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APPROVED
DEC 31 1975

revised 12/31/75

ACTION

THE WHITE HOUSE
WASHINGTON
December 30, 1975

Last Day: January 2

Posted
1/1
To archive
1/2

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON
SUBJECT: H.R. 4287 - Law Clerks for the
D.C. Court of Appeals

Attached for your consideration is H.R. 4287, sponsored by Representative Diggs, which would amend the District of Columbia Code to authorize an additional law clerk for each of the nine judges of the D.C. Court of Appeals. The enrolled bill would also amend the District of Columbia Law Revision Commission Act to allow the appointment of a Director, General Counsel and staff for the Commission from outside the civil service system.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 4287 at Tab B.



DEC 31 1975

A



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 26 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4287 - Law Clerks for the
D.C. Court of Appeals
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

January 2, 1976 - Friday

Purpose

To authorize additional law clerks for judges of the District of Columbia Court of Appeals and amend the hiring authority of the D.C. Law Revision Commission.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia	Approval
Civil Service Commission	Approval
Department of Justice	No objection
Administrative Office of the United States Courts	No recommendation

Discussion

H.R. 4287 would amend the District of Columbia Code to authorize an additional law clerk for each of the nine judges of the D.C. Court of Appeals, and amend the District of Columbia Law Revision Commission Act to allow the appointment of a Director, General Counsel, and staff for the Commission from outside the competitive service.

Additional Law Clerks for the D.C. Court of Appeals

The reason for Federal legislation in an otherwise local administrative matter is that law clerks are provided for in section 708 of the D.C. Code, which the City Council is precluded from amending under the District of Columbia Self-Government and Governmental Reorganization Act (the D.C. "Home Rule" Act). Because of the absence of this authority, and the need for additional law clerks to deal with a threefold increase in the number of cases filed with the D.C. Court of Appeals, the court has had to hire temporary law clerks under a one year Law Enforcement Assistance Administration (LEAA) grant which was predicated upon, and granted in recognition of, the need for this legislation. The LEAA grant period will expire on February 14, 1976. This bill would allow the court to hire the additional law clerks on a permanent basis.

Changes in Hiring Authority for the D.C. Law Revision Commission

The District of Columbia Law Revision Commission Act, approved August 21, 1974, established a 15-member Commission to examine the District's laws and recommend changes and reforms to the Congress and the D.C. Council. It authorized the Commission to hire a staff under procedures of the competitive civil service. H.R. 4287 eliminates the competitive service staff appointment requirement and permits the Commission to hire staff, most of whom would be attorneys, outside of the civil service system, as is the case with most D.C. employees employed in similar situations. The enrolled bill also authorizes the hiring of a Director and a General Counsel at the GS-16 level; both would serve at the pleasure of the Commission.


Assistant Director
for Legislative Reference

Enclosures

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

December 22, 1975

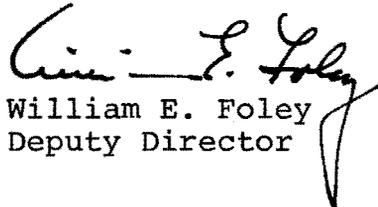
James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

This will acknowledge receipt of your enrolled bill request of December 22, 1975, transmitting for an expression of views H.R. 4287, an Act "To provide for additional law clerks for the judges of the District of Columbia Court of Appeals."

Inasmuch as the local courts of the District of Columbia, namely the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, are not within the jurisdiction of the Judicial Conference of the United States, the proposed legislation was not referred to the Conference for comment and accordingly no recommendation is made regarding Executive approval.

Sincerely,


William E. Foley
Deputy Director



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

December 24, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of the Civil Service Commission on enrolled H.R. 4287 "To provide for additional law clerks for the judges of the District of Columbia Court of Appeals."

We have no objection to the first section of H.R. 4287 which would give each District of Columbia Appeals Court judge an additional law clerk.

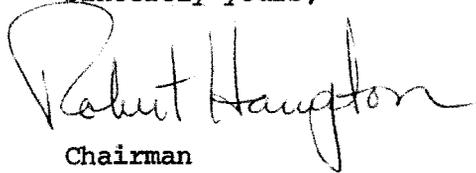
Our principal interest in H.R. 4287 is Section 2 which amends the District of Columbia Law Revision Commission Act (P.L. 93-379, D.C. Code Sec. 49-401(i),) to exempt the appointment of Commission personnel from the provisions of Title 5, U.S. Code governing appointments to the competitive service. This is in accordance with a Civil Service Commission recommendation at the time the District of Columbia Law Revision Commission was established. Our view was that since the Law Revision Commission was established as a District of Columbia Government agency, its personnel should be appointed under procedures established for comparable positions in other D.C. Government agencies, not the procedures for positions in the competitive civil service.



