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## A Thirty-Year Retrospective. Comments Of The Honorable Gregory E. Mize (Ret.)

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# **EDITED PROCEEDINGS FROM THE SYMPOSIUM ON DISTRICT OF COLUMBIA DEMOCRACY AND THE THIRD BRANCH OF GOVERNMENT**

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## **A THIRTY-YEAR RETROSPECTIVE**

*Comments of*  
**The Honorable Gregory E. Mize (Ret.)\***

I come to the discussion with feeling and with, in all honesty, trying to muster modesty, because the subject of this symposium is the judiciary in which I actively participated for twelve years. So, to say what I say, and not kind of like stroke the bench that I'm so proud to come from is, well, a risk. But I say, with all modesty, that I am of the school of thought that [the D.C. Courts are] not broken. We have much to be proud of with respect to the bench—both appellate and trial. Of course, like so many things in life, it needs to be improved and, looking at the principles of democracy, there's a long way to go in this community and in this city of ours.

For eight years I was, as was indicated earlier, the Chief Legal Officer for the District of Columbia City Council, and before that, I was David Clarke's right-hand man and lawyer from 1975, in the first elected council. I saw that group, including Sterling Tucker and Marion Barry and others grow into the job of being an elected official. Also, with the fire of David's passion, heard, many a time, criticisms of the local bench and that federal [control] needs to be reduced. So I come from that background, a long time ago.

But since then, not only having served on the bench with pride—and it's a bench, I might say that thanks to our D.C. Bar, we judges, every five years, get a confidential set of feedbacks from lawyers. So I hear, without the name of the lawyer, what they think of me on the bench. We all get that feedback.

And we have a Judicial Disabilities and Tenure Commission that is not in the state capital several hundred miles away; but we have that Tenure Commission down the street, a local phone call away. On your way to or from the courthouse, you can just take a little detour and report what really bugs you about Judge X. So there are a lot of ways to criticize, when needed, and to cure problems.

Most recently, in the last three years, I have been involved in a national research effort for the National Center for State Courts to figure out how judges manage jury trials in every general jurisdiction trial court of this nation. And to get that research completed, I had to talk to just about every chief justice of every

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state supreme court, many chief judges of large urban courts, many trial judges, and many Bar leaders across the country.

What struck me was that this is a very big country, and most of our judges are elected. And, wow, what a difference that can make. So I've talked to judges in Texas recently. More than half of the general jurisdiction trial judges in Dallas County were kicked out of office last November when a lot of partisan voting, all party-lines, took place. People were tired of the Republican administration in the Nation's Capital. They took it out on the Republican judicial candidates in Dallas, and I'm sure it happened elsewhere around the country. Some great judges got kicked out because of politics.

Throughout the country, state capitals are cutting back the budgets of courts, sometimes, in retribution for [their courts] finding a statute unconstitutional. Sometimes [retribution occurs] because a hot-button issue such as same-sex marriage [was decided] or just plain old dollars and cents [were affected]. At times legislators can't afford to even give judges a pay increase. And so the [state] senators, the [state] representatives, and the governor cut the budget or don't increase it. So there's that landscape out there that I'm mindful of.

I'm also, and more to the heart of the matter, thinking this town will always be a hybrid place. It's the seat of the national government. If we think that the federal government is going to stay out of affairs here completely and that we'll have total home rule, we are just dreaming. When the President, who has to worry even more so nowadays about Homeland Security and the Nation's Capital as a target, for the President—any President—to give up executive power and participation in the governance of the District of Columbia is a dream.

The Congress and the federal government this year funds the D.C. Court of Appeals to the tune of \$9.1 million; the D.C. Superior Court at \$86.4 million; the court system at \$41 million; and the capital budget at \$79.1 million. So the federal government pays \$216,720,000.00 of federal dollars for the court system in its various aspects. If we expect the entity that pays the bills to step back and not get involved in the appointment of the judiciary, I think that's dreaming.

I think the federal government does have a role, and the local government does have a role. I think that our current system will work even better when not only does Congresswoman Norton get a vote in the House of Representatives, but we also have two senators who get votes in the Senate. When a vacancy occurs on the bench, the President should look to the Senators for the District of Columbia and the Nomination Commission and ask "Do you have some input on who this should be?" I believe that those two Senators and the Congresswoman should and will have an influence on the resource issues that pertain to the administration of justice here.

Indeed, we need more democracy in our home here. Yet I don't think it realistically needs to or should come from giving our elected mayor, who I'm very fond of, judicial appointment authority.