

AMENDMENT OF THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS CONCERNING ASSISTANT U.S. AT- TORNEYS

MAY 19 (legislative day, MAY 18), 1971.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 4209]

The Committee on the Judiciary, to which was referred the bill (H.R. 4209) to amend the Revised Organic Act of the Virgin Islands, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend section 27 of the Organic Act of the Virgin Islands (48 U.S.C. § 1617) by correcting the reference in that section to the chapter of title 28 of the United States Code covering U.S. attorneys, and by deleting the exception in section 27 which now limits the U.S. attorney in the Virgin Islands to one assistant.

STATEMENT

The bill, H.R. 4209, was introduced in accordance with the recommendations of an executive communication from the Department of Justice which recommends its enactment. The amendments contained in the bill have been recommended by the Department of Justice because the work of the office of the U.S. attorney for the Virgin Islands has increased significantly in recent years and there is a demonstrated need for an additional assistant U.S. attorney.

At the present time, section 27 of the Organic Act of the Virgin Islands (48 U.S.C. § 1617) prohibits the Attorney General from appointing an additional assistant U.S. attorney. This section provides that chapter 31 (now chapter 35) of title 28, United States Code, which deals with the office of U.S. attorney, shall apply to the Virgin

Islands, with the sole exception that the "attorney general shall not appoint more than one assistant U.S. attorney for the Virgin Islands."

This bill would update the title 28 chapter reference from "31" to "35" and would remove the exception; hence 28 U.S.C. 542, as a part of chapter 35, would apply in the Virgin Islands. Section 542 provides that the "attorney general may appoint one or more assistant U.S. attorneys in any district when the public interest so requires." Enactment of this proposal would give the attorney general the same discretion in this matter within the Virgin Islands as he presently has in the judicial districts of the United States.

A subcommittee of the House Committee on the Judiciary held a hearing on this bill on March 10, 1971. At that hearing, the witness appearing in behalf of the Justice Department pointed out that the workload in the Virgin Islands actually exceeds several of the six districts which are presently allocated two assistant U.S. attorneys. In addition, the present lack of flexibility in the appointment of assistants in the Virgin Islands has had the effect of creating a substantial case backlog. To illustrate the problem and to make comparisons to comparable districts, the witness presented the following tables in connection with his testimony before the subcommittee:

APPENDIX

WORKLOAD COMPARISON BETWEEN DISTRICT OF VIRGIN ISLANDS AND 1 ASSISTANT DISTRICTS FOR 1ST HALF OF FISCAL YEAR 1971

District	Case filings	Case term.	Cases pending
Virgin Islands.....	156	158	185
Canal Zone.....	114	128	36
Guam.....	6	8	11

WORKLOAD COMPARISON BETWEEN DISTRICT OF VIRGIN ISLANDS (1 ASSISTANT) AND 2 ASSISTANT DISTRICTS FOR 1ST HALF OF FISCAL YEAR 1971

Virgin Islands.....	156	158	185
Maine ²	69	63	69
New Hampshire ²	44	57	53
Vermont.....	78	66	95
West Virginia N.....	148	143	215
Wisconsin W.....	103	91	236
Wyoming ²	96	90	53

¹ 1440 lands tracts.

² These districts were increased from 1 to 2 assistant U.S. attorneys effective January 1971.

Note: It can be seen from the above charts that the Virgin Islands workload greatly exceeds that of the other 1 assistant districts and generally exceeds the workload of the 2 assistant districts.

The U.S. attorney in the Virgin Islands has the additional responsibility of prosecuting felonies as defined in the laws of the Virgin Islands. It was pointed out at the hearing on March 10, 1971, that this responsibility has served to compound the workload problem of this particular office. This additional responsibility is based upon language found in section 27 of the revised Organic Act itself. It is there provided that the U.S. attorney is to prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court. It is his responsibility to prosecute all such cases unless he consents to a transfer of the function to the attorney general of the Virgin Islands. This aspect of the U.S. attorney's duties was the subject of extended dis-

cussion and explanation at the hearing. It was pointed out that it is a part of the governmental operation in the islands that the U.S. attorney is to have this jurisdiction over local crimes as well as the usual responsibility of the U.S. attorney over Federal crimes. The result is that the U.S. attorney is responsible for the prosecution of offenses other than misdemeanors.

In the Federal area, it was observed that the burden placed upon the office in connection with immigration cases also contributes to the workload. The problem of illegal entrants has been a continuing one which appears to have increased in recent years and represents a law enforcement problem. Moreover, there has been a marked increase in the number of criminal cases in the district court.

The comparative figures concerning cases handled by the average assistant U.S. attorney as compared with the assistant in the Virgin Islands should also be noted. In the United States for the year 1970, the average number of cases handled by an assistant U.S. attorney was 139. In the Virgin Islands, the cases handled during the same year by the assistant was 389. This is a disproportionate figure even when an allowance is made for the different type of cases being handled by the various districts.

