CRIMINAL JUSTICE REFORMS

HEARING

BEFORE THE

SUBCOMMITTEE ON
JUDICIARY, MANPOWER AND EDUCATION

OF THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 7988

TO ESTABLISH IN THE DISTRICT OF COLUMBIA THE OFFICE OF ATTORNEY GENERAL, TRANSFER PROSECUTORIAL AUTHORITY FOR LOCAL OFFENSES, AND PROVIDE FOR LOCAL APPOINTMENT OF JUDGES

SEPTEMBER 23, 1980

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CONTENTS

STATEMENTS

MATERIAL SUBMITTED FOR THE RECORD

SUMMARY OF TESTIMONY

APPENDIX

CRIMINAL JUSTICE REFORMS
H.R. 7988

TUESDAY, SEPTEMBER 23, 1980

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

The subcommittee met, pursuant to notice, at 9 a.m., in room 1310, Longworth House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Leland, and Harris.

Also present: Elizabeth D. Lunsford, general counsel; Don Temple, subcommittee counsel; James T. Clark, legislative counsel; Donn Davis, staff; Harry M. Singleton, minority chief counsel; and Alfred S. Frank, minority staff counsel.

Mr. MAZZOLI. We open our hearing this morning on H.R. 7988 by welcoming our witnesses and thanking them for taking time out of their busy schedules in order to testify on this bill.

[The bill referred to, introduced by Chairman Dellums by request, on August 21, 1980, together with staff summary thereof, follows:]

96TH CONGRESS
2D SESSION

H. R. 7988

To establish an Office of the Attorney General for the District of Columbia, to transfer prosecutorial authority for local offenses and custodial responsibility for prisoners convicted of local offenses to the District of Columbia Government, to provide for the local appointment of the judges of the District of Columbia Courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 21, 1980

Mr. DELLUMS (by request) introduced the following bill; which was referred to the Committee on the District of Columbia

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A BILL

To establish an Office of the Attorney General for the District of Columbia, to transfer prosecutorial authority for local offenses and custodial responsibility for prisoners convicted of local offenses to the District of Columbia Government, to provide for the local appointment of the judges of the District of Columbia Courts, and for other purposes.

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

TITLE I—SHORT TITLE, PURPOSE, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "District of Columbia Criminal Justice Reform Act".

STATEMENT OF PURPOSE

SEC. 102. Subject to the retention by Congress of the ultimate legislative authority over the District of Columbia vested by article I, section 8, clause 17, of the Constitution, it is the intent of Congress to establish an autonomous judicial system in the government of the District of Columbia by granting such government full authority over the prosecution of violations of the laws of the District of Columbia, the custody of prisoners convicted of local violations, and the appointment of the local judiciary, analogous to the authority vested in a State, and thereby to relieve the Federal Government of the burden of such essentially local District responsibilities.

DEFINITIONS

SEC. 103. As used in this Act, unless otherwise provided or indicated by the context:

(1) The term "Attorney General" means the Attorney General for the District of Columbia established pursuant to this Act.

(2) The term "Council" means the Council of the District of Columbia established pursuant to section 401 of the District of Columbia Self-Government and Governmental Reorganization Act.

(3) The term "Deputy Attorney General" means the Deputy Attorney General for the District of Columbia established pursuant to this Act.

(4) The term "District" means the District of Columbia.

(5) The term "law of the District of Columbia" means any law applicable exclusively to the District of Columbia enacted by Congress, any act of the Council, or any rule or regulation promulgated by the Mayor, the Council, or any other agency or entity of the District of Columbia.

(6) The term "Mayor" means the Mayor of the District of Columbia established pursuant to section 421 of the District of Columbia Self-Government and Governmental Reorganization Act.

TITLE II—OFFICE OF THE ATTORNEY GENERAL

ESTABLISHMENT

SEC. 201. There is established within the District of Columbia Government an Office of the Attorney General for the District of Columbia, headed by an Attorney General.

APPOINTMENT AND TERM OF OFFICE

SEC. 202. (a) The Attorney General shall be appointed by the Mayor with the advice and consent of the Council, but

if the Council does not disapprove any nomination by the Mayor within 60 days of the Mayor's transmittal thereof, the nominee shall be deemed to have been confirmed on the day following the date of the expiration of that period.

(b) The Attorney General shall serve at the pleasure of the Mayor for a term of four years coterminous with the term of the office of the Mayor as set by section 421(b) of the District of Columbia Self-Government and Governmental Reorganization Act.

FILLING OF VACANCIES

SEC. 203. A vacancy in the office of Attorney General shall be filled in the same manner in which the original appointment is made. Any person so appointed to fill such a vacancy shall serve only for the remainder of the unexpired term of his predecessor.

QUALIFICATIONS OF OFFICE

SEC. 204. The Attorney General shall be a member in good standing of the District of Columbia Bar, shall have been engaged in the practice of law for at least five years preceding appointment, and shall be a resident of the District of Columbia (or become a resident within 180 days of his appointment). For the purposes of this section, "practice of law" shall include active practice before any court of the United States, a State, the District of Columbia, or other jurisdiction of the United States; employment in a legal ca-

pacity by the government of the United States, the District of Columbia, a State, or local entity; or employment on the faculty of an accredited law school.

COMPENSATION

SEC. 205. The Attorney General shall receive compensation at a rate equivalent to level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1–331.1 et seq.).

FUNCTIONS OF THE ATTORNEY GENERAL

SEC. 206. The Attorney General for the District of Columbia shall be the chief legal officer for the District of Columbia and have charge of all law business of the District of Columbia. In the performance of such duties he shall—

(1) have charge of the prosecution of all violations of the laws of the District of Columbia except those violations brought in the name of the United States pursuant to section 216 of this Act;

(2) have charge and conduct of all civil actions, suits or proceedings instituted by and against the District of Columbia or the agencies or entities thereof (including the independent agencies thereof), or in which the District of Columbia is concerned, including all ac-

tions in which the constitutionality or validity of the laws of the District of Columbia are challenged;

(3) render written legal opinions and advice to the Mayor, the Council, and the heads of agencies and entities of the District of Columbia Government (including the independent agencies thereof), which opinions, in the absence of specific action by the Mayor or act of the Council to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law, to be followed by all District officers and employees in the performance of their official duties;

(3) render, upon request, written legal opinions and advice on matters pertaining to the District Government to the President and Congress of the United States;

(4) make recommendations to the Mayor with respect to the pardon or the commutation of the sentences of persons convicted of crimes against the District of Columbia;

(5) serve as the chief representative of the District of Columbia Government in matters of criminal justice policy, in the carrying out of which responsibility he shall have the advice and assistance of such other agencies or entities of the District of Columbia Government as he shall deem necessary and appropriate;

(6) develop and direct criminal justice and law enforcement policies and coordinate the implementation of such policies by the law enforcement agencies within the District Government;

(7) perform all functions granted to or vested in the Corporation Counsel of the District of Columbia by law prior to the effective date of this Act;

(8) develop regulations pursuant to which he shall be authorized to take all personnel actions necessary to administer the Office of the Attorney General, including the authority, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, to appoint, promote, transfer, discipline, suspend and terminate Assistant District Attorneys and other officers and employees;

(9) supervise the administration of the Office of the Attorney General;

(10) have the authority to appoint special counsel for a particular purpose or designated proceeding and to determine the compensation, powers, duties, and the length and manner of service of such special counsel;

(11) issue rules and regulations necessary to carry out the purposes of this Act; and

(12) perform such other functions that the Mayor may from time to time delegate to him.

DELEGATION AND REGULATION OF AUTHORITY

SEC. 207. The Attorney General may delegate any of his functions to any other officer, employee, or entity of the Office of the Attorney General and may authorize the successive redelegations of such functions within the Office as may be necessary or appropriate. In addition, the Attorney General may allocate or reallocate his functions among the officers, employees, or agencies of his office and establish, consolidate, alter or discontinue such organizational entities within such office as may be necessary or appropriate, except that the Attorney General may not abolish the positions established in this title.

DEPUTY ATTORNEY GENERAL

SEC. 208. (a) The Attorney General shall appoint a Deputy Attorney General for the District of Columbia, who shall generally assist the Attorney General in the performance of his duties.

(b) The Deputy Attorney General shall exercise the powers and duties of the Attorney General during his absence or disability or in the event of a vacancy in the office of the Attorney General, pursuant to section 213 of this Act.

(c) The Deputy Attorney General shall serve at the pleasure of the Attorney General and shall be compensated at a rate equivalent to level V of the Executive Schedule as established under section 5316 of title 5 of the United States

Code, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d) The Deputy Attorney General shall meet the qualifications for holding office required of the Attorney General under section 204 of this Act and shall serve a term coterminous with that provided for the office of the Attorney General under section 202(b) of this Act.

SOLICITOR GENERAL

SEC. 209. (a) The Attorney General shall appoint a Solicitor General for the District of Columbia, who shall assist the Attorney General in the performance of his duties as provided by this section.

(b) The Solicitor General, subject to the general supervision of the Attorney General, shall—

(1) conduct, or assign and supervise, all cases before the United States Supreme Court, including appeals, petitions for and in opposition to certiorari, briefs and arguments (including those as amicus curiae), and settlement thereof;

(2) authorize petitions for rehearings en banc and other extraordinary appeals, and the filing of amicus curiae briefs, in any appellate court;

(3) provide legal counsel and advice to the Attorney General;

(4) take all actions with respect to the appointment, employment, separation, training, and general administration of attorneys and other personnel in the Office of the Solicitor General, subject to the final approval of the Attorney General; and

(5) perform such other duties and functions as may be especially assigned from time to time by the Attorney General.

(c) The Solicitor General shall serve at the pleasure of the Attorney General and be compensated at a rate equivalent to the rate established for grade 18 of the General Schedule under section 5332 of title 5 of the United States Code, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d) The Solicitor General shall meet the qualifications for holding office required of the Attorney General under section 204 of this Act and shall serve a term coterminous with that provided for the office of the Attorney General under section 202(b) of this Act, or until his successor is appointed.

DISTRICT ATTORNEY FOR CRIMINAL PROSECUTIONS

SEC. 210. (a) The Attorney General shall appoint a District Attorney for Criminal Prosecutions, who shall be the head of the Criminal Division of the Office of the Attorney General and who shall assist the Attorney General in the performance of his duties as provided by this section.

(b) The District Attorney for Criminal Prosecutions, subject to the general supervision of the Attorney General, shall—

(1) have charge of the prosecution of violations of the criminal laws of the District of Columbia, except for those matters brought in the name of the United States pursuant to section 216 of this Act;

(2) have charge of conduct of all juvenile delinquency proceedings based upon violations of the criminal laws of the District of Columbia;

(3) develop and supervise the implementation of all policies relating to criminal prosecutions and juvenile delinquency proceedings, and develop policies relating to the investigation thereof;

(4) have charge of the conduct of all extradition and other special criminal proceedings;

(5) make recommendations to the Attorney General with respect to pardons and commutations of sentences by the Mayor of persons convicted of crimes against the District of Columbia;

(6) conduct or authorize, in criminal prosecutions in the name of the District of Columbia, appeals in all appellate courts and petitions to such courts for the issuance of extraordinary writs, except to the extent that such functions are delegated by the Attorney General

to the Solicitor General or another officer or employee in the Office of Attorney General;

(7) take all actions with respect to the appointment, employment, separation, training and general administration of attorneys and other personnel in the Criminal Division of the Office of the Attorney General, subject to the final approval of the Attorney General; and

(8) perform such other duties and functions as may be specially assigned from time to time by the Attorney General.

(c) The District Attorney for Criminal Prosecutions shall serve at the pleasure of the Attorney General and shall be compensated at a rate equivalent to the rate established for grade 18 of the General Schedule under section 5332 of title 5 of the United States Code, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d) The District Attorney for Criminal Prosecutions shall meet the qualifications of office required of the Attorney General under section 204 of this Act and shall serve a term coterminous with that provided for the office of the Attorney General under section 202(b) of this Act, or until his successor is appointed.

69-197 O - 81 -- 2

DISTRICT ATTORNEY FOR CIVIL PROCEEDINGS

SEC. 211. (a) The Attorney General shall appoint a District Attorney for Civil Proceedings, who shall be the head of the Civil Division of the Office of the Attorney General and who shall assist the Attorney General in the performance of his duties as provided by this section.

(b) The District Attorney for Civil Proceedings, subject to the general supervision of the Attorney General, shall—

(1) have charge of all civil and administrative actions, suits or proceedings (including the investigation thereof) instituted by or against the District of Columbia or its agencies;

(2) develop and supervise the implementation of all policies relating to the investigation, litigation, and settlement of suits and other proceedings against the District of Columbia or its agencies;

(3) conduct or authorize, in civil or administrative actions, appeals by the District of Columbia and its agencies to all appellate courts and petitions to such courts for the issuance of extraordinary writs, except to the extent that such functions are delegated by the Attorney General to the Solicitor General or another officer or employee in the Office of the Attorney General;

(4) prepare the formal opinions of the Attorney General, render informal opinions and legal advice to the agencies of the District Government, including the independent agencies thereof, and assist the Attorney General in the performance of his functions as legal adviser to the Mayor;

(5) take all action with respect to the appointment, employment, separation, training and general administration of attorneys and other personnel in the Civil Division of the Office of the Attorney General, subject to the final approval of the Attorney General; and

(6) perform such other duties and functions as may be especially assigned from time to time by the Attorney General.

(c) The District Attorney for Civil Proceedings shall serve at the pleasure of the Attorney General and shall be compensated at a rate equivalent to the rate established for grade 18 of the General Schedule under section 5332 of title 5 of the United States Code, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d) The District Attorney for Civil Proceedings shall meet the qualifications of office required of the Attorney General under section 204 of this Act and shall serve a term

coterminous with that provided for the office of the Attorney General under section 202(b) of this Act, or until his successor is appointed.

DISTRICT OF COLUMBIA MARSHAL

SEC. 212. (a) The Attorney General shall appoint a Marshal for the District of Columbia, who shall assist the Attorney General in the performance of his duties. The Marshal shall be experienced in criminal justice and security matters.

(b) The Marshal, subject to the general supervision of the Attorney General, shall—

(1) provide for the security of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, in consultation with the Joint Committee on Judicial Administration for the District of Columbia Courts;

(2) have charge of the transportation of District of Columbia prisoners within the District, and to and from the District and institutions operated by the District irrespective of their location;

(3) execute all lawful writs, subpenas, process and orders issued by the District of Columbia Courts or other authority of the District and command all necessary assistance to execute his duties, in the performance of which the Marshal and his deputies shall pos-

sess all of the common law powers of a constable or sheriff; and

(4) perform such other duties and functions as may be especially assigned from time to time by the Attorney General.

(c) The Marshal shall serve at the pleasure of the Attorney General and shall otherwise be subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d) The Marshal shall serve a term coterminous with that provided for the office of the Attorney General under section 202(b) of this Act, or until his successor is appointed.

ACTING ATTORNEY GENERAL

SEC. 213. (a) During the absence or disability of the Attorney General, or in the event of a vacancy in the office of the Attorney General (other than a vacancy occurring by reason of the expiration of the term of an Attorney General), the Deputy Attorney General shall act as Attorney General. The Attorney General shall designate the order in which other officers or employees of the Office of the Attorney General shall act for and perform the functions of the Attorney General during the absence, disability, or vacancy in the office, of both the Attorney General and the Deputy Attorney General.

(b) Upon the expiration of the term of the Attorney General pursuant to section 202(b) of this Act, the Mayor may designate a nominee for the office of Attorney General as Acting Attorney General until the nominee is confirmed.

ASSISTANT DISTRICT ATTORNEYS

SEC. 214. Assistant District Attorneys appointed by the Attorney General pursuant to this Act shall be authorized and empowered to execute and fulfill the duties of their office according to the Constitution and the laws of the District of Columbia and shall have and hold such offices with all the powers, privileges, and emoluments to the same of right appertaining during the pleasure of the Attorney General.

TRAINING

SEC. 215. The Attorney General shall establish programs for the professional training and continuing legal education of the staff of the Office of the Attorney General and may appoint an Executive Assistant for Training to coordinate such programs.

FEDERAL PROSECUTION OF LOCAL CASES

SEC. 216. (a) Except as otherwise provided in this section, prosecutions for violations of the laws of the District of Columbia shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia.

(b) An information or indictment brought in the name of the United States in the United States District Court for the District of Columbia may include charges of violations of the laws of the District of Columbia if—

(1) the Attorney General for the District of Columbia consents to the inclusion of such charges in writing; or

(2) the United States Attorney General has certified the case or matter for federal prosecution pursuant to subsection (d) of this section.

(c) An indictment or information brought in the name of the District of Columbia in the Superior Court of the District of Columbia may, with the consent of the Attorney General for the District of Columbia or upon certification by the United States Attorney General pursuant to subsection (d) of this section, be joined for trial in the United States District Court for the District of Columbia with an indictment or information brought in that court if the charges in the indictments or informations could have been joined in the same indictment or information in such District Court before the effective date of this Act.

(d)(1) Where the United States Attorney General finds that a particular matter or case involves a legitimate and compelling federal interest, which justifies the exercise of exclusive federal jurisdiction, and such exercise of federal juris-

diction is in the public interest, he may file with the Clerk of the Superior Court of the District of Columbia a certification to that effect. The Attorney General may request that such certification be filed under seal if he deems it necessary to protect the integrity of an ongoing or contemplated investigation or the privacy of an individual, provided that the certification may not be filed under seal to the extent that it relates to an indictment or information previously filed in either court. Timely notice of any certification shall be given in writing to the Attorney General for the District of Columbia.

(2) On the filing of the certification under this subsection, the District of Columbia shall be divested of jurisdiction to conduct any investigation or to bring any prosecution in relation to the matter or case as to which the certification has been filed, except to the extent that the United States Attorney General files with the Clerk of the Superior Court of the District of Columbia and the Clerk of the United States District Court for the District of Columbia a statement that the federal interest underlying the certification has been sufficiently vindicated so as to warrant the reassertion of jurisdiction by the District of Columbia. Such statement shall be filed under seal at the request of the United States Attorney General if the certification was so filed.

(3) The United States Attorney General may file a certification under this subsection only if the United States At-

torney for the District of Columbia has sought and failed to obtain the consent of the Attorney General for the District of Columbia to the exercise of federal jurisdiction over the matter or case to which the certification relates.

(4) The decision of the United States Attorney General to file the certification provided for by this subsection shall not be subject to review in any court.

(5) A prosecution pursuant to certification under this subsection shall be brought in the name of the United States in the United States District Court for the District of Columbia in the same manner and subject to the same appellate review as any other prosecution brought in the name of the United States.

(e) In cases certified pursuant to subsection (d) of this section, the District of Columbia shall be considered as a "State" within the meaning of sections 245(a)(1), 659, 1751(h), and 2117 of title 18 of the United States Code.

(f) Nothing in this section shall affect the authority of the United States Attorney General or the United States Attorney for the District of Columbia to exercise jurisdiction concerning violations of the laws of the United States.

COOPERATION BETWEEN DISTRICT AND FEDERAL AGENCIES

SEC. 217. (a) To the extent necessary to ensure effective law enforcement and the due administration of criminal

justice in the District of Columbia, the United States Attorney General shall provide assistance and guidance in the training of Assistant District Attorneys, the development of ethical and professional standards for the conduct of criminal prosecutions, and the development of cooperative law enforcement activities.

(b) The United States Attorney General and the Attorney General for the District of Columbia shall enter into a Memorandum of Understanding under which—

(1) the United States Attorney General will render, or coordinate the rendering by other Federal agencies and departments of, assistance to the District of Columbia;

(2) there will be the maximum feasible exchange of information concerning violations or potential violations of law within their respective jurisdictions, and in particular concerning those matters which may warrant exercise of the certification authority provided under section 216(d) of this Act, provided that the provisions of Rule 6(e) of the Federal Rules of Criminal Procedure and Rule 6(e) of the Criminal Rules of the Superior Court of the District of Columbia shall not bar the disclosure of matters occurring before the grand jury to the United States Attorney for the District of Columbia in connection with the investigation or prosecution

of violations of the laws of the United States or of the District of Columbia;

(3) the Attorney General for the District of Columbia and other agencies of the District of Columbia will provide to the United States Attorney General and the United States Attorney for the District of Columbia such assistance as may be necessary in aid of their investigative and prosecutorial responsibilities; and

(4) the United States Bureau of Prisons will continue to make available facilities for the confinement of certain District of Columbia prisoners.

CONTINUATION OF SERVICES BY THE UNITED STATES MARSHAL

SEC. 218. (a) The Office of the United States Marshal shall continue to have authority to provide for the transportation, within or without the District of Columbia, of prisoners convicted of violations of the laws of the District of Columbia and to execute all lawful writs, subpoenas, process, and orders issued by the District of Columbia courts outside the District of Columbia.

(b) The United States Attorney General and the Attorney General for the District of Columbia shall enter into a Memorandum of Understanding to implement the authority of the Office of the United States Marshal provided for under

this section and the authority of the District of Columbia Marshal provided for under section 212 of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 219. There are hereby authorized to be appropriated out of funds credited to the District or to the United States, pursuant to the schedule of funding provided by section 307 of this Act, such funds as may be necessary to carry out the purposes of this Act. When so specified in appropriation Acts, such funds shall remain available until expended.

OFFICIAL EXPENSES

SEC. 220. The Attorney General is hereby authorized to provide for the expenditure of funds as the Attorney General may deem necessary for appropriate purposes related to the responsibilities of the Office of the Attorney General. The determination of the Attorney General thereof shall be final and conclusive, and a certificate by the Attorney General shall be sufficient voucher for the expenditure of appropriations made pursuant to this section.

MINIMUM BUDGET REQUESTS BY DISTRICT GOVERNMENT

SEC. 221. The District Government, in any annual budget request made pursuant to section 446 of the District of Columbia Self-Government and Governmental Reorganization Act after the first fiscal year after the effective date of this Act, shall request a total number of positions and amount of appropriations for the Office of the Attorney General that

is at least equal to the number of positions and amount of appropriations authorized by Congress for such Office for the first fiscal year after the effective date of this Act.

TITLE III—TRANSITION PROVISIONS

ABOLISHMENT OF THE OFFICE OF THE CORPORATION COUNSEL

SEC. 301. The Office of the Corporation Counsel of the District of Columbia, as established by section 18 of the Act of August 23, 1971 of the Legislative Assembly of the District of Columbia, and as reestablished by Reorganization Order No. 50 promulgated by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1951, is abolished, and its functions and positions are transferred to the Office of the Attorney General.

TRANSFER OF PERSONNEL

SEC. 302. (a) Officers and employees of the Office of the Corporation Counsel incumbent prior to the effective date of title II of this Act, shall be deemed to be transferred to the Office of the Attorney General as of the effective date of title II of this Act without a break in service. Such officers or employees of such office as are appointed Assistant District Attorneys shall serve at the pleasure of the Attorney General.

(b) Any officer or employee of the Office of the United States Attorney for the District of Columbia or of the United

States Marshal's Service of the District of Columbia who, after the date of enactment of this Act but no later than 90 days prior to the effective date of title II of this Act, requests in writing to be transferred to the Office of the Attorney General, shall, with the approval of the Attorney General Designate, be deemed to be transferred to such office without a break in service on the effective date of title II of this Act. The Attorney General Designate may permit such request for transfer to be made later than 90 days prior to the effective date of title II of this Act, but in no event subsequent to such effective date. The Attorney General Designate shall be deemed to have approved such transfer unless he indicates in writing his disapproval within 20 days (excluding Saturdays, Sundays, and holidays) of the date on which such request for transfer is made.

(c) No employee shall, by reason of his transfer to the Office of the Attorney General, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer, but shall retain personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress or the Council, or regulation adopted pursuant thereto, and applicable to such employees immediately prior to the effective date of the system established pursuant to

this Act, except that notwithstanding any other provision of law, those persons appointed as Assistant District Attorneys shall serve, as of the date of their appointments, at the pleasure of the Attorney General.

TRANSFER OF POSITIONS, PROPERTY, AND FUNDS

SEC. 303. (a) In each case of the transfer by any provision of this Act of functions of the Corporation Counsel of the District of Columbia, the Attorney General of the United States, the United States Attorney for the District of Columbia, or the United States Marshal for the District of Columbia to the Attorney General for the District of Columbia, there are hereby authorized to be transferred positions, property, records, and unexpended balances of appropriations, allocations or other funds, assets and liabilities which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

(1) in the case of functions transferred from a federal officer or agency, by the Director of the Office of Management and Budget; and

(2) in the case of functions transferred from A District officer or agency, by the Mayor.

EXISTING STATUTES, REGULATIONS, AND OTHER ACTIONS

SEC. 304. Any statute, regulation, or other action in respect of (and any regulation or other action issued, made,

taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer is made by this Act references in such statute, regulation, or other action shall be held and considered to refer to the officer or agency to which the transfer is made. As used in this section the term "other action" includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

PENDING ACTIONS AND PROCEEDINGS

SEC. 305. (a) No prosecution, suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of a suit, action, or other proceeding is not necessary for purposes of settlement of the questions involved, shall allow the proceeding to be maintained, with such substitutions as to parties as may be appropriate.

(b) Prosecutions for violations of the laws of the District of Columbia brought by the United States Attorney for the District of Columbia in the Superior Court of the District of

Columbia by the filing of an indictment or information prior to the effective date of this Act shall be completed by the Attorney General for the District of Columbia, including any appellate review. The United States Attorney for the District of Columbia and the Attorney General for the District of Columbia shall enter into an agreement providing for the designation of Assistant United States Attorneys as Assistant District Attorneys for the purpose of competing such cases, pursuant to section 101(d) of title 23 of the District of Columbia Code, in the interests of economical use of prosecutorial resources.

