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F 32 LEGAL FEES FOR INDIGENT DEFENDANTS, INCREASE UNEMPLOYMENT
COMPENSATION CONTRIBUTIONS FOR HIGH TURNOVER, REMOVE
RACE FROM MARRIAGE LICENSES, AND SCHOOL FARE SUBSIDY

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GOVERNMENT

Storage

JAN 2 1975

HEARING

THE LIBRARY
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BEFORE THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 3475 and S. 3478

PAYMENT OF COSTS OF SUPPLYING COUNSEL TO INDIGENT
DEFENDANTS APPEARING BEFORE D.C. COURTS

S. 3474

AMEND UNEMPLOYMENT COMPENSATION ACT SO THAT EM-
PLOYERS WHO HAVE A HIGH LABOR TURNOVER RATE MAY
BE TAXED AT A HIGHER RATE

S. 3476

REMOVE FROM MARRIAGE LICENSE FORM THAT RACE
BE LISTED

S. 3477

EXTEND FOR 3 YEARS THE SUBSIDY FOR SCHOOL FARES

JUNE 5, 1974

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



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LEGAL FEES FOR INDIGENT DEFENDANTS, INCREASE UNEMPLOYMENT COMPENSATION CONTRIBUTIONS FOR HIGH TURNOVER, REMOVE RACE FROM MAR- RIAGE LICENSES, AND SCHOOL FARE SUBSIDY

WEDNESDAY, JUNE 5, 1974

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice at 9:30 a.m., in room 6226, Dirksen Senate Office Building, Senator Thomas F. Eagleton [chairman] presiding.

Present: Senator Eagleton.

Staff present: Robert Harris, staff director; Andrew E. Manatos, associate staff director; and Colbert I. King, minority staff director.

The CHAIRMAN. The committee will come to order.

This morning we are holding hearings on five bills, on four subjects.

S. 3476 would remove from the marriage license form the requirement that the race of the applicants be listed.

S. 3474 would amend the Unemployment Compensation Act so that the contribution rate of employers whose labor turnover is high may be taxed at a rate to exceed 2.7 percent of their payroll.

And S. 3477 would extend for another 3 years the present system of subsidization of the bus fares of school children on their trips to and from school.

Finally, both S. 3478 and S. 3475 involve the payment of the costs of supplying counsel to indigent defendants appearing before the courts of the District of Columbia.

The two bills pending before us involve basic differences in approach as to who should be responsible for the qualifications and appointment of the counsel needed to defend indigent defendants when counsel is not supplied by the Public Defender Service.

The need for this legislation is caused by the failure of the budget of the Federal judiciary to continue funding such counsel under the Criminal Justice Act after July 1, 1974.

Authorizing legislation on this subject is needed prior to final approval of the District of Columbia budget for fiscal 1975 if there are to be funds to pay the lawyers defending such indigents.

The bill proposed by Mayor Washington, which I introduced as S. 3478, would combine the Public Defender Service and the program for paying private attorneys under a board of trustees appointed by the Mayor.

S. 3475, which I also introduced at the suggestion of the Judicial Council, on the other hand continues the practice embodied in the present Criminal Justice Act, of having court appointment of lawyers, the only change being that the Joint Committee on Judicial Administration of the District of Columbia Courts is substituted for the U.S. District Court.

Obviously, the differences in philosophy between the two bills are not minor; however, in discussing this problem, I should like all the witnesses to keep in mind that Congress need only pass a bill for 1 year and thereafter the City Council may well wish to examine the long-term ramifications of the difference in appointment of counsel contained in the two bills.

We have a prepared statement by Senator Mathias, which will be made a part of the record.

[The prepared statement of Senator Mathias follows:]

STATEMENT OF SENATOR CHARLES MCC. MATHIAS, JR., RANKING MEMBER OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA ON LEGISLATION TO AUTHORIZE AN INDIGENT DEFENDER PROGRAM FOR THE DISTRICT OF COLUMBIA

The legislation we shall consider this morning is of critical importance to those who administer the criminal justice system in the District, as well as to all citizens of the metropolitan Washington area.

Failure by the Congress to enact legislation by June 30 authorizing an indigent defender program for the Nation's Capital raises the specter of the continuation of District of Columbia court judges vainly attempting to draft lawyers into long-term service or dismissing cases against alleged criminal offenders who can't afford legal counsel. Neither alternative serves the public's interest. And both can be avoided.

Swift congressional action on the legislation before this committee can prevent these consequences too cataclysmic to contemplate from occurring. Both bills before this committee offer remedies to the problems we now face. I am confident that this committee and the Senate shall act without delay to construct a sound vehicle on which to launch an effective and successful indigent defender program for the Nation's Capital by June 30.

The failure of constructive response by the Congress over the last 2 years to a problem everyone knew was coming has already created a chaotic condition in the District of Columbia courts. We should demonstrate that we are serious about having an effective criminal justice system by quickly acting to remedy this situation.

The CHAIRMAN. At this time I place in the record copies of all the bills on which we are holding hearings this morning. Also to be included are reports from the District of Columbia government on these bills.

[The bills and reports referred to follow:]

93d CONGRESS
2d SESSION

S. 3474

IN THE SENATE OF THE UNITED STATES

MAY 9, 1974

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To amend the District of Columbia Unemployment Compensation Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 3 (c) (4) (B) of the District of Columbia Un-
4 employment Compensation Act, approved August 28, 1935,
5 as amended (D.C. Code, sec. 46-303 (c) (4) (B)) is fur-
6 ther amended by striking the following from the first sentence
7 thereof “, but in no event shall the contribution rate for any
8 employer be more than 2.7 per centum”.

II



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON
Mayor-Commissioner

June 5, 1974

Honorable Thomas F. Eagleton
Chairman
Committee on the District of Columbia
United States Senate
Washington, D.C.

Dear Mr. Chairman:

The Government of the District of Columbia has for report S. 3474, a bill "To amend the District of Columbia Unemployment Compensation Act." The bill would amend section 3(c)(4)(B) of the Unemployment Compensation Act (D.C. Code, sec. 46-303(c)(4)(B)), by striking out the phrase "but in no event shall the contribution rate for any employer be more than 2.7 per centum".

Under present law District employers are required to pay contributions at varying rates to the District Unemployment Fund into which all contributions received or collected are paid and from which all benefits and refunds are paid. The maximum contribution rate for any employer is established at 2.7 per centum. Existing law further provides that if the amount of the fund as of June 30 of any year is less than 4 per centum of the total payrolls subject to contributions for the twelve-month period ending on the preceding December 1, the contribution rate for each employer shall be increased by the percentage differential between 4 per centum of such total payrolls and the fund's percentage of such total payrolls. This provision of law is designed to authorize an increase in employer contribution rates to protect the solvency of the unemployment trust fund whenever its balance drops below the specified level.

Employer contribution rates have never been increased pursuant to this section of the Act because of favorable balances in the trust fund account in previous

years. During the past three years, however, there has been a steady drain on the amount of the fund because of increases in the number of claims, in benefits paid to claimants, and in the duration of periods of unemployment. For instance, the number of claims filed in 1972 increased 65% over the 1965-69 average and unemployment benefits paid in 1972 amounting to \$22,307,812 represent an increase of 172% over the 1965-69 average. Over the past four years the amount in the trust fund available for the payment of benefits has sustained a decline of almost \$30,000,000.

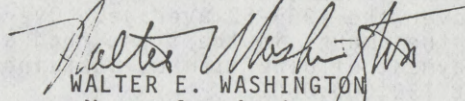
The total payrolls in the District subject to employer contributions for the year ending June 30, 1973 amounted to \$1,324,430,485. The balance in the unemployment trust fund as of December 20, 1973 was \$48,244,020, or 3.64% of the total payrolls. Based on the experiences of the past several years, it does not appear likely that the amount of the unemployment trust fund can be increased to 4 per centum of the total payroll subject to employer contributions by June 30, 1974. Accordingly, it will be necessary to increase the contribution rate of each District employer subject to the unemployment compensation tax so that the amount of the fund may be raised to 4 per centum of the annual payroll as provided by section 3(c)(4)(B) of the Act.

Approximately 6,000 of the total 16,800 covered employers in the District now pay the maximum rate of 2.7 per centum and thus their contributions may not be increased under existing law to offset the decline in the amount of the trust fund below the prescribed 4 per centum of the total payrolls. Therefore, employers whose contribution rates are below the maximum 2.7%, including many who have earned reduced rates, will have to bear the brunt of the increased contributions needed to bring the amount of the trust fund up to 4 per centum, unless in the meantime the law is amended to authorize an increase in the contribution rate of those employers who are presently rated at the maximum. As many of the latter group of employers include those who are either unrated, have deficit reserves, or have relatively more former employees drawing unemployment benefits, it appears equitable and desirable that the maximum contribution rate of 2.7% be increased or eliminated so that all employers may be charged their proportionate share

of the amount needed to stabilize the unemployment trust fund at the statutory level of 4 per centum.

For these reasons, the District Government urges favorable consideration and prompt enactment of S. 3474.

Sincerely yours,


WALTER E. WASHINGTON
Mayor-Commissioner

93^D CONGRESS
2^D SESSION

S. 3475

IN THE SENATE OF THE UNITED STATES

MAY 9, 1974

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "District of Columbia
4 Criminal Justice Act".

5 SEC. 2. Title 11 of the District of Columbia Code (1973
6 edition) is amended by adding at the end thereof the fol-
7 lowing new chapter:

1 **"Chapter 26.—REPRESENTATION OF INDIGENTS IN**
 2 **CRIMINAL CASES**

"Sec.

"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.

3 **"§ 11-2601. Plan for furnishing representation of indigents**
 4 **in criminal cases**

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

10 " (1) who is charged with a felony or misdemeanor
 11 and the United States attorney prosecutes, or with juve-
 12 nile delinquency by the commission of an act which, if
 13 committed by an adult, would be prosecuted by the
 14 United States attorney;

15 " (2) who is under arrest, when such representa-
 16 tion is required by law;

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

1 “(A) Section 23-110 of the District of Colum-
2 bia Code (remedies on motion attacking sentence),

3 “(B) Chapter 7 of title 23 of the District of
4 Columbia Code (extradition and fugitives from
5 justice),

6 “(C) Chapter 19 of title 16 of the District of
7 Columbia Code (habeas corpus),

8 “(D) Section 928 of the Act of March 8, 1901
9 (D.C. Code, sec. 24-302) (commitment of men-
10 tally ill person while serving sentence); or

11 “(4) for whom the sixth amendment to the Consti-
12 tution requires the appointment of counsel or for whom,
13 in a case in which he faces loss of liberty, any local law
14 requires the appointment of counsel. Representation
15 under the plan shall include counsel and investigative,
16 expert, and other services necessary for an adequate
17 defense. The plan shall include a provision for private
18 attorneys, attorneys furnished by the Public Defender
19 Service, and attorneys and qualified students participat-
20 ing in clinical programs.

21 **“§ 11-2602. Appointment of counsel**

22 “Counsel furnishing representation under the plan shall
23 be selected from panels of attorneys designated or approved
24 by the courts. In every criminal case in which a person may
25 be appointed counsel under this chapter the court shall ad-

1 vise the defendant that he is entitled to be represented by
2 counsel and that counsel will be appointed for him if he is
3 financially unable to obtain counsel. Unless the defendant
4 waives representation by counsel, the court, if satisfied after
5 appropriate inquiry that the defendant is financially unable
6 to obtain counsel, shall appoint counsel to represent him.
7 Such appointment may be made retroactive to include any
8 representation furnished pursuant to the plan prior to ap-
9 pointment. The court shall appoint separate counsel for de-
10 fendants having interests that cannot properly be represented
11 by the same counsel, or when other good cause is shown.

12 **"§ 11-2603. Duration and substitution of appointments**

13 "A person for whom counsel is appointed shall be rep-
14 resented at every stage of the proceedings from his initial
15 appearance before the court through appeals, including ancil-
16 lary matters appropriate to the proceedings. If at any time
17 after the appointment of counsel the court finds that the per-
18 son is financially able to obtain counsel or to make partial
19 payment for the representation, it may terminate the ap-
20 pointment of counsel or authorize payment as provided in
21 section 2606 of this chapter, as the interests of justice may
22 dictate. If at any stage of the proceedings, including an ap-
23 peal, the court finds that the person is financially unable to
24 pay counsel whom he had retained, it may appoint counsel
25 as provided in section 2602, and authorize payment as

1 provided in section 2604, as the interests of justice may
2 dictate. The court may, in the interest of justice, substitute
3 one appointed counsel for another at any stage of the
4 proceedings.

5 **“§ 11-2604. Payment for representation**

6 “(1) **HOURLY RATE.**—Any attorney appointed pur-
7 suant to this chapter shall, at the conclusion of the repre-
8 sentation or any segment thereof, be compensated at a rate
9 fixed by the Joint Committee on Judicial Administration,
10 not to exceed the hourly scale established by the provisions
11 of section 3006A (d) (1) of title 18, United States Code.
12 Such attorney shall be reimbursed for expenses reasonably
13 incurred.

14 “(2) **MAXIMUM AMOUNTS.**—For representation of a
15 defendant before the Superior Court or before the District
16 of Columbia Court of Appeals, as the case may be, the com-
17 pensation to be paid to an attorney shall not exceed the
18 maximum amounts established by section 3006A (d) (2)
19 of title 18, United States Code, in the corresponding kind
20 of case or proceeding.

21 “(3) **WAIVING MAXIMUM AMOUNTS.**—Payment in
22 excess of any maximum amount provided in subsection (2)
23 of this section may be made for extended or complex rep-
24 resentation whenever the Superior Court certifies that the
25 amount of the excess payment is necessary to provide fair

1 compensation and the payment is approved by the chief
2 judge of the District of Columbia Court of Appeals.

