1707 L Street, N.W.
Sixth Floor
Washington, D.C.
20036-4203
(202) 331-4364
FAX (202) 828-8572

Sections Infoline
(202) 223-7729

SECTIONS
DISTRICT OF COLUMBIA BAR

TO: Board of Governors
Section Chairpersons
(Designated to Receive Public Statements)

FROM: Carol Ann Cunningham

DATE: September 30, 1992

SUBJECT: EMERGENCY PUBLIC STATEMENT regarding an Amicus Curiae in the matter of Harvey V. Scott, No. 92 SP-695, by the Section on Criminal Law and Individual Rights

48-Hour Expedited Consideration Requested on behalf of the Criminal Law and Individual Rights Section

Enclosed please find for your immediate review a one-page summary of a public statement prepared by the Criminal Law and Individual Rights Section. Copies of the full text will be provided upon request. If you wish to have this matter placed on the next Board of Governors' agenda on October 13, please call me at the Sections Office by 5:00 p.m. on Friday, October 2. I can be reached at (202) 331-4364.

Please note that according to the Guidelines regarding public statements (pp. 38-49) your telephone call "must be supplemented by a written objection lodged within seven days of the oral objection."

Enclosures

cc with full public statement:
Jamie S. Gorelick
Mark H. Tuohey III
Linda E. Perle
Glenda James
Celia A. Roady
Barbara J. Kraft
Katherine A. Mazzaferri

S U M M A R Y

The amicus brief that the Criminal Law and Individual Rights Section intends to file jointly with the American Civil Liberties Union Fund of the National Capital Area and the National Association for the Advancement of Colored People will be submitted in support of a petition for a writ of prohibition directed against former D.C. Superior Court Judge Robert Scott.[1]

The petitioner, John Harvey, is a criminal defense attorney who regularly represents clients in the Superior Court. He is a member of the Faith United Church of Christ and has served as counsel to the church. As a matter of church policy, Mr. Harvey is required to wear a kente cloth stole at all church events and other formal proceedings. Under the policies and practices of his church, court proceedings constitute formal proceedings. Even if not required to wear a kente cloth as a matter of church policy, Mr. Harvey would wear the kente cloth as matter of personal choice to express his religious and cultural beliefs.

In May of 1992, during the course of pretrial proceedings in a criminal case, Judge Scott ruled that Mr. Harvey would be prohibited from wearing a kente cloth in proceedings conducted before a jury. Thereafter Mr. Harvey filed a petition for a writ of prohibition before the D.C. Court of Appeals. The day after the petition was filed Judge Scott removed Mr. Harvey from the case.

The issue presented by the brief is whether a conservatively attired attorney can be prohibited from wearing a kente cloth stole over a business suit during a jury trial when the trial court fails to determine whether the kente cloth stole would actually prejudice the jury and where the trial court has not considered alternatives to prohibition. The brief argues that the Judge Scott's ruling violates Mr. Harvey's first amendment right to free exercise of religion and abrogates his liberty interests without due process of law. In addition, the brief takes the position that the petition remains justiciable despite the fact that Judge Scott passed away during the pendency of the appellate process.

---

[1] Although Judge Scott died during the pendency of this matter, the brief argues that the case is not moot since the conduct at issue is capable of repetition (by other Superior Court judges) yet evading review.