This legislation also sets the pay of the Director and General Counsel of the District of Columbia Law Revision Commission at the same GS-16 equivalent rate. While this is questionable from a management standpoint, we do not consider it a serious enough problem to warrant recommendation of a veto. We therefore recommend that the President sign enrolled H.R. 4287.

By direction of the Commission:

Sincerely yours,

A handwritten signature in cursive script that reads "Robert Haughton". The signature is written in dark ink and is positioned above the printed name "Chairman".

Chairman



THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in reference to a facsimile of an enrolled enactment of Congress entitled:

H.R. 4287 - To provide additional law clerks for the judges of the District of Columbia Court of Appeals.

Section 1 of the enrolled bill would amend D.C. Code, § 11-708, enacted by P. L. 91-358, 84 Stat. 473, by authorizing the chief judge of the District of Columbia Court of Appeals to appoint three personal law clerks and each associate judge of that court to appoint two law clerks. Presently, the chief judge is authorized to appoint two law clerks and each associate judge, one.

This section of the enrolled bill would enhance the ability of the court to dispose of a caseload that has shown a dramatic increase since the establishment of the court under the District of Columbia Court Reorganization Act of 1970, and would help to prevent further increases in the backlog of cases before the court, which otherwise would have an adverse impact on the fair administration of justice in the District.

Section 2 of the enrolled bill would amend section 2(i) of the District of Columbia Law Revision Commission Act, P. L. 93-579, § 2(i), 88 Stat. 480, D.C. Code, § 49-401(i) (Supp. II, 1975), by authorizing the Commission to appoint personnel without regard to the provisions

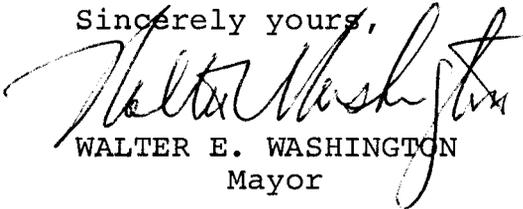
of title 5 of the United States Code governing appointments in the competitive service, including a Director and a General Counsel, both of whom will be entitled to the maximum salary established under the General Schedule in 5 U.S.C. § 5332 for a grade 16.

This section of the enrolled bill would permit the Commission to appoint personnel outside the competitive service as is the case with respect to the appointment of District of Columbia employees in similar positions.

The enactment of H.R. 4287 will result in additional costs to the District Government of approximately \$150,000. It is to be noted, however, that funds needed to implement the provisions of the bill may not be made available.

The District Government recommends approval of H.R. 4287.

Sincerely yours,

A handwritten signature in cursive script, reading "Walter E. Washington". The signature is written in black ink and is positioned above the printed name and title.

WALTER E. WASHINGTON
Mayor

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 26 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4287 - Law Clerks for the
D.C. Court of Appeals
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

January 2, 1976 - Friday

Purpose

To authorize additional law clerks for judges of the District of Columbia Court of Appeals and amend the hiring authority of the D.C. Law Revision Commission.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia	Approval
Civil Service Commission	Approval
Department of Justice	No objection
Administrative Office of the United States Courts	No recommendation

Discussion

H.R. 4287 would amend the District of Columbia Code to authorize an additional law clerk for each of the nine judges of the D.C. Court of Appeals, and amend the District of Columbia Law Revision Commission Act to allow the appointment of a Director, General Counsel, and staff for the Commission from outside the competitive service.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1543

Date: December 29

Time: 1030am

FOR ACTION: Jim Falk *ve*
Ken Lazarus *th*
Max Friedersdorf *an*
Dick Parsons *th*

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 30

Time: 600pm

SUBJECT:

H.R. 4287 - Law Clerks for the D.C. Court of Appeals

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1543

Date: December 29

Time: 1030am

FOR ACTION: Jim Falk
Ken Lazarus
Max Friedersdorf
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 30

Time: 600pm

SUBJECT:

H.R. 4287 - Law Clerks for the D.C. Court of Appeals

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

I recommend Approval of H.R. 4287.

Please return to Judy Johnston, Ground Floor West Wing

RFJ

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

John E. Cavanaugh
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1543

Date: December 29

Time: 1030am

FOR ACTION Jim Falk
Ken Lazarus
Max Friedersdorf
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

10

~~FROM THE STAFF SECRETARY~~

DUE: Date: December 30

Time: 600pm

SUBJECT:

H.R. 4287 - Law Clerks for the D.C. Court of Appeals

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No Comment.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

J. E. Cavanaugh
For the President

THE WHITE HOUSE
WASHINGTON

DEC 30 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: H.R. 4287 - Law Clerks for the D.C. Court
of Appeals

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1543

Date: December 29

Time: 1030am

FOR ACTION: Jim Falk
Ken Lazarus
Max Friedersdorf
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 30

Time: 600pm

SUBJECT:

H.R. 4287 - Law Clerks for the D.C. Court of Appeals

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 12/30/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

John E. Cavanaugh
Staff Secretary

ADDITIONAL LAW CLERKS FOR JUDGES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

