funds for this purpose should be included in the budget of the District of Columbia Government and that the local courts should defend their own estimates and assume responsibility for the administration and control of the amounts appropriated.

Fees of jurors.—A total of \$18,500,000, the full amount of the budget estimate, is recommended for the payment of statutory fees and allowances of jurors and fees of jury commissioners.

Travel and miscellaneous expenses.—The bill contains \$12,200,000 for the necessary expenses of travel and subsistence incurred by judges and supporting personnel in attending sessions of court or transacting other official business and for equipment, law books, supplies, and other expenses of operating the 11 courts of appeals and 93 district courts of the United States.

The amount allowed is an increase of \$1,574,000 over the appropriation for fiscal year 1973 and is a decrease of \$813,000 in the budget request.

Administrative Office of the United States Courts.—The bill provides \$3,906,000 for the necessary expenses of the Administrative Office of the United States Courts. The amount allowed is a decrease of \$341,000 below the amount requested.

Of the forty-six additional positions requested, nineteen have been allowed, 10 for the Information Systems Division, 5 for the Business Administration Division, 2 for the Probation Division, and 2 for an Equal Employment Opportunity Unit.

Salaries and expenses of United States Magistrates.—The full amount of the budget estimate, \$7,837,000, is included for the salaries and expenses of United States magistrates, including secretarial and clerical assistance as authorized by 2 U.S.C. 634–635.

Salaries of referees.—The sum of \$6,997,000, the same amount as appropriated for the current year, is provided for the salaries of referees.

Expenses of referees.—Also included in the bill is the sum of \$12,-660,000 for the expenses of referees including the salaries of their assistants. This amount is a decrease of \$120,000 below the budget estimate.

FEDERAL JUDICIAL CENTER

The bill also provides \$2,000,000 for necessary expenses of the Federal Judicial Center as authorized by Public Law 90-219. This amount is an increase of \$456,000 over the appropriation for the current fiscal year.

* * * * *

The CHAIRMAN. Is the gentleman saying he cannot respond to any questions?

Mr. SWEENEY. No, sir.

The CHAIRMAN. Relating to this?

Mr. SWEENEY. No, sir. I am saying that there are some questions I may not be able to respond to. We will get any information that the committee wishes. I think that I am really saying that I am unable to give a competent summary of the seven-page statement.

Mr. CHAIRMAN. Proceed, sir.

Mr. SWEENEY. All right, sir. I understand that it is a long statement and I will not impose on the committee's time.

I am quoting. This is the statement of Rowland F. Kirks, Director, Administrative Office of the U.S. Courts, submitting the following statement at the request of the Hon. Charles C. Diggs, chairman of the District of Columbia Committee, House of Representatives:

"The question before the committee, as I understand it, is not whether counsel appointed in the local courts of the District of Columbia, namely the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, shall be paid for services rendered pursuant to the Criminal Justice Act of 1964, as amended, but rather whether they shall be paid out of an appropriation for the District of Columbia court system or from the appropriation for the Federal Judiciary.

My duties as Director of the Administrative Office of the U.S. Courts are set forth in sections 604 and 605 of title 28, United States Code, which make it clear that I operate under the supervision and direction of the Judicial Conference of the United States and that in presenting budget estimates I do so only with the approval of the Judicial Conference. Heretofore the budget requests for payments under the Criminal Justice Act which I have submitted included requests for the implementation of the act in the local courts of the District of Columbia. The Judicial Conference of the United States, at its October 1972 session, however, instructed me to delete this request from the submission for the budget for fiscal year 1974. The Conference noted that the District of Columbia Court Reorganization Act (Public Law 91-358, approved July 29, 1970) provides in chapter 17 that the Joint Committee on Judicial Administration in the District of Columbia, composed of the chief judge of the District of Columbia Court of Appeals, an associate judge of that court, the Chief Judge of the Superior Court of the District of Columbia and two associate judges of that court, shall among other things have the

responsibility of submitting annual budget requests for the District of Columbia court system."

The CHAIRMAN. Will the witness suspend? When will Mr. Kirks be back?

Mr. SWEENEY. I believe he will be back sometime this week. Next week, I beg your pardon.

The CHAIRMAN. We have already made his statement a part of the record. Why don't we, since you are at that kind of a disadvantage, submit the questions to him for response to the record and we will keep the record open so his response can go in the record. I think it is unfair to proceed with further time under these circumstances.

Mr. SWEENEY. Whatever is your pleasure.

The CHAIRMAN. Thank you very much for being here to present the testimony. We will make it a part of the record. We will submit questions to Mr. Kirks for his answers, and those answers will be included in the record.

Mr. SWEENEY. We will be happy to answer any questions.

The CHAIRMAN. Is that procedure satisfactory to the committee? Without objection, it is so ordered.

Mr. SWEENEY. Thank you, sir.

The CHAIRMAN. The next gentlemen, Charles Duncan and Frank Karsten. Mr. Charles T. Duncan, the new president of the Unified Bar of the District, accompanied by Hon. Frank Karsten, former distinguished Member of the House, who is also a member of the association.

Both of you are familiar with appearances before the committee. Mr. Duncan has a letter from the bar. Mr. Karsten has a prepared statement. I will let you two decide how you want to proceed.

STATEMENT OF CHARLES T. DUNCAN, PRESIDENT OF THE UNIFIED BAR OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY FRANK KARSTEN, MEMBER

Mr. DUNCAN. Mr. Chairman, I think we can both be very brief. We appreciate the opportunity to appear here. The position of the District of Columbia bar is set forth in my letter, dated June 23 of this year, to Judge Greene. He very ably summarized most of the points that we made, particularly the difficulties involved in calling on our entire 16,500 membership, most of those being inexperienced in criminal trials, the difficulties in relying on only those 700 who have trial experience, the administrative difficulties of working out a free legal system. The only two points which I would add and which are elaborated on in the letter are that the Code of Professional Responsibility which governs attorneys' conduct, specifically prohibits an attorney from handling a matter which he is not qualified to handle and believes he is not qualified to handle. This would emphasize the difficulty involved in calling lawyers who are not familiar with the criminal practice.

The other problem is what to do about the government attorneys. Our membership is comprised of two-fifth lawyers who work for United States or District of Columbia courts. Were we to get into a system of free representation of indigents, our Board of Governors feel strongly no distinction should be made between the government

and non-government lawyers. We propose to volunteer the government as well as non-government lawyers. That raises obvious problems of conflict of interest, et cetera.

Other than that, I think everything I was prepared to say has already been said.

[The letter follows:]

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., June 23, 1973.