(c) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

PLANNING BY ATTORNEY GENERAL DESIGNATE

SEC. 306. (a) The Mayor may appoint, and the Council may confirm, an Attorney General Designate, who shall take office as Attorney General upon the effective date of title II this Act. The Attorney General Designate, in cooperation with appropriate federal and district authorities, shall provide for the planning preliminary to the establishment of the Office of the Attorney General and the orderly transition to such office of functions and personnel from the Office of the

69-197 O - 81 -- 3

Corporation Counsel of the District of Columbia and the United States Department of Justice, including the Office of the United States Attorney for the District of Columbia and the United States Marshal's Service for the District of Columbia, as provided by this Act. The Attorney General Designate may appoint and remove a Deputy Attorney General Designate, a Solicitor General Designate, District Attorney Designate for Criminal Prosecutions, District Attorney Designate for Civil Proceedings, and a District of Columbia Marshal Designate, who shall take office as Deputy Attorney General, Solicitor General, District Attorney for Criminal Prosecutions, District Attorney for Civil Proceedings, and District of Columbia Marshal, respectively, upon the effective date of title II of this Act. In addition, the Attorney General Designate may hire other assistants and nonlegal clerical staff as he deems necessary and appropriate to the fulfilment of his responsibilities during the transition period. The Attorney General Designate and other designated officers appointed by him shall be subject to the provisions concerning appointment (including the requirement of confirmation of the Attorney General within 60 days of nomination), filling of vacancies, qualifications of office, and compensation provided by title II of this Act, but nothing in this section shall be construed to shorten the terms of office of such officers, after

the effective date of title II of this Act, as provided by sections 202, 206, 207, and 208 of this Act.

(b) Prior to the confirmation of the Attorney General Designate by the Council, the Mayor may exercise the authority of the Attorney General Designate to negotiate and enter into any agreements with federal authorities, and such other actions, as are necessary.

FUNDING DURING TRANSITION YEARS

SEC. 307. The expenses of the Office of the Attorney General (except for the expenses of functions previously performed by the Office of the Corporation Counsel) including the expenses of the transfer of functions from Federal or District agencies to such office, as appropriated by Congress, shall be paid from funds deposited to the credit of the District or the United States according to the following schedule:

(1) During the period between the date of the effective date of this section and September 30, 1981, and during the fiscal year ending September 30, 1982, the entire expense of the Office shall be paid from United States funds.

(2) During the fiscal year ending September 30, 1983, seventy-five percent of the expenses of the Office shall be paid from United States funds and twenty-five percent shall be paid from District funds.

(3) During the fiscal year ending September 30, 1984, fifty percent of the expenses of the Office shall be paid from United States funds and fifty percent shall be paid from District funds.

(4) During the fiscal year ending September 30, 1985, twenty-five percent of the expenses of the Office shall be paid from United States funds and seventy-five percent shall be paid from District funds.

(5) During the fiscal year ending September 30, 1986, and subsequent fiscal years, the entire expense of the Office shall be paid from District funds.

TITLE IV—AMENDMENTS TO OTHER LAWS

AMENDMENTS TO THE SELF-GOVERNMENT ACT

SEC. 401. The District of Columbia Self-Government and Governmental Reorganization Act is amended as follows:

(1) Section 431 is amended—

(A) in subsection (d), by amending paragraph (1) to read as follows:

"(1) There is established a District of Columbia Commission on Judical Disabilities and Tenure (hereinafter referred to as the 'Tenure Commission'). The Tenure Commission shall consist of five members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years.";

(B) in subparagraph (C) of paragraph (1) of subsection (e), by striking out "paragraph (3)(E)" and inserting in lieu thereof "paragraph (3)(C)"; and

(C) in paragraph (3) of subsection (e)—

(i) by striking out subparagraphs (A) and (E); and

(ii) by redesignating subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

(2) Section 433 is amended—

(A) by striking out "President" each place it appears and inserting in lieu thereof "Mayor"; and

(B) by striking out "Senate" each place it appears and inserting in lieu thereof "Council".

(3) Section 434 is amended—

(A) by striking out subsection (a) and inserting in lieu thereof:

"(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereinafter in this section referred to as the 'Commission'). The Commission shall consist of five members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years.";

(B) in clause (C) of paragraph (1) of subsection (b), by striking out "(4)(E)" and inserting in lieu thereof "(4)(C)";

(C) in paragraph (4) of subsection (b)—

(i) by striking out subparagraphs (A) and (E); and

(ii) by redesignating subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively;

(D) by striking out paragraph (5) of subsection (b); and

(E) in subsection (d)—

(i) by striking out "President" each place it appears and inserting in lieu thereof "Mayor"; and

(ii) by striking out "Senate" each place it appears and inserting in lieu thereof "Council".

(4) Title IV is amended by inserting after section 423 the following new section:

"ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

"SEC. 424. (a) The Attorney General for the District of Columbia shall be the chief legal officer for the District of Columbia government and shall have charge and conduct of all prosecutions for violations of the laws of the District and

all civil or administrative matters brought by or against the District or in which the District is concerned. As chief legal officer of the District, the duties and powers of the Attorney General shall extend to the independent agencies of the District government, including but not limited to those established in part F of this title. The Attorney General shall render legal opinions to the Mayor, the Council, and agencies or entities of the District Government, which opinions, in the absence of specific action by the Mayor or act of the Council to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law, to the followed by the officers and employees of all District agencies, including the independent agencies, in the performance of their official duties. In addition, the Attorney General shall supervise the District of Columbia marshal, perform all functions previously granted to or vested in the Corporation Counsel, serve as the chief representative of the District government in matters of criminal justice policy, and perform other professional functions as are necessary to carry out the responsibilities of the Attorney General as chief legal officer.

"(b) The Attorney General shall be appointed by the Mayor with the advice and consent of the Council for a term of four years coterminous with the term established for the Mayor pursuant to section 421(b) of this Act, but if the Council does not disapprove any nomination of the Mayor within

60 days of the Mayor's transmittal thereof to the Council, the Mayor's nominee shall be deemed to be confirmed. Vacancies in the office of Attorney General shall be filled in the same manner in which the original appointment was made, and any person so appointed to fill such a vacancy shall serve only for the remainder of the unexpired term of his predecessor.".

(5) The table of contents of such Act is amended by inserting after the item relating to section 423 the following new item:

"Sec. 424. Attorney General for the District of Columbia.".

AMENDMENTS TO TITLE 11 OF THE DISTRICT OF COLUMBIA CODE

SEC. 402. Title 11 of the District of Columbia Code is amended as follows:

(1) Section 11–502(3) is amended to read as follows:

"(3) Any offense under the laws of the District of Columbia which is authorized to be included in an indictment or information brought in such court pursuant to section 216 of the District of Columbia Judicial System Autonomy Act.".

(2) Sections 11–703(b) and 11–903(b) are amended by striking out "90 per centum of".

(3) Section 11–1501(a) is amended—

(A) by striking out "President" each place it appears and inserting in lieu thereof "Mayor"; and

(B) by striking out "Senate" each place it appears and inserting in lieu thereof "Council".

(4) Section 11–1503(a) is amended by striking out "President" each place it appears and inserting in lieu thereof "District of Columbia Judicial Nominating Commission".

(5) Section 11–1562(c) is amended by striking out ", approved by the Surgeon General of the United States,".

(6) Section 11–1903(b) is amended by inserting "or Attorney General for the District of Columbia" after "United States Attorney for the District of Columbia".

AMENDMENT TO TITLE 13 OF THE DISTRICT OF COLUMBIA CODE

SEC. 403. Section 13–302 of title 13 of the District of Columbia Code is amended by inserting "or the District of Columbia marshal or his deputy" after "United States marshal for the District of Columbia or his deputy".

AMENDMENT TO TITLE 16 OF THE DISTRICT OF COLUMBIA CODE

SEC. 404. Section 16–501(e) of title 16 of the District of Columbia Code is amended by inserting "or District of Columbia marshal" after "United States marshal".

AMENDMENTS TO TITLE 23 OF THE DISTRICT OF COLUMBIA CODE

SEC. 405. Title 23 of the District of Columbia Code is amended as follows:

(1) Section 23–101 is amended to read as follows:

"§ 23–101. Conduct of prosecutions.

"(a) The Attorney General for the District of Columbia shall have charge and conduct of all prosecutions for violations of the laws of the District of Columbia and regulations promulgated by the Mayor, the Council, or any other agency or entity of the District of Columbia government, except as otherwise expressly provided by law.

"(b) An indictment or information brought in the name of the United States may include, in addition to offenses prosecutable by the United States, offenses prosecutable by the District of Columbia, and such prosecution may be conducted either solely by the Attorney General for the District of Columbia or his assistants or solely by the United States Attorney or his assistants if the other prosecuting authority consents.

"(c) Separate indictments or informations, or both, charging offenses prosecutable by the District of Columbia and by the United States may be joined for trial if the offenses charged therein could have been joined in the same indictment or information. Such prosecution may be conducted either solely by the Attorney General for the District of Columbia or his assistants or solely by the United States Attorney or his assistants, if the other prosecuting authority consents.

"(d) The Attorney General of the District of Columbia may, with the consent of the United States Attorney for the District of Columbia, designate any Assistant United States Attorney as an Assistant District Attorney, and the United States Attorney for the District of Columbia may, with the consent of the Attorney General for the District of Columbia, designate any Assistant District Attorney as an Assistant United States Attorney, for the purpose of the prosecution, conduct of proceedings, or investigation, of cases or matters within the jurisdiction of the designating official. Such designated attorneys shall be subject to the general supervisory authority of the designating official and shall possess all the powers of the office to which they are designated for the purpose of such designation.

"(e) If in any case any question shall arise as to whether, under this section, the prosecution should be con-

ducted by the Attorney General for the District of Columbia or by the United States Attorney, the presiding judge shall forthwith, either on his own motion or upon suggestion of either prosecuting authority, certify the case to the District of Columbia Court of Appeals, which shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the District of Columbia Court of Appeals. The decision of such court shall be final.".

(2) Section 23–109 is amended by inserting "the Attorney General for the District of Columbia or by" after "appointed by".

(3) Section 23–541 is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(12) the term 'Attorney General' means the Attorney General for the District of Columbia or any of his assistants designated by him or otherwise designated by law to act in his place for the particular purpose in question.".

(4) Section 23–546 is amended by inserting "or the Attorney General for the District of Columbia" after "United States Attorney" each place it appears.

(5) Section 23–548(a) is amended by inserting "or the Attorney General" after "United States Attorney".

(6) Section 23–555(b) is amended by inserting "and the Attorney General for the District of Columbia" after "United States Attorney for the District of Columbia".

(7) Section 23–701(f)(2) is amended by striking out "United States attorney" and inserting in lieu thereof "Attorney General for the District of Columbia".

(8) Section 23–704 is amended—

(A) by striking out "chief judge of the Superior Court" each place it appears and inserting in lieu thereof "Mayor of the District of Columbia";

(B) by striking out "chief judge" each place it appears and inserting in lieu thereof "Mayor"; and

(C) by striking out subsection (h).

(9) Sections 23–1103 and 23–1104 are amended by inserting "deputy District of Columbia marshal" after "deputy United States marshal," each place it appears.

(10) Section 23–1321(h)(2) is amended by inserting ", District of Columbia marshal," after "United States marshal".

(11) Sections 23–1322(c), 23–1324, and 23–1329(b) are amended by inserting "or Attorney General for the District of Columbia" after "United States Attorney" each place it appears in such sections.

(12) Section 2329(d) is amended by inserting ", District of Columbia marshal or his deputies," after "United States marshal".

AMENDMENTS TO THE CAMPAIGN FINANCE ACT

SEC. 406. The District of Columbia Campaign Finance Reform and Conflict of Interest Act is amended as follows:

(1) Section 301(c) (D.C. Code, sec. 1–1151(c)) is amended by striking out "United States Attorney" and inserting in lieu thereof "Attorney General".

(2) Section 701(d) (D.C. Code, sec. 1–1191(d)) is amended to read as follows:

"(d) Prosecutions for violations of this Act shall be brought by the Attorney General for the District of Columbia in the name of the District of Columbia.".

AMENDMENT TO THE COURT REORGANIZATION ACT

SEC. 407. Section 173(a) of the District of Columbia Court Reorganization Act of 1970 (D.C. Code, sec.

47–204a) is amended by striking out "(1)" and by striking out paragraph (2).

AMENDMENT TO THE DISTRICT OF COLUMBIA SECURITIES ACT

SEC. 408. Section 16(m) of the District of Columbia Securities Act (D.C. Code, sec. 2–2415(m)) is amended by striking out "United States Attorney for the District of Columbia" each place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS TO THE DISTRICT OF COLUMBIA COOPERATIVE ASSOCIATION ACT

SEC. 409. The District of Columbia Cooperative Association Act is amended as follows:

(1) Section 35 (D.C. Code, sec. 29–835) is amended by striking out "United States Attorney" and inserting in lieu thereof "Attorney General for the District of Columbia".

(2) Section 37 (D.C. Code, sec. 29–837) is amended by striking out "United States Attorney for the District of Columbia" and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS TO THE DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

SEC. 410. The District of Columbia Unemployment Compensation Act is amended as follows:

(1) Section 13(a) (D.C. Code, sec. 46–313) is amended by striking out "attorneys,".

(2) Section 21 (D.C. Code, sec. 46–321) is amended by striking out "United States Attorney for the District of Columbia" each place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS TO THE REVISED STATUTES OF THE DISTRICT OF COLUMBIA

SEC. 411. The Revised Statutes relating to the District of Columbia are amended as follows:

(1) The first sentence of section 6 (D.C. Code, sec. 1–220) is amended to read as follows: "The Mayor of the District of Columbia shall have plenary power to grant pardons, commutations, and reprieves, and to remit fines and forfeitures, for all offenses against the laws of the District of Columbia.".

(2) Section 219 (D.C. Code, sec. 43–1535) is amended by striking out "attorney of the United States for the District of Columbia" and inserting in lieu thereof "Attorney General for the District of Columbia".

(3) Section 454 (D.C. Code, sec. 29–514) is amended by striking out "United States attorney" and

inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS TO THE 1901 CODE

SEC. 412. The Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, is amended as follows:

(1) Section 491c (D.C. Code, sec. 7–204) is amended by striking out "United States marshal for the District of Columbia" and inserting in lieu thereof "District of Columbia Marshal".

(2) Section 586 (D.C. Code, sec. 29–413) is amended by striking out "United States attorney" and inserting in lieu thereof "Attorney General for the District of Columbia".

(3) Section 786 (D.C. Code, sec. 29–719) is amended—

(A) by striking out "United States attorney for the District of Columbia" and inserting in lieu thereof "Attorney General for the District of Columbia"; and

(B) by striking out "United States attorney" and inserting in lieu thereof "Attorney General for the District of Columbia".

(4) Section 793 (D.C. Code, sec. 29–725) is amended by striking out "United States attorney" each

69-197 O - 81 -- 4

place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

(5) Section 794 (D.C. Code, sec. 29–726) is amended by striking out "United States attorney" and inserting in lieu thereof "Attorney General for the District of Columbia".

(6) Section 866(c)(3) (D.C. Code, sec. 22–1505) is amended by striking out "United States marshal" and inserting in lieu thereof "District of Columbia Marshal".

(7) Section 869b (D.C. Code, sec. 22–1510) is amended by striking out "United States attorney for the District of Columbia" and inserting in lieu thereof "Attorney General for the District of Columbia".

(8) Section 869f (D.C. Code, sec. 22–1514) is amended by striking out "United States attorney" each place it appears and inserting in lieu thereof "Attorney General".

(9) Section 1608f (D.C. Code, sec. 7–314) is amended by striking out "United States marshal for the District of Columbia" and inserting in lieu thereof "District of Columbia Marshal".

(10) Section 1608g (D.C. Code, sec. 7–315) is amended by striking out "marshal" each place it ap-

pears and inserting in lieu thereof "District of Columbia Marshal".

(11) Section 1608j (D.C. Code, sec. 7–318) is amended by striking out "marshal" and inserting in lieu thereof "District of Columbia Marshal".

AMENDMENTS RELATING TO CORRECTIONS

SEC. 413. (a) The Act entitled "An Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions and for other purposes", approved July 15, 1932, is amended as follows:

(1) Section 4(a) (D.C. Code, sec. 24–204) is amended by striking out "Attorney General of the United States" and inserting in lieu thereof "Mayor of the District of Columbia".

(2) Section 4(b) (D.C. Code, sec. 24–204) is amended by striking out "District of Columbia Council" and inserting in lieu thereof "Council of the District of Columbia".

(3) Section 5 (D.C. Code, sec. 24–205) is amended by striking out "Attorney General of the United States" and inserting in lieu thereof "Mayor of the District of Columbia".

(4) Section 11 (D.C. Code, sec. 24–425) is amended by striking out "Attorney General of the

United States" and inserting in lieu thereof "Mayor of the District of Columbia".

(b) So much of the first section of the Act of September 1, 1916, as relates to the workhouse (D.C. Code, sec. 24–402), is amended by striking out "Attorney-General" each place it appears and inserting in lieu thereof "Mayor of the District of Columbia".

(c) So much of the first section of the Act of March 1, 1911, as relates to the workhouse (D.C. Code, sec. 24–403), is amended by striking out "Attorney-General" each place it appears and inserting in lieu thereof "Mayor of the District of Columbia".

AMENDMENTS RELATING TO THE HOSPITALIZATION OF ADDICTS

SEC. 414. The Act entitled "An Act to provide for the treatment of users of narcotics in the District of Columbia", approved June 24, 1953, is amended as follows:

(1) Section 5 (D.C. Code, sec. 24–605) is amended by striking out "United States Attorney for the District of Columbia" each place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

(2) Section 11(b) (D.C. Code, sec. 24–610) is amended by striking out "United States attorney for

the District of Columbia" and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS RELATING TO THE TREATMENT OF SEXUAL PSYCHOPATHS

SEC. 415. Section 202 of the Act entitled "An Act to provide for the treatment of sexual psychopaths in the District of Columbia and for other purposes", approved June 9, 1948 (D.C. Code, sec. 22–3504), is amended by striking out "United States attorney for the District of Columbia" each place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENTS RELATING TO HOUSES OF PROSTITUTION

SEC. 416. The Act of February 7, 1914 (relating to houses of prostitution), is amended as follows:

(1) The first sentence of section 2 (D.C. Code, sec. 22–2714) is amended to read as follows: "Whenever a nuisance is kept, maintained, or exists as defined in this Act, the Attorney General for the District of Columbia or any citizen of the District of Columbia may maintain an action in equity in the name of the District of Columbia, upon the relation of such Attorney General or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists.".

(2) Section 3 (D.C. Code, sec. 22–2715) is amended—

(A) in the second sentence thereof, by striking out "attorney of the United States for the District of Columbia or the Attorney-General of the United States of America" and inserting in lieu thereof "Attorney General for the District of Columbia"; and

(B) in the third sentence thereof, by striking out "attorney of the United States for the District of Columbia" each place it appears and inserting in lieu thereof "Attorney General for the District of Columbia".

AMENDMENT RELATING TO THE REGULATION OF ALCOHOLIC BEVERAGES

SEC. 417. The second sentence of section 33 of the Act entitled "An Act to control the manufacture, transportation, possession and sale of alcoholic beverages in the District of Columbia", approved January 24, 1934 (D.C. Code, sec. 25–132), is amended to read as follows: "Prosecutions for violations of this Act shall be on information filed in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia.".

AMENDMENT RELATING TO FALSE ADVERTISING

SEC. 418. Section 2 of the Act entitled "An Act to prevent fraudulent advertising in the District of Columbia", approved May 29, 1916 (D.C. Code, sec. 22–1412), is amended to read as follows:

"SEC. 2. Prosecutions hereunder shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General for the District of Columbia, or one of his assistants.".

GENERAL AMENDMENT TO STATUTES WITH REFERENCES TO THE CORPORATION COUNSEL

SEC. 419. (a) Except as otherwise provided in this Act, all laws of the District of Columbia, or regulations promulgated thereto, in force on the effective date of this Act, in which reference is made to the "Corporation Counsel of the District of Columbia" or the "Corporation Counsel", are amended by substituting "Attorney General for the District of Columbia" for each such reference; and all such laws or regulations in which reference is made to "Assistant Corporation Counsel" or "Assistant Corporation Counsels" are amended by substituting "Assistant District Attorney" or "Assistant District Attorneys", respectively, for each such reference.

(b) Sections 18 and 19 of the Act of August 23, 1871, of the Legislative Assembly of the District of Columbia (D.C. Code, secs. 1–301, 1–302) are hereby repealed.

TITLE V—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 501. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on October 1, 1981.

(b) Title I (relating to the short title, purpose, and definitions of this Act), section 302(b) (relating to transfer requests by employees of the United States Justice Department), section 306 (relating to planning by the Attorney General Designate), and section 307 (relating to the schedule of funding) shall take effect on the date of the enactment of this Act.

(c) Section 219 of this Act shall take effect on the date of the enactment of this Act with respect to the authorization of appropriations for the transfer of functions to the Office of the Attorney General.

Staff Summary of H.R. 7988

This is a summary of H.R. 7988, introduced by Mr. Dellums, Chairman of the Committee on the District of Columbia, at the request of the Mayor of the District of Columbia.

H.R. 7988 is divided into five (5) Titles. A summary of each title is provided below.

I. TITLE I—SHORT TITLE, PURPOSE, AND DEFINITIONS

The Short Title of H.R. 7988 is the "District of Columbia Criminal Justice Reform Act." The purpose of this Act is to establish an autonomous judicial system in the District by granting it (1) authority over the prosecution of violations of its laws; (2) custody of prisoners convicted of local violations; and (3) authority to appoint local judges. Presently, these functions are respectively performed by the U.S. Attorney for D.C., the U.S. Marshal and the President of the United States.

II. TITLE II—OFFICE OF THE ATTORNEY GENERAL

This Title establishes an office of the Attorney General for D.C. The Attorney General shall be appointed by the Mayor with the advise and consent of the City Council. The appointee shall serve at the pleasure of the Mayor for a four year term—coterminous with the Mayor's term of office.

He or she must be a member in good standing of the D.C. Bar, have practiced law for five years, and have been a resident of the District within 180 days of appointment.

The Attorney General for D.C. will be the chief legal officer for the District and will be responsible for prosecuting violations of D.C. laws; representing D.C. in all of its civil actions; providing legal guidance to the Mayor and the D.C. government; developing criminal justice policy and administering the office of the Attorney General. The Attorney General's functions are delegable.

The organizational structure for the office of the Attorney General will primarily consist of a Deputy Assistant General (Section 208), a Solicitor General (Section 209), a District Attorney (D.A.) for Criminal Proceedings (Section 210), a D.A. for Civil Proceedings (Section 211), a District Marshal (Section 212), and a number of Assistant D.A.'s (Section 214). Each will be appointed by the Attorney General and shall serve at the Attorney General's pleasure.

The Deputy Attorney General will be responsible for assisting the Attorney General and shall serve as Attorney General in the case of a vacancy. The Solicitor General will be responsible for representing the District government in its cases before the United States Supreme Court. The D.A. for Criminal Prosecutions will be responsible for the prosecution of violations of the D.C. criminal laws and for representing the District in criminal matters before appellate courts. The D.A. for Civil Proceedings shall represent the District in all civil and administrative actions instituted by or against D.C. and in all civil or administrative appeals. The D.C. Marshal shall be responsible for the security of both the Superior Court and the Court of Appeals for D.C., the transportation of prisoners and the execution of subpoenas and writs.

Under this Title an information or indictment brought in the name of the United States may include charges for violations of D.C. laws if the Attorney General for D.C. consents or the U.S. Attorney General certifies the matter for federal prosecution (Section 216). Such cases may also be prosecuted jointly by the U.S. Attorney General and the Attorney General for D.C. in the U.S. District Court for D.C.

Additionally, the Bill provides for exclusive federal jurisdiction if the U.S. Attorney General finds that a case involves a "legitimate and compelling federal interest", and that the exercise of federal jurisdiction is in the public interest. Upon proper certification the District would be divested of its jurisdiction to either investigate or prosecute the matter. Various procedural guidelines are provided in this regard.

III. TITLE III—TRANSITION PROVISIONS

Title III provides for the transfer to the office of the Attorney General for D.C. the officers and employees of the Corporation Counsel, and the officers or employees of the office of the U.S. Attorney for D.C. and the U.S. Marshal Service of the District who request transfers (Section 303).

Prosecutions for violations of D.C. laws initiated by the U.S. Attorney for D.C. prior to the effective date of H.R. 7988 will be completed by the Attorney General for D.C., including appellate litigation.

Title III also provides for the Mayoral appointment of an interim "Attorney General Designate" who would take office upon the effective date of this Act (Section 306). He or she would be responsible for the preliminary planning of the

Office and the transfer of personnel. The interim Attorney General would be authorized to appoint a Deputy Attorney General Designate, Solicitor General Designate, D.A. Designates for both Criminal and Civil Proceedings, and a District Marshal. The appointees would take office upon the effective date of Title II.

A declining yearly federal government contribution is proposed to cover the expenses of the office during the first four years of the transition (except for the expenses of functions presently performed by the Office of Corporation Counsel). The proposed federal contribution is as follows: Year one—100 percent; Year two—75 percent; Year three—50 percent; and Year four—25 percent.

IV. TITLE IV—AMENDMENTS TO OTHER LAWS

Title IV would amend the D.C. Self-Government and Governmental Reorganization Act (hereafter the Self-Government Act) and would delete the two federal appointments on both the Judicial Disabilities and Tenure Commission (the Tenure Commission) and the Judicial Nomination Commission (the Nomination Commission).

The amendments would authorize the Mayor to nomiate Judges of the D.C. Court of Appeals and Superior Court from a list provided by the Nomination Commission and authorize the City Council to confirm such nominations.

One Amendment increases the compensation of the D.C. Court of Appeals and Superior Judges to the compensation provided for U.S. Court of Appeals Judges and U.S. District Court Judges respectively. Another substitutes the Mayor as the chief extradition officer for the Chief Judge of the Superior Court. Additional Amendments are proposed to either reflect changes made in the Self-Government Act or in the previous titles of H.R. 7988.

V. TITLE V—EFFECTIVE DATES

Title V provides that the effective date of the Act will be October 1, 1981.

STATEMENT OF REPRESENTATIVE MAZZOLI

Mr. MAZZOLI. The 1970 Court Reform and Criminal Procedure Act reorganized the District of Columbia court system into what is now the superior court and the court of appeals. This legislation ended a period of overlapping jurisdiction between Federal and local courts over civil and criminal actions.

The Home Rule Act of December 24, 1973 (87 Stat. 774; D.C. Code, Title 1, sec. 121 et seq.) established general legislative authority within the District of Columbia City Council, and general executive authority in the Mayor. However, home rule was not completed, with respect to the judicial system.

Currently, the District of Columbia does not have full prosecutorial authority over violations of its criminal laws. The majority of its criminal offenses are prosecuted by the U.S. Attorney's office. The U.S. Marshal is responsible for the custody of local prisoners and for protecting the local courts.

The power to appoint judges for both the superior court and the Court of Appeals for the District is vested in the President of the United States, subject to Senate confirmation.

H.R. 7988 proposes to transfer to the District full authority over the prosecution of violations of its laws through the creation of an office of the Attorney General for the District of Columbia.