OCTOBER 30, 1975.—Committed to the Committee of the whole House on the
State of the Union and ordered to be printed

Mr. DIGGS, from the Committee on the District of Columbia,
submitted the following

REPORT

[To accompany H.R. 4287]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 4287) to provide for additional law clerks for the judges of the District of Columbia Court of Appeals, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4287 is to amend the District of Columbia Code in order to authorize an additional law clerk for each of the nine judges of the District of Columbia Court of Appeals. This **additional** law clerk would bring the total number of law clerks for each associate judge to two and would bring the total for the chief judge to three. The general purpose of the legislation is to increase the analysis and research capability of the Court, thereby enhancing its case disposition capacity. The reason for Federal legislation in this otherwise local administrative matter is that law clerks are provided for by section 708 of the D.C. Code which the City Council is prohibited from amending by section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act.

BACKGROUND

The District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 482) created a new trial court of general jurisdiction, the Superior Court of the District of Columbia. This new court was a consolidation of the former Court of General Sessions, Juvenile Court, and Tax Court. To it was transferred much of the workload

which had been handled by the U.S. District Court for the District of Columbia. Transferred, by carefully phased increments, were all District of Columbia Code felony cases, probate jurisdiction, and non-Federal civil case jurisdiction unlimited as to amount. This transfer was completed in late 1973.

The District of Columbia Court Reform and Criminal Procedure Act of 1970 made the District of Columbia Court of Appeals the highest local court in the District of Columbia consisting of nine judges. Prior thereto, it was a six-judge intermediate appellate court, and a losing party could file a petition for allowance of an appeal to the U.S. Court of Appeals for the District of Columbia Circuit. Section 11-102 of the District of Columbia Code now provides:

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States . . .

In the mid-1960's, before court reorganization, the U.S. Court of Appeals for the District of Columbia Circuit was receiving approximately 1,100 appeals per year, yet each of the Court's nine judges was authorized to have only one law clerk. Consequently, in the year 1965 several judges on the Circuit Court retained a second law clerk on an interim basis and since 1967 each judge on that court has had the services of two full-time law clerks.

With the completion of court reorganization and concomitant expansion of the jurisdiction of the Superior Court of the District of Columbia, the District of Columbia Court of Appeals is now receiving more appeals than the number of appeals filed in the U.S. Circuit Court, yet each judge on the District of Columbia Court of Appeals is officially authorized to employ one less law clerk than each of the judges on the Circuit Court. In the year immediately preceding the publication of this report, the District of Columbia Court of Appeals has been able to cope with its caseload in large part because of a 1-year Law Enforcement Assistance Administration discretionary grant to the court to provide funds for an additional law clerk for each judge.

In testimony before the Judiciary Subcommittee on H.R. 4287, the Court submitted testimony showing that the additional law clerks have made possible a 4 percent reduction of the court's backlog. This reduction is significant in light of the substantial increase in the backlog of appeals (434 in November 1972 and 839 in November 1974). These temporary clerks helped the Court to decrease the average number of days between argument and disposition of appellate cases. That average time lapse in 1974 was 97 days but was reduced to 81 days for cases on the regular calendar and 31 days for cases on the newly established "summary" calendar, for the 10 months ending August 31, 1975.

However, in the hearings before the subcommittee, the Court was careful to point out that the financial assistance from the Law Enforcement Assistance Administration was predicated upon, and granted in recognition of, the need for legislative action to increase the number of law clerks authorized to be employed by the District of Columbia Court of Appeals. The LEAA grant period is scheduled to terminate on February 14, 1976.

NEED FOR THE LEGISLATION

The number of cases filed in the District of Columbia Court of Appeals has more than tripled since fiscal year 1970, the last year before court reorganization. In that year, 371 cases were filed with the court, and the cases filed there in subsequent fiscal years are as follows:

1971-----	548
1972-----	662
1973-----	958
1974-----	1,074
1975 (projected)-----	1,400

In addition to the increased caseload, the court has experienced a substantial increase in the number of motions, both procedural and substantive. In fiscal year 1971, 1,122 procedural and 479 substantive motions were filed. In fiscal year 1975 those figures increased to 4,730 procedural motions and 1,266 substantive motions (which required the attention of a three-judge division). One factor which has contributed significantly to this dramatic increase in appellate cases is the substantial increase in the number of criminal indictments returned in the Superior Court. Its indictment figures have been as follows:

1971-----	1,841
1972-----	2,349
1973-----	3,354
1974-----	3,514

With the increase in the number of cases filed for appeal there has been a corresponding increase in the number of pending appeals comprising the backlog. The backlog figures, measured as of November 1 of each year, are as follows:

1972-----	434 (of which 94 were argued but undecided)
1973-----	661 (of which 148 were argued but undecided)
1974-----	839 (of which 181 were argued but undecided)