HON. HAROLD H. GREENE,
Chief Judge,
Superior Court of the District of Columbia,
Washington, D.C.

DEAR CHIEF JUDGE GREENE: I acknowledge receipt of your letter dated June 20, 1973 in which you call upon the members of The District of Columbia Bar, in cooperation with the Public Defender Service, "to provide free representation to indigent criminal defendants in the local court system."

The Board of Governors of The District of Columbia Bar held a special meeting on June 22 to consider your request and I have been authorized and directed by that body to make the following response.

The Board, and I am sure, most members of the Bar understand and appreciate the problem faced by your Court and the community. We are well aware of your many efforts to resolve this dilemma in an appropriate and legal fashion; in fact, as your letter notes, our Bar has participated with you in these efforts. We are also aware that the effectiveness and integrity of the criminal justice system in the District of Columbia are threatened. We see, however, a number of very serious problems which make us question whether there can be effective compliance with your request.

As you know, a relatively small percentage of our membership possesses criminal trial experience. Criminal trial work is a specialty, just as taxation, corporate law, labor law, patent law and many others are specialties, and specialists in one branch of the law often are unable to perform efficiently in other specialties of the law. The same is true, of course, in all of the professions.

The Code of Professional Responsibility, which governs our conduct, prohibits an attorney from handling a legal matter which he knows or should know that he is not competent to handle (DR 6-101) (A) (1). A very serious ethical question would be raised from the attorney's point of view if all members were directed to provide criminal defense services. Even more important, however, the constitutional rights of the defendants themselves almost certainly would be seriously jeopardized if they were represented by inexperienced counsel who were unfamiliar with the criminal law and its many procedures.

On the other hand, if assignments in indigent cases were limited to those attorneys, estimated to be about 700, who have had criminal trial experience, it is obvious that extreme burdens would be placed on them, as they would be required to devote as much as one-third to one-half of their professional time to uncompensated legal services; this in turn would raise due process and other constitutional objections.

Notwithstanding the above, and assuming the willingness of all members of the Bar to cooperate fully, the administrative problems which would be imposed on The District of Columbia Bar, the Public Defender Service and the Superior Court would be enormous. Your letter calls for 54 different attorneys for each of six days per week. The administration of such a plan, in terms of notices, instructions, directions to the several buildings in which your Court is located, and the like, would be almost impossible to administer with existing resources. Further, the actual matching of defendants and attorneys would, in our view, be extraordinarily difficult to accomplish. We feel very strongly that such a system simply would not work.

Another complication is the extent of which attorneys employed by the Government, comprising approximately two fifths of our membership, would participate in the program you suggest. Our Board strongly feels if your plan is attempted, no distinction should be drawn on the basis of such employment. On the other hand, we recognize that conflict of interest questions may be raised if Government attorneys are included.

For the foregoing reasons, the Board of Governors feels that it cannot conscientiously participate, at least on any long term basis, in a plan which is fraught with such constitutional, ethical and administrative difficulties.

At the same time, as indicated at the beginning of this letter, the Bar wishes to assist the Court in solving the very serious problem which it faces. Accordingly, I have been directed to appoint a committee, which will consist of Messrs. Horsky, Stoner, and Temple to work with you in determining whether or not the Bar, by providing free legal assistance through its members, can fill the void created by the refusal of Congress to act. This committee is authorized to explore in greater detail the proposal contained in your letter, to assist in the preparation and filing of appropriate litigation to provide for compensation to counsel as provided in the Criminal Justice Act or otherwise, to test in appropriate ways the professional responsibility of attorneys to participate, or to refuse to participate, in the solution which you propose and to pursue such other lines of inquiry and to make such recommendations as it deems appropriate.

As you know, our basic position is that this entire problem can and should be resolved by the continued receipt by the District of Columbia of the funds to which it is entitled under the Criminal Justice Act. To this end, the Board of Governors has authorized the bringing of a lawsuit to achieve that result through the courts.

As your letter indicates the members of the Bar have a continuing interest in solving this problem. We will continue to cooperate to the fullest extent consistent with our professional responsibility to indigent defendants, to our members, and to the community as a whole.

Very truly yours,

CHARLES T. DUNCAN, *President.*

The CHAIRMAN. Do you have any supplemental comments?

Mr. KARSTEN. Mr. Chairman, it is always a pleasant experience for me to visit the House of Representatives and see my old friends. I spent almost 35 years working here, first as a committee clerk and thereafter as a Member of the House and I cherish the memory of those good old years and all my friends that I have down here.

I am going to summarize my statement in the interests of time.

[The full statement follows:]

PREPARED STATEMENT OF HON. FRANK M. KARSTEN

Mr. Chairman, it is always a pleasant experience for me to visit the House of Representatives and see my old friends. I spent almost thirty-five years working here, first as a Committee Clerk and thereafter as a Member of the House and I cherish the memory of those years.

I have been a Member of the Bar of the District of Columbia for twenty seven-years and since I left Congress in 1969 I have been engaged in the private practice of law. I have devoted a part of my time to criminal law work in the Superior Court.

Defendants in criminal law cases fall into two categories—those who are financially able to retain counsel and those who are indigent. It has long been established that one accused of a crime is not only entitled to a speedy and impartial trial but he is also entitled to be represented by counsel regardless of his financial status. In the District of Columbia the vast majority of defendants in criminal cases, probably 95% are legally indigent.

On the average, there are about seventy-five new cases a day which originate in the Superior Court. They cover the entire range of criminal law from simple assault to first degree murder. A substantial number involve drugs and narcotics.

Generally the arraignment or presentment of the defendant is held the day following arrest. Depending upon the nature of the offense the defendant then enters a plea and the case is set for trial or a preliminary hearing. In most cases it is not possible for the defendant to qualify for release on bond, pending trial because of indigency and counsel frequently spend an hour or two exploring other methods of release.

These simple preliminary procedures involve a great deal more of the attorney's time than many people realize. In addition to the foregoing, the attorney is usually present during the morning of the day he is appointed to a case. He must then interview the client, develop the facts and decide upon a course of action which will safeguard the rights of the defendant. Following this the Court reconvenes in the afternoon and of course the attorney must be present when the case is called. With about seventy cases on the docket it is often necessary to wait an

hour or two for the case to be reached. For his initial efforts, which have required a large part of the day the attorney will generally be compensated for only one hour of his time.

I mention these details which confront practitioners in the Superior Court to illustrate the difficulties that would be encountered by attorneys and the judiciary if they were required to operate completely without funds to pay counsel for representing indigent defendants. The compensation that may be paid under the Criminal Justice Act is certainly not attractive to most members of the Bar but many have been accepting Court appointed cases as a part of their responsibility as officers of the Court.

