NEED FOR A YOUTH COMMISSION

After reviewing the extent of juvenile crime and delinquency in the District, the characteristics of juvenile offenders, and the procedures and resources for dealing with them, the Commission has decided that the creation of a Youth Commission is compelled by the following facts.

Increase in Juvenile Crime

The amount of juvenile crime in the District of Columbia has increased substantially in the last 15 years, particularly in the past 5 years.[144] In 1965 juveniles accounted for 37 percent of all arrests for serious crimes. Arrests of juveniles in 1965 for all crimes (except traffic violations) increased 17 percent over 1964 and 63 percent over 1960. The number of cases referred to the Juvenile Court in 1966 represented an increase of 74 percent over 1960, even though 1966 referrals fell by 8 percent from 1965. Commitments to juvenile institutions in 1966 also fell below the 1965 highs, but they still exceeded 1960 commitments by 33 percent at Cedar Knoll and 60 percent at Maple Glen. Up to 10 percent of the juveniles between 10 and 17 in some parts of the city report having been arrested at least once, and the rate of court referrals is up to 60 per 1,000 youths in these areas.[145] The increase in juvenile crime has far exceeded the growth in the juvenile population.[146]

Rate of Recidivism

Among those delinquent youths who are apprehended, an excessive number violate the law again within too short a time. In fiscal 1966 approximately 66 percent of the 16- and 17-year-old juveniles referred to the court by the Youth Aid Division had been before the court previously. In 1965, 56 percent of those in the Receiving Home were repeaters. The SRI study revealed that 61 percent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that 42 percent had been referred at least twice before. The SRI study also indicated that the violent offenders begin delinquency careers at an even earlier age than the ones whose crimes are primarily economic. Whatever the underlying reasons for the delinquent behavior of these juveniles, they are not being satisfactorily met by present procedures for handling them in the District of Columbia.

Lack of a Comprehensive Plan

We have repeatedly emphasized the absence of a unified approach to detecting and helping children who seem destined for delinquent

careers. Unless he happens to be in one of several "pilot projects," a child acting up in school may be ignored, handled solely through temporizing measures affecting his school work only, or referred on to other agencies by pupil counselors. Some fortunate youths, particularly those involved in gang activity, may come to the attention of a Roving Leader. But the leader in turn is limited in what he can do for the boy by the availability of referral sources to alleviate basic problems which counseling cannot solve.

If the youth finally is arrested by the police for minor misconduct, he may be dismissed, lectured and dismissed, or in a comparatively few cases referred to the Commissioners' Youth Council or another agency. Although these agencies do what they can within the limits of their jurisdiction and resources, they do not have any responsibility for reporting back on their progress or evaluating the success of their efforts. At no time in the process does anyone undertake to make an overall diagnosis of the child's problems or to attempt a full-scale, continuing treatment of these problems.

On a broader scale, we have no effective mechanisms for systematically spotting the most vulnerable group of potential delinquents. This kind of fundamental research in the District is long overdue as a basis for establishing priorities among prevention programs. The Howard University evaluation of the Cardozo project contained the beginnings of such research, analyzing a sample of institutionalized and non-institutionalized youth. Although there was little difference between the groups as to the intactness, size and income of their families, there were significant differences in their educational attainments, since the institutionalized youth left school earlier and more often and their grades were lower. The study revealed that the families of the institutionalized juveniles tended to do more drinking at home, and had more family members who had been arrested. These families lived in tracts within the overall Cardozo area where the median income was lower, the overcrowding greater, the illegitimacy rates higher, and the overall socio-economic picture darker.[147] No matter how difficult the task, a delinquency profile along such lines must be established so that effective programs of intervention can be directed at the groups in which delinquency is most likely to occur.

An agency which collects such data and analyzes its significance should also have the power to formulate and operate official prevention programs in the District. In the past decade no existing agency has attempted or been able to perform these functions. Research has been divorced from operational power. The Commissioners' Youth Council and UPO have conducted some valuable research, but they have not had the authority to change official policy accordingly. The public

agencies with authoritative control over juveniles—the schools, the Department of Public Welfare, and the Juvenile Court—have not taken the leadership in mobilizing research to guide their actions or to develop public support for such an integrated approach. Federal grants from the Department of Health, Education, and Welfare under the 1961 Act have contributed to the anti-poverty program, supplemented existing agency services, and stimulated some new programs. Except for financing UPO evaluation studies, however, they have not contributed to the development of an official prevention program in the District.