The increase in the caseload carried with it a matching increase in the average number of days from the argument of a case to the disposition thereof. The totals are as follows for the calendar year:

	<i>Days</i>
1971-----	55
1972-----	79
1973-----	81
1974-----	97

In fiscal year 1974 the D.C. Court of Appeals took steps at various stages of the proceedings to avert this backlog and the delay between argument and decision. For example, the judges sat more often in order to hear more cases. Also, unreported typed judgments were written in those cases in which a reported opinion would make no contribution to the law. Finally, screening techniques were applied to cases in order to determine which cases might be susceptible to summary treatment. As a result of these efforts the court was able to decrease the average number of days between argument and disposition of a case to 81 days for cases on the regular calendar and to 31 days for cases on the summary calendar. Thus it is apparent that the court has been making a diligent effort to reduce its case backlog and its request for additional law clerks appears justifiable.

LEGISLATIVE HISTORY

H.R. 4287, the bill to authorize additional law clerks for the District of Columbia Court of Appeals was introduced in the House by Chairman Diggs (by request) on March 5, 1975, and on September 25, 1975, hearings and markup were held by the Judiciary Subcommittee. Testifying in support of the bill were three distinguished judges of the District of Columbia Court of Appeals: Chief Judge Gerard D. Reilly, Associate Judge John W. Kern, III, and Associate Judge Stanley S. Harris. Markup was conducted on the same day by the subcommittee with a quorum of five Members present. The bill was favorably reported without amendment to the full committee.

COMMITTEE VOTE

The full committee by unanimous voice vote approved H.R. 4287 on October 6, 1975.

DEPARTMENTAL REPORTS

The reports to the Chairman on this legislation from the Chief Judge of the District of Columbia Court of Appeals, follow:

DISTRICT OF COLUMBIA COURT OF APPEALS,
Washington, D.C., April 29, 1975.

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

DEAR MR. CHAIRMAN: I have your letter of March 12, 1975 in which you were good enough to ask for the views of this court on H.R. 4287, "A Bill to provide for additional law clerks for the judges of the District of Columbia Court of Appeals." This bill proposes to amend D.C. Code 1973, § 11-708, so as to permit each Associate Judge of this court to have two law clerks instead of one, and to permit the Chief Judge to have three law clerks instead of two. Our court strongly recommends favorable action on this bill.

Its objective is to improve the research and analysis capability of the court by providing an additional research assistant for each of the nine judges and thereby expedite the disposition of cases, while maintaining high standards in the administration of appellate justice.

In view of the dramatic increase in the caseload of the court in the past four years, the need for this legislation is compelling. Otherwise the goals of the D.C. Court Reform and Criminal Procedure Act of 1970, Pub. L. 91-358, may be frustrated by inordinate delays in the appellate process.

As a result of the Act, the caseload of this court has risen from 371 case filings in FY 1970 to 1,074 in FY 1974, thus nearly tripling in four years. Statistics for the preceding four months indicate that the caseload is continuing to climb and is expected to pass that of the United States Court of Appeals for the District of Columbia Circuit, the court from which jurisdiction over local appeals was transferred (hereinafter referred to as the Circuit court). This trend is reflected in the following table:

TABLE 1.—CASELOAD OF THE D.C. COURT OF APPEALS (FISCAL YEARS 1970-74)

	1970	1971	1972	1973	1974	Projected 1975-76
Cases filed:						
Criminal.....	193	264	347	524	670	700
Civil.....	178	284	315	434	404	500
Total.....	371	548	662	958	1,074	1,200

The caseload of the Circuit court averaged approximately 1,100 case filings over the same period of time. It should be noted that the caseload of the Circuit court has decreased significantly during the first half of fiscal year 1975. However, it is too early to say whether this trend will continue.

As would be expected, this court's motions load has also grown. In fiscal year 1971, 1,122 procedural (extensions of time, etc., which are handled by one judge) and 479 substantive motions (necessitating three-judge disposition) were filed. By fiscal year 1974, the totals had grown to 4,404 procedural and 1,077 substantive motions.

One important factor in predicting the future caseload of the D.C. Court of Appeals is the number of trial judges from whose decisions appeals are taken to this court. There are 44 trial judges on the Superior Court, the local trial court of general jurisdiction, compared to only 15 judges on the U.S. District Court for the District of Columbia, the counterpart of the Superior Court in the purely federal system. This is expected to have a major impact on the number of appeals filed in this court.

Moreover, the rate of indictments in criminal cases in the Superior Court has been between 3,500 and 4,000 annually for the last two fiscal years. The indictment rate in the District Court averaged less than 1,500 per year from 1963 to 1973 and has been declining rapidly in the last two years since the transfer from that court of major felony jurisdiction. With twice as many major criminal cases moving through the local trial court, more and more appeals from these convictions will be taken to this court.