3 “(4) FILING CLAIMS.—A separate claim for compen-
4 sation and reimbursement shall be made to the Superior Court
5 for representation before that court, and to the District of
6 Columbia Court of Appeals for representation before that
7 court. Each claim shall be supported by a sworn written state-
8 ment specifying the time expended, services rendered, and ex-
9 penses incurred while the case was pending before the court,
10 and the compensation and reimbursement applied for or re-
11 ceived in the same case from any other source. The court shall
12 fix the compensation and reimbursement to be paid to the
13 attorney. In cases where representation is furnished other
14 than before the Superior Court or the District of Columbia
15 Court of Appeals, claims shall be submitted to the Superior
16 Court which shall fix the compensation and reimbursement to
17 be paid.

18 “(5) NEW TRIALS.—For purposes of compensation and
19 other payments authorized by this section, an order by a
20 court granting a new trial shall be deemed to initiate a new
21 case.

22 “(6) PROCEEDINGS BEFORE APPELLATE COURT.—If a
23 person for whom counsel is appointed under this section
24 appeals to the District of Columbia Court of Appeals, he may
25 do so without prepayment of fees and costs or security there-

1 for and without filing the affidavit required by section 1915
2 (a) of title 28 of the United States Code.

3 **“§ 11-2605. Services other than counsel**

4 “(1) UPON REQUEST.—Counsel for a person who is
5 financially unable to obtain investigative, expert, or other
6 services necessary for an adequate defense may request them
7 in an ex parte application. Upon finding, after appropriate
8 inquiry in an ex parte proceeding, that the services are neces-
9 sary and that the person is financially unable to obtain them,
10 the court shall authorize counsel to obtain the services.

11 “(2) WITHOUT PRIOR REQUEST.—Counsel appointed
12 under this section may obtain, subject to later review, inves-
13 tigative, expert, or other services, excluding the preparation
14 of reporter’s transcript, without prior authorization if neces-
15 sary for an adequate defense. The total cost of services
16 obtained without prior authorization may not exceed \$150
17 or the rate provided by section 3006A (e) (2) of title 18,
18 United States Code, whichever is higher, and expenses rea-
19 sonably incurred.

20 “(3) MAXIMUM AMOUNTS.—Compensation to be paid
21 to a person for services rendered by him to a person under
22 this subsection shall not exceed \$300, or the rate provided
23 by section 3006A (e) (3) of title 18, United States Code,
24 whichever is higher, exclusive of reimbursement for expenses
25 reasonably incurred, unless payment in excess of that limit

1 is certified by the court, as necessary to provide fair com-
2 pensation for services of an unusual character or duration,
3 and the amount of the excess payment is approved by the
4 chief judge of the District of Columbia Court of Appeals.

5 **“§ 11-2606. Receipt of other payments**

6 “Whenever the court finds that funds are available for
7 payment from or on behalf of a person furnished representa-
8 tion, it may authorize or direct that such funds be paid to
9 the appointed attorney, or to any person or organization
10 authorized pursuant to section 2605 of this title to render
11 investigative, expert, or other services, or to the court for
12 deposit in the Treasury as a reimbursement to the appro-
13 priation, current at the time of payment, to carry out the
14 provisions of this section. Except as so authorized or directed,
15 no such person or organization may request or accept any
16 payment or promise of payment for representing a defendant.

17 **“§ 11-2607. Preparation of Budget**

18 “(a) The joint committee shall annually prepare and
19 submit to the Commissioner of the District of Columbia in
20 conformity with section 11-1743 of this title, or to his
21 successor in accordance with section 445 of the District of
22 Columbia Self-Government and Governmental Reorganiza-
23 tion Act, its estimate of the amount needed for furnishing
24 representation by private attorneys to persons entitled to rep-
25 resentation in accordance with section 2601 (b) of this title.

1 “(b) In making its computation of such estimate, the
2 joint committee shall—

3 “(1) issue and follow definitional standards with
4 respect to financial inability to obtain adequate legal
5 representation;

6 “(2) estimate the respective percentage of indigent
7 defendant cases which can be effectively handled by the
8 Public Defender Service, private attorneys, and quali-
9 fied law students participating in clinical programs
10 under attorney supervision;

11 “(3) take into account the number of cases in the
12 United States courts for which payment was made
13 under the last appropriation for the administration of
14 the Criminal Justice Act in such courts and the propor-
15 tion which such number bears to the estimated number
16 of such cases in the District of Columbia courts for the
17 particular fiscal year;

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

22 **“§ 11-2608. Authorization of appropriations**

23 “There are hereby authorized to be appropriated to the
24 District of Columbia such funds as may be necessary for the
25 administration of this Act. Unless otherwise specified in

1 appropriations Acts, such appropriations shall remain avail-
2 able until expended. Disbursements from such appropriations
3 to persons entitled to payments, pursuant to orders of the
4 courts, under this Act, shall be made by the executive officer
5 of said courts, subject to the supervision of the fiscal officer
6 of the District of Columbia.”.

7 SEC. 3. Subsection (1) of section 3006A of title 18,
8 United States Code, is repealed.

9 SEC. 4. This Act shall take effect upon the expiration of
10 the thirty-day period following the date of its enactment.

93D CONGRESS
2D SESSION

S. 3476

IN THE SENATE OF THE UNITED STATES

MAY 9, 1974

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To amend section 1291 of the Act of March 3, 1901, relating to marriage licenses in the District of Columbia.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1291 of the Act of March 3, 1901, as amended
4 (D.C. Code, sec. 30-110), is amended by deleting "names,
5 ages, and color" and inserting in lieu thereof "names and
6 ages".

II



THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
Mayor-Commissioner

WASHINGTON, D.C. 20004

May 30, 1974

Honorable Thomas F. Eagleton
Chairman
Committee on the District of Columbia
United States Senate
Washington, D.C.

Dear Mr. Chairman:

The Government of the District of Columbia has for report S. 3476, a bill "To amend section 1291 of the Act of March 3, 1901, relating to marriage licenses in the District of Columbia." The bill would eliminate the requirement of existing law (D.C. Code, sec. 30-110) that requires the clerk of the Superior Court of the District of Columbia, before he issues a license to solemnize a marriage, to ascertain under oath the color of the parties desiring to marry.

The District Government believes that this provision of law is outmoded and archaic and that the placement of racial designations on the marriage application does not appear to serve any useful purpose. While not clearly unconstitutional, the present statutory requirement is repugnant and is, in our view, unnecessary to the performance of the ministerial function of issuing a marriage license.

For these reasons, the District Government supports the enactment of S. 3476.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Walter Washington", written over the typed name.

WALTER E. WASHINGTON
Mayor-CommissionerWAR:vlw
CCL 183/93
5/29/74

93^d CONGRESS
2^d SESSION

S. 3477

IN THE SENATE OF THE UNITED STATES

MAY 9, 1974

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To amend the Act of August 9, 1955, relating to school fare subsidy for transportation of schoolchildren within the District of Columbia.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2 of the Act entitled "An Act to provide for the
4 regulation of fares for the transportation of schoolchildren
5 in the District of Columbia", approved August 9, 1955
6 (D.C. Code, sec. 44-214a), as amended by an Act approved
7 October 18, 1968, and by an Act approved August 11, 1971,
8 is further amended by deleting "1974" and substituting
9 "1977".

II



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON
Mayor-Commissioner

May 29, 1974

Honorable Thomas F. Eagleton
Chairman
Committee on the District of Columbia
United States Senate
Washington, D. C.

Dear Mr. Chairman:

The Government of the District of Columbia has for report S. 3477, a bill "To amend the Act of August 9, 1955, relating to school fare subsidy for transportation of schoolchildren within the District of Columbia."

S. 3477 would extend for an additional three-year period, to August 1977, the subsidy to common carriers providing reduced fares for the transportation of schoolchildren to and from public, parochial, or like elementary and secondary schools in the District of Columbia. The subsidy authorization expires August 1974.

Under existing law (Act of August 9, 1955, as amended; D.C. Code sec. 44-214(a)), the Washington Metropolitan Area Transit Commission, which succeeded to the jurisdiction of the Public Service Commission over mass transit carriers, is responsible for fixing the rate of fare for transportation by bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half of the regular cash fare, and to establish rules and regulations governing the use thereof. The reduced fare for schoolchildren is presently established at ten cents for one-way transportation in lieu of the regular adult fare of forty cents. The District Government is required to fund the difference between the total of all reduced bus fares paid to the carrier for schoolchildren and the amount which would have been paid

to the carrier at the lowest regular adult fare.

Extension of the subsidy for transportation of schoolchildren is a recognition of the fact that such transportation is a public responsibility and the cost should be shared by all taxpayers, not just those who ride the buses. Consequently, the District Government supports the objective of S. 3477.

We would, however, suggest that the Committee give consideration to certain additional amendments to existing law which are contained in a substitute draft bill attached to this report and explained in the following paragraphs.

The draft bill would transfer the authority to set the reduced fare rate for schoolchildren from the Washington Metropolitan Area Transit Commission to the District of Columbia Council and would authorize the Council to establish rules and regulations governing the administration of the school fare subsidy program. This change is consistent with the District of Columbia Self-Government and Governmental Reorganization Act and with the fact that the District Government pays for the costs of the subsidy out of its revenues. It is especially appropriate at this time because the Transit Commission is no longer actively involved in the mass transit rate-making process. The bill also does not provide a maximum or minimum limit on the school fare rate, thus enabling the Council to effectively control the amount of the subsidy.

Additionally, the proposed draft bill would eliminate the role of the Transit Commission as certifying agent with respect to the amount of the monthly subsidy payment. With the acquisition of the former privately-owned D.C. Transit and WMA Transit Company bus lines by the Washington Metropolitan Area Transit Authority, a government agency, and the subsequent reduction in the Transit Commission's staff, it does not now appear necessary that the Transit Commission continue to

exercise this function. These proposals have the support of the Transit Commission.

The draft bill also would delete the present age limitation of eighteen upon the use of school fare tickets and allow all students to utilize the reduced fare plan for so long as they remain in attendance at an elementary or secondary school. There appears to be no compelling reason why students, regardless of age, who are regularly attending elementary and secondary schools should not be permitted to travel at a reduced fare, at least until they cease their enrollment or graduate from the twelfth grade. This proposed amendment may further serve as an inducement to encourage students to remain in school until such time as they complete all academic requirements. It is intended that this proposal would be limited to schoolchildren pursuing a regular elementary and secondary school program and would not be available to adults or students enrolled in colleges or proprietary schools.

While S. 3477 authorizes only a three-year extension of the subsidy, the draft bill contains no limitation as to time. With transfer to the Council of the authority to set the reduced fare rate and to establish rules and regulations for administration of the subsidy program, there appears to be no further reason to limit the authorization to a three-year period.

The draft bill further contains amendments which would permit subway as well as bus transportation; allow the orderly conclusion of the functions and authorities of the Transit Commission and Transit Authority under present law; eliminate certain obsolete legal references in the present statute; and provides an effective date of September 1, 1974 to enable the rate to be timely set by the Council.

The actual cost to the District of Columbia Government for schoolchildren's bus fares in fiscal year 1973 was \$3,391,000, and for fiscal year 1974, \$4,112,300 has been budgeted for this purpose. With regard to the anticipated costs involved in a three-year extension of the existing law, the District Government is requesting \$3,812,300 in its fiscal year 1975 budget estimates and,

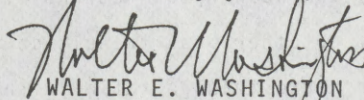
assuming a constant fare structure, it is expected that the cost to the District for fiscal years 1976 and 1977 will also be \$3,812,300 each year.

It is anticipated that the amendments contained in the proposed draft bill may increase the foregoing cost estimates. Because of the unavailability of data indicating the number of students of the age of eighteen and over who are in regular attendance at public and private schools, we are unable to provide an estimate of additional costs that may result from elimination of the age limitation. In addition, any change in the reduced fare for schoolchildren or in the adult fare will affect the cost of the subsidy program.

We believe the amendments contained in the draft bill will materially improve the administration of the school fare subsidy program and urge their favorable consideration by the Congress. As the current statutory authorization for the subsidy will expire in August 1974, we urge early enactment of legislation to allow continuation of this important program.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,


WALTER E. WASHINGTON
Mayor-Commissioner

Attachment

RND:baa
5-24-74
CCL 171/93

A BILL

To amend the Act of August 9, 1955 relating to the school fare subsidy for transportation of schoolchildren in the District of Columbia.

1 BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Act entitled "An Act to provide for the regulation of fares for the transportation of schoolchildren in the District of Columbia," approved August 9, 1955 (D.C. Code, sec. 44-214a), as amended, is further amended to read as follows:

2 "Sec. 1. The District of Columbia Council is hereby authorized to fix the rate of fare for transportation by mass transit modes of schoolchildren going to and from elementary and secondary public, parochial, or like schools in the District of Columbia, at less than the regular adult fare established from time to time by the Washington Metropolitan Area Transit Authority or other mass transit common carrier for regular route transportation within the District of Columbia. The Council is also authorized to establish rules and regulations governing the administration of the school fare subsidy program.

3 "Sec. 2. The District of Columbia, with respect to each calendar month commencing with September, 1974, shall pay to the Washington Metropolitan Area Transit

1 Authority or other mass transit common carrier an
2 amount which is the difference between the total of
3 all reduced fares paid during such calendar month
4 to such carrier by schoolchildren in accordance with
5 this Act and the amount which would have been paid
6 during that month to such carrier if such fares had
7 been paid at the regular adult cash fare established
8 for equivalent regular route transportation in that
9 month.

