

Curb Sought on Authority Of U.S. Appeals Court Here

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The Justice Department has warned that a recent federal Appeals Court decision here might prompt convicted felons to go judge-shopping to the liberal federal appeals bench in an effort to have their convictions overturned on constitutional grounds.

The department is asking the Supreme Court to strike down the ruling, which it said will swamp the federal courts with spurious challenges by defendants in cases that have already been decided by the local court system.

The ruling, issued in July by the U.S. Court of Appeals, reasserted the authority of that panel and the city's federal District judges to overrule the relatively conservative D.C. Court of Appeals in criminal cases involving constitutional issues. It overturned one of the keystones of the Nixon administration's 1970 reorganization of the city's court system, which specifically removed the federal Appeals Court here from the appellate process in prosecutions of violent street crimes.

The appellate ruling will cause a "diminution of the stature and integrity of the local court system," strain the resources of the federal court



JUDGE DAVID BAZELON
...heads federal bench

system here, and undercut the congressional intent in the 1970 court reform act that expanded and upgraded the local courts here, the department argued.

Since the underlying issue is the fundamental power of the federal court system as compared with the local court system, the Justice Department said the federal appellate court ruling in this case should be viewed with unusual scrutiny by the U.S. Supreme Court.

In effect, the department said the Appeals Court had a conflict of interest when it decided the cases since it is one of the parties that will be affected by the ruling.

The court reform act that set up the D.C. Superior Court as the trial court for such violent crimes here as murder and robbery, was seen by some at the time as including "court-packing" aspects so the Nixon administration could appoint conservative judges and wrest appellate review from the relatively liberal federal Appeals Court bench, whose chief judge is David L. Bazelon.

Under the act, convictions on violent crimes now are appealed to the relatively conservative D.C. Appeals Court and then directly to the U.S. Supreme Court. Previously, D.C. Appeals Court rulings could be appealed to the U.S. Appeals Court here.

However, the U.S. Appeals Court ruled 8 to 1 in July that it and the District's federal judges still had the authority to overrule the local D. C. Court of Appeals in criminal cases involving constitutional issues.

In its request for a hearing by the Supreme Court, the

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Agency Seeks Curb On U.S. Appeals Court

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Justice Department specifically noted that the more liberal rulings by the U. S. Court of Appeals on such issues as search and seizure and alleged ineffectiveness of counsel will prompt defendants to seek review of their cases there rather than before the more conservative D. C. Appeals Court.

The Justice Department cited figures from the first 11 months of this year that showed that 251 of the 346 cases decided by the local Appeals Court raised federal constitutional issues.

"If federal habeas corpus routinely becomes the next step in the process of review—as surely it will under the decisions in the instant cases—a large number of cases can thus be expected to find their way by means of habeas corpus to the U. S.

District Court and ultimately to the U. S. Court of Appeals," the Justice Department said in its brief.

The Justice Department said such requests for writs of habeas corpus will "add another resource-consuming layer of litigation between the institution of a criminal case and its final determination... (while) the purpose of the court reform act was precisely to avoid that result."

The right to seek a writ of habeas corpus from a federal court after exhausting local court remedies is accorded defendants in all 50 states. Under the government view, D. C. defendants could appeal for such relief only to the U. S. Supreme Court, which considers only a tiny fraction of the cases presented to it.

The federal Appeals Court said in its July opinion that it did not feel its ruling thrust the Court into a supervisory role over the city's local courts, but "merely reaffirm (s) that if local courts withhold effective remedy, the federal courts have the power and duty to provide it."

Tuvalu Celebrates

Reuter

FUNAFUTI, Tuvalu, Jan. 2—Three days of celebrations are under way on this tiny Polynesian island marking the birth of the new territory of Tuvalu. Formerly the Ellice Islands, Tuvalu came into being yesterday when it was separated from the neighboring Gilbert Islands.