

TESTIMONY OF

HON. MICHAEL C. DUNSTON, PRESIDING JUDGE,
SUPERIOR COURT OF THE VIRGIN ISLANDS

ON BILL NO. 31-0161, AN ACT AMENDING TITLE 20 VIRGIN ISLANDS CODE,
PART II, CHAPTER 43, RELATING TO TRAFFIC FINES,

BEFORE THE THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON GOVERNMENT SERVICES,
CONSUMER AND VETERANS AFFAIRS

ON JANUARY 22, 2016

Honorable Justin Harrigan, Sr., Committee Chair, Honorable Myron Jackson, Vice Chair, Members of the Committee Honorable Janette Millin Young, Honorable Sammuel Sanes, Honorable Neville James, Honorable Terrence Nelson, and Honorable Tregenza Roach, other Honorable Members of the Thirty-first Legislature in attendance, Legislative Staff, and ladies and gentlemen.

Good morning. I am Michael C. Dunston, the Presiding Judge of the Superior Court of the Virgin Islands. I thank you for the opportunity to address you this morning regarding Bill No. 31-0161.

Please permit me to begin by confirming that I welcome and applaud the efforts of the Legislature to identify new and innovative sources from which, and means by which, it can provide adequate funding for the Virgin Islands Police Department, the Bureau of Motor Vehicles, and, in particular, the Superior Court. As the jurisdiction of the Superior Court has expanded, the demands on its personnel and facilities have concomitantly increased, as have the resources required for the Court to meet its statutory and constitutional obligations.

Commensurately, so too has grown the pressure on the Court to accomplish more with less. Frustrated members of this Legislature often respond to our requests

for budgetary increases by pointing out the difficulty you face in dividing a smaller “pie” of government revenues between ever-more-numerous worthy requests for increased funding. We recognize the problems created for legislators by the economic challenges faced by the entire Virgin Islands Government.

In these times of economic uncertainty, it is also important to observe, as this Bill appears to recognize, that, although the Superior Court generates a sizeable revenue stream from its operations, none of those funds are currently retained by the Court. All amounts collected by the Superior Court for fines, fees, penalties, and court costs are paid by the Court either into the General Fund, to finance the operations of the Virgin Islands Government as a whole, or into special dedicated funds for specific designated purposes. I conservatively estimate the amount of these collections to exceed Two million dollars per year.

Additionally, I have previously discussed with members of this and past Legislatures my willingness to embrace the concept of identifying funding sources for the Court’s operations within the funds the Court collects and to recognize the advisability of designating a specific portion of the revenues the Court generates to be retained by the Court for use in maintaining and improving its facilities and meeting its other obligations. In short, I generally support earmarking a percentage of statutorily set **fees and costs** to the Superior Court for the Court’s use and, in some instances, adopting new or increased fees to generate additional revenue, so long as that does not result in reduction of the annual budget appropriations to the Court.

However, I must raise a significant concern that I have previously expressed before the Finance Committee regarding the designation of a percentage of **fines** to be

retained by the Superior Court for funding its operations, as Bill No. 31-0161 purports to do.

Maintaining the integrity of the Superior Court and that of the judges and magistrates who serve the people of the Virgin Islands from the bench is essential to preserving the public's confidence in the judicial system, in particular, and the Government of the Virgin Islands, in general. In order for the people of the Virgin Islands to respect and to peaceably honor the Court's decisions, judicial pronouncements must engender confidence that the aim of the Court is to dispense evenhanded justice to all who come before it, without regard to the race, national origin, gender, religion, station in life, political affiliation, or other inappropriate characteristics of the litigants. Additionally, the public must perceive the Court as a neutral arbiter, whose judges and magistrates afford the parties a fair opportunity to be heard and decide issues presented in the litigation based on the law, without regard to political pressure, public opinion, the personal interests of the judicial officer, or the financial implications of the decision for the Court.