It also proposes to transfer from the U.S. Marshal to the District government various functions, including custody of prisoners convicted of local violations.

Finally, H.R. 7988 would transfer from the President to the Mayor the authority to appoint local judges and from the Senate to the city council the authority to confirm these appointments.

H.R. 7988 is an important bill and one not without controversy. I hope the hearings we commence today will provide the data and

the information needed to illumine, explain, and hopefully, resolve the issues presented.

I would like to enter into the record at this point a statement of Mr. Dellums, the chairman of the full committee, relative to his bill, H.R. 7988; a statement of the Honorable Walter Fauntroy in support of the bill; and a statement from the chairman of the House Judiciary Committee, the Honorable Peter Rodino, in favor of the bill.

[The statements follows:]

STATEMENT OF CHAIRMAN DELLUMS ON H.R. 7988

Chairman Mazzoli, I am very pleased that your subcommittee is giving early attention to H.R. 7988, a legislative proposal of the Mayor of the District of Columbia concerned with judicial & prosecutorial autonomy in the justice system of the District. Unfortunately, time permits only a start or the review process this Congress—an important start that will be very valuable next year to our deliberations.

As I said a year and a half ago as I became Chairman of this Committee, I am dedicated to expanding local Home Rule and reducing the strings which Congress and the Federal government still maintain over the residents of this city. The several provisions of H.R. 7988 deserve careful study by this subcommittee.

Three years ago this matter was studied and discussed in the White House Task Force on the District of Columbia, chaired by Vice President Mondale. The Task Force recommended judicial and prosecutorial autonomy for the District. Although this was not listed in the White House press release, the appropriate administration officials were instructed to begin working immediately on the matter with the city.

By the first of next year the Committee will also have available to it the extensive study of the D.C. Judicial System being prepared by a committee of the D.C. Bar. Any legislative initiatives recommended by the Bar and others may be considered during the first session of the 97th Congress.

Although the exact form of any Congressional enactment will depend on these hearings and the work of this subcommittee and others, I fully support expanded local autonomy in this area.

STATEMENT OF HON. WALTER E. FAUNTROY, DELEGATE, DISTRICT OF COLUMBIA

Mr. Chairman, I am pleased to have this opportunity to express my support for H.R. 7988 which would make extensive reforms in the Criminal Justice System of the District of Columbia. This legislation would continue the reforms begun with the passage of the Court Reform Act in 1970 and the Self-Government and Governmental Reorganization Act of 1973.

Most notably, this legislation would provide for the creation of the Office of Attorney General, which would assume the responsibilities for criminal prosecution which now is handled by the United States Attorney for the District of Columbia. Such a transfer would be a logical extension of Home Rule government and would reaffirm the dual system of prosecution which has evolved in the Federal system of the United States.

Additionally, the bill also provides that the mayor would appoint, and the City council would confirm, judges to the District of Columbia courts. The current functions of the Nominating and Tenure Commissions would be retained intact. Nowhere else in the United States do Federal officials select local judges and, consistent with the basic premise on which the entire autonomy plan rests, there is no logical reason why Federal officials should exercise such authority regarding the selection of these local judges.

There would also be established a Marshal's Service which would be responsible for the functions which the United States Marshal's Service now performs for the District's judicial system as follows:

(1) Provision of security for Superior Court Judges;
(2) Operation of the Superior Court cell block;
(3) Movement and transportation of prisoners;
(4) Service of arrest warrants;
(5) Service of process in civil matters;
(6) Service of subpoenas throughout the United States, and
(7) Handling of evictions in landlord and tenant matters.

To meet the needs of the District of Columbia as the Nation's Capital, the United States Marshal will continue to serve Superior Court criminal subpoenas outside the District of Columbia.

Finally, the bill would also provide that prisoners convicted under laws solely applicable to the District of Columbia would be committed to the custody of the Mayor instead, as it is presently provided, to the Attorney General of the United States. The effect of this change would be imperceptable; it would, however, enable the District to have full responsibility for all persons entering the criminal justice system from the time of indictment to incarceration.

In recognition of the special relationship of the District of Columbia to the Federal government and the fact that the District is the national capital, a unique procedure is proposed for a limited number of extraordinary cases in which there is clearly a legitimate and compelling reason for the Federal government to assume prosecutorial responsibility.

This bill has been carefully crafted. It seeks to take full advantage of the opportunities which the existing Federal system offers while guaranteeing that District of Columbia citizens will have a criminal justice system which is fully responsive and responsible to them and their needs. That has been recognized by the cooperative effort which has gone into this legislation by the Administration, the U.S. Attorney's Office, the Department of Justice, and our own local government.

Passage of this bill is an important component of Home Rule government. People who live in a society of laws must believe that the system of justice and the prosecutors are directly responsible to them, especially in those cases where the crimes sought to be punished are those which are personal to them. This bill fulfills that aspect of the social compact which enables a society such as ours to function.

Out city has been fortunate to have been the recipitent of some of the finest U.S. Attorneys and some of the finest judges that any community can ever wish to have serve them. The appointments to the Federal bench of jurists who sit on our Court has been nothing short of phenomenal. The successes and the efforts of our U.S. Attorney's Office has made it the envy of the country. These attributes, however, are not enough. The people must feel close to the system of justice and they must believe that the decisions of the Courts are those which they themselves would render if given the opportunity. This bill accomplishes that goal and it builds upon all of the successes we have had in the ten years since the creation of one of the most modern and progressive court systems of our country.

I am confident that our government will seek to emulate and surpass these successes and I would urge you to give careful consideration to this bill with the view that it be favorably reported.

CONGRESS OF THE UNITED STATES,
U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., September 22, 1980.

Hon. RONALD V. DELLUMS,
Chairman, Committee on the District of Columbia,
Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that you will be proceeding with hearings on the bill H.R. 7988, to establish an office of the Attorney General for the District of Columbia and to provide for local appointment of judges. As you know, I have long been a supporter of the concept of home rule. I fully support the proposition that the citizens of the District of Columbia should have a direct input into the operation of their local government which I believe should include control over the appointment of judges and criminal prosecution with appropriate protection of the Federal interest.

I look forward to working with you on this meritorious endeavor.

Sincerely yours,

PETER W. RODINO, Jr.,
Chairman.

Mr. MAZZOLI. So this morning we welcome the Attorney General of the United States, Benjamin Civiletti. Accompanying him is the distinguished U.S. attorney for the District of Columbia, Mr. Charles Ruff, and the U.S. Marshal for the District of Columbia, Mr. J. Jerome Bullock.

Mr. Civiletti, you may proceed.

STATEMENT OF HON. BENJAMIN CIVILETTI, ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY CHARLES RUFF, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA, AND J. JEROME BULLOCK, U.S. MARSHAL

Attorney General CIVILETTI. I am pleased to appear here today to discuss with you H.R. 7988, the recently proposed District of Columbia Criminal Justice Reform Act.

H.R. 7988

This bill proposes the transfer of local prosecution and judicial appointment authority, as well as certain marshals' and prisoner custody functions, from the Federal Government to the District of Columbia. The bill is no stranger to the Department of Justice. Indeed, departmental representatives have been working closely with local officials for more than a year to assist in developing such a legislative proposal. And the people who are here with me today are two of the hardest workers from the Justice Department side. Those efforts have resulted in a good working draft that sets the stage for serious discussion and consideration of the transfer issue. In the short time available to me this morning, I would like to share with you my major concerns on the subject, and support for the bill.

LOCAL RESPONSIBILITY FOR CRIMINAL JUSTICE SYSTEM

First, I believe as a matter of principle that the responsibility for the local criminal justice system should rest not with Federal entities but with agencies of the District of Columbia. The transfer of the responsibilities covered by the bill is the next logical step in the process of establishing a unified criminal justice system for the District of Columbia, a process that began with the enactment of the D.C. Court Reform and Criminal Procedure Act of 1970 and continued with the 1973 passage of the D.C. Self-Government and Governmental Reorganization Act. Creating a local prosecutor's office to handle violations of the District of Columbia Code is, in my view, an appropriate extension of home rule for the District. The transfer of that authority to a locally appointed official should increase not only the actual responsiveness of the prosecutor to community concerns, but also the community's sense that its interests are being served by its principal law enforcement authority.

FEDERAL INTEREST CERTIFICATION

At the same time, I am greatly concerned that any proposed transfer plan recognize and protect the very special Federal interest in law enforcement in the District of Columbia. The instant bill demonstrates that the movement toward greater local autonomy need not compromise our interest in the security of Federal property, officials, and operations in our Nation's Capital. The certification procedure envisioned by section 216 of the bill, for example, affords the Federal Government the continuing ability—consistent with the public interest—to prosecute local offenses which involve a legitimate and compelling Federal interest.

PROSECUTOR'S ROLE

The bill also seeks to minimize any potential conflict between the activities of the local and Federal prosecutor's office. Section 217 of the bill is designed to coordinate local and Federal activities to avoid the duplication of effort, and collateral estoppel or double jeopardy problems, that might otherwise arise. For example, section 217(b)(2) makes it clear that rule 6(e) of the Federal Rules of Criminal Procedure is not intended to delimit the exchange of grand jury information between the local and Federal prosecutor in the District of Columbia. I wish to emphasize that I consider the certification process outlined in section 216 of the bill, and provisions ensuring effective coordination of the two offices, to be imperative to an effective and workable transfer plan. In fact, I consider these features so important that I would be unwilling to support legislation that omitted them.

MARSHALS

In supporting the concept of transfer, the Department of Justice advocates that the District of Columbia assume as much responsibility for the marshals' and prisoner custody functions as is reasonably practicable. I recognize that it may be more appropriate, at least in the foreseeable future, for the Bureau of Prisons to continue to make space available to house a limited number of District of Columbia prisoners than for the District to undertake the construction of its own facilities. However, should the envisioned transfer occur, other related law enforcement functions could be transferred in their entirety. Federal marshals should, for example, be relieved of responsibility for process and prisoner custody functions routinely performed elsewhere by State governments.

The Department of Justice has identified for officials of the District of Columbia government a number of outstanding technical and substantive questions and disagreements that we have with the proposed bill. We do, however, see the bill as a very satisfactory beginning to an important legislative effort. I plege our continuing interest, assistance, and support in working toward a final product that we can all enthusiastically endorse.

Thank you for considering my views. Charles F. C. Ruff, the U.S. attorney for the District of Columbia, and Jerome Bullock, the U.S. Marshal for the District of Columbia, have accompanied me today, and will be happy to respond to your questions.

Mr. MAZZOLI. Thank you very much, Mr. Attorney General, and the gentlemen who constitute the panel. We appreciate your help.

SUBSTANTIVE QUESTIONS FOR RESOLUTION

Mr. Attorney General, on the bottom of page 3, you stated there are a remaining number of substantive questions. Is there an ongoing process in which your office and perhaps your colleagues cooperate to resolve these difficulties.

Attorney General CIVILETTI. Yes. the work of the government of the District of Columbia and Mayor Barry's office, as well as my office in the Department of Justice under the Deputy, will continue. That work has been going on for the last year or more; it will continue with a special task force meeting regularly. Mr. Ruff and

Mr. Bullock have participated intimately in those efforts and continue to play a leading role with the Mayor's representatives.

Mr. MAZZOLI. Do you see progress being made?

Attorney General CIVILETTI. I think a tremendous amount of progress has been made and I think Mayor Barry has, along with his legal staff and the Department of Justice, looked upon this as an opportunity to create a sound local system afresh, as opposed to the conflicting and sometimes duplicitous systems which historically have existed between the Federal Government and old State governments and city governments. Here the effort has really been remarkable to avoid some of the waste and confusion and disputes which exist from time to time in State systems in conflict with the Federal system. We have tried to eliminate those and have tried to design a system which is not only compatible between the Federal Government and the District of Columbia, but one which is synergistic.

Mr. MAZZOLI. I have one last question on that topic, so to speak: Are you at liberty to discuss one or two areas which are currently the subject of such discussion?

MARSHALS

Attorney General CIVILETTI. I think we can. Some of those issues are of substantial significance. Others of not as great significance would be questions like the role of the District of Columbia marshal, with regard to activity outside of the District of Columbia jurisdiction for service of process, apprehensions, transfer and arrest, even going to subpena service nationwide.

ELECTED OR APPOINTED OFFICIALS

Another issue would be how to fill some of the offices covered by the bill, whether they can and should be elected or perhaps some of them appointed with a confirmation process.

A third would be whether or not the method which we have designed for the bill for compatibility and review, the Attorney General certification provisions, and communication between the two prosecutors, holds up to close scrutiny.

Another would be whether or not we have sufficient allowances within the bill in the system to assure the maximum economy efficiency, competency, and training of both sets of prosecutors.

Mr. MAZZOLI. Thank you very much.

FEDERAL INTEREST CERTIFICATION

Mr. Attorney General, you mentioned the certification process. On page 3 of your statement, you refer to section 216 where you interspersed words to the effect that you would not be able to support the bill without a transportation approach.

I wonder if the bill before this subcommittee represents the last word as far as certification, or is it an area which has to be in the final bill?

Attorney General CIVILETTI. I think, Chairman Mazzoli, the latter. True, the hard effort and creativity we have posed and support this particular design, but there is no permanent magic to it. The concept is extremely important to recognize the special

Federal interest in the seat of government and to provide a means by which we can accommodate that interest by and between the Justice Department and the Attorney General acting through the U.S. attorney and the District of Columbia official. There are probably any number of means which can be developed to satisfy that concept. This happens to be one we think is sound, but I do not think the Mayor's office nor the Department of Justice is locked into this precise design.

Mr. MAZZOLI. One other witness today will suggest there be an appeal procedure from the Attorney General certification. Has that consideration come up in your discussion?

Attorney General CIVILETTI. An appeal from the U.S. Attorney General's certification?

Mr. MAZZOLI. Yes, in a sense you would not have the final authority in determining the Federal constitutional interest.

Attorney General CIVILETTI. Institutionally, I would be opposed to that.

GRAND JURY PROCEEDINGS

Mr. MAZZOLI. Section 6(e) provides for access by the U.S. attorney to grand jury records. Perhaps you or Mr. Ruff would be willing to comment on that. To what extent do you believe the U.S. attorney has to have access to the entire range of grand jury proceedings, and could that access be limited and the Justice Department still support the bill?

Mr. RUFF. Mr. Chairman, I think the key is not so much that the U.S. attorney have carte blanche to all grand jury material produced by the local prosecutor, but rather when the moment comes, and it is crucial—and that is frequent—for the two prosecutors to exchange information so they can cooperate; that rule 16 not stand in the way of that kind of free exchange, recognizing there still would be the normal protections on grand jury secrecy so it would not be a matter of making public grand jury testimony, but rather when a matter is of sufficient Federal concern and the local prosecutor felt he wanted to make the information available, he could do so.

We think that kind of information flow is crucial to the kind of cooperation the Attorney General spoke of when he spoke of trying to eliminate the old conflicts.

Attorney General CIVILETTI. We have run into that problem now because rightfully, rule 6(c) is very strict and limited with regard to not only prosecutors and the limitation of anything which is said in the grand jury process, but also it requires fairly substantial disclosure by prosecutors to investigators and third parties within the Government during the course of investigations. Where we have as we do today in many cities and States in the country, joint investigations or investigations which involve violations of State or sometimes multistate laws and the Federal laws, we have to either cross-deputize or certify State prosecutors and bring them into the investigation in order to have a fully coordinated investigation.

JOINT PROSECUTIONS

This in effect is a provision which allows within the judgment of the respective prosecutors, such essential need-to-know exchange of

information which occurs in the grand jury, anticipating that there will be many joint prosecutions which cross the code lines between the District of Columbia criminal law and the Federal criminal law and will allow an evaluation of the instances when the Federal interest will outweigh the local District of Columbia.

Mr. MAZZOLI. The feeling then, on the part of both of you gentlemen, is that the situation in the District of Columbia is unique enough so there would be an exception to 6(c) and as to other jurisdictions, it would have to be made different.

Attorney General CIVILETTI. That is our general feeling, because it would be awkward and repetitive if each time we had to have such an exchange, we had to either run to the court to get a rule 6(c) or we had to cross-deputize State prosecutors.

Mr. MAZZOLI. Mr. Ruff, let me ask you a question: I understand the bill before the subcommittee provides that cases initiated by your office would be further prosecuted after the transfer by the attorney from the District of Columbia.

Mr. RUFF. It was my proposal, Mr. Chairman, that would be the way it would be handled. There were a number of alternatives suggested, such as having assistant attorney generals continue a case, but given the time it takes a case to go through the system, particularly the appellate process, it was felt a clear line of demarcation ought to mark a transfer of responsibility, always with the understanding that U.S. attorney personnel would be available to carry on cases in which they were particularly expert and which there was a need for that continuing involvement, so there would not be an artificial break in responsibility for these cases.

Mr. MAZZOLI. Thank you.

Mr. Bullock, I wonder with respect to handling of prisoners and with respect to their handling, have you had a comment on where we are and how far we have to go before we reach the best possible goal, in your standpoint?

HANDLING PRISONERS

Mr. BULLOCK. Yes. I think we have resolved the basic question of the responsibility for handling of local prisoners within the District of Columbia.

I have talked with my counterpart from the corporation counsel's office, and there is a great deal of interest to further explore the transportation of prisoners outside the District of Columbia, that is, to those institutions where they might continue to be housed, those Federal institutions.

Additionally the bill provides for a memorandum of understanding between the attorney general of the District of Columbia and the U.S. Attorney General which could adequately resolve this question.

Mr. MAZZOLI. I have at this time no further questions. The distinguished gentleman from Texas, Mr. Leland.

LOCAL JUDGES

Mr. LELAND. Mr. Civiletti, I understand there is considerable controversy on the part as to the local judiciary.

Attorney General CIVILETTI. I am not exactly firm on the judiciary part of the bill. I have listened to the controversy and debate and frankly, I have not made up my mind.

Mr. LELAND. What about your colleagues?

Attorney General CIVILETTI. They will have to speak for themselves.

Mr. RUFF. I admit to some of the same uncertainty, although I think that the narrow concerns about undue political influence of the judiciary are exaggerated. That is not a despot situation at this time.

Mr. MAZZOLI. Counsel.

FUTURE OF U.S. ATTORNEYS IN DISTRICT'S SYSTEM

Mr. SINGLETON. We welcome you this morning. I have a question primarily directed to Mr. Ruff and Mr. Civiletti. I would suspect one of the keystones to this plan would be personnel. I was curious to know what is the prospect of assistant U.S. attorneys transferring to the new D.C. Attorney General's office in sufficient numbers to maintain the quality of prosecution we have enjoyed in the past?

Attorney General CIVILETTI. My own view, hope and expectation is, to the extent we can contribute to that, a very substantial number of U.S. attorneys would be willing to work in the D.C. Attorney General's office. I think they would look on it as an opportunity. I think they would look on it as a new challenge and institution and office which is just under way, and an opportunity for advancement even faster, perhaps, than in the federal system. Since they will have a cooperative relationship with the U.S. attorney's office, they will not in effect be isolated from it. I think they will seize that opportunity, which is for the good of the system, because to the extent we can get and retain in any area of prosecution, particularly in the District of Columbia, experienced, well-trained, interested, and committed lawyers, then we are far better off.

Now of course the office in numbers will have to have a number of other positions filled by people from the private bar and from law school graduates and the rest, but I think there will be a substantial corps of experienced people available and willing to work with and help establish and set the quality and tone for the Attorney General's office; and I am sure an outstanding person will be chosen to lead that office.

Mr. SINGLETON. Mr. Ruff, have you a view on this matter?

Mr. RUFF. Yes. There is no question that you focus on an important problem. To the extent we say at a given time the responsibility will shift to a new prosecutor, it is essential he have the ability. This has been a subject of ongoing debate. We have done a number of things which will help solve it, not the least of which is affording the same benefits to anyone who elects to transfer. But in addition to that, we have always recognized that there may be a period of time during which it is crucial to maintain an available supply of assistant U.S. attorneys to provide transition support.

We have a turnover rate in the U.S. attorney's office of about 4 years. I think if we begin, if and when this becomes a realistic process, to recruit people with the clear understanding that down

the road the new local prosecutor is coming, I think we will have eager, young prosecutors, as well as senior people who will be prepared to move over.

My own experience in going through 1 year of recruiting and my experience in law school would indicate to me that the prosecutor's office is one of the very few less desirable offices for young lawyers. I think most prosecutors' offices around the country have experienced no dearth of applicants. So I expect an appeal will bring some people into the office.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. Attorney General, just for the record, I presume the statements you and your colleagues are making represent the views of the administration; is that correct?

Attorney General CIVILETTI. Yes.

Mr. MAZZOLI. Thank you, Mr. Attorney General. We may, because of the necessary brevity of today's hearing, have further questions in writing. If so, we will submit those to you.

We now welcome to our witness chair the distinguished Mayor Marion Barry, who will be accompanied by the distinguished corporation counsel, Ms. Rogers.

Thank you very much for your help over the years, and we look forward to your testimony today, Mr. Barry.

STATEMENT OF HON. MARION BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY JUDY ROGERS, CORPORATION COUNSEL

Mayor BARRY. Mr. Chairman and members of the committee, I am pleased to testify in support of the District of Columbia Criminal Justice Reform Act. This hearing is a further step in the unfinished business of providing full self-determination for the citizens of the District. Accordingly, it is of great historical importance to the District of Columbia.

I would like to indicate for the record I have with me Mrs. Judy Rogers, the Corporation counsel, and my own representative in the dialog with the task force and the White House. We have a number of other individuals here, including Herbert Reid, counsel to the Mayor.

Mr. MAZZOLI. Your colleagues are welcome, and if at some point they would like to make a comment, they may do so.

Mayor BARRY. I would like to thank you for your strong support. You have been unyielding in assisting us to achieve self-determination, and I am appreciative of it.

I am also delighted to see another strong supporter of the District of Columbia, Congressman Leland of Texas, who has been one of our dearest friends.

Also, Mr. Chairman, I am delighted to indicate the present Attorney General in my view demonstrates the strong commitment and support of the Carter administration toward this transfer. Of course there have been a number of things considered, but I think we are down to the 90-percent level, where most of those disagreements have been worked out.

I would like to enter into the record my full statement.

Mr. MAZZOLI. I have read the statement. Without objection, it will be made a part of the record. You may read from it or excerpt from it.

BACKGROUND

Mayor BARRY. This whole process is not in a vacuum. Congress enacted legislation 10 years ago with far-reaching implications for the criminal justice system in the District. The District of Columbia Court Reform and Criminal Procedure Act of 1970 recognized that the trial of persons charged with local criminal offenses and the adjudication of local civil cases should be handled by a local court system, rather than the Federal judiciary. The court reform act established trial and appellate courts for the District with jurisdiction and statute equivalent to State courts, and transferred from the Federal courts to these local courts the responsibility over all local cases. At the time, consideration of the transfer of local prosecutorial responsibility was deferred until the new court system could be well established. The District's courts have demonstrated that a transfer of responsibility from the Federal system to a local system is in the best interests of the District. The standards of local justice have improved over the years so that local cases are handled in an expeditious, efficient, and just manner, and the local courts have attracted men and women of high caliber, who take pride in serving the citizens of the District of Columbia.

HOME RULE ACT

Three years after passage of the court reform act, this committee began the deliberation which led to the enactment of the most important legislation in the history of the District. The District of Columbia Self-Government and Governmental Reorganization Act granted the citizens of the District the right to elect a Mayor and Council, with the primary, stated purpose to:

> Grant to the inhabitants of the District of Columbia powers of local self-government and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters:

By January 2, 1979, Congress had also transferred to the District legislative authority over the local criminal law. Once again, during consideration of the self-government act, the proposal to transfer prosecutorial authority was postponed until the local government could be established.

Today, the committee has before it a measure that would complete the process—begun with the court reform act and continued with the Self-Government Act—of transferring to the citizens of the District the responsibility over the local criminal justice system. Now that the District possesses an established court system and elected government empowered to legislate in criminal justice matters, it is unquestionably time to complete the Federal-to-local transition process so that the citizens of the District will possess a full measure of self-determination in these areas.

PROSECUTORS FOR THE DISTRICT

Everywhere in the United States except the District, the authority of the U.S. attorney is limited to violations of Federal law, under

policies and procedures established by the U.S. Department of Justice. As Federal attorneys, their primary concern is not local crimes or local criminal justice priorities. Every State, therefore, has a local system to prosecute violations of the common law and statutes of the State and to promote local criminal justice policies and priorities. State and local prosecution systems exist because our system of government has recognized from the outset that there are legitimate local concerns in these areas. Thus, throughout the Nation, most common law and statutory criminal offenses fall within the ambit of the various State systems and are handled by State and local prosecutors.

That is not, however, the current system in the District of Columbia. Here, the U.S. attorney performs both the Federal and local prosecution functions, just as the U.S. courts adjudicated most local cases prior to 1970. This is a basic inequality which would be remedied by the transfer of this fundamental element of self-government to the citizens of the District of Columbia.

Let me say, those of us who are elected in the District of Columbia and those who are appointed feel as strongly about the criminal justice system as anyone in the Nation. We get just as upset about attempted rapes or larcenies or other major offenses, and it seems, Mr. Chairman, if we are to improve the quality of the criminal justice system, the best way to do that is to put it in the hands of those elected so we can be accountable to the people here.

I am convinced, when you have full home rule, the local officials, because we are elected, are more sensitive, in the sense that our constituencies are right here and they will tend to be the barometer as to whether or not they agree or disagree with us.

Therefore, Mr. Chairman, we are not asking for anything that is revolutionary or anything that is radical, but only that which is just and that which makes sense. Also, Mr. Chairman, we have had the excellent cooperation of the Department of Justice and the District Government.

DEVELOPMENT OF THE PROPOSED LEGISLATION

The Criminal Justice Reform Act was conceived, developed, and drafted jointly by the Department of Justice and the District Government. It was the logical outgrowth of the work of the President's Task Force on the District of Columbia. That task force, chaired by the Vice President of the United States, included the chairmen of the four congressional district committees, the Mayor, and the Chairman of the Council. Its agenda addressed the major issues remaining between the Federal and District Governments, with the goal of expediting the steps necessary to provide full self-determination for the citizens of the District. Fiscal, legislative, and criminal justice autonomy were the basic agenda items, and each was pursued along several levels. Following the report of the President's task force and his recommendations, District and appropriate Federal agencies began work on the recommended legislative proposals and administrative changes.