Lack of Coordination

The inevitable result of inadequate planning is an absence of coordination among public and private agencies. An examination of the youngsters who come to the attention of these agencies shows that the same children are too often being identified for different problems at various stages in their lives. However, the different agencies that may deal with the child have little communication with each other; in many cases they do not know of the efforts or findings of other agencies with the same child; in others they may be suspicious of, and reluctant to use, the social histories drawn up in other agencies. The failure to communicate results in an inevitable dilution of scarce personnel, as each agency concerned with the child keeps identical records and performs similar diagnostic services and administrative chores. This unfortunate lack of coordination continues even after institutionalization and release; children released from the Children's Center are largely cut off from the main stream of delinquency prevention efforts in the District and are given only token services under the aftercare program of the Department of Public Welfare.

Many of the youths who commit serious crimes have had extensive contacts with a number of community agencies, each with limited jurisdiction over some aspect of their welfare but none with authority or resources to diagnose, treat and follow through with their cases. The possible consequences of this fragmented approach are suggested by one actual case reported by the Executive Director of the Commissioners' Youth Council:

> In 1956, Lewis, age 9, was referred to the D.C. Commissioners' Youth Council after a series of contacts with several welfare agencies. He was described by the agencies as coming from a large, multi-problem family. In addition, he was having considerable difficulty in school and was creating serious behavior problems. He had poor personal hygiene and had been described by the school staff as moody, nervous, careless, not working to capacity and so on.
>
> His home situation was found to be rather confused and lacked the continuity of a sustaining family group. His grandmother, the most stable member of that group, worked seven days a week as a kitchen helper and was, therefore,

unable to spend much time in the home. Lewis' mother virtually ignored him, even though she occasionally lived in the house.

In 1956, Lewis visited relatives who lived on a farm in North Carolina. Since he adjusted extremely well and showed a marked improvement in behavior there correspondence was initiated between the North Carolina Department of Welfare and the District of Columbia Department of Welfare in order that a satisfactory arrangement might be worked out between the two agencies for allowing Lewis to remain in North Carolina.

The North Carolina Department of Welfare approved his remaining there but asked that the D.C. Department of Welfare guarantee his return passage if the arrangement did not work out. The D.C. Welfare Department's rules, however, provide that it can make such assurances only in the case of a committed child. Lewis was forced to return to the District of Columbia.

Shortly after his return to the District, Lewis was expelled from school because of assaultive and abusive behavior. Psychiatric treatment was recommended for him but such services were not available. He was returned to school without having received the necessary treatment and in July 1959, at age 12, he was arrested and referred to Juvenile Court. From 1959 to 1961, Lewis managed to acquire an extensive Juvenile Court record and, finally, in 1961 was committed to Cedar Knoll School. Not long after his release from Cedar Knoll, Lewis was charged with a seemingly unprovoked attack upon a stranger whom he shot and critically wounded.

It was later discovered that the trail that led to this very serious crime ran through at least twelve different agencies with whom Lewis and his family had had contact; three different elementary schools; the pupil appraisal and study department of the D.C. Public Schools; the Health Department; Gale's Clinic; Youth Aid Division of the Police Department; Women's Bureau; Precinct Officers; Glendale Hospital; the Alcoholic Clinic; North Carolina Welfare Department; Public Assistance Division of the D.C. Welfare Department; Child Welfare Division; Juvenile Court; Probation Officer; Youth Guidance Project; and the Commissioners' Youth Council.

Each agency provided the minimum service required in its own purview. Each agency had records and took a history. Little or no exchange of information took place. No joint short or long-term planning or dealing of resources took place. No effective or consistent follow-up took place on the part of one or more agencies. No central pool of information on this youth or his family is available. Even in retrospect we do not know what intervention or coordination of interventions might have helped. We do not know what has happend to him since.

In spite of a great deal of activity and a great expenditure of money and manpower by the District, no one really helped Lewis or his family.