Filing fees, copying fees, processing fees, administrative fees, and court costs are almost universally fixed as a specified sum in the Virgin Islands Code or schedules maintained by the Court. For example, 20 V.I.C. § 425 imposed a fixed \$3.75 per day surcharge on rental vehicles, \$2.00 of which was designated to go into the Virgin Islands Education Initiative Fund and \$1.75 of which was allocated to the Department of Public Works to pay for the completion of certain specified capital projects. The statute also provided that, once those capital projects were completed and the Public Finance Authority's cost of using the money as collateral for financing the projects was paid, then that \$1.75 was designated to be paid to the Education Maintenance Fund.

On the other hand, in several instances potential traffic and criminal fines are stated in a range up to a maximum limit, and the judicial officer has discretion to set the fine in an appropriate amount within the available range. For example, one convicted of reckless driving may be fined not more than \$1,000.00, imprisoned not more than six months, or be punished by both a fine and imprisonment up to those maximum amounts. On occasion a minimum is set out in the statute, but that is not always the case. A ready example is 20 V.I.C. § 493, which provides that the potential penalty for a first offense of driving under the influence is imprisonment not to exceed one year, a fine of not less than \$300.00 (or not less than \$500.00 if an accident occurred), or both a fine and imprisonment. Because a first offense of driving under the influence is classified as a misdemeanor, it also has a maximum fine of \$1,000.00.

Please do not misunderstand me. I do not mean to suggest that judicial discretion in the imposition of a fine or other sentence is somehow a bad thing. On the contrary, judicial discretion is essential because judicial officers must be able to determine appropriate punishment and ensure that the sentence is commensurate with the offense.

What I am saying is that judicial officers ought to be able to exercise their discretion without being concerned that their sentencing decisions are being misinterpreted by the public or the press, or being misrepresented by others with a political agenda, as based upon the Court's self interest in generating revenue for its operations.

When the Court receives a statutorily designated portion of a fixed **fee or cost**, the Court is merely being reimbursed for the time of its staff and its expenses in performing a particular nondiscretionary act or processing a particular transaction at a fixed rate. But, if the Court is to receive a portion of a permissible, but not mandatory, **fine**, the amount of which is determined by the judicial official imposing the sentence in his or her discretion,

there is a danger that some persons may perceive or suggest that, rather than because the financial penalty was an appropriate sentence, a high fine was imposed because the Court made a decision to generate revenue through a fine higher than it would otherwise set. An example of the potential for systemic abuse of such a scheme was recently uncovered related to the tragic events in Ferguson, Missouri, where police officers, prosecutors, and municipal judges effectively conspired to balance the municipal budget primarily through issuing traffic tickets to African-Americans.

However, there are certain instances in which fines are fixed in Part II of Title 20. An example is § 512, which sets out a schedule of fines for traffic offenses, primarily so that people can pay those fines before court in order to avoid a court appearance. Most of the fines set out in that section are fixed, although in a few instances the fine is to be determined by the court. In those instances where the fine is fixed, since the fine is set by statute, a judicial officer would not be subject to the same potential criticism regarding its imposition.

Consequently, a potential solution would be to provide in subsection (b) that discretionary fines imposed under Part II of Title 20 would be entirely divided between the Bureau of Motor Vehicles and the Police Department, and add a subsection (c) that indicates that the Superior Court would retain a percentage of “nondiscretionary, fixed” fines. In order to achieve the same relative revenue to the Superior Court, perhaps the percentage of the nondiscretionary, fixed fines retained by the Superior Court could be increased to, say, twelve percent.

The Court must always conduct its operations in a manner that demonstrates the transparency of its practices and shows that its focus is on dispensing justice rather than raising revenue. Were Bill No. 31-0161 to provide that the Court was to retain all or a

portion of certain fixed fines, fees or costs collected by the Court, I could support the Bill. Because the Bill currently indicates that revenues would be generated by the Court's imposition of both fixed and discretionary fines, the latter being necessarily set in the discretion of judicial officers, I cannot support the Bill in its current form.

Thank you once again for providing me with the opportunity to address you on this matter. If you have any questions, I will do my best to answer them for you.

Sincerely,

Michael C. Dunston
Presiding Judge

cc: Hon. Rhys S. Hodge, Chief Justice of the Virgin Islands Supreme Court
Associate Justices of the Supreme Court
Judges and Magistrates of the Superior Court