In January 1979, shortly after I took office as Mayor, I met with the President and the chairmen of the four congressional district committees to review the agenda for continuation of the District's transition from dependence to independence. With the President's

support in principle for the criminal justice reform proposal, I met with the Attorney General in March 1979, and we agreed to establish a task force to plan and prepare legislation for the transfer of prosecutorial, marshal, prisoner, and judicial appointment authorities. Then Deputy Attorney General Civiletti was designated by the Attorney General to serve on the task force. The Special Assistant to the President for Intergovernmental Affairs served as the White House representative, and the chief judges of the local courts were invited to serve as members of the task force. Also on the task force were the Chairman of the Council of the District of Columbia, and the chairman of the Council's Committee on the Judiciary.

This task force, aided by a staff component, has continued to work cooperatively for over a year. Under the leadership of Attorney General Civiletti, the Justice Department has assisted the District in preparing transfer plans, assembling information, and perfecting the legislation, so he has a great knowledge of the work, of how we have come to where we are. Mr. Chairman, we feel very strongly that the various drafts and the proposal that has been shared with the chief judges and comments and suggestions from the judges and bar organizations were received and many subsequently incorporated. After circulating a descriptive plan in September 1979, a draft bill was prepared and revisions made in response to additional comments. The District and Justice Department are in essential agreement on the legislation. We continue to review the bill and will recomend clarifying revisions in response to recent suggestions by the Department. I do not think anyone should get upset if there are minor disagreements on a point here or there. That is the reason for these hearings.

H.R. 7988

There are three or four major areas in the bill. The basic premise on which the bill rests is the desirability of continuing to afford the citizens of the District of Columbia an increasing measure of self-determination in areas that are basically local in character. The authority of the District, in terms of its basic judicial and governmental structure, is today quite similar to that of the States. There remain, however, several areas in the criminal justice system where the Federal Government still exercises a measure of authority which experience has shown is no longer necessary or consistent with the principle that local law enforcement functions should be performed by local officials.

APPOINTMENTS OF JUDGES

If enacted, this bill would complete the self-determination transition process in these areas, as it would give the District the authority to appoint its judges, prosecute its criminal offenders, and handle its prisoners in the same manner as any of the States. It is against this decade-long transition process that the existing judicial and law enforcement systems, and how they would be changed under the bill, should be evaluated. It is my own view and based on the history of how the States came about it, most started out with an appointed official, and I am speaking to the elected officials on the dias. There is no way to run for elective office—when I hear

people say, we have to keep politics out of our school system, yet they have to campaign, raise money. When you are new and young you want to take as much politics out of this as you can. I would be, in a long run, for an elected attorney general, but at this point, I am for an appointed attorney general.

The record will demonstrate, as long as I have been there, I have not called the Corporation Counsel one time to ask that a particular case be looked at or any decision be changed. So my commitment is clearly there, even though I have budgetary authority for the Corporation Counsel's office as well as the courts.

I think even in this tight budget situation we are trying within the tight fiscal restraints to meet the requests of the judges.

The bill has three primary objectives: It would establish an Office of the Attorney General for the District of Columbia and transfer to it responsibility for prosecuting local crimes, providing marshal services, conducting civil litigation, and providing legal counsel. It would provide for the nomination of judges of the local courts by the Mayor, upon recommendation of the Judicial Nomination Commission, and require confirmation by the Council. And it would transfer responsibility over prisoners convicted of local crimes to the District.

Also, Mr. Chairman, we believe that we have an opportunity here to learn from the other States. As the Attorney General spoke, a number of States have had early disagreement as to jurisdiction of the Federal Government and their own government.

As you know, States have been rather reluctant to give up any authority in that area, but here we have an opportunity to take the best from all possible worlds to learn from those States which have gone through this process.

Then there is the whole question of judicial appointments. Mr. Chairman, I feel very strongly that the citizens of the District of Columbia should have the same rights as well as the responsibilities of the citizens of our neighboring States of Maryland and Virginia. There is no reason for the President of the United States to continue to appoint local judges. The President of the United States has other responsibilities. It is our view that we are just as concerned about the quality of our judges as the President of the United States would be. Therefore, we have a process, the Judicial Nominating Committee, which would recommend to the Mayor, as it does now to the President, three or more names, and the Mayor would select and send to the Council those names.

Let me also say, Mr. Chairman, that we now have an advise and consent process for department heads. That has worked, in my view, very well. Judges are not in the same category, but again, it seems to me, there is an assumption that if the elected legal officials get involved in this process, the quality will decrease. The President of the United States is an elected official, and the quality has not decreased.

As a matter of fact, since the requirement that District of Columbia judges live and be residents here, I have seen an opportunity for the President to appoint judges who will bring more diversity and equality to the bench. In fact, I feel very, very strongly about it. I think that is the feeling of all of us in the District. The bill includes a provision containing a 15-year term for the judges. So I

think there are adequate safeguards here. I do not know what the opposition could be, other than emotion. It is not based on logic.

JUSTICE AUTHORITY OVER PRISONERS

As you know, every prisoner sentenced in the District of Columbia is technically under the authority of the Attorney General of the United States. Again, this is the only place in the Nation where a person convicted of local crimes is technically under the authority of the Attorney General. We have worked out some relationships where about 80 percent of all our prisoners are housed in institutions run and maintained by the District of Columbia Government. I think we ought to continue the opportunity. In other States, local criminal offenses, those who are convicted can be sent to Federal prisons. As you know, the District, unlike other States, is a small area in terms of territory, and oftentimes a number of people who have committed criminal activity together should be separated.

I think one case in point is the situation we had 3 or 4 years ago, the takeover of the District Building and B'nai B'rith. I think it was wise to separate the various persons involved in that activity.

So in closing, Mr. Chairman, I think we have covered all the bases. We have covered all the safeguards for protection of the Government; on the other hand, given full responsibility to the local interests.

FINANCING TRANSFER OF FUNCTIONS

In the financing section, we have made it very clear that the District of Columbia is prepared to assume its full financial responsibility. The executive branch has agreed it ought to be fully funded by the Department of Justice, partly because we were overpaying the Department from 1941 to 1959. So it is really a reimbursement back, but it also gives us a chance each year to develop a systematic budget: 100 percent the first year, 75 the second, 50 percent the third, then 25 percent after 4 years, when the District assumes its full budget responsibility.

The budget would never go under that.

In conclusion, Mr. Chairman, I would urge that this committee hold a number of hearings about this important matter, as it plans to do, that it gets the view of people far and near, and that it recommend to the full committee whatever change is necessary, and the full committee recommend to the House of Representatives that at last the citizens of the District of Columbia be given the responsibility and authority as to how we protect, enhance, and strengthen our criminal justice system.

[The remainder of the Mayor's prepared statement follows:]

A. OFFICE OF THE D.C. ATTORNEY GENERAL

The Office of the Attorney General for the District of Columbia established by the bill would be headed by an Attorney General appointed by the Mayor for a four year term after confirmation by the Council. The District's Attorney General would be the chief legal officer for the District and would exercise broad responsibility over local law enforcement and criminal justice programs and policies. He would exercise general supervision over the Office, but without direct involvement in day-to-day, case-related activities, and would also render legal advice and opinions to the District departments, independent agencies, and other District Government entities. As the lead District representative in criminal justice matters, he would work with

federal and area law enforcement and criminal justice agencies to promote coordination of law enforcement policies in the metropolitan area. In addition, he would perform the civil and advisory functions and limited criminal responsibilities currently vested in the District's Corporation Counsel.

The Office would be headed by a small immediate office of the Attorney General and five principal subordinate officers appointed by the District's Attorney General for four year terms. The Deputy would be the general assistant to and act as the Attorney General in his absence. The Solicitor General would be responsible for providing legal counsel to the Attorney General and handling extraordinary appeals, en banc cases, and cases before the Supreme Court. The two main divisions of the Office would be the Civil and Criminal Divisions. The District Attorney for Criminal Prosecutions would head the Criminal Division, and the District Attorney for Civil Proceedings would head the Civil Division. A third, operational section would be the Marshal's Service, headed by the District of Columbia Marshal.

The Criminal Division would assume the current functions of the Superior Court Division of the United States Attorney's Office for the District of Columbia, as well as the prosecution of juvenile delinquency, serious traffic, criminal tax, and regulatory matters now handled by the Corporation Counsel. It would have responsibility for prosecuting all criminal offenses codified in Title 22 of the D.C. Code. Organizationally, the Criminal Division would be modeled after the Superior Court Division of the United States Attorney's Office in order to maintain maximum continuity in prosecutorial functions. Plans for the Division call for Felony, Misdemeanor, Juvenile Delinquency, Special Prosecution, and Appellate Offices. The Special Prosecutions Office would perform Major Crimes and Fraud functions now conducted by the United States Attorney in its Federal District Court divisions.

The Civil Division would assume the current functions of the Office of the Corporation Counsel in the civil, legal counsel, and administrative law areas, including matters relating to children, youth, and families other than juvenile delinquency proceedings. This includes responsibilities regarding child abuse and safety, as well as persons-in-need-of-supervision. All legal activities related to or in support of District Government operations and programs would in the Civil Division.

The District of Columbia Marshal's Service would assume the local functions now performed by the United States Marshal's Service for the District of Columbia, including (1) the provision of security for Superior Court judges, (2) the operation of the Superior Court cell block, (3) the movement of prisoners in court facilities, (4) the transportation of prisoners to and from District correctional facilities, (5) the service of certain warrants, (6) the service of civil process, and (7) the handling of evictions. Plans for the Marshal's Service call for three major divisions—Court Support, Cell Block, and General Assignment.

To meet the needs of the District of Columbia as the national capital, the United States Marshal will continue to have authority to serve Superior Court criminal subpoenas outside the District of Columbia, although we anticipate that such authority would not be utilized routinely, but primarily in extraordinary circumstances. The District's Marshal will be authorized to serve subpoenas within the Washington Metropolitan Area and felony arrest warrants will continue to be serveable anywhere in the United States.

The special relationship of the District of Columbia to the Federal Government and the status of the District as the national capital necessitates a special procedure to meet federal needs and constitutional restraints. A unique procedure is, therefore, proposed for extraordinary cases necessitating assumption of prosecutorial responsibility over local cases by the Federal Government. Upon the consent of the District's Attorney General for the District of Columbia, or in the absence of such consent, on the written certification by the Attorney General of the United States that a case involves a legitimate and compelling federal interest, the federal prosecutor would handle the matter in the United States District Court. It is contemplated that this procedure would be used very sparingly and that cross-designations of Assistants and other cooperative arrangements between the local and federal prosecutors would be the preferred and usual manner of handling local matters of interest to the United States.

To accomplish a smooth transfer of jurisdiction, the bill includes incentives to attract members of the United States Attorney's Office and Marshal's Service to the Office of the Attorney General for the District of Columbia. Thus, it provides that they would retain their personnel benefits and be exempt from the requirement that all new employees of the District Government must become District residents. All employees of those staffs who transfer by the effective date of the bill would be so treated. Attorneys who transfer from the Department of Justice and Office of the Corporation Counsel to the new Office of the Attorney General would receive comparable personnel benefits and serve at the pleasure of the Attorney General of

the District of Columbia, as Assistant United States Attorneys now serve at the pleasure of the Attorney General of the United States.

B. Judicial Appointments

The bill provides for the local appointment of the judges of the Superior Court and Court of Appeals. Unlike any other jurisdiction in the United States, judges of the purely local courts in the District are appointed by the President of the United States and confirmed by the Senate. This procedure is inconsistent with a statelike court system and local self-government. Selection of the members of the District's Courts by representatives of the people of the District of Columbia is integral to the principle of local self-government and has previously been included in home rule proposals. This bill would provide for their nomination by the Mayor and confirmation by the Council. The current functions of the Judicial Nomination and Tenure Commissions would be retained, although the two federal appointments to these Commissions would be eliminated. The Nomination Commission would remain responsible for preparing a list of nominees to fill judicial vacancies and designating the chief judges of the local courts. The Tenure Commission would remain responsible for judicial reappointment, removal, suspension, and involuntary retirement. The bill also includes a provision to increase the salaries of the local judges, who serve 15-year terms, in recognition of their stature and responsibilities, and in keeping with the goal of the Court Reform Act to attract well qualified men and women to the local bench.

C. Prisoner Custody

The bill transfers formal custody over prisoners convicted of purely local offenses from the Attorney General to the District. Custody of these prisoners, including furlough and pardon responsibilities, would be placed in the Mayor, just as state prisoners are committed to the custody of the Governor of the State. The Attorney General of the United States now delegates his custodial responsibility for most District of Columbia prisoners to the District Government, and those prisoners are housed at District operated institutions. Other District prisoners would continue to be housed in federal institutions under reimbursement arrangments based on existing statutory formulas for the States.

D. Reimbursement Transfer

The financing of the transfer of functions contemplated by this bill has been carefully planned. Since 1941, the District Government has been required to reimburse the United States Treasury for the costs of the local activities of the United States Attorney and United States Marshal's Service. From 1941 to 1959, the District paid 60 percent of the expenditures of these offices, and from 1960 to fiscal year 1974, the District paid 75 percent of these costs. In fiscal year 1974 it was determined by local and federal officials that the payments had been excessive for all these years, and an adjustment was made in the amount of the reimbursement in fiscal year 1974 with the idea of eventually developing a new and equitable reimbursement procedure pursuant to sections 731 and 737 of the D.C. Self-Government Act. Shortly thereafter, the Federal Government began a study of the transfer of local prosecutorial responsibilities.

Under the bill, the District would resume paying for these functions, but they would be under District control. To enable careful financial planning by the District and in recognition of years of overpayments to the United States Treasury, the bill provides for a decreasing percentage payment for these functions over a four year period. This is consistent with the precedent established by the Court Reform Act and assures a smooth transition. Accordingly, the Federal Government would fund 100 percent of the transition and first year costs, 75 percent of the second year costs, 50 percent of the third year costs, and 25 percent of the fourth year costs. The District would fund the remainder of the costs in the second, third, and fourth years, and all of the costs in the succeeding years. The first year costs, after the transition period, for the entire series of transfers are approximately $14.2 million, based on the salaries of employees of the United States Attorney's Office who currently perform local functions and the cost of the local activities of the United States Marshal's Office. To attract and retain employees of high quality, competitive salaries would be continued along with basic support services necessary to assure a continued high quality criminal justice system. The only other cost associated with the bill is related to judicial salaries, which would be increased to that of federal District Court judges at an estimated annual cost of $325,000.

IV. CONCLUSION

The District of Columbia Criminal Justice Reform Act is the fulfillment of the decade-long process of transferring responsibility for the criminal justice system to the people of the Distrcit of Columbia—a process begun with the Court Reform Act and continued with the Self-Government Act. The bill would complete another step in this process and accord the citizens of the District this important element of self-government which is enjoyed by the citizens of every State. That this Committee is today conducting hearings is evidence of the strong support for the citizens of the District of Columbia by this Committee, the President, the officials in his Administration, and officials of the District Government. On behalf of the citizens of the District, I want to express my appreciation for the support we have received and pledge myself to continuing efforts in support of the enactment of this legislation.

Thank you for this opportunity to testify.

Mr. MAZZOLI. Thank you very much, Mayor Barry, for your statement.

While the gentleman from Virginia is not a member of the committee, we welcome him to our hearing.

STATEMENT OF HON. HERBERT E. HARRIS II

Mr. HARRIS. Thank you, Mr. Chairman. I am rightly supposed to be in a Judiciary Committee meeting right now, which channels Federal judiciary matters. But I wanted to make a special effort to be here to welcome you and applaud you as more and more you become the architect for democracy in the District of Columbia. Your fighting record, your courage and farsightedness is something we should be very pleased about.

I am not a member of this subcommittee, but I would like to go on record in support of H.R. 7988. Over the years, I have remained and stay a staunch supporter for home rule for the District of Columbia.

I think the custody of prisoners who are convicted of local crime should be processed by State and local officials, not by the Federal Government. I believe the District of Columbia should be treated no differently in this respect.

An effective criminal justice system is as important to the citizens of the District of Columbia as to the visitors and residents of the District of Columbia.

I understand the Department of Justice has been and will continue to work closely with the District of Columbia to assure the quality will be maintained and strengthened.

I think this is a very natural step toward home rule and home responsibility.

I am pleased to offer my encouragement as we move this legislation along.

Mr. MAZZOLI. I thank the gentleman, if you will, explain my absence to our chairman, Mr. Rodino.

Mr. HARRIS. I expect he has given his permission.

Mr. MAZZOLI. I did not ask the gentleman from Texas if he has a statement.

STATEMENT OF HON. GEORGE THOMAS (MICKEY) LELAND

Mr. LELAND. I, too, have a full committee meeting to attend, but I would like to say I appreciate all the efforts by the Mayor for what he has done in his short history in accomplishing that which is to be projected here in the District of Columbia for the need to liberate the District of Columbia from the bounds of its circum-

stances—I hate to call it this, but "reservation-type mentality" which has prevailed in not only the District of Columbia but throughout the Nation on behalf of the attitude of people who resent these kinds of issues coming before the Congress.

I would hope that at least the substance of issues that come before us will be treated in light of what the responsibilities are. I commend the Mayor for his efforts, those of the corporation counsel, and of course, Mr. Reid.

Mr. MAZZOLI. We thank the gentleman from Texas.

APPOINTED OR ELECTED D.C. ATTORNEY GENERAL AND JUDGES

Mr. Mayor, just a couple of questions: Your feeling is, because of the newness of the transition and change here, that the attorney general for the District of Columbia should be appointed rather than elected?

Mayor BARRY. Yes, sir.

Mr. MAZZOLI. Have you given thought to having an elected attorney general, because I believe your statement indicated you would not be totally adverse to an election at some subsequent time after the coming election. And if so, what time frame would this election take place in?

Mayor BARRY. I have not done that. We are in the process now of looking at those States. Even now, there are seven States which still have appointed attorney generals. The closest to us is Pennsylvania. They are moving now to an electoral process. New Jersey is still appointed by the Governor. I would like to reserve my time frame on that for a while and sort of think it through. But at least a minimum of 8 to 12 years, it seems, should give us a chance to settle down. Every 4 years you will have a different Mayor and every 4 years, a different Council—we are trying very desperately, trying to get full budgetary autonomy.

I believe in elections. Every time people can vote, they should.

Mr. MAZZOLI. One observation concerning the election versus appointment, in the case of the corporation counsel, the Mayor's lawyer, is that that position will always remain an appointed position. The attorney general for the District of Columbia will be a position with broader responsibility. Therefore, in the interests of autonomy and independence, observations have reached me that the election process might be better suited than the appointment process.

Also, you have indicated that the judges for the District of Columbia should be appointed by the Mayor with the advice and consent of the City Council. I am sure that your deliberations balance that against the continuation of the present process, which is appointment by the President with concurrence by the Senate. Is appointment of judges a matter you consider to be fundamental to this bill, or is this an area that could possibly be among those areas to be further examined?

Mayor BARRY. I think this is fundamental to the bill. In final analysis, the prosecutors, whether Federal or local, have to take these cases someplace, and they take them to grand jurys and to judges. Again, it is a local statute, and as you know, Mr. Chairman, law is an evolving process. I have been told by distinguished lawyers that the law reflects the socioeconomic and environmental

attitudes of certain communities within certain frameworks. I think we need that here. There are other protections in this process as the nomination committee. The Mayor would not be able to nominate someone who did not come before him from the nominating committee. Then you have the Council, 13 members, who look and sit in judgment as to adequacy of such an appointment. Then once a person is appointed, you have 15-year terms.

There is an assumption here that mayors and councils do not have as much integrity as Presidents or Senators. That might sound a little farfetched, but I believe there is an equal amount of integrity to be concerned about our local judges.

Also, the Mayor has no review authority. Once the Mayor makes the decision about any matter, the Mayor can only use the Attorney General to appeal to the court system for those items going against the city.

In terms of the courts, the law requires that the Mayor pass on the courts' budget under section 445 of the criminal code. So you have all the protections here.

I feel very strongly that this is an area we ought to maintain. I realize if anything is controversial about this bill, this is an area of controversy. A number of judges in the present superior court have indicated some concern and opposition. Yet on the other hand you have a significant number of judges who support the appointment of local judges.

During the Carter administration we have had excellent dialog as to local desires.

ELECTED SIMILAR STATE OFFICIALS

Mr. MAZZOLI. I wonder if Miss Rogers has done research as to the number of States which appoint their interim review board on the basis—I should not say appoint, but the high bench or intermediate boards by election as against appointment by the Governor.

Ms. ROGERS. We can provide it for the committee. I know you can almost find any system you can imagine. Some judges at the highest level are appointed by the Governor for the first term, then stand for election for subsequent terms. Others stand for election initially.

Mr. MAZZOLI. It would be interesting, because just as you use a figure of 43 out of 50 States (excepting only Alaska, Hawaii, Maine, New Hampshire, New Jersey, Tennessee, and Wyoming) have elected attorneys general, statistics concerning the selection of judges might be of help to the subcommittee.

[The material referred to follows:]

THE BOOK OF THE STATES

1980-1981

VOLUME 23

THE COUNCIL OF STATE GOVERNMENTS
LEXINGTON, KENTUCKY

Table 13
CONSTITUTIONAL AND STATUTORY ELECTIVE ADMINISTRATIVE OFFICIALS*

State or other jurisdiction	Governor	Lt. governor	Secretary of state	Attorney general	Treasurer	Auditor	Controller	Education	Agriculture	Labor	Insurance	Mines	Land	University regents	Board of education	Public utilities commission	Executive council	Miscellaneous	Total agencies	Total officials
Alabama	C	C	C	C	C	C	...	...	C(a)	...	...	...	...	...	C8	S3	...	...	9	18
Alaska	C	C	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1(p)	2
Arizona	C	...	C	C	C	...	...	C	...	...	...	C	...	...	...	C3	...	...	7	9
Arkansas	C	C	C	C	C	C	...	...	...	...	...	...	C	...	...	...	...	...	7	7
California	C	C	C	C	C	...	C	C	...	...	...	...	...	...	...	...	...	Board of Equalization—C4(b)	8	11
Colorado	C	C	C	C	C	...	...	...	...	...	...	...	...	C9	C5	...	...	...	7	19
Connecticut	C	C	C	C	C	...	C	...	...	...	...	...	...	...	...	...	...	...	6	6
Delaware	C	C	...	C	C	C	...	...	...	...	C	...	...	...	...	...	...	...	6	6
Florida	C	C	C	C	C(c)	...	C	C	C	...	(c)	...	...	...	(d)	...	...	...	8	8
Georgia	C	C	C	C	...	...	C	C	C	C	(e)	...	...	...	...	C5	...	...	9	13
Hawaii	C	C	...	...	...	...	...	...	...	...	...	...	...	...	C13	...	...	...	3	15
Idaho	C	C	C	C	C	C	C	C	...	...	...	...	...	...	...	...	...	...	7	7
Illinois	C	C	C	C	C	...	C	...	...	...	...	...	...	...	...	...	...	Bd. of Trustees, Univ. of Ill.—S9(n)	7	15
Indiana	C	C	C	S	C	...	...	S	...	...	...	...	...	...	...	...	...	...	7	7
Iowa	C	C	C	C	C	C	...	...	S	...	...	...	...	...	...	...	...	...	7	7
Kansas	C	C	C	C	S	...	...	...	...	...	S	...	...	...	C10	...	...	...	7	16
Kentucky	C	C	C	C	C	C	...	C	C	...	C	...	(k)	...	...	...	...	Railroad Commission—C3	9	11
Louisiana	C	C	C	C	C	...	...	C	C	...	C	...	...	...	C8(l)	C5	...	Elections commissioner	11	22
Maine	C	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	1
Maryland	C	C	...	C	...	...	C	...	...	...	...	...	...	...	...	...	...	...	4	4
Massachusetts	C	C	C	C	C	C	...	...	...	...	...	...	...	...	...	...	C8	...	7	14
Michigan	C	C	C	C	...	...	...	...	...	...	...	...	...	C24(f)	C8(g)	...	...	...	8	36
Minnesota	C	C	C	C	C	C	...	...	...	...	...	...	...	...	...	...	...	...	6	6
Mississippi	C	C	C	C	C	C	...	C	S(h)	...	S	...	S	...	...	S3	...	Highway Commission—S3	12	16
Missouri	C	C	C	C	C	C	...	...	...	...	...	...	...	...	...	...	...	...	6	6

Montana	C	C	C	C		C		C			(o)				S5						7	11
Nebraska	C	C	C	C	C	C								C8	C8	C5					9	27
Nevada	C	C	C	C	C		C							C9	S9						8	24
New Hampshire	C																C5				2	6
New Jersey	C																				1	1
New Mexico	C	C	C	C	C	C								C		C10				Corporation Commission—C3	9	20
New York	C	C		C			C														4	4
North Carolina	C	C	C	C	C	C		C	C	C	C										10	10
North Dakota	C	C	C	C	C	C		C	C	S(i)	C						C3			Tax commissioner—C	12	14
Ohio	C	C	C	C	C	C										C23					7	29
Oklahoma	C	C		C	C	C		C			C						C3				8	10
Oregon	C		C	S	C			C		S											6	6
Pennsylvania	C	C		C	C	C															5	5
Rhode Island	C	C	C	C	C																5	5
South Carolina	C	C	C	C	C		C	C	S											Adjutant & inspector general—C	9	9
South Dakota	C	C	C	C	C	C								C			S3				8	10
Tennessee	C																S3				2	4
Texas	C	C		C	C		C		S					C		S24				Railroad Commission—C3	9	34
Utah	C	S(j)	C(j)	C	C	C										C11					6	16
Vermont	C	C	C	S	C	C															6	6
Virginia	C	C		C																	3	3
Washington	C	C	C	C	C	C		C			S		C								9	9
West Virginia	C		C	C	C	C			C												6	6
Wisconsin	C	C	C	C	C			C													6	6
Wyoming	C		C		C	C		C													5	5
Guam	C	C														S11(m)				Village Commissioners—S16	4	29
Puerto Rico	C																				1	1
Virgin Islands	C	C																			2	2

*Includes only officials who are popularly elected.
Symbols: C—Constitutional, S—Statutory; numbers indicate number of officials.
(a) Commissioner of agriculture and industries.
(b) Plus controller, ex officio.
(c) The state treasurer also serves as insurance commissioner.
(d) Governor and cabinet ex officio.
(e) Comptroller general is ex officio insurance commissioner.
(f) Three universities with eight regents each.
(g) Plus governor and superintendent of public instruction, ex officio, nonvoting.
(h) Commissioner of agriculture and commerce.
(i) The constitution provides for a secretary of agriculture and labor. If the legislature provides for a secretary of labor, which it has, then it must be a separate and distinct office. The secretary of agriculture and labor then becomes just the secretary of agriculture. Therefore the constitution does provide for a secretary of labor, as do the statutes.
(j) Lieutenant governor and secretary of state are the same individual.
(k) Secretary of state holds this office.
(l) Eight elective members, three appointive.
(m) Elected school board, by districts.
(n) Plus governor, ex officio.
(o) State auditor is also insurance commissioner.
(p) Lieutenant governor's office is part of governor's office.