10 "Sec. 3. Appropriations to carry out the provi-
11 sions of this Act, including costs of administration,
12 are hereby authorized.

13 "Sec. 4. This Act shall take effect on September 1,
14 1974, except that schoolchildren's fares for a period
15 commencing September 1, 1974, or later, may be fixed
16 by the Council prior to that date: Provided, That
17 authorities contained in existing laws, and the rules,
18 regulations, and orders promulgated thereunder, relat-
19 ing to or affecting the transportation of schoolchildren
20 and the fares therefor, shall continue for a period,
21 not beyond June 30, 1975, sufficient to conclude ad-
22 ministration of such provisions.

23 "Sec. 5. On the effective date of this Act, the
24 Act approved February 25, 1931 (46 Stat. 1419) is re-
25 pealed."

93^d CONGRESS
2^d SESSION

S. 3478

IN THE SENATE OF THE UNITED STATES

MAY 9, 1974

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "District of Columbia De-
4 fender Services Act".

5 ESTABLISHMENT OF SERVICE

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

II

BOARD OF TRUSTEES

1
2 SEC. 3. (a) The District of Columbia Defender Service
3 (hereinafter referred to as the "Service") shall be governed
4 by a Board of Trustees (hereafter referred to as the
5 "Board") which shall consist of seven members appointed
6 by the Commissioner of the District of Columbia, with the
7 advice and consent of the District of Columbia Council. The
8 Board shall establish a general plan and set the general policy
9 for the Service but shall not direct the conduct of particular
10 cases.

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

ESTABLISHMENT OF THE PLAN

22
23 SEC. 4. (a) After consultation with the Joint Com-
24 mittee on Judicial Administration in the District of Colum-
25 bia and the bar of the District of Columbia, the Board

1 shall establish and place in operation in the District of
2 Columbia a plan for furnishing representation for any per-
3 son who is financially unable to obtain adequate represen-
4 tation and—

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

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

11 (3) who is subject to proceedings pursuant to
12 chapter 5, title 21, of District of Columbia Code (hos-
13 pitalization of the mentally ill); or

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

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

19 (A) District of Columbia, section 23-110
20 (remedies on motion attacking sentence),

21 (B) District of Columbia Code, title 23, chap-
22 ter 7 (extradition and fugitive from justice),

23 (C) District of Columbia Code, title 16, chap-
24 ter 19 (habeas corpus), or

1 (D) section 928 of the Act of March 8, 1901
2 (D.C. Code, sec. 24-302) (commitment of men-
3 tally ill person while serving sentence).

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

13 (c) Representation under the plan shall include counsel
14 and investigative, expert, and other services necessary for an
15 adequate defense. The plan shall include a provision for pri-
16 vate attorneys, attorneys furnished by the Service, and attor-
17 neys and qualified students participating in clinical programs.
18 Not more than 60 per centum of the persons who are annu-
19 ally determined to be financially unable to obtain adequate
20 representation and who are persons described in the above
21 categories may be represented by the Service, but the Service
22 may furnish technical and other assistance to private attor-
23 neys appointed to represent persons described in the above
24 categories.

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

6 (e) Upon approved of the Board, the Service may per-
7 form such other functions as are necessary and appropriate
8 to the duties described in this section.

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

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

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

17 (3) establishment of eligibility standards and proce-
18 dures for selecting attorney panels provided for in sec-
19 tion 5 hereof; and

20 (4) authorization of attorneys to engage in pro-
21 viding legal representation in cases where post conviction
22 relief is sought.

23 (g) The determination whether a person is financially
24 unable to obtain adequate representation shall be based on

1 information provided by the person to be represented and
2 such other persons or agencies as the Service shall require.
3 Whoever in providing this information knowingly falsifies,
4 conceals, or covers up by any trick, scheme, or device a
5 material fact, or makes any false, fictitious, or fraudulent
6 statement or representation, or makes or uses any false
7 writing or document knowing the same to contain any false,
8 fictitious, or fraudulent statement or entry shall be fined
9 not more than \$1,000 or imprisoned not more than one year,
10 or both.

11 APPOINTMENT OF COUNSEL

12 SEC. 5. Counsel furnishing representation under the
13 plan shall in every case be selected from panels of attorneys
14 designated and approved by the Service in accordance with
15 procedures established by the Board. In all cases where a
16 person faces a loss of liberty and the Constitution or any
17 other law requires the appointment of counsel, the court shall
18 advise the defendant or respondent that he has the right to
19 be represented by counsel and that counsel will be appointed
20 to represent him if he is financially unable to obtain counsel.
21 Unless the defendant or respondent waives representation by
22 counsel, the court, if satisfied after appropriate inquiry that
23 the defendant or respondent is financially unable to obtain
24 counsel, shall appoint counsel to represent him. Such appoint-
25 ment may be made retroactive to include any representation

1 furnished pursuant to the plan prior to appointment. The
2 court shall appoint separate counsel for defendants or ré-
3 spondents having interests that cannot properly be repre-
4 sented by the same counsel, or when other good cause is
5 shown. In all cases covered by this Act where the appoint-
6 ment of counsel is discretionary with the court, the court
7 shall advise the defendant or respondent that counsel may be
8 appointed to represent him if he is financially unable to
9 obtain counsel, and the court shall in all such cases advise the
10 defendant or respondent of the manner and procedures by
11 which the appointed counsel may be obtained.

12 DURATION AND SUBSTITUTION OF APPOINTMENTS

13 SEC. 6. A person for whom counsel is appointed shall
14 be represented at every stage of the proceedings from his
15 initial appearance before the court through appeals, includ-
16 ing ancillary matters appropriate to the proceedings. If at
17 any time after the appointment of counsel the court finds
18 that the person is financially able to obtain counsel or to
19 make partial payment for the representation, it may termi-
20 nate the appointment of counsel or authorize payment as
21 provided in section 9 of this Act, as the interests of justice
22 may dictate. If at any stage of the proceedings, including
23 an appeal, the court finds that the person is financially unable
24 to pay counsel whom he had retained, it may appoint counsel
25 as provided in section 5, and authorize payment as provided

1 in section 7 as the interests of justice may dictate. The court
2 may, in the interest of justice, substitute one appointed coun-
3 sel for another at any stage of the proceedings.

4 PAYMENT FOR REPRESENTATION

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

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

20 (c) WAIVING MAXIMUM AMOUNTS.—Payment in
21 excess of any maximum amount provided in subsection (b)
22 of this section may be made for extended or complex rep-
23 resentation whenever the judge in the Superior Court or
24 before the presiding judge of the District of Columbia Court
25 of Appeals before whom the representation was rendered,

1 certifies that the amount of the excess payment is neces-
2 sary to provide fair compensation and the payment is
3 approved by the Service.

4 SERVICES OTHER THAN COUNSEL

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

13 (b) WITHOUT PRIOR REQUEST.—Counsel appointed
14 under this section may obtain, subject to later review, inves-
15 tigative, expert, or other services, excluding the preparation
16 of reporter's transcript, without prior authorization if neces-
17 sary for an adequate defense. The total cost of services
18 obtained without prior authorization may not exceed \$150
19 or the amount provided by section 3006A (e) (2) of title
20 18, United States Code, whichever is higher, and expenses
21 reasonably incurred.

22 (c) MAXIMUM AMOUNTS.—Compensation to be paid
23 to a person for services rendered by him to a person under
24 this subsection shall not exceed \$300, or the amount pro-
25 vided by section 3006A (e) (3) of title 18, United States

1 Code, whichever is higher, exclusive of reimbursement for
2 expenses reasonably incurred, unless payment in excess of
3 that limit is certified by the court as necessary to provide
4 fair compensation for services of an unusual character or
5 duration, and the amount of the excess payment is approved
6 by the Service.

7 (d) FILING CLAIMS.—A separate claim for compen-
8 sation and reimbursement shall be made to the Service for
9 representation before the Superior Court and the District of
10 Columbia Court of Appeals. Each claim shall be supported
11 by a sworn written statement certifying the time expended,
12 services rendered, and expenses incurred while the case was
13 pending before the court, and compensation and reimburse-
14 ment applied for or received in the same case from any other
15 source. The Service shall fix the compensation and reim-
16 bursement to be paid to the attorney.

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

21 (f) PROCEEDINGS BEFORE APPELLATE COURTS.—If a
22 person for whom counsel is appointed under this section ap-
23 peals to the District of Columbia Court of Appeals, he may
24 do so without prepayment of fees and costs or security

1 therefor and without filing the affidavit required by section
2 1915 (a) of title 28 of the United States Code.

3 RECEIPT OF OTHER PAYMENTS

4 SEC. 9. Whenever the Service finds that funds are avail-
5 able for payment from or on behalf of a person furnished
6 representation, it may request that the court direct that such
7 funds be paid to the appointed attorney, or to any person or
8 organization authorized pursuant to section 8 to render in-
9 vestigative, expert, or other services, or to the Service for
10 deposit in the Treasury to the credit of the District of Co-
11 lumbia as a reimbursement to the appropriation current at
12 the time of payment, to carry out the provisions of this Act.
13 Except as so authorized or directed, no such person or or-
14 ganization may request or accept any payment or promise of
15 payment for representing any defendant or respondent.

16 DIRECTOR AND DEPUTY DIRECTOR

17 SEC. 10. The Board shall appoint a Director of the Serv-
18 ice, who shall serve at the pleasure of the Board. The Direc-
19 tor shall be responsible for the supervision of the work of the
20 Service and shall perform such other duties as the Board may
21 prescribe. The Deputy Director, who shall be appointed by
22 the Director, shall assist the Director and shall perform such
23 duties as he may prescribe. The Director and Deputy Di-
24 rector shall be members of the bar of the District of Columbia.

1 The Board shall fix the compensation to be paid to the Di-
2 rector and the Deputy Director without regard to chapter 51
3 and subchapter III of chapter 53 of title 5 of the United
4 States Code, but compensation for the Director shall not ex-
5 ceed the rate prescribed for GS-18 of the General Schedule
6 and compensation for the Deputy Director shall not exceed
7 the maximum rate prescribed for GS-17 of the General
8 Schedule.

9 EMPLOYMENT OF ATTORNEYS AND OTHER PERSONNEL

10 SEC. 11. (a) The Director shall employ a staff of at-
11 torneys and clerical and other personnel necessary to pro-
12 vide adequate and effective defense services. The Director
13 shall make assignments of the personnel of the Service. The
14 compensation of all employees of the Service, other than
15 the Director and the Deputy Director, shall be fixed by
16 the Director in accordance with budgetary and personnel
17 constraints and guidelines established by the Board, without
18 regard to chapter 51 and subchapter III of chapter 53 of
19 title 5 of the United States Code, but shall be comparable
20 to the compensation which may be paid to persons of
21 similar qualifications and experience in the Office of the
22 United States Attorney for the District of Columbia. All
23 attorneys employed by the Service to represent persons
24 shall be members of the bar of the District of Columbia.

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

3 REPORTS BY BOARD OF TRUSTEES

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

7 APPROPRIATIONS

8 SEC. 13. (a) For the purposes of carrying out the provi-
9 sions of this Act, there are authorized to be appropriated for
10 each fiscal year, out of any moneys in the Treasury to the
11 credit of the District of Columbia, such sums as may be neces-
12 sary to implement the purposes of this Act. When so specified
13 in appropriation Acts, such appropriations shall remain avail-
14 able until expended. The budget estimates made pursuant to
15 this Act shall be prepared by the Board and submitted to the
16 Commissioner of the District of Columbia.

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

20 MEMBERS OF THE BOARD AND THE SERVICE EXEMPT FROM

21 PERSONAL LIABILITY

22 SEC. 14. The members of the Board and employees of
23 the Service shall not be personally liable in damages for any
24 official action performed in good faith, nor shall any members
25 of the Board or employees of the Service be liable for any

1 costs that may be taxed against them on account of such
2 official action by them in their official capacities; but such
3 costs shall be charged to the District of Columbia and paid
4 as other costs are paid in suits brought against the munici-
5 pality; nor shall the said members of the Board or employees
6 of the Service be required to give any supersedeas bond or
7 security for costs or damages on any appeal whatever.

8 CRIMINAL PENALTY

9 SEC. 15. Any person compensated, or entitled to be
10 compensated, by the Service for any services rendered under
11 this Act who shall seek, ask, demand, receive, or offer to
12 receive, any money, goods, or services in return therefor
13 from a defendant or respondent shall be fined not more than
14 \$1,000 or imprisoned not more than one year, or both.

15 AMENDMENT AND REPEAL

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

18 “(1) APPLICABILITY IN THE DISTRICT OF COLUM-
19 BIA.—Except for subsection (h) of section 1, the provisions
20 of this Act shall apply in the United States District Court for
21 the District of Columbia and the United States Court of
22 Appeals for the District of Columbia Circuit. The provisions
23 of this Act shall not apply to the Superior Court of the Dis-
24 trict of Columbia and the District of Columbia Court of
25 Appeals.”.

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

7 **EFFECTIVE DATE**

8 SEC. 17. This Act shall take effect upon enactment, ex-
9 cept that the plan provided for in section 4 of this Act shall
10 take effect one hundred and twenty days after the date of
11 enactment. Until such plan is placed into operation by the
12 Board, payments to provide attorneys and the legal repre-
13 sentation of persons in the District of Columbia shall continue
14 in accordance with the authorities contained in laws, policies,
15 procedures, and practices in effect on the effective date of this
16 Act and in such manner as the Commissioner shall provide.