A young man has been charged with the commission of a very serious offense. A man has been critically injured.

Society could not have been given a clearer notice that this boy might commit such a crime.[148]

As this case dramatically confirms, children are too often lost between independent and uncoordinated programs in the District of Columbia. The examples can be multiplied: A "beyond control" youngster may be referred to the Children's Hospital for psychiatric observation where he is found to be not committable, although disturbed, and returned home without further action; Junior Village re-

turns one of its wards to his home, but his need for outpatient care is called to no agency's attention; a health clinic receives a case on referral but does not report back that it has closed the case for non-cooperation. In short, we have not yet established the principle that a child who is discovered to be in trouble must not be lost. Early contacts with potential delinquents or their families are now lost opportunities, as each agency performs its minimum specific functions and no one agency is accountable to the community for what happens to these children.

When an agency has limited services to offer, its diagnosis of the problem may be affected. A social casework service, for example, decides if a child will benefit from its services alone; its ultimate decision might be different if there were alternative treatment methods available. It has no power to decide for other agencies if their services would be better or indeed if they are available to the child at all. Without the results of other program experience, it may make a decision based on insufficient knowledge. A centralized service for the diagnosis of all problem children is clearly necessary, so that one agency has authority to call together all agencies involved with a child and plot one consistent course. Only from this kind of integrated treatment on an individual level will come the data about causes and cures for delinquency that can form the basis for citywide program planning.

Lack of Evaluation

We have been disturbed, too, by the almost total absence of any systematic evaluation of the various preventive programs in existence. As a result we have scant knowledge whether programs in operation for many years have been at all successful. The effect of this on agency activities is a drifting along time-worn paths, without careful consideration of alternatives or knowledge of results. An outstanding example here was the Department of Welfare's exclusive reliance on big, isolated institutions for all ages and types of juveniles until Federal money and outside-agency pressures culminated in the recent introduction of small "pilot project" community group homes. Except for UPO, not one agency contacted could supply us with a recent evaluation of its programs in terms of their specific impact on delinquency. Yet, almost every agency desires expansion of its present programs. If delinquency efforts are to be properly channelled, programs must be ruthlessly evaluated; those that show no impact should be eliminated. The field of prevention is dominated by myths that are costing the taxpayers millions of dollars each year.

Lack of Resources

District agencies which work with delinquent youth are vitally handicapped by shortages of staff and facilities. Absence of enough skilled professional personnel at the Department of Public Welfare has prevented the development of a meaningful diagnostic service at the Receiving Home and has severely limited the potential of the rehabilitative program at the Children's Center. The probation services offered by the Juvenile Court suffer from high caseloads. The special preventive programs of the public schools and the Commissioners' Youth Council have labored under similar disabilities.

Staff efforts are too often spent in "shopping around" for other resources to diagnose or to deal with the child's problems. Even if the canvassing is successful, vital decisions are frequently based not on the appropriateness of the facilities but on whether there is a vacant slot for the child. In too many cases proper resources just do not exist. Roving Leaders, YAD officers, or Juvenile Court probation officers can do little if they have to work in a vaccum. There is a lamentable lack in this community of treatment centers, foster homes, psychiatric clinics, youth residential facilities, and day-care programs. These resources must be systematically developed and allocated according to a centrally-administered priority system so that they can serve the troubled children who need help.

Most of the District's present efforts at prevention deal solely with the child, not his parents. Yet only a small minority of the delinquent children come from families which can be considered structurally intact and stable. According to the SRI study, only 47 percent of the 1965 juvenile referrals lived with both parents at the time of their first referral.[149] Even in that group the family situation is probably far from ideal. Often, one or both parents is severely disturbed; the father may be unemployed and does not represent the major source of support, or he may be away from the home most of the time as a result of his work. Other members of the family may be in trouble with the law; economic pressures may be the cause of frequent moves so that the family never takes root. Such families are frequently not in a position to provide the help their children need or even, in many instances, to protect them from delinquency-producing conditions in the high-crime neighborhoods in which they live.[150] Such parents seldom ask for assistance, even when their children can only be helped and protected through active community intervention.