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1980-1981

VOLUME 23

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FINAL SELECTION OF JUDGES

Alabama	Appellate, circuit, district, and probate judges elected on partisan ballots. Judges of municipal courts are appointed by the governing body of the municipality.
Alaska	Supreme court justices and superior court judges appointed by governor from nominations by Judicial Council. Supreme court justices and superior court judges approved or rejected at first general election held more than 3 years after appointment. Reconfirmation every 10 and 6 years, respectively. Magistrates appointed by and serve at pleasure of the presiding judges of each judicial district.
Arizona	Supreme court justices and court of appeals judges appointed by governor from a list of not less than 3 for each vacancy submitted by a 9-member Commission on Appellate Court Appointments. Maricopa and Pima County superior court judges appointed by governor from a list of not less than 3 for each vacancy submitted by a 9-member commission on trial court appointments for each county. Superior court judges of other 12 counties elected on nonpartisan ballot (partisan primary). justices of the peace elected on partisan ballot; city and town magistrates selected as provided by charter or ordinance, usually appointed by mayor and council.
Arkansas	All elected on partisan ballot.
California	Supreme court and courts of appeal judges appointed by governor with approval of Commission on Judicial Appointments. Run for reelection on record. Appointments. Run for reelection on record. All judges elected on nonpartisan ballot.
Colorado	Judges of all courts, except Denver County and municipal, appointed initially by governor from lists submitted by nonpartisan nominating commissions, run on record for retention. Municipal judges appointed by city councils or town boards. Denver County judges appointed by mayor from list submitted by nominating commission, judges run on record for retention.
Connecticut	All appointed by legislature from nominations submitted by governor, except that probate judges are elected on partisan ballot.
Delaware	All appointed by governor with consent of senate.
Florida	All trial judges are elected on a nonpartisan ballot. All appellate judges are appointed by the governor with recommendations by a Judicial Nominating Commission. The latter are retained by running on their records.
Georgia	All elected on partisan ballot except that county and some city court judges are appointed by the governor with consent of the senate.
Hawaii	Supreme court justices and circuit court judges appointed by the governor with consent of the senate. District judges appointed by chief justice of the state. Candidates are to be nominated (on a list of at least 6 names) to governor or chief justice by Judicial Selection Committee.
Idaho	Supreme court and district court judges initially are nominated by Idaho Judicial Council and appointed by governor, thereafter, they are elected on nonpartisan ballot. Magistrates appointed by District Magistrate's Commission for initial 2-year term, thereafter, run on record for retention for 4-year term on nonpartisan ballot.
Illinois	All elected on partisan ballot and run on record for retention. Associate judges are appointed by circuit judges and serve 4-year terms.
Indiana	Judges of appellate courts appointed by governor from a list of 3 for each vacancy submitted by a 7-member Judicial Nomination Commission. Governor appoints members of municipal courts and several counties have judicial nominating commissions which submit a list of nominees to the governor for appointment. All other judges are elected.
Iowa	Judges of supreme, appeals, and district courts appointed initially by governor from lists submitted by nonpartisan nominating commissions. Appointee serves initial 1-year term and then runs on record for retention. District associate judges run on record for retention, if not retained or office becomes vacant, replaced by a full-time judicial magistrate. Full-time judicial magistrates appointed by district judges in the judicial election district from nominees submitted by county judicial magistrate appointing commission. Part-time judicial magistrates appointed by county judicial magistrate appointing commissions.
Kansas	Judges of appellate courts appointed by governor from list submitted by nominating commission. Run on record for retention. Nonpartisan selection method adopted for judges of courts of general jurisdiction in 22 of 29 districts.
Kentucky	All judges elected on nonpartisan ballot.
Louisiana	All elected on open (bipartisan) ballot.
Maine	All appointed by governor with confirmation of the senate, except that probate judges are elected on partisan ballot.
Maryland	Judges of circuit courts and Supreme Bench of Baltimore City appointed by governor, elected on nonpartisan ballot after at least one year's service. District court judges appointed by governor subject to confirmation by senate. Judges of appellate courts appointed by governor with the consent of the senate. Run on record after at least one year of service for retention.
Massachusetts	All appointed by governor with consent of Executive Council. Judicial Nominating Commission, established by executive order, advises governor on appointment of judges.
Michigan	All elected on nonpartisan ballot, except municipal judges in accordance with local charters by local city councils.
Minnesota	All elected on nonpartisan ballot. Vacancy filled by gubernatorial appointment.
Mississippi	All elected on partisan ballot, except that city police court justices are appointed by governing authority of each municipality.
Missouri	Judges of supreme court, court of appeals, circuit courts in St. Louis City and County, Jackson County, Platte County, Clay County, and St. Louis Court of Criminal Correction appointed initially by governor from nominations submitted by special commissions. Run on record for reelection. All other judges elected on partisan ballot.
Montana	All elected on nonpartisan ballot. Vacancies on supreme or district courts and Worker's Compensation Court filled by governor according to established appointment procedure (from 3 nominees submitted by Judicial Nominations Commission). Vacancies at end of term may be filled by election, except Worker's Compensation Court. Gubernatorial appointments face senate confirmation.
Nebraska	Judges of all courts appointed initially by governor from lists submitted by bipartisan nominating commissions. Run on record for retention in office in general election following initial term of 3 years; subsequent terms are 6 years.

FINAL SELECTION OF JUDGES—Concluded

Nevada	All elected on nonpartisan ballot.
New Hampshire	All appointed by governor with confirmation of Executive Council.
New Jersey	All appointed by governor with consent of senate except that judges of municipal courts serving only one municipality are appointed by the governing body.
New Mexico	All elected on partisan ballot.
New York	All elected on partisan ballot except that governor appoints chief judge and associate judges of court of appeals, with advice and consent of senate, from a list of persons found to be well qualified and recommended by the bipartisan Judicial Nominating Commission, and also appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of New York City appoints judges of the criminal and family courts in the city.
North Carolina	All elected on partisan ballot. By executive order, governor has extended the trial system for merit selection of superior court judges.
North Dakota	All elected on nonpartisan ballot.
Ohio	All elected on nonpartisan ballot except court of claims judges who may be appointed by chief justice of supreme court from ranks of supreme court, court of appeals, court of common pleas, or retired judges.
Oklahoma	Supreme court justices and court of criminal appeals judges appointed by governor from lists of 3 submitted by Judicial Nominating Commission. If governor fails to make appointment within 60 days after occurrence of vacancy, appointment is made by chief justice from the same list. Run for election on their records at first general election following completion of 12 months' service for unexpired term. Judges of court of appeals, and district and associate district judges elected on nonpartisan ballot in adversary popular election. Special judges appointed by district judges. Municipal judges appointed by governing body of municipality.
Oregon	All judges except municipal judges are elected on nonpartisan ballot for 6-year terms. Municipal judges are mostly appointed by city councils except 2 Oregon cities elect their judges.
Pennsylvania	All originally elected on partisan ballot; thereafter, on nonpartisan retention ballot, except police magistrates, city of Pittsburgh—appointed by mayor of Pittsburgh.
Rhode Island	Supreme court justices elected by legislature. Superior, family, and district court justices and justices of the peace appointed by governor, with consent of senate (except for justices of the peace); probate and municipal court judges appointed by city or town councils.
South Carolina	Supreme court, court of appeals, and circuit court judges elected by legislature. City judges, magistrates, and family court judges appointed by governor—the latter on recommendation of the legislative delegation in the area served by the court. Probate judges elected on partisan ballot.
South Dakota	All elected on nonpartisan ballot, except magistrates (law trained and others), who are appointed by the presiding judge of the judicial circuit.
Tennessee	Judges of intermediate appellate courts appointed initially by governor from nominations submitted by special commission. Run on record for reelection. The supreme court judges and all other judges elected on partisan ballot, except for some municipal judges who are appointed by the governing body of the city.
Texas	All elected on partisan ballot except municipal judges, most of whom are appointed by municipal governing body.
Utah	Supreme court, district court, and circuit court judges appointed by governor from lists of 3 nominees submitted by nominating commissions. If governor fails to make appointment within 30 days, chief justice appoints. Judges run for retention in office at next succeeding election; they may be opposed by others on nonpartisan judicial ballots. Juvenile court judges are initially appointed by the governor from a list of not less than 2 nominated by the Juvenile Court Commission, and retained in office by gubernatorial appointment. Town justices of the peace are appointed for 4-year terms by town trustees. County justices of the peace are elected for 4 years on nonpartisan ballot.
Vermont	Supreme court justices, superior court judges (presiding judges of superior courts), and district court judges appointed by governor with consent of senate from list of persons designated as qualified by the Judicial Nominating Board. Supreme, superior, and district court judges retained in office by vote of legislature. Assistant judges of superior courts and probate judges elected on partisan ballot in the territorial area of their jurisdiction.
Virginia	Supreme court justices and all judges of circuit courts, general district, and juvenile and domestic relations district courts elected by legislature.
Washington	All elected on nonpartisan ballot except that municipal judges in second-, third- and fourth-class cities are appointed by mayor.
West Virginia	Judges of all courts of record and magistrate courts elected on partisan ballot.
Wisconsin	All elected on nonpartisan ballot.
Wyoming	Supreme court justices, district court judges, and county judges appointed by governor from a list of 3 submitted by nominating committee and stand for retention at next election after 1 year in office. Justices of the peace elected on nonpartisan ballot. Municipal judges appointed by mayor.
Dist. of Col.	Nominated by the president of the United States from a list of persons recommended by the District of Columbia Judicial Nomination Commission; appointed upon the advice and consent of the U.S. Senate.
American Samoa	Chief justice and associate justice(s) appointed by the U.S. Secretary of Interior pursuant to presidential delegation of authority. Associate judges appointed by governor of American Samoa on recommendation of the chief justice, and subsequently confirmed by the senate of American Samoa.
Guam	All appointed by governor with consent of legislature from list of 3 nominees submitted by Judicial Council for term of 7 years; thereafter run on record for retention every 7 years.
Puerto Rico	All appointed by governor with consent of senate.

EXTRADITION

Mr. MAZZOLI. Mr. Mayor, I have one other question, which has to do with extradition. Apparently this function is to be transferred to the office of the Mayor. Is this as fundamental a factor as you feel the appointment of judges is?

Mayor BARRY. I would like to ask Ms. Rogers to comment more specifically. My reaction to your question is that I do not put this section of the bill in the same fundamental category as that of judges. I think the judges and prosecutorial authority—for the record, the corporation counsel is now the chief legal officer. I rely on Mr. Reid for personal advice, but as far as the city is concerned, the corporation counsel is the official legal officer.

Ms. ROGERS. Jurisdictionally, the corporation counsel's office is vested with authority comparable to the State attorney general's office with the exception, namely, of all the felony prosecutions and misdemeanors, but every other type of legal problem is vested in the office of the corporation counsel.

Specifically with respect to your question on extradition, the District of Columbia is unique. In every other State the Governor is the extraditing authority. Our local code provides in title 23, section 704, that the chief judge of the superior court shall cause to be apprehended and delivered up fugitives from justice in the same manner and under the same regulations as the executive authority of a State.

So the chief judge here is substituted for a lack of a Governor and it was a section prior to home rule, and he served as a chief executive officer would in that initial review function, in the decision as to whether or not to deliver up a fugitive. In that same section, the alleged fugitive has a right for further hearing before a court, or he can appeal the chief executive's decision to the appellate court. So I think it is clear that the judge or the chief judge of the superior court under current law is simply acting as a chief executive. All our proposal does is say let us recognize the chief executive is under our charter, the Mayor of the District of Columbia.

Mr. MAZZOLI. Thank you.

COSTS OF TRANSITIONS OF FUNCTIONS

One final question, Mr. Mayor. It has to do with the cost of the transfer. You would propose for the first 4 years a declining scale from 100 percent to 25 percent of the cost of the transition would be borne by the Federal Government, and at the end of the fourth year, the District of Columbia would pick it up.

I wonder if your office has been able to do an estimate of how much it currently costs the U.S. attorney to perform that legal work of the District of Columbia which is proposed to be transferred, and basically two other questions, in this regard. One is, what would be your judgment as to why the Federal Government should assume these costs, and secondly, would the District of Columbia government be able to handle these costs after the fourth year?

Mayor BARRY. First of all, Mr. Chairman, between the periods 1941 and 1959, there was one process, and then there was another

process from 1960 to 1974. The District paid 75 percent of these costs. However, it was determined by both the local and Federal officials that the payments have been excessive for all these years, and take the fact that the U.S. attorney's office performs functions outside D.C. crimes. Because of the prior years' overpayment, since 1974, these costs have been borne entirely by the Federal Government for the U.S. marshal's office and the U.S. attorney's office. It is our view from a transitional point of view that the D.C. Government will assume 25 percent—it is really a budgetary matter, and will give us a chance to phase in.

We are also having discussions as to St. Elizabeths Hospital as to how you phase in the participation of the Federal Government. There has been a history of this in the Federal system throughout the land. This has been true of Federal grants. Over the years we have been able to receive grants 100-percent funded, then 75 percent, then 25 percent, then it phases out in 3 or 4 years.

Also in our budget projections for the next 5 years, we have looked at this. We think the first year costs after the transition period will be approximately $14.2 million, based on the salaries of the employees of the U.S. attorney's office who currently perform functions and the current activities of the U.S. marshal service.

The big difficulty we will probably have around the whole funding issue is not one of philosophy, but I get the impression the Department of Justice would not like to have that counted against their appropriations; but that can be worked out with the OMB and this administration.

Mr. SINGLETON. I would like to follow up on that line of questioning, Mr. Mayor. You made some logical points and certainly set forth points that were in harmony with the philosophy of the Home Rule Act.

The question that I have is whether you would still support the transfer if the sum of $35 or $40 million of Federal support were not forthcoming.

Mayor BARRY. From where?

Mr. SINGLETON. As you stated a second ago, the first year would involve some $13 or $14 million from the Federal Government, then there is a diminishing scale of 25 percent a year. I did some quick calculation and it totaled some $35 million altogether, approximately.

Mayor BARRY. You mean for the 4-year period?

Mr. SINGLETON. Yes.

Mayor BARRY. The Federal Government is paying this now. I have not seen any indication from a philosophical point of view they are not prepared to continue paying this.

Mr. SINGLETON. The Federal Government is paying you now because of some overpayment the city has made?

Ms. ROGERS. The city was required as a part of the Appropriations Act to reimburse the U.S. Treasury. The Appropriations Act subcommittee report for the District of Columbia indicates the committee's and subcommittee's concern of the years of overpayment by the District of Columbia in excess of the services they were required to pay. An internal audit confirmed that by the Department of Justice. What we have here is a recognition of that overpayment. We are evening out as it were the scale. The city is

still under a directive from the OMB to work out a fair and equitable reimbursement scheme with the U.S. Treasury as a result of those directives and other directives from the Commission that this whole transfer plan has worked out.

Mayor BARRY. I do not think this is an exact science. I think it was a good way to make up for past omissions. As I said earlier, if the transfer does not take place, the Federal Government will continue these costs. On the other hand, if the transfer hinges solely on the ability of the District of Columbia Government to pick up these costs, naturally, we are willing to make some sacrifices somewhere else because we feel this strongly about this transfer. It hinges solely on that. If we get everything else, the appointment of judges, the prosecutorial authority, and all of that, and as a result of making budgetary sacrifices, as long as I am Mayor I would recommend we do that.

JUDICIAL NOMINATION COMMISSION

Mr. SINGLETON. Three of the five members on the Judicial Nomination Commission are to be appointed by the Mayor. Inasmuch as the Mayor will be appointing and the Council will be confirming judges, does this overlap cause you any problem?

Mayor BARRY. I do not think so. I have learned during my tenure that just because you appoint someone to a board does not mean they are going to walk in lockstep with you. In fact, it is reversed. Lots of time when you appoint them, you think you are together, but they want to show independence. But there is some balance. You have representatives from the bar and the Council—the other thing that is there, I think it is not a major problem. I do not think every lawyer in Washington who is a member of the bar is looking to be a judge, and there is a 6-year term provided for the nominating committee. So I think you have a good balance. Plus other States have various mechanisms.

In some cases, Mr. Chairman, there is no in between. In some instances the Governor or the other local executives have no process in between, you appoint or nominate them directly to the bench. I think we have a good process here.

Mr. SINGLETON. I have no further questions.

Mr. MAZZOLI. Counsel.

FEDERAL INTEREST CERTIFICATION

Mr. TEMPLE. Do you support the promulgation of guidelines by the U.S. attorneys general to be followed in the exercise of the certification procedure outlined in section 216.

Ms. ROGERS. We have been working as the Attorney General indicated with Mr. Ruff and his predecessors. It started out trying to identify categories of offenses. It becomes difficult to do, because when the United States may decide there is a compelling interest, it may not fall clearly within an isolated category. I do not want to speak for the United States, but I think it was their position they did not want to be restricted by categories of cases, but they felt the rare exercise of this authority plus the necessity for either the consent of the local attorney general or absent that consent, a written certification from the attorney general that there was a

legitimate and compelling interest, provided sufficient protection in that regard.

Mr. MAZZOLI. Does the gentlelady have a question?

MARSHALS AREA OF AUTHORITY

Ms. LUNSFORD. Would the District of Columbia marshals be allowed to arrest on a felony warrant persons outside the District of Columbia borders?

Ms. ROGERS. The bill provides the authority in the D.C. area in recognition of the geographical limitations of the District and on a communication with our surrounding vicinities.

Ms. LUNSFORD. Would that metropolitan area be clearly defined?

Ms. ROGERS. Yes.

Mr. MAZZOLI. Thank you very much, Mr. Chairman, and corporation counsel. There may be other questions, but we will send those to you in writing. Thank you very much for your testimony.

Mayor BARRY. Let me thank you again. I was delighted to know that later on you will have two distinguished members of the bar, Mr. Horsky, who is in the forefront with reference to assisting the District, the same as Mr. Douglas, as well as the former president of the D.C. bar. I wanted for the record to express my appreciation for their presence.

Mr. MAZZOLI. We now welcome to the witness stand the honorable Chairman of the District of Columbia City Council, Mr. Arrington Dixon.

STATEMENT OF HON. ARRINGTON DIXON, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY DAVID CLARKE, CHAIRPERSON, COMMITTEE ON THE JUDICIARY, AND LARRY MIREL, GENERAL COUNSEL

Mr. DIXON. Mr. Chairman, we appreciate the opportunity to testify on this important issue.

I am joined today by my colleague, David Clarke, who chairs the Committee on the Judiciary, who has been offering a great deal of leadership in the council and in the community generally on this issue. By request he is here, and I am glad to have him with me because of his work with this issue.

Also, I am joined by my general counsel, Larry Mirel, who has permission to be a part of this task force.

I have a very brief statement and will capsulize it and will be available for questions.

H.R. 7988

This bill, H.R. 7988, is one of the most important elements we are considering now for self-determination for the District of Columbia. This is one of the more important steps that needs to be taken to give people of the District of Columbia proper control over the institutions which affect them so directly. It is not only symbolic, but appropriate, for as we look across the country, we note the prosecutorial function is one controlled by local jurisdictions, and in most cases where criminal prosecution is involved the papers indicate "The People" versus the defendants, and in the District of Columbia that is not the case except in very discrete areas.

I think that therefore it is important that we have this authority authorized as other spokespersons have indicated.

The two issues which come up go to the level of competence and to the fiscal impact of this particular legislation, the level of competence which will result in the prosecutorial function as well as the cost of that function being transferred.

On the first issue, I think it ill-conceived and illogical to think the residents and elected officials of the District of Columbia will not demand as high a quality of service in this area as any other area in the United States. I think that is clearly a misperception. In fact, I would hope the level would be as great as it is now.

I would point out that most crimes are committed against our citizens, not in terms of persons who have Federal involvement, which is an incentive for our system to work better.

FISCAL CONCERNS

In terms of the fiscal concern, I think it is clear the bill before us has the mechanism that it needs. I am sure, working with the Congress it has developed to allow this transition to be financially feasible. I do, in fact, indicate in my statement, and I think I reflect some concerns within the Council and the city, that there be a clear understanding as to the cost so we can plan for this over a long haul, not in just a short period of time of a few years. We are already facing very serious fiscal concerns, and I think this might be one we have to accept. Freedom has a price, and we have to be willing to pay it.

The other point I would make, and it is reframed for me when I come before this august Congress, the House and Senate, and the executive branch when possible, is to speak of the concerns for checks and balances. As the system exists now, there is total dependence of the Congress on the White House. There is a total dependence. I think this check and balance is critically important for local jurisdictions.

The Council, as you know, Mr. Chairman, is the newest institution within the District of Columbia, having really been in existence for 5 years with its new authority. Some of the perceptions by the Congress and by the public at large I think need to be clarified, and the Council needs to be strengthened so we can, in fact, properly confirm, review, and assess the competence of the persons sent to us in this particular process.

CONFIRMATION OF APPOINTEES

I would also point out the record of the Council in the confirmation process so far. There have been very few confirmations which have been returned to the Mayor. This speaks highly of his selections. I can speak more fully on that at some other point. This may not be the proper forum.

Thank you for this time. I will be open to questions, and now yield to Mr. Clarke.

[The prepared statement of Mr. Dixon follows:]

PREPARED TESTIMONY OF HON. ARRINGTON DIXON, CHAIRMAN, THE COUNCIL OF THE DISTRICT OF COLUMBIA

Mr. Chairman, Members of the Committee, the proposal you have before you is one of the most important elements in the long-range commitment of Congress to let the people of the District of Columbia govern themselves. Every State in the Union is responsible for prosecuting offenses against its own laws. The District of Columbia Judicial System Autonomy Act would give the District of Columbia the same right—and the same responsibility.

The importance of this move is more than symbolic. A person who commits a crime is transgressing against the people who promulgated the law he violates. Many States emphasize this fact by designating their criminal prosecutions "the people versus (the defendants)." In the District of Columbia the people against who local crimes are committed are the people of the District of Columbia. Those people are entitiled to have their own officials prosecute such crimes.

Moreover, there is an inconsistency in our present mixed system which has no rational basis. The District of Columbia, through the office of the corporation counsel, now represents the people of the District of Columbia in all civil matters and in some criminal cases, such as juvenile offenses. It is illogical to provide for local representation in those areas but to have the prosecution of other local crimes in the hands of a prosecutor appointed by the National Government. Nowhere else in the United States—with the exception of the territories such as Gaum—and the Virgin Islands—does the Federal Government prosecute local criminal offenses, even though in many other places there are also substantial federal installations and personnel. Even civilian crimes committed on military bases are ordinarily prosecuted by local officials in whatever jurisdicition the crime was committed.

I think there is broad agreement that it makes sense, from both an administrative and a "good government" point of view, for the District to have the same prosecutorial authority as the various States. The objections to the transfer that I have heard are primarily practical—will the District be able to maintain the high level of competence demonstrated by the local U.S. Attorney's office and—closely related—will the District be able to commit the financial resources necessary to support a first class prosecutorial office?

Let me be clear about commitment: No one has a greater stake in the vigorous prosecution of criminals in the District of Columbia than the citizens of this community. Our people are the primary victims of local crime, and the concern about our high crime rate is both broad and deep among our citizens and our city officials.

The economic aspects are, of course, more difficult. The district is facing a serious fiscal situation, and difficult measures must be taken to bring our expenses into line with our income. However, we must pay the cost of the prosecuting function of government no matter who does it, and that means we simply have to manage our financial resources in a sound and responsible way. The bill before you provides for a cost sharing arrangement with the Federal Government over the first several years of the transfer to allow the District to plan prudently for the expenses involved in the new system. However, the Federal Government must provide information detailing the precise fiscal impact that the District will face in assuming this office. This way, we can prepare to properly fund this office to assure the continued level of operation of the criminal justice system.

Mr. MAZZOLI. Mr. Clarke.

STATEMENT OF MR. CLARKE

Mr. CLARKE. I am appreciative of the invitation to accompany Mr. Dixon. I have no prepared statement, except to say I am fully supportive of the concept that is before you.

Mr. MAZZOLI. As chairman of the Judiciary Committee, I am sure you have had more than a passing interest in this development, and certainly you have been of great assistance to this committee.

Mr. Chairman, I would probably have just a couple of questions with respect to City Council since that element of advice and consent would be true with respect to appointment of judges. Are you satisfied that the process outlined in this bill is an appropriate

process to guarantee first the high quality of the judiciary, and secondly to insure the autonomy, independence, and objectivity of the judiciary appointed?

Mr. DIXON. Yes; I think the legislation has been developed with the cooperation of the Council, our technical support as well as the councilmanic support. It represents our best effort and format for the establishment of this power in the District of Columbia. An assumption built into this is an assumption that the Council, as is the assumption built into the budgetary independence, that the Council cannot operate as an independent branch. I think there have to be some serious insensitivities in being able to put the Council in that posture. We cannot be viewed as a line item as a branch, just another extension. For if we do, the checks and balances fundamental to our system of Government will not operate there. I would only point out that in Jefferson's letter, he indicated the embodiment of the judicial and the legislative under one, that is the executive is the very definition of tyranny. It says the independence of the courts and the legislative and executive branch must be firmly established not just on paper, but fiscally as well as otherwise.

Mr. MAZZOLI. Mr. Clarke.

Mr. CLARKE. In terms of quality and objectivity, I think we are going to do better with the system that is proposed in the bill than either the Presidential or electoral selection. The ability of a judge being objective is better assured by an appointment process. I say that philosophically, and I might catch a little heck in my community because everybody wants everybody elected. But I think judges should be appointed. But there has to be some nexus with the people, and that has to come through the people elected. I think it is a part of the checks and balances of Government.

The autonomy and independence is more a function of not who you select but of the structure of Government and the judicial offices held. I think Congress is assured with the Court Reform Act and Self-Government Act, both of which are beyond influence by the Council in the District of Columbia, or if they were, would still have to go through review process by Congress. More importantly, the structure of the office is such as to insure independence once a person gets in there. The person takes a 15-year term. If the person wants reappointment, he does not go back to the original electing authority, but before the Judicial Tenure Commission.