The CHAIRMAN. Mr. Murphy, the District of Columbia Corporation Counsel is not with us as yet, but we will proceed in any event, and move on with Judge Harold H. Greene, chief judge of the District of Columbia Superior Court, and accompanying is the Honorable Frank Q. Nebeker, associate judge of the District of Columbia Court of Appeals.

Judges Greene and Nebeker, we welcome both of you, and you may proceed.

STATEMENTS OF HON. HAROLD H. GREENE, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA; AND HON. FRANK Q. NEBEKER, ASSOCIATE JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

Judge GREENE. Mr. Chairman, I have a prepared statement, which I would like to submit for the record. It is not terribly long.

The CHAIRMAN. It will be made a part of the record.

[Judge Greene's prepared statement follows:]

TESTIMONY OF CHIEF JUDGE HAROLD H. GREENE CONCERNING REPRESENTATION
FOR INDIGENT DEFENDANTS
SENATE DISTRICT COMMITTEE, JUNE 5, 1974

Mr. Chairman, I am happy to be here today to testify in support of S. 3475, a bill to authorize a local Criminal Justice Act for the District of Columbia Court System. As you know, over the past two years the District of Columbia court system has been in the center of a controversy concerning the proper source of funding for payment of counsel appointed to represent indigent individuals charged with crimes in the District. Since 1966 appointed counsel in the local courts had been paid pursuant to the general federal Criminal Justice Act which is funded through the budget of the Federal Judiciary. After court reorganization, however, the Judicial Conference of the United States concluded that the cost of counsel for indigent defendants in the local system should be borne by the District government.

Earlier this year, the controversy over funding resulted in the total exhaustion of monies for the payment of appointed counsel, with the result that those attorneys who normally accept appointments to represent indigent defendants refused to continue to do so. The Superior Court was then forced to require the general membership of the Bar to undertake the representation of indigent defendants in order that the system of justice in this city might continue to function. This effort did not work very well, and, upon approval by a Conference

Committee of a \$2 million supplemental appropriation for fiscal years 1973 and 1974, we were able to discontinue the lawyer "draft."

One of the primary reasons why the District of Columbia has heretofore been unable to assume financial responsibility for this program has been the lack of substantive authority. As you are perhaps aware, Mr. Chairman, the District of Columbia budget request for fiscal year 1975 contains an item of \$2.3 million to compensate attorneys appointed to represent indigent defendants. When that request was sent forward, it was hoped and contemplated that the necessary authorizing legislation would be enacted prior to action on the city budget request for fiscal year 1975, and the language contained in S. 3475 was developed for this purpose.

S. 3475, which was submitted by the Joint Committee on Judicial Administration, would authorize appropriations to the District of Columbia for payment of counsel appointed for indigent defendants pursuant to a plan for furnishing representation to such individuals. The Act would further provide for the development of a Criminal Justice Act budget based on the same average per case cost as the Federal Criminal Justice Act, and related to the funds appropriated for criminal prosecutions. It would also provide for investigative and other services, and for hourly and maximum payments to attorneys and others comparable to the payments allowable under the Federal Criminal Justice Act.

Another bill on this topic, S. 3478, has been developed by the Executive Branch of the District of Columbia Government and introduced for congressional consideration. This bill, in addition to providing for the appointment and compensation of private attorneys to represent indigent defendants, would also make substantial changes in the operation of the Public Defender Service of the District of Columbia. In general, the bill would establish a board for a new District of Columbia Defender Service, such board to be appointed by the Mayor, and to have total responsibility for furnishing representation to indigent defendants. The proposed bill would establish a complex system of defender services in the District of Columbia that would be substantially different than the system which is presently in effect.

While I am certain that there are many ways in which the present system of providing counsel for indigent defendants could be improved, the precise changes which should be made are a subject upon which many people have very strong opinions, and about which there is substantial disagreement. It appears to me that before the present system is totally changed the matter should be considered in an unhurried and in depth manner by the Congress, the city government, the court system, representatives of the Bar, and others with an interest in this subject. I do not believe that a total revision of the defender system in the

- 4 -

District of Columbia should be undertaken on a rush basis if only because the controversial nature of the more complex bill might jeopardize the speedy enactment of local Criminal Justice Act legislation.

I submit, Mr. Chairman, that there is a pressing need for the enactment of authorization for appropriations for a local Criminal Justice Act in the District of Columbia, in order to prevent the kind of disruption of the criminal justice system which has already occurred because of uncertainties as to funding for the appointed counsel program, and which would occur to a much greater extent if the city's commitment to assume responsibility for this program beginning in fiscal year 1975 were not honored. While I think that authorizing legislation must therefore be enacted on an expedited basis, I believe that it would be a mistake to attempt to undertake a total revision of the system of providing defender services on the same basis. Such a revision requires considerable study and extensive deliberations if the result is to be an improvement over the present system rather than simply change for the sake of change.

FUNDS RUNNING OUT

Judge GREENE. I will be relatively brief.

As you stated, the reason we are here, basically, is because the funds for the payment of lawyers who defend indigents accused of crimes are running out on June 30.

Appropriations bills have to be passed, and before the appropriations bills can be passed, there must be authorizing legislation.

S. 3475 CONTINUES STATUS QUO

It is for that reason the Joint Committee on Judicial Administration suggested what has now become S. 3475, which would simply continue the status quo, so to speak, except that the Joint Committee on Judicial Administration would substitute for the Judicial Conference of the United States, which no longer wants to undertake this job.

MAYOR'S BILL MORE COMPLEX

The other bill, the one suggested by the mayor is a far more complex and, I suggest, far more controversial piece of legislation.

It would make fundamental changes in the way in which defense services are provided in the District of Columbia. It would make fundamental changes in the way the public defender service is governed, and it would in effect transfer that service and all of the legal defense services from the present status to a new agency, all of whose members would be appointed by the executive branch of the District of Columbia.

I should say there are others who have equally controversial views, totally at odd with those of the mayor.

OTHER APPROACHES

Mr. Dash, who represents the board of trustees of the public defender service, would also wish to have a new agency created, but would have other people appoint the board of trustees of that agency.

I suspect that the entire Board of Judicial Administration of our courts would have yet a third approach, if there is to be a new agency, having the members appointed by the courts.

TOO LATE FOR CHANGE NOW

What I am suggesting, Mr. Chairman, the problem of now revamping legal services in the District of Columbia, 3 weeks before the July 1 deadline, when our present funding for the Criminal Justice Act for funds runs out, seems to me to be unwise, and unreasonable.

It seems to me it could jeopardize the funds that are needed to prevent chaos in the judicial system of the District of Columbia.

It seems to me those who now at this late stage of the legislative session would like to have far-reaching changes made, would bear heavy responsibility, as a result of that controversy, if the funds are not appropriated.

We suggest that the kind which simply extends the present system for 1 year, with the only substitution of the Joint Committee to be substituted for the Judicial Conference, and that during the next year anyone who wishes, all of those other ideological and philosophical approaches could be debated at great length, and new legislation could be passed at that time.

OPERATION OF PRESENT SYSTEM

The CHAIRMAN. Judge, for the record, will you describe how the present system is operating today?

Judge GREENE. The present system—the funds are appropriated to the Judicial Conference of the United States. They are administered by the Administrative Office of the U.S. Courts, and they are disbursed by the U.S. Office of the U.S. Courts.

That is, with respect to private lawyers. The judges themselves in cases in which they preside appoint attorneys, and they approve any claims for compensation made by those.

The CHAIRMAN. The District of Columbia Superior Court?

Judge GREENE. And the same is true of the District of Columbia Court of Appeals.

The CHAIRMAN. Is there an assignment judge for criminal cases in the superior court?

Judge GREENE. Essentially, there is.

The CHAIRMAN. Does he make the appointments then, at the outset of the case after the indictments have been returned of the information?

Judge GREENE. Yes; there is an arraignment judge. That duty rotates every month, but there is a judge that makes the appointment for that month.

PERCENT REPRESENTED BY PUBLIC DEFENDER

The CHAIRMAN. And then do the records show that roughly about 60 percent of the indigent defendants are represented by the public defender, and about 40 percent by court-appointed?

Judge GREENE. No, it does not, Mr. Chairman.

The statute provides the public defender cannot handle more than 60 percent. Because of its budgetary constraints the public defender has never handled more than 25–30 percent.

The CHAIRMAN. So 70–75 percent are appointed pursuant to the procedure discussed, and they are compensated in part for the services they render?

Judge GREENE. That is correct.

WHAT S. 3475 DOES

The CHAIRMAN. And all S. 3475 would do would substitute in lieu of the Joint Committee on Judicial Administration of the District of Columbia Courts—

Judge GREENE. It would substitute the Joint Committee, the Judicial Administration of the District of Columbia Courts for the Judicial Conference of the United States.

The CHAIRMAN. What is the Joint Committee on Judicial Administration of the District of Columbia Courts?

Judge GREENE. Well, it is a body that was set up by the District of Columbia Criminal Procedure and Court Reform Act which consists of two judges of the District of Columbia Court of Appeals, and three judges of the superior court including two chief judges.

The CHAIRMAN. And the bill would extend, with this modification basically, the present procedure for 1 year to July 1, or July 30, 1975, is that correct?

Judge GREENE. The bill does not have a cutoff date, but that is what it would be.

The CHAIRMAN. Would that be giving the new city council to be elected, and a new mayor, and so forth, ample time to formulate a new policy if they desire to embark on a new policy?

Judge GREENE. Well, there would be ample time for someone, it would seem to me, to embark on a new policy.

The matter is not complicated. There are basic differences of approach, but it is not that complicated until somebody makes a decision.

The CHAIRMAN. To make it complicated?

Judge GREENE. As to whether, I am not certain, I cannot say for certain whether it would be the city council's responsibility, or the congressional responsibility, after home rule to deal with the subject, but in any event, I think 1 year would be more than enough time for somebody to decide whether the mayor should be appointing the board, or the courts, or some combination of rules.

The CHAIRMAN. Thank you, judge.

Judge Nebeker?

Judge NEBEKER. Mr. Chairman, I think Chief Judge Greene has spoken not only on his own behalf, but also on behalf of the joint committee.

PURPOSE OF S. 3475

I do not wish to repeat what he has said in that regard. However, I would like to point out, consistent with the observations respecting the purpose for S. 3475, that it continues a system which has been in operation in the Federal courts for quite some time. It is a system which involves the courts in the appointment and the compensation of private attorneys appointed to represent the indigent defendants. As Chief Judge Greene has observed, in the District of Columbia it is upwards of 75 percent of the criminal cases.

That system has worked well. There is theoretical criticism of it, but it certainly involves the area of compensation of the individuals, the judges, those most knowledgeable about the relative ability of counsel, and the relative complexity of the particular case.

As a result, I would question whether there is any real, as distinguished from theoretical, criticism that could be leveled at the direct court involvement in this particular facet of the administration of criminal justice.

Our bill purports to continue that system, and I would urge that until such time as the real criticism, real fault can be shown on that system, that it be retained.

As I read the statement by Mr. Austern, he does not take exception to the idea, at least on the interim basis of continuing the courts in the administration of the Criminal Justice Act system.

POSSIBILITY OF DISCRIMINATION

I also caution that there is another real possibility, if the system in the District of Columbia is not kept tied and made similar to the Federal system, of a possibility of discrimination between attorneys appointed to represent defendants charged by the United States in the District of Columbia, and attorneys in other jurisdictions, and also appointed to represent defendants charged by the United States, and it is this discrimination which is a real danger, it was in its purest form prior to the substantial possibility of a supplemental appropriation to pay counsel when there was no funds to pay them at all.

In that instance, the discrimination was pure. We had attorneys in the District of Columbia who had no promise whatsoever of payment, in cases involving the United States, and the contrary was true elsewhere.

I think that will conclude my remarks, unless, Mr. Chairman, you have any questions.

The CHAIRMAN. Thank you, judge. We appreciate it. Your prepared statement will be placed in the record in its entirety.

Judge NEBEKER. Thank you, Mr. Chairman.

[The prepared statement of Judge Frank Q. Nebeker follows:]

STATEMENT OF
FRANK Q. NEBEKER, ASSOCIATE JUDGE
DISTRICT OF COLUMBIA COURT OF APPEALS

The immediate need for authorization legislation to enable the District of Columbia courts to function with an adequate indigent defender program is recognized by all. The necessity for this kind of legislation has prompted numerous proposals seeking a variety of changes in the existing defender program. All but one of these proposals seize upon the occasion for an immediate substantive enactment as a vehicle for change in the existing program. Senate bill 3475, proposed by the Joint Committee on Judicial Administration, essentially preserves the status quo, yet provides the necessary substantive authority for a continuing public defender system. It should be noted that the Administrator of the Administrative Office of the U.S. Courts has endorsed S. 3475 as consistent with similar legislation proposed by the Judicial Conference of the United States.

The enactment of S. 3475 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, the 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 the Joint Committee, S. 3475, should be enacted in order to avoid a point of order, in the absence of authorizing legislation,

during the consideration of the FY 1975 appropriation request.

In drafting S. 3475, 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. Among others, the Public Defender Service objected to being removed from the litigation arena in the United States District Court and the United States Court of Appeals. 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, S. 3478, which is before you today and carries Mayorial endorsement, would make the Public Defender Service an agency under the control of the executive branch of the District of Columbia government, with authority to appear in both court systems.

A particularly troublesome problem in S. 3478 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." I view section 4 as deficient and inconsistent with the Sixth Amendment to the extent that some nonjury triable offenses require counsel.