By and large, delinquency-prone children suffer from inconsistent parental supervision and a lack of love and adequate support from adults. They rarely experience a family life where both parents live

in reasonable harmony and security and introduce their children into normal social and emotional patterns; these children break from family control early in life. Comprehensive plans to help a child overcome delinquent tendencies must detect and respond to such underlying family situations. Remedial efforts have to include help for the families of these children.[151] Few of the agencies working in the field now are equipped to perform these services, and the family aspects of a child's problem are rarely brought to the attention of an agency which may have the authority and resources to be of assistance.

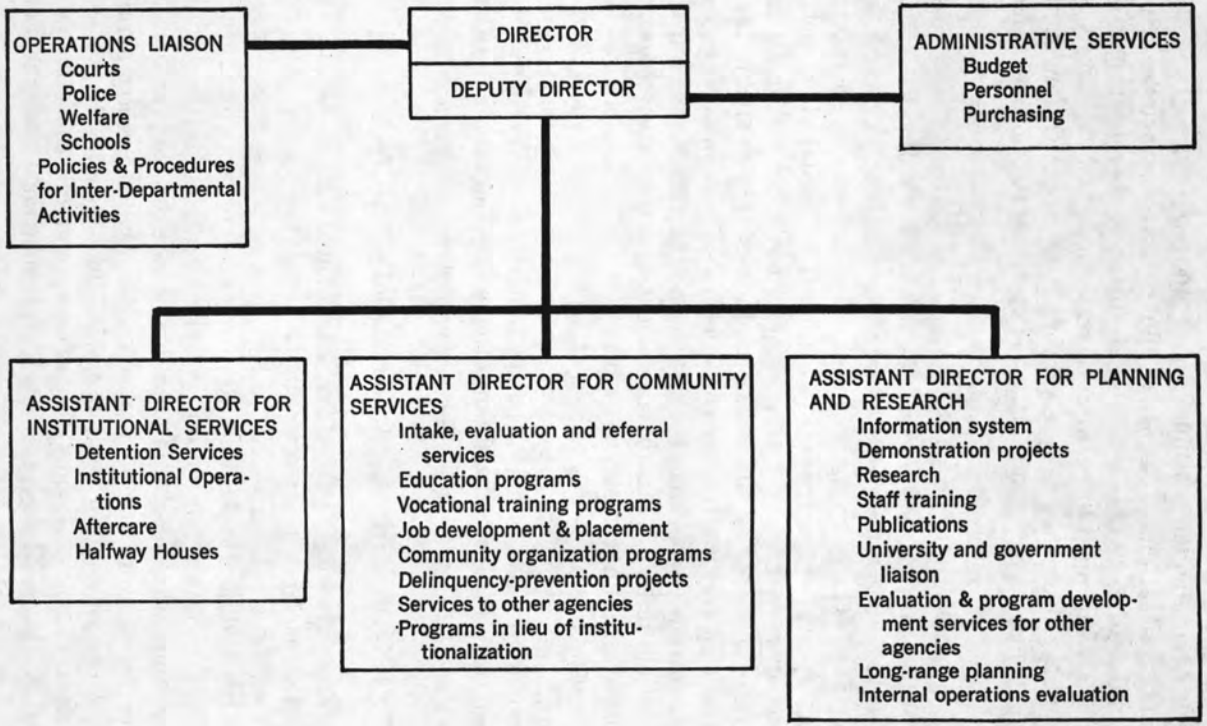
Lack of Authority

Without a central agency responsible for delinquency control, the District's response to periodic crises has been a growth of *ad hoc* services. The growing profusion of delinquency-prevention programs in this city, in fundamental isolation if not in naked competition with one another, has led to an illusion of services for youth in trouble. Unfortunately, as funds become increasingly available for new delinquency services the current situation will simply generate increased numbers of programs, the net impact of which will hardly be discernible unless a careful assessment and allocation of services and resources is undertaken and maintained. This can occur only through the establishment of a coordinating mechanism with *official responsibility* and *authority* to perform that function. Voluntary interagency cooperation has failed—perhaps inevitably—to do the job. The time has come for centralized authority and responsibility in the form of a District of Columbia Youth Commission.