Indeed, Mr. Chairman, if we are to look strongly at the question of independence, we might want to look at the Tenure Commission, because it has more effect on judges in the District of Columbia than the office of Mayor.

Finally I might point out if they want to be a judge in the Federal court, they will be more conscious of an appointing authority.

Finally, looking at the appointing authority, the question is not whether or not the Mayor is going out and will pick someone from his campaign committee. He will pick from a field of three for every judgeship, as the President does. The question is, will the Mayor pick one of the other two that the President might and if so, will that person really be independent? I think the question is farfetched.

CONFIRMATION BY COUNCIL

Going to the question of the confirmation by the Council, I would point out, as the chairman has, that the Council has been quite conservative with respect to this. Early on in 1975, I had a memorandum done by a young man now on the staff of the Senate Judiciary Committee, Jay Steptoe, in which he analyzed historically confirmation trends and what the philosophies were. Without it having been expressed in any rules, I think the Council has adopted two standards for rejecting confirmation: the person is simply not qualified; and the other would be that the person has a conflict of interest. We have learned that although we would like to have someone else appointed, to reject a confirmation does not assure the other will be appointed. I think that has been the history of the Council.

Mr. MAZZOLI. Before I yield to the members of the panel and the staff, I would like to ask one final question.

Mr. Chairman, you have devoted a considerable part of your statement to the cost factor, noting that it is essential for the city to have ascertainable financial data upon which to proceed, not 1 or 2 years of short-run data, but long-term data.

If you have before you as accurate a financial plan as is possible, do you feel that paying for this transition, will be one of your major priorities and that of any succeeding chairman and succeeding City Councils?

Mr. DIXON. It would be presumptuous for me to predict as to future membership of the Council. But in any event, it is fair to say that some of my colleagues must have before them some figure that we can plan on. The commitment we are beginning to look at now, in terms of a 30-year to deficit and spending debt, has to have a future commitment to a strong prosecutorial system.

Mr. CLARKE. I can say this, the future leadership will be chosen by a public which feels crime and safety to be one of its foremost issues. As the Office of the U.S. Attorney General becomes an issue, I think indeed it is going to be one of the things we are going to have to be attending to because we are elected officials.

Mr. MAZZOLI. Thank you.

Any questions?

Mr. SINGLETON. I notice the presence of our Chief Judge of our highest court here. Rather than delay him, I will defer.

Mr. MAZZOLI. That is very thoughtful of you.

Gentlemen, thank you very much. As usual, we appreciate your attendance.

It is now a pleasure to welcome before our committee the Chief Judge of the Court of Appeals for the District of Columbia. You have been very patient. We will make your statement a part of the record and receive any further information you have.

STATEMENT OF HON. THEODORE NEWMAN, CHIEF JUDGE OF THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Judge NEWMAN. I apologize for not having a prepared text. There are two reasons: the press of business at 500 Indiana Avenue NW.; and the fact I find I operate probably better without one.

You asked the Attorney General a question, your concluding question to him, was he speaking on behalf of the administration? I

speak as Theodore Newman, chief judge of the Court of Appeals for the District of Columbia, individually. I do not speak on behalf of the court system of the District of Columbia, nor on behalf of the D.C. Court of Appeals. The views I express are mine. I am sure there are colleagues of mine on the Court of Appeals, as I know there are judges in the superior court, with different opinions. I know you have had communication as to differing views.

I had the opportunity to appear before the Vinson committee of our unified bar when they were conducting hearings on this proposed legislation. Fred Vinson asked me an opening question: Judge Newman, tell us why you support this bill. I gave a very terse answer, and was prepared to stop there. My terse answer was, because I believe in democracy. In essence, I felt that was enough said. I did not get away with it. But that is fundamentally why I support this proposal, because it does complete the creation of a democratic system of government in the District of Columbia, our Nation's Capital.

Yes; there are legitimate concerns. Yes, there should not be change unless change is going to improve a system. But in determining whether or not change will improve a system, it is important to recognize that the giving of democracy is in and of itself a value to be sought. So in determining whether or not this change is an improvement, a factor this Congress has to be alert to is the vesting of a greater democracy in the citizens of the District of Columbia.

Mr. Chairman, 10 years ago, 11 years ago, when this House and the other body on the other side of the Hill, the Senate, were considering the Court Reform Procedure Act of 1970, there were major concerns at that time about transferring judicial authority from the Federal courts to local courts.

Indeed, I remember the vehement opposition of our fiduciary bar, our probate bar, to the transfer of probate jurisdiction from the Federal courts to the local courts.

I hope I will be pardoned my pride, since I was a fiduciary judge for 3⅓ years upon the transfer of that jurisdiction, in saying that after the first couple of years, wild horses could not have gotten our fiduciary bar to support a transfer of that jurisdiction back to the Federal courts. I say that to say simply this, whenever there is a proposal for change there is apprehension, because we as human beings rely upon that which we are used to. We know how it works, and we are comfortable with it. We tend to resist change, we in our profession, since the whole doctrine of stare decisis which is ingrained into us resists change. But change is not necessarily bad.

APPOINTIVE JUDICIARY

I will speak primarily with respect to the judicial provisions of the legislation. I have had the pleasure, as has my colleague the chief judge of the superior court, of serving on the task force which formulated this. I fully support the power and authority of the Mayor to appoint judges in the District of Columbia. I share some of the wonderment of one or more of the previous witnesses about the reason for the opposition. I do not understand it. The more some of my colleagues have tried to explain it to me, the less I understand it. The judges will be doing the same work they are

doing now. They will have the same term of office that they have now. They will have the same jurisdiction. They will have the same power. The only difference is their commission of office will be signed by the Mayor, rather than by the President of the United States.

There is a legitimate concern always, not only in the District of Columbia, but in Kentucky and everywhere else, as to judicial independence. I have had the pleasure of being the head of the court system of the District of Columbia under both our elected Mayors, Walter Washington and now Marion Barry. I can say with absolute candor, without any fear of contradiction, that I have never received the slightest bit of pressure, appropriate or inappropriate, in my role as a judge in the District of Columbia, and I would be stunned and amazed if I were ever to receive such.

Yes; we must be sensitive to that. The history of the U.S. court system reflects attempts by the executive branch to influence. We do not have to go too far back in history to recall visitations with Justices of the Supreme Court about other Justices of the Supreme Court. This is something that happens, unfortunately, but it will happen on a Federal level as well as on a State level. There is no reason, I submit, to suspect that publicly elected officials in the District of Columbia are less sensitive, less concerned, less honorable about the independence of the judiciary than the government of Maryland, Virginia, Kentucky, or Montana, or the President of the United States.

JUDICIAL NOMINATING AND TENURE COMMISSION

One item in the bill I would suggest be changed from what is in it now—and I think this is probably more symbolic than real—I would urge that the present composition of the Judicial Nominating Commission and the Judicial Tenure Commission be retained as it is presently, a seven-person commission, rather than a five-person commission. I wish I could come up with someone other than the President to appoint one of those seven; I cannot. I particularly think the presence of a judge on both commissions is good, and on balance I think it is desirable that that be a Federal judge, because here in the District of Columbia we do have a capacity to have a Federal judge sit on our commission, distinct from what is the situation in Maryland, Virginia, or the 50 States.

I deliberately do not use the word the District of Columbia is unique. That is a buzz word with me. Every time somebody proposes something for the District of Columbia that works everywhere else, the first words you hear is "but the District of Columbia is unique," sort of like it is a nonsequitur which stops all intelligent discussion. Yes, it is unique; it is the Nation's Capital, and there is only one of them. But what is there about that uniqueness which is relevant to the issue we are discussing? In no other area in the Nation does the President appoint judges except article III judges.

I am pleased to be president of the National Conference of Judges, and next year will take over the presidency of the National Center of State Courts. I have a sensitivity to State courts, but in every State in the Nation it is judges appointed or elected by State voters or appointed by State officials, or in New York, where some

of them are appointed by the mayor of the city of New York. I just do not understand why there should not be for the citizens of the District of Columbia the same participatory role in judicial selection as works in every other State in the Nation.

EXTRADITION

Two minor comments, Mr. Chairman. I am satisfied that if in 1970, when the Court Reorganization Act was passed, if there had been an elected Mayor for the city, of the District of Columbia at that time, the extradition authority would have been vested in the Mayor. The only reason it has ever been in the chief judge of the superior court is because there was no elected chief executive in the District of Columbia, so it was given to the chief judge of the superior court. Extradition is an executive branch function and should not be in the judicial branch, whatever.

JUDGES' SALARIES

A final comment, Mr. Chairman, then I will shut up and answer any questions you might have. There has been some concern expressed that the provision of the bill which would raise the level of salaries of judges from 90 percent of their Federal counterparts to 100 percent of their counterparts is some attempt to buy some support. Mr. Chairman, we need that 10 percent, but I do not know of a single judge in the District of Columbia who is likely to change his or her view for 10 percent, or 100 percent, or a whole heap of more money than we are talking about there. Simple justice should dictate that pay raise for us. Separate it out and pass it out, but I urge, pass it.

Mr. MAZZOLI. I thank you. I do not believe I have ever been in this room when you have spoken from a prepared text. I appreciate that. You have a flair and eloquence which I think is very useful to this committee.

Because you dealt with the question of the appointment process as against the election process, I gather from your statement, Your Honor, that you feel confirmation from the City Council certainly will guarantee the same quality of people as confirmation from the U.S. Senate. There may be some people who feel there may not be the cachet there, but the end quality is what we are looking for.

Judge NEWMAN. Absolutely, cachet is one of the things I have heard. "I did not come here to be a municipal court judge." But I say, "So-and-so your tenure did not change, your salary did not change, what are you griping about?"

Mr. MAZZOLI. So, the judges have the same power——

Judge NEWMAN. Right.

Mr. MAZZOLI. I would just make one last comment: I am glad you discussed the increased salary. I have no idea what this panel will do. Are these any concerns as to whether or not the salary increase goes through as in the bill?

Judge NEWMAN. The City Council put it in because there was a concern at the courthouse that we were doing the same work the Feds used to be doing for 90 percent of what the Feds got paid. The first bill to which that could be conveniently attached was this one.

Mr. MAZZOLI. The resolution adopted by the Board of Judges comments adversely on the bill and suggests that the provision to transfer to the Mayor and Council the power of appointment should not be passed: I wonder if you might for the record tell me what the Board of Judges is. Of course, earlier in your statement you indicated that you are speaking for Judge Newman and not for the bench itself. But maybe you can clarify this.

Judge NEWMAN. First, I would emphasize the resolution to which you make reference is from the Board of Judges of the Superior Court of the District of Columbia, our trial bench. The Board of Judges of the District of Columbia Court of Appeals has not collegially considered this matter. I cannot say much more than that, because not being a member of the Board of Judges of the Superior Court and not being privy to its deliberations, I would not start guessing.

Mr. MAZZOLI. I have read this and was not sure.

[The resolution referred to follows:]

RESOLUTION

The Board of Judges of the Superior Court of the District of Columbia is informed that the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, has included in his 1979 legislative program, forwarded to the 96th Congress, three proposals in respect of judicial affairs. They are to authorize (1) the transfer of the functions of the United States Marshal from the United States to the District of Columbia Government, (2) the transfer of prosecution of local crimes from the United States Attorney for the District of Columbia to the District of Columbia Government, and (3) the transfer of the power of appointment and confirmation of judges from the President and the U.S. Senate to the Mayor and the City Council.

This Board is likewise advised that the first two of these measures, the transfer of functions of the United States Attorney and the United States Marshal, have received executive policy approval and that steps are being taken to implement the action. These two proposals, if enacted by the Congress, will effect major changes in the operation of this Court and the reasons therefor are readily discernible.

Superior Court was designed and structured by the Congress as an institution concerned with legal affairs pertaining peculiarly to the District of Columbia. Largely because of the unique Federal presence in the District of Columbia, the Court is empowered to conduct its business with the authority of a Court of the United States, established under Article I of the United States Constitution. The most significant example of the manner in which this court applies the power of a United States Court to local problems lies in the field of criminal law. Violations of the District of Columbia Criminal Code are not considered municipal concerns only, but are crimes against the United States to be prosecuted in the Superior Court by the United States Attorney. To accomplish this important and difficult mission, the United States Attorneys for the District of Columbia throughout the years have maintained a strong core of career prosecutors fortified by a capable staff of younger lawyers recruited and trained with great care. Similarly, for the security of its courtrooms and the management of prisoners throughout its system and the enforcement of its writs, the Court has depended upon the fidelity, skill, and experience of the United States Marshal and his deputies. Futher, prisoners sentenced by the Court are placed in the custody of the Attorney General of the United States making available, when needed, the facilities of the entire United States prison system. In performing these assignments, the Federal offices concerned are authorized to act across state lines, to call for assistance from other government agencies, and have through the years become accustomed to adapting their functions to the routines and practices of this particular Court. Without federal involvement, these powers and resources cannot be duplicated by any single political unit.

Manifestly, the elimination of this entire complex structure, without the most careful and detailed legal and fiscal planning for its replacement, can do nothing less than create a severe instability in the administration of criminal justice in the District of Columbia.

Finally, this Board is compelled to comment on that proposal which would authorize the Mayor of the District of Columbia to appoint the judges of the District of Columbia Courts. An independent judiciary, that is, one capable of reviewing the

actions of the legislative and executive branches of government totally free from bias, fear, favor, or retaliation, is the *sine qua non* of an effective judicial system. The District of Columbia Government is the most constant litigant in the Civil Division of our Court, and if, indeed, the prosecution of criminal cases were to be transferred to the District of Columbia, the overwhelming majority of the litigation conducted in our Court would involve the District of Columbia as a party. Legislation enacted by the City Council and executed by the District of Columbia's executive branch is ruled upon by the judges of our Court on a daily basis. The legal propriety of revenue provisions, housing codes, rental acts, administration procedures, school strikes, and the adequacy of mental health, penal, and juvenile facilities constitute a large part of our Court's regular calendar. In these matters—and numerous others—the executive and legislative branches of the District of Columbia Government have a very direct interest. In a truly effective judicial system, adjudication of these matters must be accomplished by judicial officers who are independent of the coordinate branches of government. This essential independence is seriously undermined when those coordinate branches appoint and reappoint the judicial officers who must rule on the propriety and legality of their various actions.

Legislative history clearly shows that Congress provided for Presidential appointment of judges of the District of Columbia Courts for one reason only: to achieve and maintain and independent judiciary—a judiciary which can perform its duties fairly and completely without in any manner being intimidatd by the possibility of pressure from the other branches of government. The present appointing mechanism guarantees that necessary independence; the proposed change in the power of appointment does not.

In conclusion, it is the position of the Board of Judges that there should be no changes made in the organic structure and basic method of operation of the Superior Court of the District of Columbia such as those proposed by the Mayor in his 1979 Legislative Program unless and until it is first demonstrated to us by detailed legal and fiscal plans that the proposed changes will improve and not adversely affect the present administration of justice in the District of Columbia.

PRISONERS

Mr. SINGLETON. Judge Newman, are there any potential detriments that you can see in the transport of prisoners by this transfer proposal? Will it hurt your backlog in any way?

Judge NEWMAN. I do not think so, Mr. Singleton. Our backlog is not a product of inadequate servicing by United States marshals, nor do I anticipate our backlog will be affected one way or another by the transfer of that function to a D.C. marshal. When the Mayor was first considering some time ago, at the suggestion of OMB, I think, the transfer of the Marshal Service to the District of Columbia, before this full package had been thought through, I cautioned the Mayor that there were a number of interlocks that would have to be closely examined, that it was not something that could be done by a budget item; there were a number of legislative interlocks that would have to be examined.

I am satisfied in the main that that attention has been given. I have not given minute examination to this, but I do not think it will have any impact on backlog one way or another.

Mr. MAZZOLI. Thank you very much for your time, and continued good fortune.

John W. Douglas and Charles Horsky. Your statements will be made a part of the record. We welcome you.

[The statements referred to follow the oral statements of the witnesses.]

STATEMENTS OF JOHN W. DOUGLAS AND CHARLES A. HORSKY

Mr. DOUGLAS. I appreciate the opportunity to appear here today in support of the transfer legislation. I will just add a little bit to my written statement.

I am a proxy lawyer in the District of Columbia and former Assistant Attorney General of the United States and past president of the D.C. Bar. I support 7988 because it would confer upon the District a rightful measure of self-determination, and would grant to the District authority to appoint its judges in the manner as is now basically employed by the States.

Under the bill an attorney general would be the District of Columbia's chief legal officer. Nominated by the Mayor and confirmed by the City Council for a 4-year term, the attorney general would exercise the same type of general supervisory authority over civil and criminal matters as does the U.S. Attorney General over the various divisions in the Justice Department and the individual U.S. attorneys' offices in the Nation as a whole. The D.C. attorney general would also assume the local prosecution functions now exercised by the U.S. attorney, leaving to the latter control over the Federal prosecution activities. This would bring the District of Columbia into general parity with other States where traditional common law criminal offenses are prosecuted by State and local prosecutors, rather than by the various U.S. attorneys.

The bill would recognize the existence of some cases with compelling Federal interests. Thus, wherever the Attorney General of the United States certified that there was an overriding Federal concern or where the District of Columbia attorney general consented, the U.S. attorney would be responsible for the matter.

The bill contains parallel provisions reflecting similar self-determination considerations which would govern the future appointment of judges to the District of Columbia Court of Appeals and to the District of Columbia Superior Court. At present, and unlike the situation elsewhere in the United States, Federal officials still select local judges in the District. The bill would change this by providing for appointment of the judges by the Mayor with confirmation by the City Council. The procedure of the current nominating commission would be retained.

In summary, then, the basic provisions of the plan contemplate a continuation and completion of the self-determination transition process which has been in progress for some years here. The governmental institutions of the District of Columbia have demonstrated the capacity to handle increased responsibility. The proposed legislation would recognize this development and would bring about a logical completion of the Federal-to-local transition process.

Mr. MAZZOLI. Mr. Douglas, I have a couple of questions:

FEDERAL INTEREST CERTIFICATION

The American Civil Liberties Union has filed a statement which you may not have read which discusses the certification process by which the U.S. attorney can certify there is a compelling Federal interest which justifies the exercise of Federal jurisdiction.

In the bill before us, one certification is made that is it. ACLU suggests there be some type of judicial review. Have you had a moment to think whether or not there should be plenary judgment by the attorney general, or should there be review?

Mr. DOUGLAS. I think the bill should remain as drafted. If there were a review process, it would tie up the prosecution and defeat

the purpose of certification. I think a transfer of prosecutorial functions is not the kind of thing ordinarily subject to review, and I would not think it appropriate.

Mr. MAZZOLI. I understand Mr. Horsky is now with us.

As I understand the bill, certification is very discretionary. Do you think guidelines should be issued, or as you understand the bill and the activities of the attorney general, should his judgment be final and there be no need to have regulations?

Mr. DOUGLAS. I would suppose, Mr. Chairman, that it would be desirable for the Department of Justice to issue guidelines in this regard. I wonder whether it would be possible to draft those and put them in the legislation. I would question that.

Mr. MAZZOLI. The corporation counsel, if my memory is correct, indicated they decided to leave it as is at this point.

GRAND JURY PROCEEDINGS

One other question the ACLU raises deals with access to grand jury proceedings. In the current bill, the U.S. attorney is given full access to grand juries, and not just those in which there is a Federal question. The ACLU suggests that rule 6(e) not be waived. I wonder if you have any reaction to that.

Mr. DOUGLAS. I may want to think about that a little later.

SELECTION OF ATTORNEY GENERAL

Mr. MAZZOLI. Currently, the bill provides that the Mayor would appoint the attorney general. The Mayor's attorney said earlier there may be a phase-in time, at which point the process would be completed enough to permit an election. Have you a feeling one way or another on an immediate election process for the Attorney General?

Mr. DOUGLAS. I think I would be opposed to that. In a transition period it would be better to have the selection process consist of nomination. That would tend to focus people's attention a little more on responsibility, and there would be a better and more systematic way of dealing with prosecutions.

PREPARED STATEMENT OF JOHN W. DOUGLAS

My name is John W. Douglas and I appreciate the opportunity to appear today in support of the transfer legislation. I am a practicing lawyer in the District of Columbia and a former Assistant Attorney General of the United States, past-President of the District of Columbia Bar, a past-President of the National Legal Aid and Defenders Association, and a past-Co-Chairman of the Lawyers' Committee for Civil Rights Under Law.

I support H.R. 7988 because it would confer upon the District of Columbia a rightful measure of self-determination in the important area of administration of justice. It will grant to the District authority to appoint its judges, prosecute its criminal offenders and handle its prisoners in the same basic fashion as that now basically enjoyed by the States. Such authority would constitute a logical follow-on to the transition process which has been in motion for a decade here in the District of Columbia. It would increase, in appropriate measure, self-determination in important District of Columbia areas which are intrinsically local in character.

Under the bill an Attorney General would be the District of Columbia's chief legal officer. Nominated by the Mayor and confirmed by the City Council for a 4-year term, the Attorney General would exercise the same type of general supervisory authority over civil and criminal matters as does the United States Attorney General over the various Divisions in the Justice Department and the individual United States Attorneys' Offices in the nation as a whole. The D.C. Attorney

General would also assume the local prosecution functions now exercised by the United States Attorney, leaving to the latter control over the federal prosecution activities. This would bring the District of Columbia into general parity with other States where traditional common law criminal offenses are prosecuted by State and local prosecutors, rather than by the various United States Attorneys.

The bill would recognize the existence of some cases with compelling federal interests. Thus, wherever the Attorney General of the United States certified that there was an overriding federal concern or where the District of Columbia Attorney General consented, the United States Attorney would be responsible for the matter.

The bill contains parallel provisions reflecting similar self-determination considerations which would govern the future appointment of judges to the District of Columbia Court of Appeals and to the District of Columbia Superior Court. At present, and unlike the situation elsewhere in the United States, federal officials still select local judges in the District. The bill would change this by providing for appointment of the judges by the Mayor with confirmation by the City Council. The procedure of the current Nominating Commission would be retained.

In summary, then, the basic provisions of the Plan contemplate a continuation and completion of the self-determination transition process which has been in progress for some years here. The governmental institutions of the District of Columbia have demonstrated the capacity to handle increased responsibility. The proposed legislation would recognize this development and would bring about a logical completion of the federal-to-local transition process.

Mr. MAZZOLI. Mr. Horsky, we appreciate your taking time to be with us. We have heard from your colleague, Mr. Douglas, and I have already asked that your statement be made a part of the record. Unfortunately, I have to leave to go to the floor, but maybe you would like to make a comment.

Mr. HORSKY. My statement expresses my feelings. It seems we are in the process of completing a job that Congress started about a decade ago when they made the judiciary independent, made it in effect self-government with direct review by the Supreme Court of the United States. They then provided for an elected District government, which is another step. This now brings the circle to a conclusion. I do not think Congress has any reason to regret what it has done thus far, nor would they have anything to regret in this regard.

[Mr. Horsky's statement follows:]

PREPARED STATEMENT OF CHARLES A. HORSKY

I should like to express my support for H.R. 7988. It represents the completion of the efforts begun a decade ago to accord to the citizens of the District full responsibility for District affairs, and to relieve the Federal Government of an unnecessary local responsibility. At the same time it provides appropriate protection for the Federal interest in the Nation's capital city.

Although I am not a resident of the District, it has been my privilege over the past thirty years or more to serve in a number of capacities relating to the District and to its government. I have helped in the transition from an appointed government in the District, and through the D.C. Bar and in other ways I have had considerable contact with the District's judges and court personnel. On that basis, I can assert with confidence that the judgment expressed by the Congress in passing the Home Rule bill, and in granting the equivalent of home rule to the courts in the Court Reform Act of 1970 was fully warranted.

H.R. 7988 will simply compete the process which has thus been started, by according to the District the same powers to deal fully with the prosecution of local crimes, and to appoint judges to local courts, as are exercised by the 50 States. It is supported as you know, by the President and the Attorney General, both of whom recognize the incongruity of the actions they are now required to take in purely District affairs. The transition provisions, plus the expressed willingness of both the Federal and District authorities to take every measure possible, seems to be adequate to insure that the transfer will be accomplished smoothly and with no loss of efficiency.

May I add that I applaud this committee's decision to consider the bill now, and I hope that it will be able to act promptly. If I can be of any assistance to the Committee, I will be glad to oblige.

Mr. MAZZOLI. Let me thank all our participants today and the committee staff. We now stand adjourned.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[The additional statements referred to follow:]

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA

The American Civil Liberties Union of the National Capital Area, a non-profit organization of over 5,000 members in the District of Columbia dedicated to the preservation and enhancement of the Bill of Rights, welcomes this opportunity to provide comments to the Subcommittee on H.R. 7988, the District of Columbia Criminal Justice Reform Act.

Throughout its history, the ACLU has been deeply concerned with and has spoken out on issues relating to the administration of justice. Moreover, in carrying out its work our organization takes part in a significant amount of litigation each year. Thus we take particular interest in the changes proposed in H.R. 7988 that affect both the District of Columbia judicial system and responsibilities of those who represent the District government in court in both criminal cases and civil actions.

In addition, the National Capital Area ACLU maintains a deep interest in the progress toward home rule for the District of Columbia. We have testified in years past in strong support of efforts to increase the degree of responsibility for District affairs vested in the officials and the citizens of the District. We believe it is important to continue taking steps that will promote self-government and therefore, more responsive government in the District. Thus we are encouraged by the Subcommittee's willingness to conduct these hearings on this important piece of home rule legislation.

The bill before you, H.R. 7988, would establish an Office of the Attorney General for the District of Columbia, and would provide for local appointment of judges to the D.C. courts. We believe this bill in general is a very natural and reasonable extension of the advances toward home rule for the District made during the last ten years. It builds upon the creation in 1970 of the D.C. court system,[1] and the extension in 1973 of legislative authority to the City Council,[2] by designating an official to enforce the District's laws in the District's courts. The bill recognizes that the Federal government can benefit, through a reduced work load, by granting the District certain powers analogous to those exercised by a State Attorney General.

For all these reasons, in general we strongly support the proposed bill. As currently drafted, however, H.R. 7988 contains several provisions that we believe should be revised during the Subcommittee's consideration of the bill. Our concerns about these provisions are described in the remainder of this statement.

1. THE FEDERAL CERTIFICATION AUTHORITY (SECTION 216)

We are deeply troubled by certain aspects of the authority granted to the U.S. Attorney General to certify a case for exclusive Federal prosecution (section 216).