Moreover, I observe that Mayor Washington in his letter of transmittal of April 23, 1974, wherein he submitted what is now S. 3478, merely observes that the contemplated section 4(a) plan "shall apply to those persons who are charged with certain offenses..." What is significant about section 4(a) is that it purports to include all so-called District of Columbia prosecutions triable by jury. As I have observed above, the right to appointed counsel hinges on a deprivation of liberty. That being so, S. 3478 poses a serious question whether the proposed Defender Service must not also take responsibility for representation of indigents for all District of Columbia prosecutions where loss of liberty is contemplated at the outset. With that number of persons included in the group of represented indigents, the 60 per centum limit on Service representation in section 4(c) must surely be increased else the number of less serious offenses will dilute Service representation in felony and serious misdemeanor cases.

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 S. 3478 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).

While, under S. 3478, 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.

As to compensation of appointed counsel, it seems clear under S. 3478 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 S. 3478 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.

Section 8(f) is unnecessary in light of Rule 23(a) of the Rules of the District of Columbia Court of Appeals. See also Rule 24(a), Federal Rules of Appellate Procedure, and D.C. Code 1973, § 11-743.

A final but important point relates to section 8 and the above discussion respecting the lack of wisdom in 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." As observed above, this provision is confusing and inconsistent with the mandatory language of section 7(a). It is also misplaced in the bill as a part of section 8.

The need for the enactment of legislation which would establish a vehicle for providing representation of indigent defendants charged in the District of Columbia Courts is so compelling that, if not expedited, the system of criminal justice in the District is facing an inevitable breakdown resulting from the exhaustion of funds and no source of

additional funds. The Federal Judicial Conference has remained adamant in its position against including in its future budget estimates any proposal for additional funds, and the Mayor has refused to entertain a request for any appropriations until the approaching fiscal year 1975. Efforts were made by the Joint Committee to introduce authorization legislation early this year. However, less than one month before the start of a new fiscal year and without the benefit of thorough planning, the Congress is now asked to make major revisions to the defender system in the District. If the Congress delays action to consider a major overhaul of the defender system, I foresee the continuation of the crisis which has existed in the District due to the uncertainty of whether funds will be forthcoming to those who have and are continuing to represent indigents in criminal cases. The Joint Committee has been very careful not to make recommendations for amending Chapter 22, Title 2, of the D.C. Code affecting the Public Defender Service. The revised legislative proposal, I will reiterate, is simply a stopgap measure. It affords the District, by separate legislation, a continuation of past workable practice. It follows the same scales of compensation established by the federal act and cannot be considered at all controversial. At present, there are so many conflicting views as to what should be done that postponing action until these hard judgments are made will seriously threaten the administration of justice in the District of Columbia. As Chief Judge Hood, now retired, has often cautioned: let us not hurry to a mistake.

RACE REQUIREMENT SHOULD BE ELIMINATED

The CHAIRMAN. Judge Greene, while we have you here, just as you are departing, would you care to comment on S. 3476, changing the marriage license requirement with respect to the listing of color?

The staff tells me that you have expressed some interest in this bill.

Judge GREENE. I am delighted the bill has been introduced. I am delighted the Congress is considering it, and I wrote to you, Mr. Chairman, and your counterpart in the House early in 1973, and I have been trying for years to get rid of this provision in the requirements in marriage license applications.

It is obviously unfair, it is insulting to many people. We have had a great deal of difficulty, citizens have complained to me that in this day and age of having to fill their race or color in order to receive a marriage license, and I am delighted that the wheels have been set in motion to eliminate that requirement.

The CHAIRMAN. Thank you, Judge. The letter you wrote to me on April 24, 1973, on this subject will be made a part of the record.

Judge GREENE. Thank you.

[The letter referred to follows:]

Superior Court of the District of Columbia

Washington, D. C. 20001

Harold H. Greene
Chief Judge

APR 26 3 08 P. '73

UNITED STATES
SENATOR

April 24, 1973

The Honorable Thomas F. Eagleton
Senate Office Building
Room 6235
Washington, D. C.

Dear Senator Eagleton:

I am writing to suggest to you an amendment to the District of Columbia Code which would remove what I have found to be a persistent irritant for the Citizens of the District of Columbia.

As you may know, marriage applications in the District of Columbia contain a blank requiring each applicant to state his or her color. The racial inquiry is mandated by statute, District of Columbia Code §30-110 (Supp. V 1972), which reads as follows:

It shall be the duty of the clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry . . .

This enactment, which traces its ancestry to the 1901 codification of the laws of the District of Columbia, has been the occasion of a steady flow of complaints to my office and has led to at least one lawsuit. I have refused requests to instruct the Clerk of the Court to disregard the statutory requirement, because it has not to date been declared unconstitutional by a court of competent jurisdiction. Since it is arguable that the requirement serves a valid record-keeping function, I do not believe that its unconstitutionality is sufficiently clear for me to issue such an instruction in the absence of an adjudication of invalidity made in the context of actual litigation. Compare Hamm v. Virginia, 230 F.Supp. 156, affirmed, 379 U.S. 19 (racial data on divorce decrees held to be validly required). Moreover, the National Center for Health Statistics of the Public Health Service, Department of Health, Education and Welfare, has communicated to the

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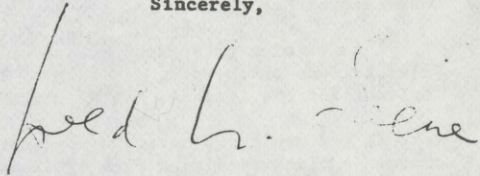
Court its view that the racial information contributes to the compilation of national vital statistics.

While I recognize the importance of accurate records, I feel that this bit of information does not yield data of sufficient significance to justify incurring the understandable antagonism of many residents of the Nation's Capital.

Accordingly, I respectfully suggest that §30-110 be amended to substitute "names and ages" for the present language, "names, ages and color."

In the alternative, a reply to the racial question might be made wholly voluntary and the Clerk could be prohibited from refusing to issue a marriage license solely on the ground that the racial question had been left unanswered. The latter approach would still provide some statistical information while permitting citizens who object to the question to avoid what they regard as an indignity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred L. Lane". The signature is written in dark ink and is positioned below the "Sincerely," text.

cc: Mayor Walter E. Washington

The CHAIRMAN. We now revert back to the regular order of the schedule, and our next witness will be Mr. C. Francis Murphy, District of Columbia Corporation Counsel, accompanied Mr. Comer S. Coppie.

STATEMENT OF C. FRANCIS MURPHY, DISTRICT OF COLUMBIA CORPORATION COUNSEL; ACCOMPANIED BY COMER S. COPPIE, SPECIAL ASSISTANT TO THE MAYOR FOR BUDGET AND FINANCIAL MANAGEMENT; AND WILLIAM ROBINSON, ASSISTANT CORPORATION COUNSEL

Mr. MURPHY. Good morning, Mr. Chairman.

I also have with me Mr. William Robinson.

The CHAIRMAN. Good morning, Mr. Robinson.

Mr. MURPHY. With your permission, Mr. Chairman, I will submit my statement.

The CHAIRMAN. Your full statement will be made a part of the record.

Mr. MURPHY. Thank you, Mr. Chairman.

[Mr. Murphy's prepared statement follows:]

STATEMENT OF C. FRANCIS MURPHY, D.C. CORPORATION COUNSEL,
BEFORE THE SENATE COMMITTEE ON THE DISTRICT OF COLUMBIA
ON S.3475 and S.3478

June 5, 1974

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear to present the views of the District of Columbia Government on S.3475 and S.3478. As you are aware, the District Government's legislative proposal, which has been introduced as S.3478, 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 President of the Senate, dated April 23, 1974, discussed in some 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.

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The District Government's proposal, S.3478 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.

We have carefully examined the other proposal, S.3475, 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 S.3475. Briefly stated we would point out that S.3475 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. S.3475 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

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ultimately deemed desirable by the judiciary, the bar, and the local government.

S.3475 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, S3475 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.

The contrasts between these two proposal 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 creation of a unified indigent representation program no major changes are proposed in the existing Public Defender Service. This agency has worked well;

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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 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.

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.

Should the Congress be so disposed, then we recommend that this be accomplished by continuing the present plan for representation including the provisions of the necessary administrative functions by the Public Defender Service in the D.C. Government. We believe there are several important advantages to this approach.

First, the Public Defender Service presently performs a number of administrative services with respect to the private attorneys who are appointed and would continue to do so during the interim period. This would involve less of a disruption in

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the current Defender Service Program.

Second, It would also allow completion of the various studies which are underway before any major shifts in the current defender service programs take place.

Third, it would preserve the necessary 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.

PUBLIC DEFENDER SERVICE SHOULD BE COMBINED WITH PROGRAM OF
COMPENSATED PRIVATE ATTORNEYS

Mr. MURPHY. I will summarize the basis of our approach to this problem.

I think we feel that for three specific reasons the public defender service should be combined with the program of compensated private attorneys for indigent defendants: (1) from a management point of view, (2) from a budget control point of view, and (3) we believe that this approach is in accord with the standards recommended by the American Bar Association, and the National Advisory Commission on Criminal Justice, Standards and Goals, which essentially recommends that the services be provided by an independent agency.

It is essentially for those three reasons that we recommend that there be a separate defender service to be responsible both for the public defender service operations and the program of compensated private attorneys.

TRANSITIONAL LEGISLATION SHOULD BE SIMPLE IN NATURE

Now, we recognize that the Congress may not be inclined at this time to enact the legislation, setting up this new agency, and may desire to leave it to the City Council when it becomes operative in 1975. But if Congress is so inclined, we would recommend that the transitional legislation be simple in nature, and that it simply authorize the continuation of the present program, provide for the funding of the District's share of the costs of this program, and place in the public defender service the administrative responsibilities which under the existing program are presently lodged in the Administration Office of Justice. With that type of a provision the City Council would then simply pick up the program as it exists today, and then would be free to either adopt our proposal, or the proposal recommended by the judges.

The CHAIRMAN. I take it, Mr. Murphy, if we decided to go the so-called transitional route, you would like the Administration to transfer it from what is in the present law, the Federal District Courts, to what?

Mr. MURPHY. To the public defender service.

The CHAIRMAN. As opposed to Judge Greene's proposal, it would be transferred to the Commission on Judicial Administration?

Mr. MURPHY. Yes.

The CHAIRMAN. What is wrong, as you view it, with Judge Greene's proposal?

VEERS FROM AMERICAN BAR ASSOCIATION RECOMMENDATIONS

Mr. MURPHY. I view that proposal as really being more than transitional, and really establishing a program in the District comparable to the Federal program. We believe that this really veers away from the American Bar Association recommendations, and that if we are not going to create an agency at this time, or not going to try to cope with that problem, that the better approach would be simply to continue the existing program, as it is, and make the necessary changes as to the administrative responsibilities.

The CHAIRMAN. Even your proposal would be a change that is taking place.

Mr. MURPHY. Our proposal would be a complete change.

The CHAIRMAN. So in a sense, your proposal, although labeled transitional, would be a significant departure from the current practice.

Mr. MURPHY. Our main proposal would be.

The CHAIRMAN. I am talking about what we now call a transitional proposal.

Mr. MURPHY. It would change the existing program only to the extent that the administrative responsibilities in the processing of vouchers, and so forth, would be transferred from the Federal Government to the District government.

LENGTH OF TRANSITIONAL PERIOD

The CHAIRMAN. How long a transitional period would you have in mind, for what I call your alternative proposal?

Mr. MURPHY. I would think approximately 1 year—until the city council had an opportunity to act on it.

Now, whether they would be able to act by June of next year, I could not say. But I would think within the calendar year of 1975, the city council could act on a permanent program.

The CHAIRMAN. How about a 2-year transition?

Mr. MURPHY. I think that would be reasonable.

The CHAIRMAN. To insure ample time for due consideration?

Mr. MURPHY. I think that would be reasonable, Mr. Chairman.

May I suggest that if the committee is inclined to utilize the recommendation by the judges for transitional program, that there are two things I think should be incorporated into that approach: (1) The budget for this particular program should not be considered in the same setting as the budget for the judiciary itself, and that this budget should be subject to a complete, extensive review, as any other executive agency in the District, and (2) there should be a specific provision in the legislation that the city council could provide for a different approach in the future. I say that because under the existing home rule legislation, the city council is prohibited from making any change in provisions in title II.

I think that should be specifically provided for so that there would be no question they would be authorized to act in this area.

The CHAIRMAN. They cannot make any change in title II for 3 years?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. So we would have to be very precise in what we were doing here to make certain it was either under title II, or definitely not under title II.

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Thank you, Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Samuel Dash, Chairman of the Board of Trustees, Public Defender Service. Mr. Dash is accompanied by Mr. Norman Lefstein, Director, and Mr. J. Patrick Hickey, Deputy Director, Public Defender Service.

**STATEMENT OF SAMUEL DASH, CHAIRMAN, BOARD OF TRUSTEES,
PUBLIC DEFENDER SERVICE; ACCOMPANIED BY NORMAN LEF-
STEIN, DIRECTOR, AND J. PATRICK HICKEY, DEPUTY DIRECTOR,
PUBLIC DEFENDER SERVICE**

Mr. DASH. Good morning, Mr. Chairman. I appear, Mr. Chairman, in my capacity as Chairman of the Board of Trustees of the Public Defender Service of the District of Columbia.

We have prepared a statement and submitted it to the committee and I do not wish to read the statement but I would like to make it a part of the record and I will just briefly summarize the points made.

With me, as I indicated, Norman Lefstein, Director of the Public Defender Service, who will be available for any detailed questioning of the operations of our agency, and Mr. Pat Hickey, the Deputy Director.

MODEL STATUTE

First, Mr. Chairman, I would like to emphasize that the present public defender statute, which Congress enacted, is an excellent statute and has been looked at throughout the country as a model for the country.