Additional civil as well as criminal appeals may also result from the new law-making powers granted the City Council by the Home Rule Act (Pub. L. 93-198). Concurrently therewith, a Law Revision Commission has been created to examine the laws in the District of Columbia and recommend to Congress and to the Commissioner and D.C. City Council, where appropriate, law reform to modify or eliminate antiquated and inequitable rules of law, and to bring the District laws, both civil and criminal, more into harmony with modern conditions (Pub. L. 93-379). The impact of these two legislative actions will probably cause the projected caseload to which reference has been made to increase even more.

These factors make it clear that an adequate research staff is critical in order to avert an unsurmountable backlog in the local appellate court. A comparison in staff size and research capability of the two courts is important in the analysis of the need for this legislation. The non-judicial or administrative staff for each court is virtually identical, i.e., 28 employees in the Circuit court compared to 25 in the D.C.

Court of Appeals. But, the judicial function of each court, consisting of judges, their secretaries and law clerks, is markedly divergent. In numbers, there are 44 employees who assist the Circuit court in its judicial function as compared to 28 in the D.C. Court of Appeals. The following table¹ discloses the staffing pattern in each court for this function:

TABLE 2.—STAFFING PATTERN OF JUDICIAL FUNCTION

	U.S. Court of Appeals	District of Columbia Court of Appeals
Judges.....	9	9
Judges' secretaries.....	11	9
Steno pool.....	4	
Judges' law clerks.....	19	10
Senior law clerks.....	1	
Total.....	44	28

In short, the judges on the Circuit court are authorized two law clerks each (the Chief Judge, three), whereas each judge of this court is authorized only one law clerk (and the Chief Judge, two). This bill, if enacted, would authorize bringing the staff complement in this court in line with that of the Circuit court.

This court fearing a backlog resulting from the transfer of all local jurisdiction, the sizable increase in the number of judges on the trial bench and its limited staff, adopted a number of techniques aimed at expediting the appellate process.

These techniques include the development of a screening process which culls out, at an early stage, noncomplicated civil and criminal cases for expedited consideration by the court. The Clerk's office reviews each appeal upon the filing of briefs in order to determine the number of issues, whether these issues raise novel points and whether the fact situation is complicated. Cases which then appear susceptible to quick disposition are placed on a summary calendar distinguishable from the regular calendar in that argument is not heard unless specially requested by the parties or the court. If oral argument is granted, it is limited to 15 minutes per side rather than the 30 minutes per side allowed for regular calendar cases.

With respect to the regular calendar, divisions of the court now sit in double sessions, morning and afternoon, in order to hear more cases.

In decision making, the court has resorted to the use of unreported judgments in a greater number of cases than in the past. This type of disposition explains the decision to the parties involved without the need for publication of an opinion. This technique disposes of cases which do not affect settled law and avoids delays incident to the preparation and printing of opinions.

Such measures have been successful to a limited extent in expediting the appellate process. Thus, the time from the noting of an appeal to assignment to the deciding panel has not significantly increased. However, the time from such assignment to decision has increased significantly although at an irregular pace over the last few years as illustrated by Table 3.

¹ The retired judges of the Circuit and this court and their respective staff have not been included in this analysis although such judges contribute to the disposition of a significant number of appeals in both courts.

TABLE 3.—TIME INTERVAL (IN DAYS)

	1971	1972	1973	1974
Time from notice of appeal to the filing of the record.....	67	65	61	62
Time from filing of record until briefing is completed.....	97	96	97	90
Time from complete briefing to argument.....	24	25	47	62
Time from argument to decision.....	55	79	82	101
Overall time from notice of appeal to decision.....	243	265	287	315

Because of the potentially crippling backlog of cases awaiting disposition, the court applied for and was awarded a federal grant of funds from the Law Enforcement Assistance Administration to hire nine legal assistants to supplement the judges' personal staffs. This grant was made last August and became fully operational in November. While it is impossible in this four month period of time to develop meaningful statistics, the consensus of all the judges of the court has been that the addition of the extra law clerks has enabled the court to reduce substantially the interval between argument and decision.

The increase in the appropriations needed for the nine additional law clerks is \$95,200 for FY 1976, the first year of operation, in light of the availability of grant funds for these positions until November of 1975. For future years, the total amount of personnel compensation required each year (based on increased salary levels since the grant) would be \$150,000.

For the reasons stated, I respectfully urge that the committee take favorable action on H.R. 4287.

Faithfully yours,

GERARD D. REILLY,
Chief Judge.

STATEMENTS REQUIRED BY RULE XI(1)(3) OF HOUSE RULES

Oversight Findings and Recommendations

The Committee's oversight findings with respect to the matters with which the bill is concerned remain as a part of its continuing Congressional oversight required by the Constitution and specifically provided for in the Home Rule Act (Sections 601, 602, 604 and 731 of Public Law 93-198).

Budget Authority

This local legislation for the District of Columbia creates no new budget authority or tax expenditure by the Federal Government. Therefore, a statement required by Section 308(a) of the Congressional Budget and Impoundment Control Act of 1974 is not necessary.