Since the passage of the Criminal Justice Act, which incidentally I supported when I was a Member of this Body, a small group, composed mostly of young men, has been developed within the District Bar and they have become specialists in the criminal law. All together there are probably five hundred or more attorneys in the District who are thoroughly competent and experienced in this field.

In the past funds for the Criminal Justice Act in the District of Columbia have been carried in the Judiciary appropriation which would appear to be justified by the Comptroller General's decision, B175429, of May 26, 1972.

The subsequent position taken by the Judicial Conference of the United States in October, 1972 directing that no provision be made in the budget of Federal Courts for the Superior Court of the District of Columbia or the District of Columbia Court of Appeals, for all intents and purposes has had the effect of overruling the Comptroller General's decision. Whether it is ultra vires, de jure or defacto the Judicial Conference action has prevented the inclusion of any request for funds for the District in the Judiciary budget.

Over the past few months the District Bar has thoroughly explored every possibility of securing funds on an interim basis until the item could be included in the District Budget next year. We have had conferences with the Deputy Attorney General as well as the Mayor and many Members of the House and Senate. In addition I also talked with Chief Justice Burger whose letter to me of June 7 I offer for the record. He said in part:

"* * * there is virtually nothing I can do. The District of Columbia leaders should put their needs in their own budget. Our hearings are long since closed and the Judicial Conference action is binding on me. I strongly support the D.C. Government position but its request should be directed to the D.C. Committee."

Thereafter, on June 22 the Committee on Appropriations reported H.R. 8916 to the House. This Bill carries the 1974 Judiciary funds and the Committee Report No. 93-321 contains the following language:

"No funds were requested by the Judiciary for fiscal year 1974 and none have been provided for the compensation and reimbursement of expenses of attorneys appointed by Judges of the District of Columbia Court of Appeals or by Judges of the Superior Court of the District of Columbia."

The Committee reiterates its agreement with the positions of the Judicial Conference regarding funding for this purpose for these Courts, to wit:

"The Judicial Conference of the United States has taken the position that funds for this purpose should be included in the budget of the District of Columbia Government and that the local courts should defend their own estimates and assume responsibility for the administration and control of the amounts appropriated."

This Bill is scheduled to be taken up in the House tomorrow and doubtless will be passed.

I would also like to call to the attention of the Committee that the Report of the Appropriations Committee on the Omnibus Appropriation Bill which passed the House and Senate last month contained language similar to the pending Report. On that occasion the Committee seemed to go a little out of its way to make its position clear.

I have the greatest respect for the Comptroller General whom I have known personally for many years and would be hesitant to question the validity of his decision which certainly does rest on a strong legal foundation. However the Appropriations Committee within the past few weeks has twice expressed itself in a manner contrary to the Comptroller General's decision. In view of the strong and persistent opposition of the Committee on Appropriations it would appear to me the only practical approach to the problem is through the Committee on the District of Columbia.

I thank the Committee for granting me this time and will be glad to try to respond to any questions Members may wish to ask.

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 7, 1973.

FRANK M. KARSTEN, Esq.,
221 Emerald Hill Drive,
Washington, D.C.

DEAR MR. KARSTEN: Your letter reached me after the date of your meeting with Mr. Sneed.

The enclosed copy of letter to E. Barrett Prettyman will indicate that there is virtually nothing I can do. The District of Columbia leaders should put their needs in their own budget. Our hearings are long since closed and the Judicial Conference action is binding on me. I strongly support the D.C. government position but its request should be directed to the D.C. Committee.

Cordially,

WARREN E. BURGER.

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 7, 1973.

E. BARRETT PRETTYMAN, Jr., Esquire,
President, the District of Columbia Bar,
Washington, D.C.

DEAR BARRETT: This will acknowledge your letter of May 29, 1973, on the subject of funds for payment of fees and expenses for counsel appointed by the judges of the District of Columbia Court of Appeals and the District of Columbia Superior Court.

In a letter of March 6, 1973, to Chief Judge Reilly of the District of Columbia Court of Appeals, I stated in part: "* * * the Judicial Conference of the United States has explicitly directed that no provision be made in the budget of federal courts for the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in terms of compliance with the Criminal Justice Act. The Director of the Administrative Office is, of course, bound by the Judicial Conference action and I am equally bound by that action. For that reason, the budget of the Administrative Office presently under consideration by the House Subcommittee does not include any provision for the local courts. Hearings have already been concluded on that budget."

While I appreciate your problems and your position and am happy to note the decision of Mayor Washington for fiscal year 1975, I do not see how I can arbitrarily countermand the decision of the Judicial Conference for fiscal year 1974. Even should the Judicial Conference be willing to reconsider its position, it does not convene until September, which would be too late to handle your immediate problem.

Further, I understand that the Appropriations Committees of the Congress are presently considering whether funds for fiscal year 1974 should be added to the existing request of the Judiciary or for that of the District of Columbia. It would be improper of me to intervene in those deliberations since the hearings on the Judiciary are closed and a committee report should be imminent.

I sincerely hope that you will understand the reasons for and the necessity of my position.

Cordially,

WARREN E. BURGER.

MR. KARSTEN. I might say that I have been a member of the District Bar for about 27 years. Since I left Congress in 1969 I have been engaged in the private practice of law. I have devoted a part of that practice to criminal work in the superior court. Actually the practitioner in the superior court is at a great disadvantage.

COURT PROCEDURE

I might cite the procedure that is followed here. The average is about 75 new cases a day which originate there. They cover the entire range of criminal law from serious felonies down to petty misdemeanors. Generally in the superior court the arraignment or presentment of the defendant is held the day following his arrest. Depending

on the nature of the case, the defendant enters a plea. The case is set for preliminary hearing. In most cases, as has been pointed out, the defendant is financially unable to pay for counsel services and also unable to secure bail. As a result of that, the attorney often spends an hour or two, or more, trying to work out other methods for release of the defendant. These simple procedures involve a great deal more time of the attorney than many people realize.

After the attorney is appointed in the morning, he is generally there at the time of the appointment, then he must be in court in the afternoon when the case is called. With 70 or 75 cases on the dockets it is often necessary for an attorney to spend 2 or 3 hours or longer in the court waiting for his case to be called.

I mentioned these details which confront the practitioners in the superior court to illustrate the difficulties that confront the court and attorneys if they were required to operate completely without funds to pay counsel for indigent defendants. The compensation that may be paid under the Criminal Justice Act is certainly not very attractive to most members of the bar.