Recently, the Law Enforcement Assistance Administration of the Department of Justice designated our Public Defender Service in Washington, D.C., as one of the exemplary projects. The LEAA, from time to time, looks at various agencies on the administration of criminal justice and designates them as an exemplary project and what that means is that it prints up publications and analysis of that project so it can disseminate them throughout the country to use them as a model for other parts of the country. So, therefore, we are quite proud of the fact that the District of Columbia has been so chosen and has been chosen primarily not only for the services of our Director and staff and the Board but because of the nature of the statute itself. We think that S. 3478, which is the bill recommended by the District of Columbia government, would even improve the public defender statute by making it more comprehensive.

SERVICE IS LIMITED

It would give a comprehensive service to the entire provision of counsel to poor defendants. Our service is limited by our budget and by our staff. I think, as Judge Greene indicated, we have not been able to reach the 60 percent provision of the statute because of our staff restraints and we have primarily been in the 25 or 30 percent category.

However, there is a large group of defendants in the 75 percent of the poor defendants who are tried for crime in the District of Columbia who are represented by privately appointed counsel by the courts. This is a very important factor. They do represent most of those who need counsel and who cannot afford counsel.

INDEPENDENCE OF COUNSEL: SAME FOR POOR AS RICH

One of the key issues that I think this committee should take into consideration, in determining either the broader issue of which bill or

if it has a transitional approach and the key issue, as we see it, Mr. Chairman, is that providing counsel for the poor should provide for the same kind of independence of counsel as counsel for the rich.

Counsel for the rich do not depend on junkies determining how much they get paid. That is determined by their own clients.

Now, counsel for the poor should be equally independent of the judiciary. In saying that, I do not wish to reflect, in any way, on our judiciary and especially on the few judges who have appeared before your committee this morning.

Chief Judge Greene and Associate Judge Nebeker have been in the forefront in fighting the cause of getting funds for poor defendants and in supporting many of the efforts of the Public Defender Agency. But it is a factor I think the committee must take into consideration and, especially, the judge who has to hear the case which a public defender has to prepare, can have a definite effect on the nature of that defense.

SERVICES OF COUNSEL MAY BE INHIBITED

One illustration might be that if a particular motion is not popular with a particular judge and the lawyer realizes that, in making that motion, which may challenge the court, which may actually challenge the prosecution, which the court may feel by making certain motions, would actually extend the time of the hearing in the case, that the court would determine that the compensation in full would not be paid to that lawyer.

This would have a chilling effect, we suggest, Mr. Chairman, on whether or not that counsel proceeds in that way. Private counsel, paid by private client, would not be so inhibited.

As a matter of fact, we believe, although there may not be any particular proof as Judge Nebeker said, that the system which has been in effect or existence for some time is not a good one. I think commonsense would indicate that the services of counsel for the poor may in fact be inhibited by the fact that the purse strings are controlled, what he gets paid is in the hands of the very judge he has to argue before.

INDEPENDENT AGENCY SHOULD ADMINISTER PAYMENT OF FEES

As a matter of fact, we do understand there is a suit actually pending in the U.S. District Court by the various counsel, who have been practicing before the District of Columbia courts and the District of Columbia District Court, because of the setting of fees by judges. It is our position that an independent agency should be administering the payment of fees, and the processing of vouchers.

Such an agency could be our own Public Defender Service, through a separate division of that Service, and I think the city so recommends. By the way, I would like to stress that if such a responsibility were to be given to our Public Defender Service, it would not add 1 cent to the operational budget. It would not add anything to us. We would not benefit by receiving that kind of responsibility.

As a matter of fact, we would be burdened but we would be willing to assume the burden in the interests of maintaining independence of the defense of the indigent.

I would like to quote very briefly from page 9 of our prepared statement, in which Chief Judge Bazelon addressing himself to the same issue, made the very cogent statement: "When defense counsel's earnings flow from the judge, the principle of interest that is essential to the adversary system of justice is jeopardized"; and Mr. Chairman, this recognizes that the counsel for the poor, the whole service of counsel for the poor, should be independent of the judiciary, is recognized by the recent standards of the American Bar Association, and also by the national advisory standards of the administration of judicial justice.

JUDICIARY OUGHT TO BE SEPARATE AND APART

I think everybody that has looked at the problem of providing legal services for the poor have emphasized that service should be independent and that the judiciary ought to be separate and apart from both the prosecution and defense. I think it is a fact that has to be taken into consideration. I urge the committee, even in a transitional stage, that the processing of the vouchers and the payment of the fees under the representation of the poor not be in the control of the judiciary but in an independent agency. If it is not the public services, I think the legislation would have to create, but we recommend the Public Defender Service stands ready to serve in that capacity.

PROVIDE COMPREHENSIVE SERVICES FOR POOR

Just briefly, Mr. Chairman, if the committee does wish to take into consideration the bills before it, I think I have addressed myself to the bills presented in dealing with the compensation, in handling compensation, but the broader bill that the city government has presented, which is S. 3478, which I believe is an excellent bill, and will provide comprehensive services in the District of Columbia for the poor, does also err in the area of independence, because it calls, in section 3A, for the appointment of the board of trustees by the Mayor with the approval of the City Council. I think the problem of control by the executive is just as bad as control by the judiciary and our recommendation is that it be under appointment through the judges, through the bar association, through the counsel, so that there would be a broad representation of all those involved in the criminal justice system and there would not be allegiance specifically by any member of the board to a particular appointing agency.

SIZE AND MAKEUP OF BOARD

We would also suggest, Mr. Chairman, that the size of the board be increased from 7 as it is now, is in the statute, to 11, because the board's responsibilities have been increased and are increasing every day and we can attest to the fact that the need of a little larger board can be broken down into committees is important.

One of the things we do suggest and this goes again to the independence of the Public Defender Service, we would suggest that this committee does consider acting on S. 3478. That a specific provision be included in it as to who may serve on a board. That the provision retain the present provisions of section 2-2223 of the present statute, which provides the judges of the U.S. courts for the District or the

District of Columbia courts may not be appointed to the board of directors because it would be inappropriate for a judge to be on the board of directors reviewing policies of a defender agency at the time the agency is before the courts. Therefore, what we again in summary recommend, Mr. Chairman, is that recognizing that the committee may well wish to consider, because of the time factor, and the council will be taking over this area of legislation, that in any interim consideration, that even though it be interim, that the committee recognizes that counsel for the poor be independent to fully represent the indigent client. Let me point out in that regard, in the District of Columbia, as in all areas of this country, be the poor represented by private counsel or whether it be public defender, we would be less than candid, we do not believe that the poor believe they get a lawyer that is loyal to them. They are a little suspicious at first.

POOR SUSPICIOUS OF REPRESENTATION

We believe our service gives very vigorous loyal representation to the poor. If the poor perceive that the handling of the funds, the control of the money is in the hands of the judiciary, as fine as the judiciary may be, they will not believe that they have received an equitable and fair representation. It is my submission to the committee that not only must there be actually fair and adequate presentation but the appearances must be there and the poor, when convicted, believe they were improperly convicted because the counsel could not fully represent them. I think we have something inefficient in our system of justice.

The CHAIRMAN. Thank you, Mr. Dash. On your present board of seven members: How are they appointed?

Mr. DASH. Our present board is appointed by a panel which is made up of the chief judges of the various U.S. Federal and local courts, chaired by the chief judges of the circuit and also by the Mayor-Commissioner.

The CHAIRMAN. And in the authorizing statute: Are judges specifically prohibited from service on that board?

Mr. DASH. Yes, Mr. Chairman.

The CHAIRMAN. And as I heard your statement, you believe that that prohibition should continue?

Mr. DASH. It should continue. As a matter of fact, we suggest it must continue.

The CHAIRMAN. But the actual appointment of attorney, to represent the particular indigent defendant is made by a judge, not in any way made by the law board?

Mr. DASH. Yes, and we would not suggest a change.

The CHAIRMAN. Thank you, Mr. Dash.

Gentlemen, do you have anything to add? We welcome you and we are pleased to have had you here this morning with us.

Mr. DASH. Thank you, Mr. Chairman.

[The prepared statement of Samuel Dash follows:]

STATEMENT OF SAMUEL DASH, CHAIRMAN, BOARD OF TRUSTEES, PUBLIC
DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

Mr. Chairman, I am extremely pleased to be before the Senate District of Columbia Committee today on behalf of the Board of Trustees of the Public Defender Service. The subject before your Committee, 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 past several months the Board of Trustees of the Public Defender Service has spent many hours debating the significant issues presented by S. 3475 and S. 3478, and I welcome the opportunity of summarizing our views for your Committee.

The two bills under consideration, which during this discussion I shall refer to as the City Government's bill (S. 3478) and the D. C. Courts' bill (S. 3475), contain two totally different approaches to the delivery of defender services. 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 attorneys 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 S. 3475 as presently drafted.

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).

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 be 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."

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 Committee 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.

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.

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 Committee 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 Committee's staff in any way you think desirable.

Finally, the suggestion has been made that the issue of defense services for the District of Columbia is so significant that no comprehensive legislation should be enacted without substantial further study, and that a limited, interim measure is more appropriate. In the event only interim legislation is approved, we recommend that at a minimum it encompass two principal ingredients. First, the funds to compensate private counsel should be appropriated either to an independent agency or to the Public Defender Service; second, approval of payments to private lawyers should be by an independent agency or the Public Defender Service pursuant to detailed regulations.

At present all vouchers of private counsel for services rendered to indigent clients must be passed upon by judges, and usually this means the same judge before whom the case was presented. It is difficult to believe that this does not occasionally have a chilling effect upon the performance of counsel. If, for example, the attorney knows that a judge is likely to be unreceptive to a particular motion and unlikely to approve compensation for work connected with preparation of the motion, is the attorney truly independent to represent his client in accordance with his best professional judgment? 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."

From the standpoint of the Public Defender Service, the administering of funds for assigned counsel and the development of satisfactory procedures for voucher approval will involve a significant new burden, without in any way enhancing our capacity to discharge our present statutory responsibilities. The funds appropriated to the agency would be solely for the use of assigned counsel and their clients, and thus the funds would not in any way augment the operating budget of the Public Defender Service. Moreover, we would be required to assemble a small staff of

administrators and clerks, who would be responsible for discharging our new duties related to the assigned counsel program. Nevertheless, we are prepared to undertake responsibility for the funds in question and approval of vouchers because we believe that private attorneys should be totally free of judicial supervision, just as staff attorneys employed by the Public Defender Service are independent. I want to stress, however, that we have no objection if the funds together with voucher approval are entrusted to some other independent agency. In short, our concern is that private counsel be placed in an independent status, not with whether the duties and burdens of the Public Defender Service are enlarged.

The CHAIRMAN. Mr. David Austern of the District of Columbia Bar Association.

**STATEMENT OF DAVID AUSTERN, DISTRICT OF COLUMBIA BAR
ASSOCIATION**

Mr. AUSTERN. Good morning, Mr. Chairman.

On behalf of the District of Columbia Bar and also the Joint Conference Circuit Committee of the District of Columbia courts, I appear here this morning. I do have a prepared statement which I would ask be submitted for the record.

The CHAIRMAN. It will be made a part of the record.

[Mr. Austern's prepared statement follows:]

STATEMENT OF DAVID T. AUSTERN

ON S.3475 and S.3478

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.

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.

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.

Page Three

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 S.3475 or S.3478 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 capitol.

EXAMINE FUTURE OF DEFENSE SERVICES

Mr. AUSTERN. Mr. Chairman, several months ago, the judicial conference appointed a committee which had a rather broad mandate, which included examination of the future of indigent defense services in the District of Columbia.

The District of Columbia Bar also suggested that a committee be appointed for the 17,000 members of that bar to examine the future of defense services in the District of Columbia.

It is perhaps unusual, but in this case, the committee decided to get together for the benefit of one report and this is through a joint committee consisting of some 21 attorneys and I think it would be fair to say representing just about every association of attorneys in the District of Columbia which is examining the question of the future of defense services in the District of Columbia.

Unfortunately, this committee has had only two meetings and it foresees a 9- or 10-month study of the problem because the problem would not only include who should get the money for the administration of the defense services but the kinds of services that should be provided, the future of the Public Defender Services, the possibility of a Federal Public Defender Service for the Federal court as exists in several other jurisdictions, and the number and amounts of money for particular services.

UNIFIED BAR RECOMMENDS A TRANSITIONAL BILL

We strongly recommend, I think it was Mr. Murphy who coined the expression, that there be a temporary or a transitional bill of some kind, it being our very strong opinion that the question of the entire future of defense services be left open to some extent in order that we might be able to return here some time next year and perhaps, as the chairman has pointed out, we should also return to the new City Council, for the purpose of giving this new committee or the City Council the benefit of our report.

I might also say we foresee funding for staff for this committee and we hope to have a very comprehensive and full examination of defense services for the District of Columbia.

The CHAIRMAN. Of the options that are before us, if we are talking in terms of transition: What alternative appeals do you have, in terms of an option?

ADMINISTRATION OF FUNDS

Mr. AUSTERN. Well, I would have to be very candid, Mr. Chairman, and tell you why anybody would want to administer these funds escapes me. It seems to me any agency that takes this responsibility is simply getting more headaches, as was pointed out, there is now a suit pending on the question of the administration of the funds.

I would want it understood, Mr. Chairman, that this is not included in my mandate, appearing here before you. The committee itself and the trustees of the Board of Governors of the District of Columbia Bar have not taken a position on the question of who should administer the funds.