Congressional Budget Office Estimate and Comparison

No estimate and comparison of costs has been received by the Committee from the Director of the Congressional Budget Office, pursuant to Section 403 of the Congressional Budget and Impoundment Control Act of 1974. See cost estimate below by this Committee.

Committee on Government Operations Summary

No oversight findings and recommendations have been received which relate to this measure from the Committee on Government Operations under Clause 2(b)(2) of Rule X.

Costs

Based on estimates presented at the hearing, currently available, costs for the additional law clerks authorized by this legislation will be approximately \$150,000 annually, including the most recent 5 percent cost of living pay increase.

Inflationary Impact

H.R. 4287, if enacted into law, will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 7 OF TITLE 11, DISTRICT OF COLUMBIA CODE

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

* * * * *

SUBCHAPTER I. CONTINUATION AND ORGANIZATION

* * * * *

§ 11-708. Clerks and secretaries for judges

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove **[two]** *three* personal law clerks, and each associate judge may appoint and remove **[a]** *two* personal law **[clerk]** *clerks*. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge.

* * * * *



ADDITIONAL LAW CLERKS FOR JUDGES OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS

DECEMBER 10, 1975.—Ordered to be printed

Mr. EAGLETON, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany H.R. 4287]

The Committee on the District of Columbia, to which was referred the bill (H.R. 4287) having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

On page 2, immediately after line 3, insert the following:

Sec. 2. That the District of Columbia Law Revision Commission Act, approved August 21, 1974, is amended as follows:

Section 2(i) of such Act (D.C. Code, Sec. 49-401(i)), is amended to read as follows:

The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel shall be appointed without regard to the provisions of Title 5 of the United States Code, governing appointments in the competitive service. The Commission may appoint a Director. Such appointment shall be made without regard to the provisions of Title 5 of the United States Code, governing appointments in the competitive service. The Director shall serve at the pleasure of the Commission and shall be entitled to receive compensation at the maximum rate as may be established from time to time for Grade 16 of the General Schedule in Section 5332 of Title 5 of the United States Code. The Commission may also appoint a General Counsel without regard to the provisions of Title 5 of the United States Code governing appointments in the competitive service, to serve at the pleasure of the Commission. The General Counsel shall be entitled to receive compensation at the same rate as the Director and shall be responsible solely to the Commission.

Persons appointed to the staff of the Commission shall be appointed solely on the basis of their ability to perform the duties of the Commission without regard to political affiliation. Employees of the Commission shall be regarded as employees of the District of Columbia government.

PURPOSES OF THE BILL

The purposes of H.R. 4287 is to amend the District of Columbia Code in order to authorize an additional law clerk for each of the nine judges of the District of Columbia Court of Appeals. This additional law clerk would bring the total number of law clerks for each associate judge to two and would bring the total for the chief judge to three. The general purpose of the legislation is to increase the analysis and research capability of the Court, thereby enhancing its case disposition capacity. The reason for Federal legislation in this otherwise local administrative matter is that law clerks are provided for by section 708 of the D.C. Code which the City Council is prohibited from amending by section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act.

As amended by the Committee, the bill would also amend the District of Columbia Law Revision Commission Act, approved August 21, 1974, so as to allow the appointment of the staff of the commission from outside the competitive service, as is the case with most District of Columbia employees employed in similar positions.

BACKGROUND

The District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 482) created a new trial court of general jurisdiction, the Superior Court of the District of Columbia. This new court was a consolidation of the former Court of General Sessions, Juvenile Court, and Tax Court. To it was transferred much of the workload which had been handled by the U.S. District Court for the District of Columbia. Transferred, by carefully phased increments, were all District of Columbia Code felony cases, probate jurisdiction, and non-Federal civil case jurisdiction unlimited as to amount. This transfer was completed in late 1973.

The District of Columbia Court Reform and Criminal Procedure Act of 1970 made the District of Columbia Court of Appeals the highest local court in the District of Columbia consisting of nine judges. Prior thereto, it was a six-judge intermediate appellate court, and a losing party could file a petition for allowance of an appeal to the U.S. Court of Appeals for the District of Columbia Circuit. Section 11-102 of the District of Columbia Code now provides:

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States . . .

In the mid-1960's, before court reorganization, the U.S. Court of Appeals for the District of Columbia Circuit was receiving approximately 1,100 appeals per year, yet each of the Court's nine judges was

authorized to have only one law clerk. Consequently, in the year 1965 several judges on the Circuit Court retained a second law clerk on an interim basis and since 1967 each judge on that court has had the services of two full-time law clerks.