In a hypothetical case I cited a moment ago, the fee would probably be for 1 hour's service, although the attorney may have devoted a greater part of the day to the preparation of the case and initial hearing.

I might say that since the passage of the Criminal Justice Act there has developed a body of young lawyers in the District of Columbia who are experienced and capable in this work. All together, I would estimate that perhaps there are 500 or more competent and experienced defense attorneys in this field.

You would have to branch out into antitrust lawyers and other things. In the past, as has been pointed out, the criminal justice funds were included in the judiciary appropriation. I think that would certainly be justified in view of the Comptroller General's decision. The subsequent position taken by the Judicial Conference directing that no provision be made in the budget for superior court and appeals has for all intents and purposes overruled the Comptroller General's decision.

Whether it is *ultra vires*, *de jure* or *de facto*, the Judicial Conference action has prevented the inclusion of any request for funds for the District in the judiciary budget.

Over the past 4 or 5 months the District bar has thoroughly explored every possibility of securing funds on an interim basis until we could get the funds in the District budget next year. We have had conferences with the Deputy Attorney General, the Mayor, and many Members of the House and Senate. In addition, I might mention—

The CHAIRMAN. Could the witness suspend a moment.

Does the gentleman from New York have any questions before he answers the rollcall?

Mr. RANGEL. Mr. Duncan, when you mentioned 700 trial lawyers—

Mr. DUNCAN. These are attorneys with particularized experience in criminal defense work.

Mr. RANGEL. That was the only question. Thank you.

The CHAIRMAN. Perhaps the other gentlemen are going to respond to the quorum call.

The gentleman from Kentucky has a question. They may have a question.

Mr. MAZZOLI. No, Mr. Chairman, I have no questions. Thank you.
The CHAIRMAN. Proceed.

Mr. KARSTEN. In addition, I had occasion to talk personally with the Chief Justice about the matter 2 or 3 weeks ago. He wrote me a letter on June 7, and I offer it for the record.

I would like to read just one or two sentences from the letter:

* * * there is virtually nothing I can do. The District of Columbia leaders should put their needs in their own budget. Our hearings are long since closed and the Judicial Conference action is binding on me. I strongly support the D.C. Government position but its request should be directed to the D.C. Committee.

Thereafter, on June 22 the Committee on Appropriations reported H.R. 8916 to the House. This bill carries the 1974 Judiciary funds and the Committee Report No. 93-321 contains the following language:

No funds were requested by the Judiciary for fiscal year 1974 and none have been provided for the compensation and reimbursement of expenses of attorneys appointed by Judges of the District of Columbia Court of Appeals or by Judges of the Superior Court of the District of Columbia * * *.

They also alluded to the Judicial Conference decision which was printed in the report on June 22. I think that bill is scheduled to be taken up in the House tomorrow. I would like to call attention to the committee of the appropriations report on the omnibus supplemental bill that contained that restrictive language.

I might say that I have the greatest respect for the Comptroller General, whom I have known personally for many years and would certainly be hesitant to disagree with his decision. However, in view of the strong, persistent opposition of the Committee on Appropriations, it would appear to me that the only practical approach would be through the Committee on the District of Columbia.

I want to thank the committee for granting me this time.

Mr. HOGAN. Mr. Karsten, as I understand the Judicial Conference, a motion was made to have it reconsider the action they took in October 1972?

Mr. KARSTEN. Yes, sir.

Mr. HOGAN. They refused to do that?

Mr. KARSTEN. The Chief Justice also sent me a copy of the letter he wrote to Mr. Prettyman, then president of the bar association, in which he said, "The Conference will not meet again until September, which would be too late to handle this problem, if we could get them together."

Mr. HOGAN. Was there a motion made at the Conference in April of this year?

Mr. KARSTEN. I believe it was; yes, sir.

Mr. HOGAN. They refused to reconsider their position?

Mr. KARSTEN. They refused.

Mr. HOGAN. Which relied to a great extent on the Appropriations Committee for the action they have taken?

Mr. KARSTEN. Yes, sir.

In view of the action of the Appropriations Committee in these two reports that have been issued within the last month, they say this matter should come through the District Committee and the District budget. I think they would vote for it if we could get some kind of request before them.

Mr. HOGAN. Did the unified bar support the position of the Conference when they took this matter up with the Conference?

Mr. KARSTEN. I don't know the bar ever made a formal determination. Mr. Duncan would be in a better position to answer that.

Mr. DUNCAN. I think that is a correct answer.

Mr. HOGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Fauntroy.

Mr. FAUNTROY. I have no questions.

The CHAIRMAN. Thank you both for your testimony.

The CHAIRMAN. Mr. Norman Lefstein, director, Public Defender Service, accompanied by J. Patrick Hickey, deputy director, Public Defender Service.

You have a 10-page statement, Mr. Lefstein. How would you like to proceed?

STATEMENT OF NORMAN LEFSTEIN, DIRECTOR, PUBLIC DEFENDER SERVICE, ACCOMPANIED BY J. PATRICK HICKEY, DEPUTY DIRECTOR, PUBLIC DEFENDER SERVICE

Mr. LEFSTEIN. I will proceed in any way you wish, Mr. Chairman.

The CHAIRMAN. You have been very patient and we want to accord you all the time that is necessary to make your presentation. It turned out that some of the subsequent witnesses found that some of their testimony was covered by others and therefore the summarized.

You may proceed in whatever way you feel you can make your presentation most effective.

Mr. LEFSTEIN. Perhaps what I can do is summarize much of what is in the statement and limit myself to reading only small portions.

The CHAIRMAN. In any event, the entire statement, without objection, will be included in the record.

[The full statement follows:]

PREPARED STATEMENT OF NORMAN LEFSTEIN, DIRECTOR, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

I have been advised that the Committee would be interested in a discussion of the role of the Public Defender Service in furnishing legal representation to indigents in the District of Columbia. In addition, I have been asked to discuss the likely results should there be a termination of Criminal Justice Act funds to compensate private attorneys in the District of Columbia's local courts.

DESCRIPTION OF PUBLIC DEFENDER SERVICE

The Public Defender Service for the District of Columbia (PDS) was created by the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358), enacted July 29, 1970. The Service is the statutory successor to the Legal Aid Agency established by Congress in 1960. The PDS is governed by a seven member uncompensated Board of Trustees, who are responsible for the agency's general policies. Members of the Board of Trustees, all of whom are members of the District of Columbia bar, are appointed for three year terms by the Chief Judges of the four District of Columbia courts and the District's Mayor-Commissioner.