I would, however, like to add to that. This is a very personal view of mine, Mr. Murphy mentioned that the transitional bill would perhaps be 2 years in length in order to give everyone the opportunity to examine this. I would personally be opposed to the 2-year concept. I realize the dangers that can exist, if a 1-year bill is passed, because something has to be done, perhaps precipitously, at this time next year. But we fully expect to have our report finished by February or March of next year and I would certainly think that would give everyone who wanted to study it, who wanted to devote time to it, the opportunity to examine the report.

It may be somewhat self-serving but I certainly foresee that report's being comprehensive for anyone who would want to examine all possible alternatives.

OBLIGATIONS AND RESPONSIBILITIES OF CITY COUNCIL

The CHAIRMAN. Bear in mind, the newly elected District of Columbia City Council taking over the broad range of obligations and responsibilities will have many things to consider and to work on in its initial year of operation and I just ask rhetorically whether they will have ample time to give the kind of indepth consideration to this particular problem if it were justified.

Mr. AUSTERN. Well, then, perhaps as a compromise measure, 18 months or something less than 2 years. The reason 2 years worries me is that I have seen this kind of temporary legislation for a period of more than 1 year and then you quickly get to the point that whatever happens suddenly exists because it has always existed and I would not want to see that happen.

The CHAIRMAN. Thank you, Mr. Austern.

Mr. AUSTERN. Thank you.

[Subsequent to the hearing the following letter, with attachment, was received:]

DISTRICT OF COLUMBIA COURT OF APPEALS
WASHINGTON, D. C.

CHAMBERS OF
CHIEF JUDGE GERARD D. REILLY

June 11, 1974

Robert Harris, Staff Director
Senate District of Columbia Committee
Room 6222
Dirksen Senate Office Building
Washington, D.C. 20510

RE: S. 3475 and S. 3478

Dear Mr. Harris:

Two items of information have come to my attention since the hearings on S. 3475 and S. 3478, which, I believe, are vital to your consideration of said bills. Both items relate to pending and future appropriation legislation.

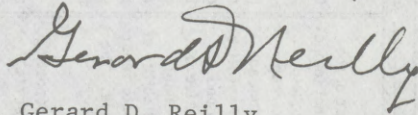
As I am sure you are aware, the FY 1975 appropriation request of \$2.3 million for the District's representation of indigents program is currently before the House and Senate Subcommittees. You may not know that it is part of the District of Columbia Courts' budget request and as such is separate from executive control. The decision to place it within the Courts' budget was made by the Joint Committee on Judicial Administration when it was clear that the funding request would not be part of the District of Columbia Government's executive-legislative submission. With this in mind, if S. 3475 were adopted, the budget request before the Congress would be freed for passage (see attached budget pages). On the other hand, if S. 3478 were adopted, it might delay the establishment of the program and perhaps cause a hiatus between the transfer of the administrative function between the federal and District agencies based

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on lack of an appropriation request by the Public Defender Service or the Mayor.

The second point I would like to bring to your attention is in regard to the suggestion of Attorney David Austern that Congress should enact an interim bill for only one year. The budgetary process is based on advance planning. The FY 1975 budget request was prepared and submitted by the Courts in the fall of 1974. A dilemma regarding which agency should make the request for fiscal year 1976 will be facing the D.C. Government and the Congress in October of this year, prior to the election of the Mayor and City Council who might desire to be involved in the decision making. I also observe that the October budget preparation date is before the Study Commission's estimated date for completion of its report. I would propose that even two years would present undue hardships on the new government -- to act within a few months of its establishment.

Faithfully yours,

A handwritten signature in dark ink, appearing to read "Gerard D. Reilly". The signature is fluid and cursive, with a large, stylized "G" and "R".

Gerard D. Reilly

cc: C. Francis Murphy
David Austern

Enclosure:

DISTRICT OF COLUMBIA GOVERNMENT FY 75	CONTINUATION OF: Justification	AGENCY District of Columbia Courts (D. C. Court System)	Congressional 5 SCHEDULE SUBMISSION
Temporary Court Reporting Services - \$8,800- The Executive Officer of the District of Columbia Courts has the responsibility to provide for additional temporary reporting services (Section 11-1727, D. C. Code). In the event adequate court reporters are not available in the D. C. Courts due to unforeseen circumstances, such as occurred during the May Day demonstrations of 1971 when an unforeseen workload was placed on the court reporting staff, the Executive Officer must have the capability to insure the continuous operation of the Courts and furnish court reporters on demand. Another eventuality which the Executive Officer must plan for is the possibility that employee-management disputes could possibly involve the court reporter personnel, thereby reducing the availability of court reporters to record judicial proceedings to such a point that adequate reporting services could not be provided for the prompt administration of justice. The amount requested is necessary based on the following formula:	It is estimated that four contract reporters for a minimum of 20 days each at the \$110 rate may be required in fiscal year 1975.	Employee Training - \$3,400 - The sum requested, based on a formula of \$50 per employee of the D.C. Court System, is necessary to meet the continuing education and training needs of the D. C. Courts. This training includes executive education designed to develop an effective, flexible and responsive core of upper level employees. In addition, nonjudicial employees below the executive level would be able to benefit in various training programs presented by the Civil Service Commission and would be at the technical level designed to aid in their training and development and assist in the efficient administration of justice. Programs supported by the requested funds would supplement the in-house training programs presently presented to nonjudicial personnel.	Maintenance of U. S. District Courthouse (CSA) - \$192,050 - Under the District of Columbia Court Reform and Criminal Procedure Act of 1970, the Courts' Executive Officer is responsible for reimbursing the United States Government for the District's share of costs for maintaining the United States District Courthouse in the District of Columbia. The estimated payment to the General Services Administration will increase from \$197,625 in fiscal year 1974 to \$369,675 in fiscal year 1975.
a. The per diem fee for each contract reporter for attendance and reporting shall be at the rate of \$110; a reporting day is a period of at least six hours in any given workday. b. Service less than three continuous hours because of the earlier termination by the Court of a trial or proceeding entitles the reporter to one-half the per diem amount, or \$55. c. If the reporter serves a total of three hours and the trial or proceeding is terminated by the Court prior to the end of the Court day, the per diem rate will be \$110.	Criminal Justice Act Program - \$2,300,000 - A request for funds for payment to attorneys representing indigent criminal defendants in the Superior Court and the D. C. Court of Appeals is being made for the first time in Fiscal Year 1975 in the judicial portion of the District of Columbia Government's budget request. Here- tofore, such funds for payment of attorneys were appropriated pursuant to the budget estimate submitted by the Administrative Office of the United States Courts, under authority of the Criminal Justice Act, 18 U.S.C. 3006A.	Contd.	154 J/C/FM/FN-32
The per diem rate will include both attendance and reporting, but shall exclude transcription of the record which is independently provided for by the Court Reporter Rules issued by the Executive Officer.			

DISTRICT OF COLUMBIA GOVERNMENT	FY 75	CONTINUATION OF: <u>Justification</u> AGENCY <u>District of Columbia Courts (D.C. Court System)</u>	5 SCHEDULE	Congressional Submission	In October 1972 the Judicial Conference of the United States directed its administrative officials not to include Criminal Justice Act funds for our courts within the budget estimate for the Federal Judiciary. Finally, in November 1973, the conferees on the fiscal 1974 appropriation act for State, Commerce, Justice and the Federal Judiciary agreed on a maximum appropriation of \$1 million for this program on behalf of criminal defendants appearing in the District of Columbia Courts. The conference report stated that this sum was to be a ceiling and that in the future, the estimates for this program should be included as part of the District of Columbia budget. Accordingly, the estimates are submitted with the Fiscal Year 1975 budget request. In order to provide the administrative support for this program 1-Supervisory Fees Auditor, 3- Fees Auditors, and 3- Fees Examiners will be required. The function to be performed by the Fees Auditors has not in the past been performed at the Administrative Office of the U.S. Courts. The only kind of personnel available in the Administrative Office of the U.S. Courts were the fees examiner types, who did arithmetical computations. The screening unit, comprised of the Fees Auditors, is being sought in order to tighten controls on this system, to reduce costs and to provide a better statistical base upon which to forecast needs in the future.
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DISTRICT OF COLUMBIA GOVERNMENT		FY 75	AGENCY - District of Columbia Courts		D. C. FUNDS DE TAIL OF INCREASES												6		Congressional Appropriation	
FUNDING		SCHEDULE		SCHEDULE		SCHEDULE		SCHEDULE		SCHEDULE		SCHEDULE		SCHEDULE		SCHEDULE				
Costs	Category Total/Items of Increase	Fund	Base Available (FY 75)		Personal Services		Increase (FY 75)		Total		Annualization (FY 76)	Full Year Cost (FY 76)	Congressional Appropriation	Congressional Appropriation						
			Positions	Amount	Positions	Amount	Other	Amount	Positions	Amount										
			Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount										
FN	D. C. Court System:																			
	<u>Within-Grade Increases</u>				G	...	...	...	25,889	...	...	25,889		25,889						
	<u>Statutory Increases</u>																			
	Maintenance of U. S. District Courthouse (CSA)				G	...	197,625	...	...	192,050	...	192,050	...	192,050	...	192,050				
	Relocations				G	...	...	...	58,072	...	...	58,072	...	58,072	...	58,072				
	Total, Statutory Increases								58,072	192,050	...	250,122	...	250,122	...	250,122				
	<u>Improved Program Increases</u>				G	...	...	...	...	3,400	...	3,400	...	3,400	...	3,400				
	Employee Training								...	...	...	...	...	...	...	...				
	<u>New Program Increases</u>																			
	CJA Program:																			
	GS-12 Supervisory Fees Auditor				G	...	...	...	18,067	440	...	18,507	...	18,067	...	18,067				
	GS-11 Fees Auditor				G	...	...	...	45,484	1,370	...	46,854	...	45,484	...	45,484				
	GS-7 Fees Examiner				G	...	...	...	30,930	3,446	...	34,376	...	30,930	...	30,930				
	Attorney Fees				G	...	...	...	...	2,123,013	...	2,123,013	...	2,123,013	...	2,123,013				
	Transcript Fees				G	...	...	...	...	72,000	...	72,000	...	72,000	...	72,000				
	Printing and Reproduction				G	...	...	...	...	3,000	...	3,000	...	3,000	...	3,000				
	Repairs to Office Equipment				G	...	...	...	...	200	...	200	...	200	...	200				
	Supplies and Materials				G	...	...	...	...	800	...	800	...	800	...	800				
	Equipment				G	...	...	...	...	950	...	950	...	950	...	950				

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DISTRICT OF COLUMBIA GOVERNMENT		HUNDREDS \$		D. C. FUNDS DETAIL OF INCREASES		AGENCY District of Columbia Courts		6		Congressional	
FY 75		75									
Code	Category Total/Items of Increase	Fund	Base Available (NON-ADD) (FY 75)		Increase (FY 75)		Personal Services		Annularization (FY 76)		Full Year Cost (FY 76)
			Position	Amount	Position	Amount	Position	Amount	Position	Amount	
Fid	D. C. Court System continued:										
	New Program Increases continued										
	CIA Program continued										
	Employee Training	G	...	...		350	...	...	...	...	350
	Total, New Program Increases					2,205,519	7	2,300,000	...	...	2,294,794
	Other Increases										
	Machine Rental	G	...	...		3,600	...	3,600	...	...	3,600
	Printing and Reproduction	G	...	3,500		1,500	...	1,500	...	...	1,500
	Maintenance Service Contract	G	...	...		6,261	...	6,261	...	...	6,261
	Supplies and Materials	G	...	10,000		6,445	...	6,445	...	...	6,445
	Contractual Court Reporting Services	G	...	...		8,800	...	8,800	...	...	8,800
	Equipment Replacement	G	...	600		5,000	...	5,000	...	...	5,000
	Total, Other Increases					31,606	...	31,606	...	...	31,606
	Total, D. C. Court System					2,432,575	7	2,611,017	...	...	2,605,811

FC/FM/FN-35

The CHAIRMAN. That concludes the testimony on S. 3475 and S. 3478. We will now move to S. 3477, which relates to the transportation of school students.

Our next witness is Mr. Comer S. Coppie, Director of the Office of Budget and Financial Management of the District of Columbia government. Mr. Coppie is accompanied by Mr. Douglas Schneider, the Transportation Systems Coordinator.

**STATEMENT OF COMER S. COPPIE, SPECIAL ASSISTANT TO THE
MAYOR FOR BUDGET AND FINANCIAL MANAGEMENT, DISTRICT
OF COLUMBIA GOVERNMENT; ACCOMPANIED BY DOUGLAS
SCHNEIDER, TRANSPORTATION SYSTEMS COORDINATOR**

Mr. COPPIE. Thank you, Mr. Chairman.

It is a privilege to be here to testify in regard to Senate bill 3477, the schoolbus subsidy or authorization extensions in the District of Columbia.

I have a prepared statement, Mr. Chairman, which I would like to provide for the record.

The CHAIRMAN. It will be a part of the record.

[Mr. Coppie's prepared statement follows:]

STATEMENT OF COMER S. COPPIL, SPECIAL ASSISTANT
TO THE COMMISSIONER FOR BUDGET AND
FINANCIAL MANAGEMENT

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear today on behalf of Mayor Washington.

As introduced, S. 3477, a bill "To amend the Act of August 9, 1955, relating to school fare subsidy for transportation of schoolchildren within the District of Columbia", would extend the subsidy for fares for the transportation of schoolchildren to and from public, parochial, or like schools in the District of Columbia for an additional three-year period, until August 1977. Mayor Washington has already written to the Chairman of this Committee of the great importance which the District of Columbia Government attaches to the prompt enactment of this proposal. The authorization must be extended as soon as possible since the present authority expires on August 31, 1974 and funds are being requested for the subsidy in the city's fiscal year 1975 budget.