Another local aspect that must be considered when one is analyzing the work of the U.S. attorney in the Virgin Islands relates to the geographical situation. The group is made up of three principal islands and the U.S. district court is held on the island of St. Thomas as well as on the island of St. Croix. Should a judge be holding court on St. Thomas at the same time as a judge is holding court on St. Croix, the office of the U.S. attorney has a dual responsibility. Should the U.S. attorney be required to appear in a case before the court of appeals in Philadelphia, which is where the U.S. Court of Appeals for the District of the Virgin Islands generally meets, the pressures placed upon the office are obvious. Since the U.S. attorney's office is responsible for the prosecution of felony cases, it is necessary for a representative of the U.S. attorney's office to appear in local courts in connection with preliminary hearings for felonies. There are four local courts in the islands which conduct these preliminary hearings and these courts meet on the island of St. Croix and St. John as well as St. Thomas. The responsibility before these courts, as well as before the district court, for a U.S. attorney's office with only two attorneys available to perform the work has proven to be a difficult matter at times.

Public Law 91-272, approved on June 2, 1970, authorized an additional judge for the Virgin Islands, so that two U.S. district judges are now authorized for the Virgin Islands. The demonstrated need for the additional judge, which has already been recognized by the Congress, is also relevant in connection with the consideration of this bill. Clearly, the volume of work which justified the creation of the additional judgeship impels a similar conclusion in connection with the removal of the limitation of the U.S. attorney's office to one assistant.

In response to a question at the hearing concerning the cost of this legislation, the witness in behalf of the Justice Department stated that in view of the additional judgeship authorized by Congress, a supplemental appropriation provided for a proportionate increase in the moneys available for the Office of the U.S. attorney.¹ In other

¹ Public Law 91-665, approved Jan. 8, 1971.

words, the money has been appropriated for this purpose. In response to a question concerning the facilities available to the U.S. attorney's office in the Virgin Islands, it was stated that there is adequate space available at the present time for an additional assistant U.S. attorney in the same building now being utilized by the U.S. attorney's office. As to support personnel, the Justice Department does not contemplate any immediate need for additional clerical support even with the appointment of the new assistant.

On April 5, 1971, H.R. 4209 passed the House of Representatives. Based on the facts outlined in the executive communication and the testimony presented at the House subcommittee hearing, the committee recommends that the bill be considered favorably.

Reprinted here and made a part of this report is the executive communication from the Attorney General of the United States.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., February 4, 1971.

The SPEAKER,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed for your consideration and appropriate reference a legislative proposal to amend the Revised Organic Act of the Virgin Islands.

Section 27 of the Revised Organic Act of the Virgin Islands, as amended (73 Stat. 569; 48 U.S.C. 1617) provides that chapter 31 (now ch. 35) of title 28, United States Code, which deals with the office of the U.S. attorney, shall apply to the Virgin Islands. The only exception to this application is the phrase in section 27 that the "Attorney General shall not appoint more than one assistant U.S. attorney for the Virgin Islands."

The enclosed legislative proposal would update the title 28 chapter reference from "31" to "35" and would remove the exception; hence 28 U.S.C. 542, as a part of chapter 35, would apply in the Virgin Islands. Section 542 provides that the Attorney General may appoint one or more assistant U.S. attorneys in any district when the public interest so requires." Enactment of this proposal would give the Attorney General the same discretion in this matter within the Virgin Islands as he presently has in the judicial districts of the United States.

The following tables indicate that the case flow of the Virgin Islands, with one assistant, is near the average for the five U.S. districts having two assistants. Final statistics for fiscal year 1970 are as follows:

Category	Virgin Islands	Districts with 2 assistants
Filings.....	212	170
Terminations.....	195	156
Pending.....	194	148

During the first quarter of fiscal year 1971, ending September 30, 1970, the case flow of the district of the Virgin Islands continues to exceed the average of the five districts having two assistants.

Category	Virgin Islands	Districts with 2 assistants
Filings.....	89	51
Terminations.....	118	51
Pending.....	160	143

In addition, Public Law 91-272, the Omnibus Judgeship Act, established an additional judgeship within the Virgin Islands. This addition, with its attendant increase in the court's workload capacity, would seem likely to impose even greater demands upon the office of the U.S. attorney. Further, Congress recently approved a supplemental appropriation, Public Law 91-665, which provides for 122 new assistant U.S. attorney positions to serve the 61 new judgeships created by the Omnibus Judgeship Act. This number of attorneys is based on a ratio of two attorneys for each judge.

The reason for the limitation on the number of assistant U.S. attorneys in the Virgin Islands is not known, but it is apparent that it should be eliminated, permitting the attorney general to appoint additional attorneys when he determines the public interest so requires.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the administration's program.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

CHANGES IN EXISTING LAW

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) :

SECTION 27 OF THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS, AS AMENDED

(68 Stat. 507, as amended; 48 U.S.C. 1617)

TITLE 48.—TERRITORIES AND INSULAR POSSESSIONS

* * * * *

§1617. United States attorney, and assistant; appointment; duties; vacancies

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of [chapter 31] *chapter 35* of Title 28, shall apply, [except that the Attorney General shall not appoint more than one assistant United States attorney for the Virgin Islands].

Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the inferior courts of the Virgin Islands. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court or the inferior courts of the Virgin Islands. In the case of a vacancy in the office of United States attorney, the District Court of the Virgin Islands may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