Pursuant to its statute, the Service's major responsibility is to represent persons financially unable to obtain adequate legal representation in the following courts and proceedings: felony and misdemeanor cases in United States District Court and in the Superior Court of the District of Columbia; proceedings before the Superior Court's Family Division where juveniles are alleged to be delinquent or in need of supervision; proceedings before the Commission on Mental Health involving civil commitments; appellate cases; and any proceedings ancillary or

collateral to the foregoing representation. The agency's legal staff, which consists of 44 staff attorneys, is assisted in its representation by a small staff of full-time and volunteer investigators and social workers.

During the past year the vast majority of PDS representation has been furnished in criminal and juvenile cases in the Superior Court. This emphasis on Superior Court cases (as opposed in Federal offenses in the United States District Court) resulted largely from the ever present threat throughout the current fiscal year that sufficient funds to compensate private counsel might be used up. Since every case handled by the PDS means one less case charged against the Criminal Justice Act by a private attorney, we determined to concentrate our efforts in the Superior Court.

Thus, during the past fiscal year in the Superior Court PDS attorneys have represented approximately 30 percent of all persons charged with criminal and juvenile delinquency cases. In addition, PDS attorneys have represented a number of persons charged with criminal offenses in the United States District Court, and also have been assigned appeals before the United States Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals. Finally, the Service's attorneys have served as counsel for virtually all persons brought before the District of Columbia Mental Health Commission in involuntary civil commitment cases.

LIMIT ON PDS REPRESENTATION AND THE "MIXED SYSTEM"

Under the PDS statute, representation by the Service is limited to not more than 60 percent of the cases, thereby insuring participation by the private bar in at least 40 percent of the more than 20,000 indigent cases annually requiring appointment in the District's local and Federal courts. The underlying philosophy of this "mixed system" of legal representation is that there should be full-time public defenders with expertise in the criminal law handling many cases on their own, and who also serve as a vital resource for private assigned counsel.

Thus, the defense of indigents in the District of Columbia is not to become the sole domain of either public defenders or a small group of private lawyers; instead, the burden of representation is to be shared by both groups, with the Public Defender Service ultimately representing up to 60 percent of the cases. To assist the courts in administering this mixed system of legal representation, the Service is required by its statute to "establish and coordinate the operation of an effective and adequate system for appointment of private attorneys. . . ." This task is performed by the Service's Coordination of Appointments Division, which consists primarily of administrative staff operating out of offices located in the Superior Court.

In my judgment, the Public Defender Service statute wisely guarantees a mixed system of legal representation consisting of both private and public defenders. In large cities where there is no mixed system and public defenders handle all or nearly all of the cases, the result has sometimes been disastrous. Caseloads have increased faster than the size of the staff and necessary revenues, making quality legal representation impossible. The plight of public defenders is illustrated by a recent decision of a Federal District Court in New York, where, in an effort to secure for defendants effective legal assistance, the judge imposed caseload limits on attorneys employed by the Kings County Branch of the New York Legal Aid Society. *Wallace v. Kern*, Nos. 72-C-898, 73-C-55 and 73-C-113 (E.D. N.Y., decided May 13, 1973). According to the court's opinion, some New York Legal Aid Society lawyers were required to handle caseloads as high as 90 felonies at a given time, and the attorneys consequently were unable adequately to prepare cases for trial or otherwise protect the Constitutional rights of their clients.

In contrast to the situation in New York and elsewhere, I am pleased to report that the Public Defender Service in the District of Columbia does not find itself with caseloads so excessive that its attorneys are unable to represent their clients adequately. While the typical PDS staff attorney is exceedingly busy, usually handling between 30-35 active felony cases, he is able to provide effective legal assistance as required by the Sixth Amendment. The subject of caseloads of PDS attorneys has received considerable attention by the agency's Board of Trustees, and recently a memorandum was adopted wherein the Trustees instructed the Director of the agency to insure that PDS lawyers do not represent an excessive number of clients.

While interested in preserving a system involving both private attorneys and public defenders, I do not mean to leave the impression that the Public Defender

Service is opposed to growth in its staff size. Our opposition is rather to an elimination of private attorneys from the representation of indigent defendants, since we agree with the conclusion of the Committee on Poverty and the Administration of Federal Criminal Justice appointed by Attorney General Robert F. Kennedy in 1963 that "an almost indispensable condition to fundamental improvement of American criminal justice is the active and knowledgeable support of the bar as a whole." In fiscal 1972, 1973 and 1974 the Service sought larger appropriations for modest increases in its number of attorneys. To date, no increases have been forthcoming. Thus, despite significant increases in the number of serious criminal cases which have been added to the criminal justice system during the past several years, the Public Defender Service has experienced no growth in the size of its legal staff for several years. In fiscal 1971 the Service was increased from 34 to 44 attorneys and this is where we are today.

APPOINTMENT OF PRIVATE COUNSEL AND THE CRIMINAL JUSTICE ACT

The criminal and juvenile cases not represented by PDS attorneys in the Superior Court are handled by private lawyers appointed pursuant to the Criminal Justice Act. The overwhelming majority of these lawyers volunteer to take these appointments because of the availability of Criminal Justice Act compensation, although a few lawyers are drafted by the Superior Court in an effort to broaden the pool of attorneys familiar with criminal and juvenile defense representation. Data compiled by the Service indicates that in the Superior Court between July 1, 1972 and March 31, 1973, 152 volunteer lawyers in criminal and juvenile cases submitted 10 or more vouchers for payment pursuant to the Criminal Justice Act. During Congressional appropriation hearings in 1972 concern was expressed that some lawyers in the Superior Court were earning upwards of \$30,000 per annum from their Criminal Justice Act appointments. Effective July, 1972, the Superior Court's Board of Judges approved procedures to limit attorney incomes under the CJA to not more than \$18,000 annually. This system for limiting attorney incomes has proven very effective and has helped to spread the appointments to a larger number of volunteer attorneys.

It appears clear that Congress intended that funds to pay private lawyers under the Criminal Justice Act in the District of Columbia's local courts would come from the Judiciary appropriation, not the budget of the District of Columbia. While I don't wish to discuss extensively what I suspect will be well covered by other witnesses, I think it worth noting that when the Criminal Justice Act was amended in 1970 it was specifically made applicable to the District of Columbia. Thus, 18 U.S.C. § 3006A (1) states:

"The provisions of this Act * * * shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

The applicability of the Criminal Justice Act to the local courts in the District of Columbia is reviewed at length in the May 26, 1972 opinion of R. F. Keller, Deputy Comptroller General of the United States. Mr. Keller's letter concludes that "the Administrative Office of the United States courts should handle the administration of, and budgeting for, the CJA program in the District of Columbia's local courts generally in the same manner as it has in the past and to the extent possible as it administers and budgets for programs of the Federal District Courts * * *."