Under existing laws, the Washington Metropolitan Area Transit Commission is responsible for fixing the fare to be paid by schoolchildren and for establishing the rules and regulations for the administration of the subsidy program. The Transit Commission is also responsible for certifying to the District the amount of the subsidy to be paid each month. The District of Columbia Government makes these subsidy payments to the Washington Metropolitan Area Transit Authority in the amount of the difference between the reduced fare for schoolchildren going to and from school and the lowest adult fare for regular

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route transportation. Currently, schoolchildren pay 10¢ for one-way transportation instead of the regular adult fare of 40¢.

The Transit Commission has recently suggested that its authority to set the reduced rate and to certify the amount which the city owes to WMATA be transferred to the City Government, since the Transit Commission no longer is involved in mass transit rate making, and since the District Government pays for the cost of the subsidy. Further, with the acquisition of D. C. Transit and WMA Transit Company by the Washington Metropolitan Area Transit Authority, and the sizeable reduction in its staff, the Transit Commission has suggested it no longer perform the certification function. We support these suggestions provided they will not result in delaying enactment of the bill.

If the Committee is disposed to consider the amendments suggested by the Transit Commission, we could also suggest two other amendments. First, the age limitation should be deleted so that all schoolchildren attending elementary and secondary schools in the District will be able to take advantage of the reduced fare. Second, the expiration date of the authorization should be deleted since there seems to be no further reason to limit the authorization to a three-year period.

I have available a substitute proposal in the form of a draft bill which was prepared by the Office of the Corporation Counsel incorporating all of these suggestions. The draft bill would authorize the District Government to fix the reduced rate for schoolchildren at the end of the next school year, make rules and regulations for the administration of the entire school subsidy program.

Douglas Schneider, the Mayor's Transportation Coordinator, and I will be pleased to answer questions that you might have.

AMENDMENTS TO SCHOOLBUS SUBSIDY BILL

Mr. COPPIE. Mr. Chairman, we support Senate bill 3477; however, if it will not result in any delay in the passage of this authorization of extension, we would propose three amendments to the proposed bill and the amendments briefly are as follows:

1. We would ask that the rate-setting authority and the administrative regulating authority be transferred from the Transit Commission of the District of Columbia to the District of Columbia Council.

Under the public ownership law, the transit responsibility in the transit area of the District of Columbia has been substantially changed. The staff has been substantially reduced and, moreover, with the new self-determination period that we will be moving into in the District of Columbia, we believe that this amendment is consistent with that.

2. The second proposed amendment would be that any limitation with regard to age be eliminated from the bill. It might well result in an age limitation in the administrative regulations authority of the city council, in the regulations that they establish, but we would propose the basic law not have any age limitation.

3. We propose that the 3-year extension be eliminated. We feel that there is no particular need for an expiration date with regard to the basic law.

Thank you, Mr. Chairman. I stand ready to answer any questions you may have.

The CHAIRMAN. What is the age limitation in the present statute?

Mr. COPPIE. It is currently 18, Mr. Chairman. For that reason, there are students that are in public schools that are precluded from qualifications for the subsidy.

The CHAIRMAN. Thank you, Mr. Coppie.

Mr. COPPIE. Thank you, Mr. Chairman.

[Subsequent to the hearing Mr. Coppie supplied the following information:]

SCHOOL TRANSIT SUBSIDY

	Fare		Actual subsidy
	Adult	Student	
Fiscal year:			
1971.....	\$0.40	\$0.10	\$3,054,000
1972.....	.40	.10	3,425,000
1973.....	.40	.10	3,392,000
1974 ¹	.40	.10	4,112,000
1975 ¹	.40	.10	3,812,000

¹ Estimates.

The CHAIRMAN. I have a letter from the Washington Metropolitan Area Transit Authority, with an attachment, concerning this legislation which I now place in the record.

[The letter, with attachment, follows:]



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

600 Fifth Street, N.W., Washington, D. C. 20001

Telephone (202) 637-1234

JUN 4 1974

Board of Directors

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Chief of Operations
and Maintenance

Honorable Thomas F. Eagleton
Chairman
Committee on the District of Columbia
U. S. Senate
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for extending to us the opportunity to make recommendations and report on S.3477.

We recognize that the public interest is served by a continuation through August 1977 of the long-standing policy of transportation of District of Columbia school children not over 18 years of age at reduced fares.

WMATA is pleased to recommend approval of S.3477; however, in the interest of clarity, we believe it is necessary to point out that the term "lowest adult fare" contained in the 1971 amendment (P.L. 92-90, 85 Stat. 315) should not be confused with the Metrobus "Golden Age" fare, which is also a reduced fare, of course. We feel that this clarification can be attained by striking the period after "1977" in the last line of S.3477 and adding the following:

"and by providing that the term 'lowest adult fare' as used in Section 2 shall be construed as the standard adult fare in applying the formula for adjustment and payment of the fare subsidy."

We have examined a draft Bill prepared by the District of Columbia on the subject of regulation of fares for the transportation of school children in the District of Columbia, a copy of which is enclosed with this letter. WMATA is equally pleased to recommend enactment of this District of Columbia draft Bill.

Sincerely,

Jackson Graham

Enclosure



A BILL

To amend the Act of August 9, 1955 relating to the school fare subsidy for transportation of schoolchildren in the District of Columbia.

1 BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS
2 ASSEMBLED, That the Act entitled "An Act to provide for
3 the regulation of fares for the transportation of school-
4 children in the District of Columbia," approved August 9,
5 1955 (D.C. Code, sec. 44-214a), as amended, is further
6 amended to read as follows:
7

8 "Sec. 1. The District of Columbia Council is
9 hereby authorized to fix the rate of fare for trans-
10 portation by mass transit modes of schoolchildren going
11 to and from elementary and secondary public, parochial,
12 or like schools in the District of Columbia, at less
13 than the regular adult fare established from time to
14 time by the Washington Metropolitan Area Transit Au-
15 thority or other mass transit common carrier for
16 regular route transportation within the District of
17 Columbia. The Council is also authorized to establish
18 rules and regulations governing the administration of
19 the school fare subsidy program.

20 "Sec. 2. The District of Columbia, with respect
21 to each calendar month commencing with September, 1974,
22 shall pay to the Washington Metropolitan Area Transit

1 Authority or other mass transit common carrier an
2 amount which is the difference between the total of
3 all reduced fares paid during such calendar month
4 to such carrier by schoolchildren in accordance with
5 this Act and the amount which would have been paid
6 during that month to such carrier if such fares had
7 been paid at the regular adult cash fare established
8 for equivalent regular route transportation in that
9 month.

10 "Sec. 3. Appropriations to carry out the provi-
11 sions of this Act, including costs of administration,
12 are hereby authorized.

13 "Sec. 4. This Act shall take effect on September 1,
14 1974, except that schoolchildren's fares for a period
15 commencing September 1, 1974, or later, may be fixed
16 by the Council prior to that date: Provided, That
17 authorities contained in existing laws, and the rules,
18 regulations, and orders promulgated thereunder, relat-
19 ing to or affecting the transportation of schoolchildren
20 and the fares therefor, shall continue for a period,
21 not beyond June 30, 1975, sufficient to conclude ad-
22 ministration of such provisions.

23 "Sec. 5. On the effective date of this Act, the
24 Act approved February 25, 1931 (46 Stat. 1419) is re-
25 pealed."

The CHAIRMAN. All right. We will now consider S. 3474, and our next witness is Mr. Louis Mackall, Director of the District of Columbia Unemployment Compensation Board.

**STATEMENT OF LOUIS MACKALL, DIRECTOR, DISTRICT OF
COLUMBIA UNEMPLOYMENT COMPENSATION BOARD**

Mr. MACKALL. Mr. Chairman, I have a prepared statement which I would like to submit for the record and I will just make a short statement.

Some 30 years ago, an experience rate was placed in the District of Columbia law. That is a system whereby after a period of time employers' rates are based upon their experience and contribution that is called—it is actually a tax paid in and benefits law against the experience.

At the same time, a provision was placed in the law to protect the solvency of the fund. It has two dates that are important: One is June 30 and the other is December 20.

The only provision we are interested in here today is the provision of June 30 and should the funding fall below 4 percent of the taxable payrolls for each tenth of a cent that it goes below that or fraction thereof, each employer's rate is raised for the last 6 months to one-tenth of 1 percent.

Now, there is a ceiling in that particular provision of 2.7 percent and this bill seeks to remove the ceiling because a great many of the people who have the 2.7 percent are the ones whose employees have been draining the fund down to a dangerous level. All we are seeking to do in this particular bill is to remove the 2.7-percent ceiling when this point is reached June 30.

Now, it is not unusual for taxes in the various States to be over 2.7 and at my last count, I cannot say precisely because it is hard to keep up with it, some 42 of the various States have rates over 2.7 percent.

If you have any questions, I would be pleased to answer them.

The CHAIRMAN. Your proposal would open end the 2.7 percent with no other ceiling?

Mr. MACKALL. Yes; just one critical point is reached on June 30. We propose next year to go into the whole matter in depth, but we do not think the fund is in serious enough condition right now to bother the Congress with that.

The CHAIRMAN. Very good.

Thank you very much, Mr. Mackall.

I also have a letter from the Board of Trade on this matter which I place in the record.

[The prepared statement of Mr. Louis Mackall and letter from the Metropolitan Washington Board of Trade follow:]

STATEMENT OF LOUIS MACKALL, DIRECTOR
DISTRICT UNEMPLOYMENT COMPENSATION BOARD
ON S. 3474

I wish to thank the Sub-committee for giving me an opportunity to appear before it. The section of the District of Columbia Code which S. 3474 seeks to amend is an escalator section in the District of Columbia Law which is designed to increase contribution (tax) rates to protect the District Fund when it becomes dangerously low. Never before has this section been invoked, but there has been a drain on the District Fund in the last three years because of increased benefits and longer duration, of over thirty million dollars and undoubtedly the fund will reach the point where the section will apply on June 30 of this year. The high point of the Fund was \$75,265,205.04 in May of 1970. As of close of business on May 31 of this year our Fund was \$45,413,267.02. Of course, it varies from day to day because of the payment of benefits and the collection of taxes.

Approximately 30 percent of the employers are paying a 2.7 rate (the maximum rate). Many of these employers have deficit reserves and it is their former employees that have helped to drain the fund to its present low position. It seems only fair that these employers' rates should be increased as well as employers who have rates below the 2.7 maximum because those employers have earned reduced rates because of stabilizing their employment and having little unemployment.

Your staff in looking over the District of Columbia Code may find many instances referring to a 2.7 rate. At this time those provisions need not be changed and

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are entirely isolated and not affected by the proposed amendment.

In my opinion legislation should be introduced after the first of the calendar year modifying the entire rate structure of the District Unemployment Compensation Law in order to protect the solvency of the Fund. However, this is not necessary at the present time.

I strongly endorse the passage of S. 3474.



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behind community progress*

Board of Trade Building
1129 20th street n.w.
Washington, D.C. 20036
202-659-6456

The Metropolitan Washington Board of Trade

Edwin K. Hoffman
President

June 4, 1974

The Honorable Thomas F. Eagleton
Chairman
Committee on the District of Columbia
United States Senate
Washington, D. C. 20510

Dear Senator Eagleton:

The Metropolitan Washington Board of Trade wishes to go on record in support of S. 3474, a bill to amend the D. C. Unemployment Compensation Act.

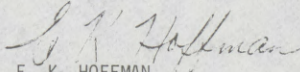
While it is never pleasant to endorse an increase in tax on employers, the conditions of the D. C. Unemployment Trust Fund, along with the delivery system of the Manpower Administration dictate our support of this amendment. This amendment will, on an equitable basis, require all employers within the city to contribute an equitable share of the monies needed to maintain the statutory stability of the fund.

In conjunction with this support, Mr. Chairman, we would encourage expeditious action on the city's 1974 supplemental budget request. This request contains some \$1.3 million in D. C. monies which are or will be due to the trust fund before June 30, 1974. Certainly reimbursement of these monies to the fund will help minimize private employer increases which undoubtedly will take effect after June 30, 1974.

You should also know that the Board of Trade has established a special consulting team to work with the D. C. Manpower Administration to improve its delivery capabilities, thereby cutting the length of stay citizens spend on unemployment.

We appreciate the opportunity to convey these comments to you, and hope the Committee will act expeditiously on S. 3474.

Cordially,


E. K. HOFFMAN

The CHAIRMAN. Finally we have Mr. William Robinson of the Office of Corporation Counsel.

STATEMENT OF WILLIAM ROBINSON, ASSISTANT CORPORATION COUNSEL

Mr. ROBINSON. Thank you, Mr. Chairman.

Just briefly, I would refer to the matter addressed to you on May 30, 1974, by the Mayor, in which he pointed out that the District government believes that the provision of law which requires the clerk to issue licenses to ascertain the color of the parties designed to marry is outmoded and archaic and that the placement of race discrimination on the marriage application does not appear to serve any useful purpose.

STATUTORY REQUIREMENT IS REPUGNANT

While not clearly unconstitutional, the present statutory requirement is repugnant and is, in our view, unnecessary to the performance of the ministerial function of issuing the license.

Accordingly, the District government strongly supports the enactment of S. 3476.

The CHAIRMAN. Very good. That is short and sweet, to the point, and appropriate.

We appreciate it, Mr. Robinson.

Thank you very much.

Are there any others here present who would desire to testify or make a statement on any of the bills that are before us here today?

That concludes the hearings on the aforementioned bills.

Thank you very much.

[Whereupon, at 10:20 a.m., the committee adjourned.]