With the completion of court reorganization and concomitant expansion of the jurisdiction of the Superior Court of the District of Columbia, the District of Columbia Court of Appeals is now receiving more appeals than the number of appeals filed in the U.S. Circuit Court, yet each judge on the District of Columbia Court of Appeals is officially authorized to employ one less law clerk than each of the judges on the Circuit Court. In the year immediately preceding the publication of this report, the District of Columbia Court of Appeals has been able to cope with its caseload in large part because of a 1-year Law Enforcement Assistance Administration discretionary grant to the court to provide funds for an additional law clerk for each judge.

In the hearing on H.R. 4287, the Court submitted testimony showing that the additional law clerks have made possible a 4 percent reduction of the court's backlog. This reduction is significant in light of the substantial increase in the backlog of appeals (434 in November 1972 and 839 in November 1974). These temporary clerks helped the Court to decrease the average number of days between argument and disposition of appellate cases. That average time lapse in 1974 was 97 days but was reduced to 81 days for cases on the regular calendar and 31 days for cases on the newly established "summary" calendar, for the 10 months ending August 31, 1975.

However, in the hearing before the committee, the Court was careful to point out that the financial assistance from the Law Enforcement Assistance Administration was predicated upon, and granted in recognition of, the need for legislative action to increase the number of law clerks authorized to be employed by the District of Columbia Court of Appeals. The LEAA grant period is scheduled to terminate on February 14, 1976.

NEED FOR THE LEGISLATION

The number of cases filed in the District of Columbia Court of Appeals has more than tripled since fiscal year 1970, the last year before court reorganization. In that year, 371 cases were filed with the court, and the cases filed there in subsequent fiscal years are as follows:

1971	548
1972	662
1973	958
1974	1,074
1975 (projected)	1,400

In addition to the increased caseload, the court has experienced a substantial increase in the number of motions, both procedural and substantive. In fiscal year 1971, 1,122 procedural and 479 substantive motions were filed. In fiscal year 1975 those figures increased to 4,730 procedural motions and 1,266 substantive motions (which required the attention of a three-judge division). One factor which has contributed significantly to this dramatic increase in appellate cases is the substantial increase in the number of criminal indictments re-

turned in the Superior Court. Its indictment figures have been as follows:

1971.....	1, 841
1972.....	2, 349
1973.....	3, 354
1974.....	3, 514

With the increase in the number of cases filed for appeal there has been a corresponding increase in the number of pending appeals comprising the backlog. The backlog figures, measured as of November 1 of each year, are as follows:

1972.....	434 (of which 94 were argued but undecided)
1973.....	661 (of which 148 were argued but undecided)
1974.....	839 (of which 181 were argued but undecided)

The increase in the caseload carried with it a matching increase in the average number of days from the argument of a case to the disposition thereof. The totals are as follows for the calendar year:

	<i>Days</i>
1971.....	55
1972.....	79
1973.....	81
1974.....	97

In fiscal year 1974 the D.C. Court of Appeals took steps at various stages of the proceedings to avert this backlog and the delay between argument and decision. For example, the judges sat more often in order to hear more cases. Also, unreported typed judgments were written in those cases in which a reported opinion would make no contribution to the law. Finally, screening techniques were applied to cases in order to determine which cases might be susceptible to summary treatment. As a result of these efforts the court was able to decrease the average number of days between argument and disposition of a case to 81 days for cases on the regular calendar and to 31 days for cases on the summary calendar. Thus it is apparent that the court has been making a diligent effort to reduce its case backlog and its request for additional law clerks appears justifiable.

The need for the amendment to the Law Revision Commission Act is created by an anomalous situation which was created by the Congress when the Act was originally passed. The Act contains a requirement that personnel hired by the Commission "shall be appointed subject to the provisions of title 5 of the United States Code, governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter II of chapter 53 of such title relating to classification and General Schedule pay rates."

Most lawyers, with the skills needed by the commission for its staff, are not appointed from the competitive service anywhere in the Federal or District of Columbia governments. Accordingly, the Commission found it impossible to find potential employees with the needed skills on the competitive register. The chairperson of the Commission, Patricia Roberts Harris, on behalf of the Commission therefore requested a change in the law to enable the Commission to hire its Executive Director and General Counsel from outside the competitive service.

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN,
Washington, D.C., November 12, 1975.

Senator THOMAS EAGLETON,
Chairman, Committee for the District of Columbia,
Washington, D.C.

DEAR SENATOR EAGLETON: The attached draft legislation is transmitted for the purpose of facilitating the employment of staff for the D.C. Law Revision Commission. The existing statutory language creates an anomalous situation in which employees are required to be appointed in the competitive service as specified in Title 5 of the United States Code, while at the same time providing that such employees are to be regarded as employees of the District of Columbia. The great majority of District of Columbia employees are not in the competitive service, but are hired as excepted appointments. The attached draft legislation would place employees of the Commission in the excepted service and permit hiring without the requirements of the competitive system and the involvement of the United States Civil Service Commission. As District employees, however, they would be compensated in accordance with the Classification Act of Chapter 51 and subchapter III of Title 5 of the United States Code.