WHAT WILL OCCUR IF NO CJA FUNDS ARE AVAILABLE

The only conceivable alternative available in the event no funds are appropriated to pay private counsel under the CJA is for the Superior Court to draft hundreds of private lawyers to provide free representation in more than 10,000 criminal and juvenile cases annually. At a minimum, this proposal would mean that each day approximately 50 private attorneys would be ordered to the Superior Court to receive an assigned case. As the District of Columbia Bar has noted, such representation by its members presents serious ethical, Constitutional and administrative difficulties. Not all of the lawyers likely to be drafted for indigent defense representation may be competent to handle the assigned cases. The Constitutional rights of defendants may be seriously jeopardized if the lawyer's experience is insufficient for the complexity of the assigned case. Moreover, enormous logistical problems would be encountered in attempting to involve so many different lawyers in appointed cases.

While the Public Defender Service favors the involvement of the private bar in a mixed system of legal representation, we believe that a system which requires large numbers of drafted lawyers to take new assignments in the Superior Court on a daily basis without compensation would be unfair and totally unworkable. The result of such a program is sure to be chaos; the Constitutional rights of defendants will not be adequately protected and the ability of the Superior Court to dispense speedy justice will unquestionably be undermined.

Lastly, a word should be said about the necessity of funds to pay for transcripts and expert witnesses, for if no monies are available to compensate appointed counsel under the Criminal Justice Act presumably there will be no funds for these other services either. Presently the Criminal Justice Act provides that "counsel for a person who financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an *ex-parte* application [to the Court]." 18 U.S.C. § 3006(e) (1). In the event no funds are available to pay for these services, an indigent defendant will be deprived of the Equal Protection of the Laws as guaranteed by the United States Constitution. Should such a situation occur, the courts undoubtedly will be asked to fashion an appropriate remedy.

Mr. LEFSTEIN. It seemed to me in listening to the other witnesses that it might be helpful by way of background to say initially something about an explanatory nature of the Public Defender Service.

PUBLIC DEFENDER SERVICE

The Public Defender Service was created by statute in 1970 as part of the District of Columbia Court Reform Criminal Procedure Act. The agency is the successor to the Legal Aid Agency which was enacted by Congress in 1960, which was a smaller agency than what the Public Defender Service is now. The agency is governed by a 7-member uncompensated Board of Trustees, all of whom are members of the District of Columbia Bar and they are appointed for 3-year terms by the chief judges of four District of Columbia Courts and the District's Mayor.

The Service has jurisdiction to provide representation not only in the superior court in felony and juvenile delinquency cases but also in the U.S. District Court. The jurisdiction also extends to cases before the Commission on Mental Health and extends to appellate cases before the U.S. Court of Appeals for the District of Columbia Circuit as well as to the District of Columbia Court of Appeals.

During the past year the vast majority of the Service's representation has been furnished in the superior court and we have emphasized the superior court in our representation because we have been faced throughout the current fiscal year which ends on the 30th of June with an ever-present threat that sufficient funds to compensate private counsel might be used up, and we know that every case that the Service handles means one less case which is going to have to be compensated under the Criminal Justice Act.

The percent of the cases which the Service has provided representation numbers about 30 percent of the criminal and juvenile cases in the superior court. We have provided representation in relatively few, but in some cases in the U.S. District Court.

We also have been assigned appeals before the U.S. Court of Appeals for the District of Columbia Circuit and we have been required by the District of Columbia Court of Appeals to provide representation in every case where there is an appeal when the Service's lawyer

was the trial counsel in the superior court. This has required us to handle many more appellate cases than was our situation in the past.

Finally, the Public Defender Service has served as counsel for virtually all persons who are brought before the District of Columbia Mental Health Commission, which numbers more than a thousand patients a year. I might add that the Mental Health Commission proceedings are not covered by the Criminal Justice Act. There is in the Public Defender Service statute a limitation on the number of cases we can provide representation in.

That was mentioned by several other witnesses. That percentage is 60 percent. It was written into the statute in order to guarantee a so-called mixed system of legal defense which would consist of public defenders as well as private attorneys.

The underlying philosophy of such a system is that there should be a defense system which becomes the domain of a group of public defenders or solely of private lawyers, but that there are advantages in having both public defenders and private lawyers involved in the system. Indeed, there was a report, which I quote in my statement, by the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, appointed in 1963, which concluded that an almost indispensable condition to fundamental improvement of Federal criminal justice is the active and knowledgeable support of the bar as a whole.

As indicated in my statement, we believe that the private bar ought to be involved in providing indigent defense. We do not favor having the Public Defender Service provide all of the representation. We do, however, have no opposition to growth in the service, and in the past several years we have sought additional funds for our attorney staff.

FUNDING THE SERVICE

In fiscal 1972, 1973, and 1974, in order to bring us closer to providing up to 60 percent of the representation, those requests for additional funding of staff have thus far not been successful. One of the problems which has confronted public defenders when they have been required to provide all of the representation invariably seems to have been a growth in caseload which has outstripped necessary revenues. Consequently, the ability to furnish effective quality legal representation has been significantly undermined in many jurisdictions by the Public Defender's Office.

There was, as noted in the statement, a decision just very recently by a Federal district court judge in New York involving the New York Legal Aid Society where the Federal judge in an effort to secure for defendants effective legal assistance imposed caseload limits on attorneys employed by the Kings County branch of the New York Legal Aid Society. That case was decided on May 13 of this year. According to the court's opinion, some New York Legal Aid Society lawyers were required to handle caseloads of 90 felonies at a given time. In contrast to New York, I am pleased to report to this committee that the public defender services does not find itself in a situation where the caseloads are so excessive that our lawyers are unable to provide an effective legal system. All of the lawyers handling felony and misdemeanor cases have caseloads of between 30 and 35 which we believe

is an adequate number to keep them extremely busy but at the same time is not a number so great that they are unable to effectively represent their clients.

The CHAIRMAN. On that point, you indicate that the statute permits a certain amount up to 60 percent of all indigent cases.

Mr. LEFSTEIN. We have the authorization to do it.

The CHAIRMAN. But you are only handling 30 percent.

Mr. LEFSTEIN. That is correct.

I believe the legislative history which accompanied the public defender service bill indicated that there would have to be an additional appropriation in order that the service would build its staff and reach a point where eventually it could represent up to 60 percent of the cases.