Section 216(d) permits the U.S. Attorney General [3] to certify to the Superior Court that a matter involves a legitimate and compelling federal interest justifying the exercise of exclusive Federal jurisdiction. When such a certification is made, D.C. authorities may not investigate or bring a prosecution relating to the matter unless the U.S. Attorney General later decides that the federal interest has been sufficiently vindicated to permit D.C. to act. The U.S. Attorney General's decision to file the certification is not reviewable in any court. Before a certification can be filed, the

[1] Public Law 91-358 reorganized the D.C. court system into the Superior Court and the Court of Appeals, ended over a period of years the overlapping jurisdiction of Federal and local courts over civil and criminal actions, and provided new status and tenure provisions for D.C. judges.

[2] Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, provided legislative authority over the District to the City Council (subject to the ultimate authority of Congress under the Constitution) and Executive authority to the Mayor.

[3] There has been an indication in the section-by-section analysis of a draft of this bill that the U.S. Attorney General's certification power is nondelegable. Since existing law (28 U.S.C. Section 510) permits delegations by the U.S. Attorney General unless the statute expressly forbids them, there should be an explicit statement of the non-delegability of the statute if that is the intent.

U.S. Attorney must attempt to secure voluntary agreement from the D.C. Attorney General to the exercise of exclusive federal jurisdiction.

While it is impossible to predict how often this certification power would be used, by its nature it should be invoked infrequently. In as many cases as possible, the District of Columbia must be permitted to enforce its laws without interference from the Federal government. In situations when the need for exclusive Federal jurisdiction is clear, the D.C. Attorney would in virtually all instances recognize the importance of Federal primacy and cooperate voluntarily in the Federal prosecution. Surely the D.C. Attorney General would be mindful of the unusual double-jeopardy circumstances that arise if D.C. should prosecute first in a case having significant Federal implications.[4] It is only when U.S. and D.C. authorities cannot agree, because a case is difficult or controversial or where differing interests are present, that the need truly arises for a way to resolve those disagreements. Yet it is just that type of difficult or sensitive case that raises the potential for abuse if the method of resolving the jurisdiction question vests unlimited discretion in federal authorities. One need hardly stretch the imagination beyond the actual events of the 1970s to foresee a certification being used to prevent a D.C. investigation of potential crimes that might eventually implicate high Federal officials. Yet under H.R. 7988 a D.C. Attorney General would be legally powerless to challenge such a politically-motivated certification.

We believe there are several revisions to the certification power that are needed to protect against such abuses. First, the standard for a certification should be more narrowly circumscribed than it currently is. The standard should include the notion that the Federal interest be not only "compelling" but that it be an interest distinct from that of the District and uniquely capable of being vindicated by Federal authorities. Both Federal and District authorities have an interest in ensuring compliance with their laws and impartial justice for lawbreakers. When the interest of the District and the Federal government coincide, we see no particular justification for Federal authorities rather than District authorities to take charge of the prosecution. The Federal government must not be allowed to usurp the responsibility for protecting the District's interests simply because a case is important or controversial. Only when the Federal government has an interest that only it can enforce (such as national security or foreign policy) is it reasonable for the certification power to be used. We believe that the standards for certification power to be used. We believe that the standards for certification that are enumerated in the bill should be amended to reflect this additional factor.[5]

Even if the threshold Federal interest is asserted, we do not believe that the certification should be immune from judicial review. The strictest of standards cannot alone prevent the possibility of abuse when a certification is valid for an indefinite period of time and is unreviewable by any court. It is important to recognize that certification is *not* an exercise of prosecutorial discretion, which is traditionally unreviewed by courts. Rather it is an exercise of Federal preemption based on carefully stated standards which courts should be fully capable of addressing.

In order to preserve the integrity of the process and assure that the interests of the District of Columbia are protected, we believe that each proposed certification by the U.S. Attorney General should be presented for approval or disapproval to the D.C. Court of Appeals which could, in appropriate instances, here the case *in camera*.[6] In response to the proposed certification, the D.C. Attorney General would explain to the court why he or she did not agree voluntarily to exclusive Federal jurisdiction, a step that under the bill must be exhausted before certification can be used. If the court permits the certification, and in the event that the Federal

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[4] Whereas the Federal government can prosecute for a violation of Federal law even after a state has prosecuted for the same acts under its law, this is not the case in the District. Since the District and the Federal government are considered one sovereign, a prosecution by either (to the point where "jeopardy" actually attaches during the trial) will bar the other from prosecuting for those same acts. (See *U.S. v. Knight*, 509 F.2d 354 (1974); *U.S. v. Jones*, 527 f.2d 817 (1975)). This situation arises because of the special responsibility for the District, as the seat of government, assigned to the Federal government by the Constitution. There is no similar special relationship between a state and the Federal government, so that each is considered a separate sovereign that can prosecute separately without the same unique double jeopardy impact.

[5] This amendment could be accomplished by striking the words "legitimate and compelling federal interest" on lines 23–24 of page 18 of H.R. 7988, and substituting the words "legitimate, compelling and distinct Federal interest uniquely capable of being vindicated by Federal authorities,".

[6] This procedure is not unlike that available under this bill to resolve disputes about whether District or Federal authorities have jurisdiction over certain offenses (see Section 405 of H.R. 7988, amending D.C. Code Section 23–101(e)).

government does not prosecute within a reasonable time, the D.C. Attorney General should have the opportunity, after 6 months or any lesser period designated by the court, to come back before the court to move that the certification be rescinded. In this manner the court can judge whether Federal authorities are in fact intent on vindicating what they claim are continuing distinct Federal interests, or whether the District of Columbia should be allowed to go forward with its cases.[7]

We believe that the changes to the certification standards and process described above are necessary to ensure that the power is used fairly and without partisan or personal motivations.

2. ACCESS TO GRAND JURY PROCEEDINGS (SECTION 217(b)(2))

Another provision of the bill that we believe should be modified is Section 217(b)(2), which grants the U.S. Attorney unlimited access to the transcripts and proceedings of D.C. grand juries.[8] Federal prosecutors do not now enjoy such ready access to state court grand jury records. States generally permit access to records for their own prosecutors (just as the Federal rules give access to Federal grand jury records to the U.S. Attorneys), but neither State nor Federal authorities routinely grant the others' prosecutors free entry into the records of their grand juries. Hence, the District practice under Section 217 would differ from the practice elsewhere.

There are unique provisions of D.C. law that may justify some variations form the normal arrangements on grand jury access. For example, any grand jury in the District, whether Federal or local, can return indictments to either the local or U.S. courts. In a situation where a Superior Court grand jury returns and indictment to the District Court, a U.S. Attorney clearly is a "prosecutor" under the Rules and would have access. Indeed, since the existing Rule 6(e) of the D.C. rules already recognizes this special situation and provides for access by U.S. prosecutors when this occurs,[9] there is no need for an exception to the D.C. rules for these special purposes. The real problem is that we do not interpret Section 217 to be limited to this kind of situation. Rather it appears to give U.S. prosecutors access to Superior Court grand jury records in connection with any Federal investigation or prosecution in the District. We see no justification for carving out such a general exception

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[7] Changes in H.R. 7988 to provide for judicial review of proposed certifications would be as follows:

On page 19, line 2, strike "Superior Court" and insert "Court of Appeals,"

Add after line 10 a new subsection (2) to read:

(2) The Court of Appeals shall promptly review the certification and any justification for it, and shall provide the Attorney General for the District of Columbia with an opportunity to comment on the matter. All papers may be kept under seal and proceedings may be held *in camera,* in the discretion of the court. The court shall issue a timely ruling approving or disapproving the certification, and providing such terms or qualifications to the certification as it shall deem appropriate.

On page 19, line 11, change the word "filing" to "approval." On page 19, line 15, add "(A)" after the word "except", and on page 16 change "Superior Court" to "Court of Appeals". On page 19, line 21, change the period to a comma and change "Such statement shall" to "such statement to".

Add a new subparagraph (B) after line 23 to read:

(B) that the Attorney General for the District of Columbia may petition the District of Columbia Court of Appeals, not earlier than six months following approval of the certification unless a shorter period shall be provided by the court, to rescind its approval of the certification if no Federal prosecution relatin to the certification has occurred since the court's approval was granted. The court shall provide the United States Attorney General with an opportunity to comment on the petition. The court shall decide whether there continues to exist legitimate, compelling and distinct Federal interests uniquely capable of being vindicated by Federal authorities that warrant the exercise of exclusive Federal jurisdiction in the public interest. The Attorney General for the District of Columbia may again petition of the court to continue the certification, unless a shorter period shall be provided by the court.

Strike paragraph (4) on page 20, lines 5 through 7.

[8] Section 217 requires the U.S. Attorney General and the D.C. Attorney General to enter into a memorandum of understanding under which, *inter alia,* there will be maximum feasible exchange of information concerning violations of law, with the following proviso: "provided that the provisions of Rule 6(e) of the Federal Rules of Criminal Procedure and Rule 6(e) of the Criminal Rules of the Superior Court of the District of Columbia shall not bar the disclosure of matters occuring before the grand jury to the United States Attorney for the District of Columbia in connection with the investigation or prosecution of violations of the laws of the United States or of the District of Columbia."

The Rules 6(e) referred to permit disclosure of grand jury matters to the prosecutors in performance of their duties, and only to other parties on order of the court in connection with a judicial proceeding or when the defendant challenges the indictment based on matters occurring before the grand jury.

[9] See Advisory Committee comment following Rule 6(e), and the wording of Rule 6(e) that permits any Court within the District to order release of Superior Court grant jury proceedings.

for U.S. prosecutors in the District, now that the District will have its own prosecutors as well as its own separate court system.

We believe that the U.S. Attorney in D.C. ought to stand in the same position vis-a-vis the D.C. grand juries as Federal prosecutors elsewhere stand in relation to state court grand juries. In other words, the U.S. Attorney should have to make the same sowings of need and connection with a possible or existing judicial proceeding as would be required for disclosure of matters before a state grand jury. We would keep intact the existing Rule 6(e) in the Federal and D.C. rules and allow courts to apply them as though the District were a state.[10]

In addition to these substantive problems with Section 217, we also have procedural concerns in that the bill attempts to establish provisos or exceptions to the U.S. and D.C. Rules of Criminal Procedure without following the normal process for amending those rules. In our view the courts responsible for the rules should be in involved in the process of developing the form and substance of the amendments, if any in fact are necessary. The rules should not be subject to change by memoranda of understanding between the two Attorneys General, a process which if started can only lead to chaos in the application of the rules.

3. APPOINTMENT AND TENURE (SECTION 202)

As currently drafted, H.R. 7988 provides in Section 202 for an Attorney General appointed by the Mayor with the advice and consent of the Council, to serve at the pleasure of the Mayor for a term of four years coterminous with the Mayor's term. Vacancies are to be filled in this same manner for the remainder of the established four-year term, under Section 203. Section 306 of the bill provides for the immediate appointment and confirmation of an Attorney General Designate to plan for the transition, who would become the Attorney General on October 1, 1981.

We urge that the bill be amended to provide that the Attorney General be elected rather than appointed. Today 43 out of the 50 states elect ther top legal officers. The modern State Attorney General in this country is not simply a legal technician or a traditional criminal prosecutor, but also carries out important environmental and consumer protection functions. For this reason a state's citizens have an increasingly vital stake in the wisdom and zealousness of an Attorney General's actions on their behalf.

We prefer that the District join the overwhelming majority of U.S. jurisdictions that provide the people with a direct voice in the selection of the Attorney General. The novel legal issues under home rule, the delicate relationships with Federal authorities, and the complex problems of law enforcement in a totally urban environment call for the kind of creativity and judgment that popular election can provide. Until the next general election in 1982, we do not object to the appointment of interim officals to plan and administer the transition to the new system.

Regardless of the method of selection ultimately adopted by this Subcommittee, we also believe that the D.C. Attorney General must be protected from arbitrary dismissal by the Mayor. As currently drafted, the Attorney General serves at the pleasure of the Mayor, and can be removed without being advised of the reasons for the removel, without an opportunity to contest those reasons, and without review by the City Council. This kind of standardless dismissal without an appropriate review process only encourages removals based on personal whim rather than considerations of competency. It also interferes with the integrity of the office and with the necessary degree of independence and judgment needed for an effective Attorney General to carry out his or her duties.

We urge that the City Council be required to approve any proposal for dismissal of an Attorney General, that the grounds of neglect of office or malfeasance should

[10] To do this, we recommend amending H.R. 7988 by substituting a period for the comma on page 21, line 19, and deleting all the text that now follows the deleted comma in paragraph (2).

be the sole basis for removal of the Attorney General.[11] Similar protections are afforded to the vast majority of Attorneys General in this country.[12]

The National Capital Area chapter of the American Civil Liberties Union appreciates this opportunity to present these comments on H.R. 7988.

TECHNICAL COMMENTS ON H.R 7988

SEC. 101: The short title is somewhat misleading because the bill concerns more than just criminal justice matters. For example, the bill establishes a District Attorney for Civil Proceedings, and provides for the appointment of judges who will do more then simply hear criminal cases.

SEC. 209(b)(4): This paragraph gives general personnel authority to the Solicitor General, "subject to the final approval of the Attorney General." Language identical to that in quotes is present in Sections 210 and 211, relating to the District Attorneys. Unless the intent is to require Attorney General approval of every personnel action (which would be a mistake), the language in subsection 209(b) providing for "general supervision of the Attorney General" over his or her subordinates is adequate for these purposes.

SECS. 210 and 211: In drafts of the bill that has now become H.R. 7988, the section-by-section analysis noted that the District Attorneys would enjoy a "measure of insulation" from the Attorney General in their day-to-day activities, akin to the situation in the Civil and Criminal Divisions of the Justice Department. It is not clear what language in the bill itself established this special relationship. If the intent is to rely on the phrase "subject to the general supervision of the Attorney General," it should be noted that the same phrase applies to the Solicitor General and the D.C. Marshal, neither of whom enjoys the special "insulation" intended for the two District Attorneys. If the D.C. Attorney General is elected rather than apponted, we see less reason for emphasizing this measure independence for the District Attorneys. If the Attorney General remains an appointed position, the subcommittee should consider adding language to the bill to clarify the relation between the top level legal officers.

SEC. 216(e): Our understanding is that this subsection was not supposed to apply only to certified cases, but rather was a general housekeeping provision making the District a "state" for these four laws. We recommend the first clause of the subsection be deleted, so that it would begin with "The District of Columbia shall be considered . . .", and that it be relocated in Title IV of the bill as an amendment to other laws.

SEC. 305(c): This subsection is redundant in light of Sec. 305(a).

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[11] Amendments to H.R. 7988 to accomplish both the election of the Attorney General and protection from arbitrary dismissal would be as follows:

Amend Section 202 to read:

Appointment, Term of Office and Removal

Sec. 202(a) The Attorney General shall be elected by the registered qualified electors of the District. Except as provided by Section 203, the election for the Attorney General shall occur on the same day as the election of the Mayor established by Section 421(b) of the District of Columbia Self-Government and Governmental Reorganization Act. The Attorney General shall serve for a term of four years coterminous with that of the Mayor.

(b) The Attorney General shall not be removed during his or her term of office except upon a finding by the Mayor of neglect of office or malfeasance, which finding shall be concurred in by a majority of the City Council. The Attorney General shall be provided an opportunity to respond to the Mayor's findings before the City Council.

Since the Attorney General would be elected rather than appointed, Section 203 would also have to be amended to provide that vacancies during the 4-year term be filled by special election, similar to the arrangements for filling mayoral vacancies under Section 421(c)(2) of the D.C. Self-Government Act, P.L. 93-198.

In addition, technical changes would have to be made in Section 306 so that the appointed transition official would not automatically succeed to the Office of Attorney General but would have to be chosen at the next general election.

[12] For example, the State of New York permits the Governor to recommend and the Senate to agree to the removal of the Attorney General for "misconduct and malversation in office," after service of charges and an opportunity to be heard. (McKinney's Concolidated Laws of New York Annotated, Public Officers, Sec. 32). California provides for impeachment based on misconduct in office (California Government Code; Title 1, Div. 4, Public Officers and Employees; Article 2, Impeachment, Sec. 3020). California also allows removal for wilful or corrupt misconduct in office (Article 3, Removal Other Than By Impeachment, Sec. 3060). Illinois provides for impeachment (Ill. Constit., Article 4, Section 14) for treason, bribery or other high crimes or misdemeanors (See *Palmer* v. *U.S. Civil Service Commission*, D.C. 1961, 191 F. Supp. 495, reversed on other grounds 297 F. 2d 450, cert. denied 369 U.S. 849). The Illinois Constitution also provides that officials appointed by the Governor (of which the Illinois Attorney General is *not* one) can be removed for incompetence, neglect of duty or malfeasance in office (Article 5, Section 10).

Majority Report of the Committee on the Transfer of Judicial Functions of the Bar Association of the District of Columbia

PRELIMINARY STATEMENT

In accordance with the request of the President of The Bar Association of the District of Columbia, the Committee on the Transfer of Judicial Functions has investigated and considered the plan proposed by Mayor Marion S. Barry, Jr., for the "transfer from the United States to the District of Columbia of the local functions of the U.S. Attorney and U.S. Marshal, for local prisoners to be committed to local custody, and for judges of the local courts to be appointed by the local government." [1]

The goal of the Committee was to reach a conclusion as to what effect the proposals, individually or collectively, would be likely to have on the administration of justice in the District of Columbia, and, based upon that conclusion, make a recommendation to The Bar Association of the District of Columbia as to the action it should take with respect to the proposed plan.

COMMITTEE INVESTIGATIONS

The procedure adopted by the Committee to carry out its assignment was to communicate with, and obtain the views of, all of the present and retired Judges of the D.C. Court of Appeals, those recent appointees to the District Court who previously were members of the Superior Court, the Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, the Chief Judge of the District Court, and a number of lawyers with substantial trial experience before the local courts. The Committee did not communicate with any member of the Superior Court because it was furnished with a copy of the resolution, adopted by nearly all of its members, which opposes the plan. The Committee also had access to the opinions of other eminent and qualified individuals through the courtesy of Fred M. Vinson, Jr., Esq., Chairman of The Bar Association of the District of Columbia's committee which is investigating the proposed plan.

The committee has decided not to attribute any view or views to any particular individual whose opinion has been received. In general, however, it can be said that a large majority of them voiced disapproval of all or significant portions of the proposed plan.

Those in favor of the plan have little concrete information upon which to base an opinion because there has been no experience in this jurisdiction to turn to for assistance in reaching a conclusion. Those in opposition rely to a large degree on past experience under the present system as a basis for their views. We believe it is fair to say that, to some extent, emotions played a role in determining the responses of at least some of the individuals whose opinions were considered by the Committee.

An overriding view of proponents of the plan is that the proposals represent an essential and inevitable extension of the home rule concept. As noted heretofore, Mayor Barry's September 12, 1979, letter is addressed: "Dear Supporter of Self-Determination for the District of Columbia." Such an approach, in the view of the Committee, has unfortunate political overtones which do not work towards assuring the maintenance of a high level of administration of justice in the District of Columbia. Indeed, the proponents do not apear to believe there necessarily will be any improvement if the plan is adopted; rather, they are adamant in the view that local officials should have the right to conduct local affairs, and that is simply makes no sense for the Federal Government to be so heavily involved in local matters pertaining to law enforcement. Proponents point out that most of the work of the courts and the U.S. Attorney's Office relates to local matters. Some of the proponents anticipate problems at the outset, but believe they will be surmounted in time.

Opponents are just as vigorous in their opposition to the plan as proponents are in their arguments in favor of it. As noted above, proponents point to the success of the present system in support of their views. The observation is repeatedly made that our U.S. Attorney's office is one of the best in the country in terms of quality of personnel and quality of performance. Why tamper with such a fine organization? The point also is made that, as a Federal office, there now is access to assistance from the F.B.I., the Criminal Division of the Justice Department, and perhaps other Federal agencies. Opponents are convinced that the quality of the

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[1] Letter of September 12, 1979, from the Honorable Marion S. Barry, Jr. to "Supporters of Self-Determination for the District of Columbia."

office will suffer substantially if its functions are transferred to the District of Columbia.

It also is believed that outstanding lawyers would not be attracted to these positions as they now are. There is a further fear that numerous Assistant U.S. Attorneys would resign. Proponents disagree with both of those predictions, pointing out that the nature of the work and compensation will be the same. It will be only "a letterhead" change.

Another observation frequently made by opponents is that it will be very difficult to obtain proper funding for a District of Columbia Attorney General's office and for the courts. They point to past difficulties of the District of Columbia authorities in obtaining proper funding, and compare that experience with the relative success of the U.S. Attorney's office in this respect. Proponents assert that there is no justification for believing that Congress would ignore its new creation.

Still another objection to all aspects of the proposals is based upon a view that the local courts and the prosecutor's office will become more political than they now are. The belief is that the courts and the U.S. Attorney's office are relatively free from politics and political pressures. It is predicted by the opponents that this condition will change for the worse if the proposals are adopted.

Probably the most unanimity expressed was that the Attorney General should be elected and not appointed. Some who favor the proposals as a whole expressed vigorous opposition to the plan to have the Attorney General appointed by the Mayor. Moreover, several of those favoring the proposals in general believe strongly that the local Judges should be elected.

The opponents of the proposal regarding the selection of the local judges by the Mayor believe that conflicts of interests are bound to arise if the plan is carried out. This was the view expressed by nearly all of the Superior Court Judges in the resolution referred to above. It is pointed out that the District of Columbia is the most active litigant before the local courts, and that those courts are continuously required to rule on the legality of all kinds of actions by local agencies. It is believed that the independence of the local judiciary would be substantially and adversely effected if the method of appointment were changed as suggested.

Proponents of the proposal to have the Judges appointed by the Mayor and confirmed by the Council believe that this fear is completely unjustified. Some expressed a view that appointments already are political to a substantial degree, and maintain that any Judge worth his or her salt is not going to bow to political pressures once appointed, and will retain an open mind regardless of the identify of the parties.

Another view expressed by opponents is that the quality of the judges will suffer because lawyers will be less inclined to accept an appointment from the Mayor than they would from the President. Proponents disagree, pointing out that the compensation will be the same, and that the authority and jurisdiction of the courts will not in any way be diminished.

Overall criticism of the proposals was sometimes expressed by statements such as "Washington, D.C. is not a state; it is a city;" "Congress intended that Washington, D.C. be the seat of the Government of the United States; it never intended that it be a local municipality;" "Washington, D.C. is not a local juridiction; millions of people living in the surrounding areas work in and visit the District of Columbia; millions of tourists visit this city;" "the legistative history of the Reorganization Act demonstrates that Congress intended that there be an 'independent judiciary,'" "attorney generals in states are usually elected, not appointed by the executive;" and "appointment of judges by a Mayor would be unprecedented."

RECOMMENDATIONS

1. The majority of the Committee does not favor the transfer of the local functions of the U.S. Attorney's Office to the District of Columbia, and recommends that The Bar Association of the District of Columbia go on record as opposing that proposal.

2. The majority of the Committee does not favor the transfer of the local functions of the U.S. Marshal's Office to the District of Columbia, and recommends that The Bar Association of the District of Columbia go on record as opposing that proposal.

3. The majority of the Committee does not favor the appointment of an Attorney General by the Mayor, even if other aspects of the plan are adopted, and recommends that The Bar Association of the District of Columbia go on record as opposing that proposal. If there is to be a local Attorney General, that office should be filled through the elective process unrelated to a mayor's slate, and should be held by an individual completely independent of the Mayor's office.

4. The majority of the Committee does not favor the appointment of local Judges by the Mayor, and recommends that The Bar Association of the District of Columbia go on record as opposing that proposal.

[Some portions of this report were deleted before submission to the committee.]

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., November 1979.

TESTIMONY OF THE CITIZENS ADVISORY COMMITTEE

We are here today to testify on behalf of the Citizens' Advisory Committee to the D.C. Bar, of which we are members. The CAC is composed of 32 non-lawyers, almost all of whom are residents of the District of Columbia. The CAC was established to bring matters dealing with the administration of justice and the legal profession to the attention of the D.C. Bar, the Courts and the public. Most of our members have been active in a wide variety of community organizations, and as a result of this community involvement as well as the vaired professional positions that our members hold, we have considerable expertise in the administration of justice in the District of Columbia.

The testimony we are giving today has been developed by the CAC after several in-depth discussions of the proposed transfer of prosecutorial and judicial-appointive authority from the United States to the District of Columbia. We think this issue is one of utmost importance for concerned citizens of the District. We have thought long and hard about the tough questions that the proposed transfer raises, and although we don't have definitive answers to all of those hard questions, we would like to share the results of our deliberations with you.

First and foremost, the Citizens' Advisory Committee is here today in support of the principle of local autonomy for local matters. Beginning in 1970 with the D.C. Court Reform and Criminal Procedure Act and continuing in 1973 with the D.C. Self-Government and Governmental Reorganization Act, significant steps have already been taken to give the citizens of the District of Columbia control over our local criminal justice system. The proposed transfer would continue this process by giving the District of Columbia the authority to appoint its local Superior Court & D.C. Court of Appeals Judges and to select its local prosecutors. The proposed transfer rests on a principle—local control over local matters—that is right. It is time that the citizens of our city—directly and through our elected representatives—exercise full authority over our criminal justice system. We should be making—and under the proposed transfer would make—the whole range of decisions about the allocation of our criminal justice resources.

Although we will touch on other matters in our testimony today, it was the firm conviction of all of our members that this principle of self-government and its application to local law enforcement functions be recognized as the touchstone of our position. This central premise is sound, and although its application clearly presents difficult problems, those tough questions cannot lead us to forget the overriding principle. We must search for creatived solutions without compromising the principle of self-determination.

Secondly, we are here today in support of quality in the criminal justice system for the District of Columbia. We do not believe that there need be any diminishing of the quality because of the transfer of the prosecutorial and judicial-appointive functions from the federal to the local government. But in order to ensure that high standards of justice are maintained, we would suggest that the following points be considered:

(a) The fiscal consequences of the transfer should be immediately addressed. We adhere to the proposition that local control means local fiscal responsibility, and ultimately the citizens of the District of Columbia must fund all of our criminal justice system. But, as the proposed plan for the transfer recognizes, "the federal government has an obvious interest in assuring a smooth transition." To facilitate the transition, the proposed plan provides that the federal government will help defray the costs in the first years after the transfer. The proposed plan provides for a federal contribution of 100 percent in the first year, with the federal contribution declining by 25 percent each year until the fifth year when the District would pick up the entire amount. The CAC suggests that the declining federal contribution decrease in smaller steps and be spread out over a longer period of time in order to ensure that the office would continue to operate on a sound fiscal basis.