The draft would also authorize the hiring of a staff director and a general counsel (although both positions would probably not be necessary during the initial phases of the Commission's operations) to serve at the pleasure of the Commission and to receive compensation at the maximum level for a GS-16.

It is believed that the amended section is necessary and would provide the flexibility to enable the Commission to select a competent person to act as staff director who could proceed to organize and plan the activities the Commission must undertake in order to accomplish its mission within the time period established by the statute.

Please accept my thanks for your consideration of this important matter.

Sincerely yours,

PATRICIA ROBERTS HARRIS,
Chairperson, D.C. Law Revision Commission.

LEGISLATIVE HISTORY

H.R. 4287, the bill to authorize additional law clerks for the District of Columbia Court of Appeals passed the House of Representatives on November 10, 1975, by a vote of 310-21. It was referred to the committee on November 11, 1975. A hearing was held on December 3, 1975, at which Chief Judge Gerard D. Reilly, and Judges John W. Kern III and Stanley S. Harris appeared. There were no adverse witnesses.

COMMITTEE VOTE

The Committee on the District of Columbia by unanimous vote approved H.R. 4287, as amended, on December 9, 1975.

COSTS

Based upon estimates presented at the hearing, the cost of the additional law clerks authorized by this legislation would be approximately \$150,000 per year. There will be no additional costs incurred because of the amendment to the Law Revision Commission Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

CHAPTER 7 OF TITLE 11, DISTRICT OF COLUMBIA CODE

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

* * * * *

SUBCHAPTER I. CONTINUATION AND ORGANIZATION

* * * * *

§ 11-708. Clerks and secretaries for judges

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove [two] *three* personal law clerks, and each associate judge may appoint and remove [a] *two* personal law [clerk] *clerks*. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge.

* * * * *

CHAPTER 4 OF TITLE 49, DISTRICT OF COLUMBIA CODE

Chapter 4.—LAW REVISION COMMISSION

§ 49.401. Establishment of Commission—Composition—Terms of office—Administrative provisions.

* * * * *

(i) The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel shall be appointed [subject] *without regard* to the provisions of Title 5 of the United States Code, governing appointments in the competitive service[.]. [and shall be paid in accordance with the provisions of chapter 51 and subchapter II of chapter 53 of such title relating to classification and General Schedule pay rates.] *The Commission may appoint a Director. Such appointment shall be made without regard to the provisions of Title 5 of the United States Code, governing appointments in the competitive service. The Director shall serve at the pleasure of the Commission and shall be entitled to receive compensation at the maximum rate as may be established from time to time for Grade 16 of the General Schedule in Section 5332 of Title 5 of the United States Code. The Commission may also appoint a General Counsel without regard to the provisions of Title 5 of the United States Code governing appointments in the competitive service, to serve at the pleasure of the Commission. The General Counsel shall be entitled to receive compensation at the same rate as the Director and shall be responsible solely to the Commission.*

Persons appointed to the staff of the Commission shall be appointed solely on the basis of their ability to perform the duties of the Commission without regard to political party affiliation. Employees of the Commission shall be regarded as employees of the District of Columbia Government.



Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To provide for additional law clerks for the judges of the District of Columbia Court of Appeals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 7 of title 11, District of Columbia Code, is amended as follows:

Section 11-708 is amended to read:

“§ 11-708. Clerks and secretaries for judges

“Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove three personal law clerks, and each associate judge may appoint and remove two personal law clerks. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge.”

SEC. 2. That the District of Columbia Law Revision Commission Act, approved August 21, 1974, is amended as follows:

Section 2(i) of such Act (D.C. Code, sec. 49-401(i)), is amended to read as follows:

“The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel shall be appointed without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Commission may appoint a Director. Such appointment shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Director shall serve at the pleasure of the Commission and shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code. The Commission may also appoint a General Counsel without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, to serve at the pleasure of the Commission. The General Counsel shall be entitled to receive compensation at the same rate as the Director and shall be responsible solely to the Commission.

“Persons appointed to the staff of the Commission shall be appointed solely on the basis of their ability to perform the duties of the Commission without regard to political party affiliation. Employees of the Commission shall be regarded as employees of the District of Columbia Government.”

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

December 22, 1975

Dear Mr. Director:

The following bills were received at the White House on December 22nd:

✓ H.J. Res. 749 ✓	✓ H.R. 8304 ✓	✓ H.R. 11184 ✓
✓ H.R. 4016 ✓	✓ H.R. 9968 ✓	✓ S.J. Res. 157 ✓
✓ H.R. 4287 ✓	✓ H.R. 10035 ✓	✓ S. 95 ✓
✓ H.R. 4573 ✓	✓ H.R. 10284 ✓	✓ S. 322 ✓
✓ H.R. 5900 ✓	✓ H.R. 10355 ✓	✓ S. 1469 ✓
✓ H.R. 6673 ✓	✓ H.R. 10727 ✓	✓ S. 2327 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.