Let me simply conclude, Mr. Chairman, by stating that the balance of my statement concerns the legal aspects of having these funds come through the judiciary appropriation which I think has been covered by other speakers and I won't go into it here.

PRESENT PROBLEM

I also noted in the statement what the situation would be if no funds of any kind were forthcoming either from the District of Columbia appropriation or from the judiciary appropriation and concluded that while an attempt could be made to involve the private bar in a massive undertaking of providing representation, in thousands of cases, I think it is ultimate result, certainly, over any protracted period of time would almost surely be chaos. You would have enormous problems of getting that number of lawyers down.

You have some constitutional problems, maybe ethical problems on the parts of lawyers. I should think that alternative ought to be avoided almost certainly if there is a way to do so. There is one last item mentioned in my statement which I think has not been touched on by anyone else and that concerns the problem of necessary funds for transfer of some expert witnesses, for no moneys are appropriated for the payment of counsel and if the limitation contained in the report of the House Subcommittee on the Judiciary were to prevail, presumably there would be no funds for the payment of experts and transcripts either. Payments for such services are specifically covered by the Criminal Justice Act, and if an attorney who was serving without compensation did not have access to funds to pay for transcripts and did not have access to funds to retain expert witnesses it would appear to me that a very serious constitutional equal protection problem would be created. I mention that simply because while it is much smaller in terms of money than the amount necessary to pay for counsel, there is no remedy that I know of other than money to solve the problem.

You can find lawyers possibly and draft them, and the court can seek to assign them, but I don't know what you would do with the transcript and expert witness problem if, for example, the present continuing resolution which appears as if it will be passed runs out at the end of September and there is nothing else to take its place.

I would be happy to answer any questions that the committee has.

The CHAIRMAN. Do any of your associates have any supplemental remarks at this point?

Mr. HICKEY. No, Mr. Chairman.

The CHAIRMAN. How many additional cases do you think you could handle without placing an inordinate workload on your staff?

Mr. LEFSTEIN. I think the answer to that is virtually no additional cases, Mr. Chairman. I think if we were to try to take significant numbers of new cases we would burden our lawyers to a point where they simply could not effectively represent their clients.

The CHAIRMAN. You said significant numbers. That is not quite responsive to the question. How many could you take? Could you take a couple more or five more? What is the cutoff point?

Mr. LEFSTEIN. I think you are right. I think that is a very good point that I said a significant number. I would like to amend that quite frankly to say I don't think we can take any more. The process which goes on in our office is constantly monitoring the caseloads of our staff.

If a lawyer, for example, becomes involved, as one attorney on the staff has been the last week in a first degree murder case which has been in trial for 6 days, you cannot take that lawyer and add new cases to her. We are mindful of the responsibility to provide representation in as many cases as possible, but I am satisfied, and together with other persons on the staff who have reviewed this problem in the light of need for counsel which the court faces, I simply do not think we can add to our staff without totally changing the nature of our program and the quality of representation which we afford.

The CHAIRMAN. You used the term "her." You have female attorneys apparently?

Mr. LEFSTEIN. Surely.

PRESENT STAFF

The CHAIRMAN. What is the breakdown on your staff? You have women; how many? You have blacks. You have other minorities. Could you tell us specifically?

Mr. LEFSTEIN. We have a staff of 44 authorized attorney positions because we have had several vacancies and several new people joining us on the 4th of September.

I can't tell you whether we are now 42 or 43 but we are very close to the 44 and as of September 4 we will be back at 44. Of those attorneys, we have 8 blacks on the staff, we have approximately 14 women. I might tell you, Congressmen, that the recruitment of black lawyers for our staff is an activity which has occupied a good deal of my attention and that of Mr. Hickey and others on the staff. It is an issue which has concerned the board of trustees of the agency.

The Public Defender Service in the District of Columbia received since May 1, 1972, until approximately May 1973, over 600 applications from persons to work in the agency. Of that number of more than 600, only 32 applications were received from blacks.

The CHAIRMAN. Why is that?

How do you account for that in a community that is 70 percent black, with a caseload that is 90 percent black?

Mr. LEFSTEIN. I think it is accounted for in a couple of respects. One is that obviously the number of blacks in law school, while growing, is not an astronomical number. In addition the blacks who come out of law school today frequently have very, very good opportu-

nities, perhaps better opportunities than what they believe they find in the Public Defender Service. I think that probably is the nub of the problem. We have tended to hire attorneys who have had some prior legal experience, and usually it is maybe only a year or 2 years. Sometimes they have clerked or done something else.

Another reason why we do that if you take somebody out of law school they join us prior to the time that they can take the bar examination or have a bar examination result and if we were to take people out of law school we would not be able to put them into courts immediately.

I mention that and that consideration because of the blacks who apply to the agency and who applied to us during the past year—the majority, I believe I am correct in saying three-fourths—were senior graduating law students, whereas only about eight of them were actually already admitted to the bar of the District of Columbia or elsewhere. I can also tell you that the caliber of lawyers that the agency attracts has, I think, been exceptional. I would be happy to submit additional information to the committee which discusses this very issue.

The CHAIRMAN. Why do you have less of a problem in recruiting female lawyers than you do blacks? You have twice as many, approximately.

Mr. LEFSTEIN. I should say that several of the females are also black. So they would fall into both of those categories. I can only report to you based on whom we have hired and interviewed. I think it is fair to say we have many more female applicants overall than black applicants. I don't think there is any question about that. I think that reflects that in the 1970's there are many, many more females attending law schools than was true when I graduated from law school in 1961.

The CHAIRMAN. What about other minorities, such as Spanish-speaking, et cetera?

Mr. LEFSTEIN. We have one person who speaks Spanish but he is not of Spanish descent.

The CHAIRMAN. You don't have any applicants from that part of the community?

Mr. LEFSTEIN. No. I can think of only one applicant who would have been a Mexican-American who applied to us from a law school in California.

The CHAIRMAN. What kind of an effort have you made for additional staff? How substantial were your requests? Why were they denied?

Mr. LEFSTEIN. As you know, the appropriations subcommittees of the House and Senate for the District of Columbia do not normally furnish and they have not in our case furnished an explanation as to why our increases for additional staff were denied. I honestly cannot tell you why they were denied. I would guess that it was simply a matter of having less priority among competing requests for funds than did some other requests for funds.

The CHAIRMAN. Did the questioning before these agencies seem to suggest some basis for their negative reaction to your requests?