(b) The CAC also recognizes the direct interrelationship between fiscal autonomy for the city and a fixed formula for the federal payment to the District. The District cannot now predict how much the federal contribution paid to the city to reimburse it for the federal presence will be in any given year or in the future. We therefore urge that legislation be enacted which establishes an equitable fixed formula for the federal payment to the District, and we suggest that it is appropriate for your

committee to include a recommendation for this legislation in whatever proposal you adopt.

(c) It is crucial that the Mayor and the City Council begin now to do the fiscal planning to implement the proposed transfer that will be required with the phasing down of the federal contribution. The CAC is and has been concerned about the funding level for the judicial branch of our local government. We have to ensure that the quality of the entire criminal justice system is continued when the transfer occurs, and only through advance planning can creative solutions be devised for the hard fiscal problems.

(d) The proposed plan sets forth several mechanisms to help ensure that the high level of the current personnel continues. These techniques include a proposal for the same staffing levels in the new Criminal Division and various incentives to attract as many existing Assistant U.S. Attorneys into the new local counterpart when it is established. We suggest that consideration be given to the establishment of a procedure in which current Assistant U.S. Attorneys serve in a dual capacity of Assistant U.S. Attorney and Attorney in the D.C. Attorney General's Office for a period of one or two years. Such a procedure might encourage more of the Assistant U.S. Attorneys to transfer to the new office.

The third major area we would like to address in our testimony is the selection process for the District of Columbia Attorney General. The proposed plan provides that the D.C. Attorney General would be nominated by the Mayor and confirmed by the City Council for a four-year term to commence after two years of the Mayor's term. It was the considered judgment of the CAC that a preferred method for selection of the D.C. Attorney General was the nomination of three persons for this position by a D.C. nominating commission and then selection by the Mayor from among those three persons, with confirmation by the City Council. Because the responsibilities of the D.C. Attorney General will include investigation, and where appropriate prosecution, of public corruption, the CAC favored the safeguard of initial screening by an independent body. The nominating commission might be composed of members selected by the Mayor, by the City Council, by the D.C. Bar Board of Governors, and perhaps by the Superior Court Board of Judges. We are not wedded to any particular composition for the nominating commission except we believe that it should be composed of members selected by local entities.

Finally, although we recognize that the charter of the Vinson Committee does not formally include the proposed transfer of the U.S. Marshal's Service, the CAC would like to endorse the establishment of a D.C. Marshal's Service as set forth in the proposed plan. The keystone of the transfer is that the city will have the responsibility for all local affairs, and coordination of the whole range of criminal justice matters including decisions about the allocation of resources will be facilitated if the services currently performed in support of the D.C. judicial system by the U.S. Marshall are transferred to a new local counterpart. We therefore would suggest that the Vinson Committee include this subject in its recommendations.

Thank you for giving us the opportunity to appear here today on behalf of the Citizens' Advisory Committee to the D.C. Bar.

JOHN GIBSON.
DOROTHY S. LANDSBERG.

[Subsequently the following letter was received for the record:]

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
Washington, D.C., October 24, 1980.

Hon. ROMANO MAZZOLI,
Subcommittee on Judiciary, Manpower and Education of the Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

(Attention: Mr. Donald Temple.)

DEAR REPRESENTATIVE MAZZOLI: The D.C. League of Women Voters is pleased to offer this testimony with respect to H.R. 7988, the District of Columbia Criminal Justice Reform Act, which is now before your Committee.

The D.C. League of Women Voters has long supported full self-government for the District of Columbia. We were, as you know, ardent advocates of the Home Rule Act of 1973, although we regretted, and continue to regret, its many deficiencies. One such is the failure of the Act to give the government of the Distrcit of Columbia control over the criminal justice system.

Local criminal offenses and the adjudication of local cases should be, in the District as elsewhere, the responsibility of local governments. We express our support of such efforts as H.R. 7988—which we realize is still in a preliminary form—to

enlarge the opportunity for D.C. citizens to take full charge of their own affairs. We applaud this effort to correct an injustice to D.C. citizens.

Sincerely,

RUTH DIXON, *President.*

APPENDIX

DISTRICT GOVERNMENT'S SUMMARY OF THE PLAN FOR CRIMINAL JUSTICE SYSTEM REFORM FOR THE DISTRICT OF COLUMBIA

This paper outlines the plan for criminal justice system reform for the District of Columbia which has been developed cooperatively by officials of the District of Columbia Government and the United States Department of Justice.

Rationale

The basic premise on which the plan rests is the desirability of continuing to afford the citizens of the District of Columbia an increasing measure of self-determination in areas that are basically local in character. Twice in this decade the Congress has enacted major legislation based on this premise in matters relating, at least in part, to the criminal justice system. In the 1970 Court Reform Act, Congress greatly expanded the jurisdiction of the City's court system and specifically designated its Court of Appeals as the "highest court of the District of Columbia." The legislation thus created a local court system equivalent in stature and jurisdiction to that of any of the States. Similarly, in the 1973 Self-Government Act, the Congress established an elected Mayor and Council and delegated to the District, effective January 2, 1979, legislative authority over local criminal law, procedure, and the treatment of prisoners. The authority of the District, accordingly, in terms of its basic judicial

and governmental structure, is today quite similar to that of the States. But there remain several areas in which the federal government still exercises a measure of authority which experience has shown is no longer necessary or consistent with the principle that local law enforcement functions should be performed by local officials.

When implemented, this plan will complete the self-determination transition process in these areas. Now that the District possesses an established and respected court system and an elected government authorized to legislate in criminal justice matters, it is appropriate to complete the federal-to-local transition process so that the District will possess a full measure of self-determination, like that of any State, in these areas. Therefore, the plan proposes that, after implementation, the District will have authority to appoint its judges, prosecute its criminal offenders, and handle its prisoners in the same manner as any of the States.

It is against this decade-long transition process that the existing judicial and law enforcement systems, and how they would be changed under the plan, should be evaluated. For example, everywhere in the United States, except in the District, the U.S. Attorney is solely the federal prosecutor, handling only violations of federal law, under policies and procedures established by the U.S. Department of Justice. As the federal attorney serving the federal government, the U.S. Attorney is

not concerned with local policies or with criminal events which implicate no national interest. But there are local policies and priorities in these areas which deserve recognition, and under our dual governmental system, they are properly cognizable by state and local governments. Every State, therefore, has a local prosecutor to prosecute violations of state law. Except where the federal constitution intervenes, state and local prosecution systems owe no specific duty to federal interests. They exist because our system has recognized from the outset that there are legitimate local concerns in these areas which deserve a local outlet. Thus, throughout the nation, traditional common law criminal offenses, including virtually all offenses collectively known as "street crime," fall within the ambit of the various state systems and are prosecuted by state and local prosecutors.

That is not, however, the current system in the District of Columbia. Here, the U.S. Attorney performs both the federal and local prosecution functions. Violations of most criminal statutes solely applicable to the District of Columbia are prosecuted by the U.S. Attorney, who also prosecutes federal criminal offenses. Therefore, unlike the States, national policies control the prosecution of purely local criminal cases. This is the central inequality of treatment to which the citizens of the District, unlike those of other States, are subjected, and it is this basic inequality which this plan would remedy.

The experience gained in this decade by the partial transition towards autonomy already accomplished demonstrates clearly that it is now time to complete the process and accord District citizens full participation in the operations of the District's criminal justice system. This view is the basic premise on which this plan is based, and it is the basis on which the plan is supported by the President of the United States, the Attorney General of the United States, the Chief Judges of the D.C. Court of Appeals and the D.C. Superior Court, and the Mayor and Council of the District of Columbia.

The Plan

This plan proposes the establishment of an Office of the Attorney General for the District of Columbia. The major officials in that Office would be the Attorney General, who would have broad supervisory responsibility for law enforcement and criminal justice matters in the District; a Deputy Attorney General to assist the Attorney General; a Solicitor General, who would handle extraordinary appeals, rehearings en banc, and petitions filed in the United States Supreme Court and serve as legal counsel to the Attorney General; a District Attorney for Criminal Prosecutions in charge of the Criminal Division, who would assume most of the local prosecutorial functions now performed by the U.S. Attorney for the District of Columbia (and certain functions of the Office of the Corporation Counsel); a District Attorney for Civil Proceedings in charge of the Civil Division, who would assume most of the

current functions of the Corporation Counsel; and a District of Columbia Marshal, who would assume all local functions now performed by the U.S. Marshal's Service for the District of Columbia.

I. The Attorney General. The Attorney General would be the chief legal officer for the District of Columbia. The Attorney General would exercise general supervision of the Office, including both the Civil and Criminal Divisions, although he would not be involved in the daily case-related activities. The Attorney General would render legal advice and opinions to all District agencies and, upon request, to Congress and the President of the United States. The Attorney General also would have broad responsibility for the development, coordination, and execution of legal and criminal justice policies and programs of the District of Columbia. As chairperson of the Law and Criminal Justice Policy Council, composed of key criminal justice officials in the District of Columbia, the Attorney General would have the responsibility of advising the Mayor on criminal justice and law enforcement needs and policies, and recommending needed reforms, procedural changes and legislation. As the lead District representative, the Attorney General would also be responsible for working with the U.S. Department of Justice and area law enforcement and criminal justice agencies to promote cooperation and coordination of law enforcement policies in the metropolitan area. In addition, the Attorney General would perform all functions previously exercised by the Corporation Counsel.

The immediate office of the Attorney General would include a Deputy Attorney General, a Solicitor General, the District Attorney for Criminal Prosecutions, and the District Attorney for Civil Proceedings. These officers would be appointed by the Attorney General for four-year terms and serve at the pleasure of the Attorney General. In addition, the immediate Office would include an Executive Assistant, who would be responsible for management of the office and the development of training programs, and various other staff support. The District of Columbia Marshal's Service, the Citizens Complaint Center, and the Victim-Witness Program would also be in the immediate office of the Attorney General reporting to the Deputy Attorney General.

The Attorney General would be nominated by the Mayor and appointed after confirmation by the Council for a four-year term.

II. The Office of the Attorney General. The Office of the Attorney General would consist of two major legal divisions, Civil and Criminal, over which the Attorney General would exercise the same type of general supervisory authority as does the U.S. Attorney General over the various divisions in the Justice Department and the individual U.S. Attorney's Offices throughout the nation. The District Attorneys for the Civil and Criminal Divisions would be responsible for the daily operations of their respective divisions. They would report directly to the Attorney General.

a. The Criminal Division. The Criminal Division would assume the current functions of the Superior Court Divisions and certain other aspects of the U.S. Attorney's Office, as well as the prosecution of juvenile delinquency, serious traffic, criminal tax and regulatory matters now handled by the Corporation Counsel. All criminal offenses prohibited by Title 22 of the D.C. Code, most of which are now prosecuted by the Assistant U.S. Attorneys, would be prosecuted by Assistant District Attorneys in the Criminal Division. The Superior Court Division of the U.S. Attorney's Office would no longer have responsibility for Title 22 offenses (except when certified, as discussed below) and personnel of the Superior Court Division would either transfer to the Attorney General's Office or be assimilated in the U.S. Department of Justice.

The Criminal Division would function as the District of Columbia's prosecuting office, subject only to the general supervision of the Attorney General. Its organization would be modeled on that of the present Superior Court Division of the U.S. Attorney's Office. Since the Superior Court Division now serves most of the functions that would be transferred, by so modeling the Criminal Division, the transfer would not disrupt existing prosecutorial functions. The Division would consist of Felony, Appellate (except for extraordinary matters to be handled by the Solictor General), Special Prosecution, Juvenile and Misdemeanor Offices. The Special Prosecutions Office would include Major Crimes and Fraud functions now conducted by the U.S. Attorney in its U.S. District Court

69-197 O - 81 -- 9

divisions. The Division would be assisted by various support units and would have input and access to an Office-wide computerized information system.

The staffing plan being developed for the Criminal Division contemplates that the Division would be staffed by attorneys and support personnel at least to the same extent as the existing Superior Court Division of the U.S. Attorney's Office (with the addition of certain District Court units as well as other functions now handled by the Corporation Counsel.)

b. The Civil Division. The Civil Division would assume the current functions of the Office of the Corporation Counsel in the civil and administrative law areas, including matters relating to families, except those involving juveniles alleged to be delinquent. Present Corporation Counsel responsibilities regarding placement and training work of the Child Abuse and Safety Program would remain in the Civil Division, as would the responsibility for handling matters relating to persons-in-need-of-supervision cases. Appellate matters arising out of civil or administrative proceedings would be handled in the Civil Division, except extraordinary appeals, Supreme Court petitions, and petitions for rehearing en banc, which would be placed in the Office of the Solicitor General (together with similar appellate matters arising from criminal proceedings). Upon establishment of the Office of the Attorney General, the Office of the Corporation Counsel would be abolished

c. The District of Columbia Marshal's Service. The U.S. Marshal's Service currently performs in aid of the

District's judicial system the following functions: (1) the provision of security for Superior Court judges hearing criminal or juvenile delinquency cases; (2) operation of the Superior Court cell block; (3) movement of prisoners within and between court houses; (4) transportation of prisoners to and from the D.C. Jail and in other situations; (5) service of certain arrest warrants; (6) service of process in civil matters; (7) interestate transportation of District of Columbia prisoners; (8) service of subpoenas throughout the nation, and (9) handling of evictions in landlord and tenant matters as ordered by the courts. These responsibilities would be transferred to a D.C. Marshal's Service, which would be headed by a D.C. Marshal, who would report to the Deputy Attorney General. The Marshal would be appointed for a four-year term and would serve at the pleasure of the Attorney General.

The Service would consist of three major divisions (Court Support, Cell Block and General Assignment), and would be comprised of 115 full-time deputy marshals.

d. Certification and Other Legal Matters. Because of the special relationship of the District of Columbia to the federal government and the fact that the District is the national capital, a unique procedure is proposed for a limited number of extraordinary cases in which there is clearly a legitimate and compelling reason for the federal government to assume prosecutorial responsibility over local cases. Upon the consent of the Attorney General for the District of Columbia, or in the absence of such consent

on the written certification by the Attorney General of the United States that the case, investigation, or similar related matters involves a legitimate and compelling federal interest, the federal prosecutor would handle the matter in the U.S. District Court. It is contemplated that this procedure would be used sparingly and that cross-designations and other cooperative arrangements would be the preferred, and usual, manner of handling local matters of interest to the United States.

To meet the needs of the District of Columbia as the national, the U.S. Marshal will continue to serve Superior Court criminal subpoenas outside the District of Columbia and the D.C. Marshal will be authorized to serve subpoenas within the Washington Metropolitan Area. Felony arrest warrants will continue to be serveable anywhere in the United States. And the single grand jury system presently in use in the District will continue to operate in the interests of efficiency and economy.

e. Personnel. Because it is important to effect the transfers with the least disruption to the District's criminal justice system, the plan includes several incentives to attract existing members of the staffs of the U.S. Attorney's Office and Marshal's Service to the District's Attorney General's Office. Thus, the plan provides:

- a waiver of the D.C. Government Comprehensive Merit Personnel Act's general residency requirement for all members

of both staffs who transfer to the new Office. If such transfers occur by the effective date of implementation of the transfer legislation, this waiver will continue for the duration of an employee's tenure;

- a guarantee that there will be no reduction in salary, health benefits, life insurance, promotion possibilities, leave accrual rights, etc., for all employees of both staffs who transfer by the date of implementation of the transfers. This guarantee will be effected by a 'grandfather' clause similar to sec. 713(d) of the Self-Government Act.

III. Custody of Prisoners. Current law provides that incarcerated District of Columbia prisoners are committed to the custody of the U.S. Attorney General. That law would be amended so that all prisoners convicted under laws solely applicable to the District of Columbia will be committed to the custody of the Mayor. The effect of such an amendment would be quite imperceptible, since currently the U.S. Attorney General delegates his custodial responsibilities for most male D.C. prisoners to the District of Columbia, and those prisoners are housed at a District-operated institution. Under the plan other prisoners would continue to be housed in federal institutions under reimbursement arrangements based on existing statutory formulae.

IV. Appointment of Judges. Unlike any other jurisdiction, judges of the D.C. Court of Appeals and the D.C. Superior Court are now appointed by the President and confirmed by the

United States Senate. The plan provides that the Mayor of the District of Columbia would appoint, and the Council of the District of Columbia would confirm, judges to District of Columbia courts. The current functions of the Nominating and Tenure Commissions would be retained intact. Nowhere else in the United States do federal officials select local judges and, consistent with the basic premise on which the entire autonomy plan rests, there is no logical reason why federal officials should exercise any such authority regarding the selection of local District of Columbia judges.

V. Cost and Financing. The District of Columbia is required to reimburse the United States for the local activities of the U.S. Attorney and the U.S. Marshal. Until 1975 the District was paying 75% of the costs of these offices. In that year it was determined by local and federal officials that the District had been over paying for the services it was receiving. Under the plan, the District would resume paying for these services but the services would be under District instead of federal control. To facilitate this resumption and consistent with the precedent established when Congress created the local court system, the federal government will help defray the expenses in the early years after transfer, for the federal government has an obvious interest in assuring a smooth transition. Accordingly, a declining yearly federal contribution is proposed, with the federal government funding 100% of the transition and first year costs; 75% of the second year costs; 50% of the third year costs, and 25% of the fourth

year costs. The District would fund the remainder of the costs in the second, third and fourth years, and all the costs in succeeding years. First year costs, after the transition period, for the entire series of transfers is estimated at $14.2 million. The largest portion of the estimated costs is made up of salaries of employees of the Criminal Division of the Attorney General's Office and D.C. Marshal's Service. In order to attract and keep quality employees in both agencies, salaries that are reasonably commensurate with what an employee might realistically expect to receive in the federal and private sectors are an absolute necessity.

VI. Proposed Legislation. The plan calls for legislation to effect criminal justice system reform to be submitted to the Congress in June, 1980, with an effective date of October 1, 1981. It will provide for the transfers of authority from the United States to the District of Columbia and establish the basic framework for the D.C. Attorney General's Office. The law establishing the Office of the Attorney General of the District of Columbia and transferring various functions to the District of Columbia would be subject to amendment by the Council of the District of Columbia, subject to the congressional review provisions of the Self-Government Act. An exception involves the position and major responsibilities of the Attorney General which are made a part of the District of Columbia Charter, which can be amended only a Charter Amendment or Act of Congress. Upon enactment, planning for implementation would begin and include District and federal officials as well as appropriate representatives of the D.C. Courts and the private bar.

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Congress of the United States
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October 3, 1980

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The Honorable Benjamin R. Civiletti
Attorney General of the United States
10th and Constitution Avenue, N.W.
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Washington, D.C. 20530

Dear Attorney General Civiletti:

Thank you for attending the Subcommittee hearing on H.R. 7988, the D.C. "Criminal Justice Reform Act."

To complete the record of the hearing, the Subcommittee respectfully requests written responses to the following series of questions which were not asked at the hearing due to time constraints:

1.) Does the Federal Assimilative Crimes Act, 18 U.S.C.§13, apply in the District of Columbia? If so, what effect will the proposed legislation, particularly §216, have on the operation of that Act in the District of Columbia?

2.) Will the U.S. Attorney for the District of Columbia be required to initiate the jurisdictional request/certification process provided for in Sec. 216 of the bill in order to prosecute cases which in other jurisdictions would be under federal authority by virtue of 18 U.S.C. §13?

3.) Would the D.C. Attorney General possess the authority to prosecute such cases should the U.S. Attorney decline to do so?

4.) In the event that Assistant U. S. Attorneys presently employed by the Superior Court Division of the U.S. Attorney's Office for the District of Columbia decline to transfer to the proposed District of Columbia Attorney General's Office, will they be provided an opportunity for employment elsewhere in the Department of Justice at the same salary level and with similar responsibilities as presently afforded them?

5.) Could you illustrate a hypothetical situation where the certification would be applied?

6.) How does the cooperation arrangement in Section 217 compare with the United States Attorney General arrangements with the United States Attorney General arrangements with States and other municipalities?

Your consideration is greatly appreciated. Best wishes and warmest regards.

Sincerely,

Romano L. Mazzoli
Chairman
Subcommittee on Judiciary, Manpower and Education
Committee on the District of Columbia

RLM:dt

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

MAY 14 1981

Honorable Romano L. Mazzoli
Chairman, Subcommittee on Judiciary, Manpower
and Education
Committee on the District of Columbia
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Attorney General has asked me to respond to the six questions regarding H.R. 7988 which you directed to him on October 3 (see enclosed). The answers are as follows:

1. The Federal Assimilative Crimes Act 18 U.S.C. § 13, does not apply in the District of Columbia. The Act refers back to 18 U.S.C. § 7 for definitions of the areas to which it applies. In Coleman v. United States, 334 F.2d 558, 565 (D.C. Cir. 1964), the Court of Appeals stated that 18 U.S.C. § 7(3) did not apply to the District of Columbia. "The area," it said, referring to a street in the District, "by no tenable construction can be said to have been within 'the special maritime and territorial jurisdiction of the United States.'" 334 F.2d at 565.

The Assimilative Crimes Act is intended to fill gaps in the federal criminal code by adopting the local state's criminal code for federal reservations. The District of Columbia criminal code, however, presently provides the equivalent of a state criminal code. The United States Attorney has the option of charging criminals under either the federal or the District criminal code. United States v. Shepard, 515 F.2d 1324, 1332 (D.C. Cir. 1975).

2. H.R. 7988 does not change the authority of the United States Attorney General to prosecute violations of the federal law. Therefore, authority of the United States Attorney for the District of Columbia to prosecute violations of the federal criminal code, as opposed to violations of the District of Columbia criminal code, remains unchanged. See proposed § 216(f). There will be no need to invoke the certification process of Section 216. However, the certification procedure will have to be invoked in order to prosecute violations of the laws of the District of Columbia.

3. The Attorney General for the District of Columbia will be charged with prosecuting all violations of the laws of the District of Columbia. See proposed § 206(1). He will not have authority to prosecute crimes established by Title 18 of the United States Code.

4. Although it is not reflected in the bill, the Department has been operating on the premise that all employees who did not wish to transfer to the local prosecutor's office would be provided comparable employment in the Department of Justice -- in the U.S. Attorney's Office where possible.

5. Certification would be utilized in situations where the special nature of the District as the seat of government is implicated in the criminal activity involved, whether violations of both federal and District law or only District law have been committed. For example, in a hostage situation arising out of grievances against the federal government, or which threatens or interferes with the operations of the federal government, the Attorney General might well assume control over the investigation and prosecution. Similarly, should a federal official whose murder is both a federal and local offense be killed with an individual whose murder is only a local offense, the entire matter would likely be certified as one of preeminent federal interest.

6. Although the structure and format may differ, the cooperation arrangement proposed by §217 is consistent in scope and spirit with arrangements presently existing in most federal judicial districts. A number of current analogies to the various elements of cooperation proposed in §217 are described below.

Section 217(a) of the proposed legislation requires that the Attorney General "provide assistance and guidance in the training of Assistant District Attorneys." On October 10, 1980, the Department proposed, at a meeting of the Executive Working Group for Federal-State-Local Prosecutorial Relations, that one local prosecutor be permitted to attend each Attorney General's Advocacy Institute criminal litigation course.

Section 217(a) further proposes that the United States Attorney General assist and guide "the development of ethical and professional standards for the conduct of criminal prosecutions." The Department of Justice, through the Executive Working Group for Federal-State-Local Prosecutorial Relations, routinely disseminates information on Department guidelines, such as the recently-issued "Principles of Federal Prosecution," to District Attorneys and State Attorneys General. Additionally, the Department has created a mechanism for coordinated review by federal, state, and local prosecutors of legislative and private proposals for new ethics guidelines.

Cooperative law enforcement activities, also proposed in section 217(a), are managed through several forums. Federal-State Law Enforcement Committees, regional bodies of law enforcement managers, exist in almost forty states. These bodies monitor joint enforcement initiatives, author agreements for the division of investigative and prosecutorial responsibilities in concurrent jurisdiction offense areas, and share training, equipment, and intelligence resources.

The Department also participates and assists in the funding of various task forces which pool law enforcement authority and resources and direct them against specific concurrent jurisdiction offenses. Last month, the Law Enforcement Assistance Administration approved funding for the creation and operation of a locally-controlled organization which will collect and disseminate intelligence information and which will coordinate multi-state investigations of illegal dumping of hazardous waste in eleven states. This body will use combined inspection and arrest authority, equipment resources, intelligence sources, and investigative and prosecutorial personnel in a coordinated effort directed at the illegal disposal of dangerous toxic wastes. Arson task forces, Drug Enforcement Administration strike forces, and "sting" operations also permit local, state and federal law enforcement personnel to enforce concurrent jurisdiction offenses as a cooperative effort.

Amongst the newest types of intergovernmental cooperation in law enforcement activity is cross-designation. Several jurisdictions currently permit federal and local prosecutors to present criminal cases in both the local and federal courts. By designating attorneys as prosecutors for both a United States Attorney's Office and a District Attorney's Office, concurrent jurisdiction cases can be developed by either office and presented before the court deemed most appropriate, based upon applicability of statutes, range of sanctions available, and even severity of court backlogs.

Federal investigative agency support is offered to all local and state prosecutors in the United States. Many federal investigative agencies develop concurrent jurisdiction cases for local prosecution. Federal investigative agencies also offer training, laboratory services, expert skills, and interstate investigative support to local law enforcement agencies.

Section 217(b) mandates a "Memorandum of Understanding" between the United States Attorney General and the Attorney General for the District of Columbia. There are no other such single-jurisdiction agreements to which the United States Attorney General has been a party. However, several United States Attorneys have entered into formal agreements with their state or local counterparts. Such agreements most often divide responsibilities for the investigation and prosecution of dual jurisdiction offenses. In addition, a recent Department of Justice report

to the Congress indicated that eighty-three United States Attorney's offices employ some type of written declination guidelines. See United States Attorneys' Written Guidelines for the Declination of Alleged Violations of Federal Criminal Laws (November 1979). In most districts these are unilateral "agreements" which inform state and local prosecutors (as well as federal enforcement agencies) which offenses will not be federally prosecuted in particular statutory areas.

I hope the above material will be helpful to the Subcommittee. Please contact me if you have any further questions.

Sincerely,

Michael W. Dolan, Acting
Assistant Attorney General
Office of Legislative Affairs

Enclosure

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