Mr. LEFSTEIN. On the Senate side, I think there has generally been more receptivity than there has been on the House side. But this past

year most of the questioning in Mr. Natcher's subcommittee dealt with the possibility of expanding the agency and of using the agency as an alternative to Criminal Justice Act payments to lawyers.

Yet I am informed that when the Appropriations Subcommittee on the House side reported out the District of Columbia budget our request for 12 new attorneys was nevertheless denied. I cannot fully explain why the response has been as it has been over the past several years.

The CHAIRMAN. This 12 that you mentioned is what you need to fulfill your statutory authority of 60 percent of the criminal cases?

Mr. LEFSTEIN. I do not believe it would be sufficient by any means. It was requested in cooperation with the D.C. Budget Office as a number which we thought we could absorb in this coming fiscal year without putting an undue burden on the agency in terms of the absorption of this number of new lawyers.

We also thought it was realistic.

The CHAIRMAN. You would really need how many to accomplish this?

Mr. LEFSTEIN. If we were to represent 60 percent of the cases and you included not only the Superior Court but also the United States District Court, where we have jurisdiction, we believe we would probably need over a hundred lawyers.

The CHAIRMAN. A hundred additional lawyers or a hundred overall?

Mr. LEFSTEIN. I'm sorry, a total somewhere over a hundred including those we now have.

The CHAIRMAN. Mr. Hogan.

REPRESENTATION IN UNITED STATES AND DISTRICT OF COLUMBIA COURTS

Mr. HOGAN. Mr. Lefstein, do you know off hand currently what your percentage of representation in the U.S. district court and the U.S. Court of Appeals is?

Mr. LEFSTEIN. In the U.S. district court, since last July or August, we have confined ourselves largely to handling cases before the U.S. magistrates prior to the time that the defendant would be held over for the grand jury. At that level we have probably handled near a majority and maybe three-fourths of the cases. Post-indictment in the U.S. district court, since last July or August we have handled relatively few cases. I mean a number which would be like 10 or 15, simply because of a desire to focus our attention in the superior court.

I might say that was also the wish of the superior court, and in view of the funding problem which was present with the \$1 million limitation last fall, it made sense to us to concentrate our efforts in the superior court with the acquiescence of the U.S. district court.

The CHAIRMAN. I assume if there were an emergency situation which arose where it looked like the local courts were faced with an emergency situation, I assume you could stop representation totally in the Federal court, could you not, because they have authority to appoint CJA people and you could concentrate your total effort in the local courts.

Mr. LEFSTEIN. Theoretically we could.

The CHAIRMAN. This would be in an emergency situation only.

Mr. LEFSTEIN. It would be met with very substantial opposition by the U.S. district court.

The CHAIRMAN. Certainly the authority would be there and the judges on the Federal side who appoint individuals under the Criminal Justice Act need not necessarily have the effectiveness of representation on that side.

Mr. LEFSTEIN. Yes.

The CHAIRMAN. We are talking about an emergency situation such as Judge Greene was faced with in the trial court.

Mr. LEFSTEIN. To put that in perspective, I should tell you I am talking only about one attorney in the U.S. district court who practices full time over in the magistrate. We have rotated that attorney. Since last August there has normally been one attorney here.

The CHAIRMAN. Certainly you would cooperate with the local courts here to help alleviate their problem.

Mr. LEFSTEIN. Absolutely. I think we have cooperated with the court and I think Judge Greene appreciates that.

The CHAIRMAN. Before closing out, Judge Greene, you have now heard all the subsequent witnesses, if there is any statement that you would like to make in view of whatever has been said since you have been in the witness chair, we would certainly welcome your comments.

STATEMENT OF HON. HAROLD H. GREENE, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA—Resumed

Judge GREENE. Mr. Chairman, I do not want to take any more time. The committee has been most patient. Most of the witnesses have, I think, supported the position I tried to take.

PREVIOUS COUNSEL SYSTEM

I would like, if I may, to comment on one area which has not been touched upon, but which I understand has been a matter of concern perhaps to at least some members of the committee. That is the question of whether the Superior Court could not simply return to the system that existed prior to the Criminal Justice Act when there was no funding of any kind and when lawyers were not required to perform on a citywide basis for free. I think that is a matter that has caused some concern. I would like to say that while it is theoretically a solution to the problem, I think it would be a tragedy if the court system were required to go back to that kind of a system.

If I may, Mr. Chairman, just read one or two paragraphs out of the study that was made of the court of general sessions, which is the predecessor court of the superior court, when that system was in effect to bring home to the committee as to what a return to those conditions would mean to the criminal justice system of the District of Columbia.

A study was made by someone who was attached to the Office of Deputy Attorneys General in 1965 and 1966 in which he made a thorough investigation of all aspects of the processing of cases in the court of general sessions, and specifically with respect to the problem of criminal representation; here is what I found. I am not quoting from pages 92 and 93 of his report, talking about what happens when the attorney first meets his client.

Typically the initial subject of conversation concerns the financial resources of the accused. Does he have any money on his person? Does he have a bank account, employers, wife or mother? The latter is a particularly fruitful source when all else fails. A not uncommon scene is a lawyer with his arms slithered through a small hole in a glass partition commanding in a harsh tone, give me the money, \$1 or \$10, nothing is spared. Not all members of the regular defense Bar are as zealous in their search for a fee as the one described.

It appears that most attorneys who depend entirely on fees on criminal cases in General Sessions the quest for money pervades their contact with their clients. Some attorneys are said to advise the defendants that their release will depend on raising a fee. It has also been observed if the defendant has money in possession at the time of arrest the attorney will invariably learn of it. Apparently the word reaches the courtroom from the jail where the defendant is searched and at the time the attorney in the court and the bondsman will know precisely what assets the defendant has.

Some observers of the Court believe there is a marked distinction in the kind of representation the defendant receives when he is able to pay his attorney and when he is not. In the former case the attorney will make a vigorous effort to negotiate a favorable disposition and will offer the defendant's plea to guilty or attempt to maneuver the case before the most lenient judge and argue on behalf of his time of sentence. Somewhat less vigorous defense is provided in the case of the truly indigent defendant. Frequently he will be pleaded guilty at the first opportunity. Perhaps as the Criminal Justice Act is implemented, these attorneys will lose what one Judge described as their predatory nature and will provide their clients with better representation.

I think if we abolish in effect the Criminal Justice Act for this jurisdiction we will go back precisely to that system.

The CHAIRMAN. I think we are all agreed that should not happen, and if this committee can be helpful, it will not happen. Thank you very much.

The committee stands adjourned.

[Whereupon, at 12 :51 p.m., the committee adjourned.]