FUNCTIONS OF A YOUTH COMMISSION

The proposed Youth Commission should be an official District of Columbia agency with exclusive responsibility for developing and executing a comprehensive anti-delinquency program. It should not only coordinate and review all programs of other public agencies which affect the target population, but also take the initiative in integrating private efforts into its plan. It should have direct operational responsibility for all non-police and non-court facilities which deal with delinquent youth in a compulsory setting, and should function as the primary control agency for services rendered to delinquency-prone youth. From its inception, such an agency must have the legal power, governmental support and financial resources to launch a coordinated, forceful attack on delinquency in our community. While by no means suggesting this outline as a definitive model, we propose a Youth Commission along the lines suggested in Figure 1.

Figure 1.
FUNCTIONAL CHART FOR THE
DISTRICT OF COLUMBIA YOUTH COMMISSION



Prevention Activities

Central Intake Service

All youths with social or behavioral problems who come to the attention of any community agency, but do not require referral to the Juvenile Court, would be referred to the central intake service of the Youth Commission. Private agencies or individuals, UPO neighborhood centers, and parents would also be encouraged to make referrals. In addition, the Youth Commission, through a network of neighborhood offices, citizen committees, Roving Leaders, and other detached workers, would be actively engaged in searching out those children in the community with problems which require attention.

The authority of the Youth Commission over all children except those under court jurisdiction would, of course, be consensual, and the participation of the youths and their families in treatment programs would be voluntary. If the youth or family had already been the subject of another public agency's programs, the Youth Commission would be empowered to obtain the records reflecting the complete history of the relationship. Comparable arrangements would be established with private agencies on a voluntary basis. With the cooperation of the youth and family, the multidisciplinary staff of the intake service would prepare a complete evaluation of the juvenile's problems, including his: (1) Social history; (2) education status, aptitudes and skills; (3) psychological and psychiatric condition; (4) family, housing and financial situation; and (5) vocational aptitudes, skills and ambitions. It could then formulate a treatment plan for the child, taking into account the varied causes of his problems and the available resources in the community.

It would then be incumbent upon the Youth Commission to persuade the family of such a child to take advantage of the treatment program developed and arranged by the intake service. In some instances, this would consist of participation in various services or programs offered directly by the Youth Commission; in other cases arrangements would be made with another agency. When a different agency is utilized, however, the Youth Commission would make certain that such services were in fact available and make all necessary arrangements.

Agencies dealing with the child on a regular basis, such as the schools and health clinics, or those to which he is referred for treatment, would be required to keep the Youth Commission informed of his progress. Periodic review of these reports by a special Youth Commission worker assigned to the case would permit continuous assessment of the services being rendered and would identify gaps in community resources or facilities at an early point. Thus even though

the juvenile is referred to another agency, the Youth Commission retains the basic statutory responsibility for following through on his case and evaluating the success of such referrals. In this way children will no longer be shuffled from agency to agency with no exchange of information or responsible follow-through.

Central Data Bank

Centralized case files on all predelinquents and delinquents in the District would provide an incomparable source of data for other agencies to draw upon and would reduce the wasteful duplications of data gathering which now occurs. For instance, if the juvenile eventually violates the law despite preventive efforts, it would be of inestimable value to the police and the Juvenile Court to know what has been done for the youth up to that point so that they can assess his rehabilitative potential and avoid repeating past mistakes.

The research potential of such a complete data collection for program planners would be unparalleled. Besides individual case files, a "youth problem" file would be maintained, accumulating on the basis of concrete case histories the kinds of situations, temptations and conditions that are commonly involved in delinquency. A central data bank would permit informed judgments to be made about the factors in a child's life that predispose him to delinquency and those preventive and rehabilitative techniques which work with certain kinds of children. New programs for containing delinquency could be built on this mass of continually updated data. For the first time, the people of the District would know the extent of its delinquency problem and would be in a position to assess whether or not those in charge are doing the job successfully.

Preventive Programs

In developing a comprehensive delinquency preventive program, the Youth Commission can draw upon the accumulated experience of private and public programs in the District during the last 10 years. The new agency would not duplicate the anti-poverty efforts of the United Planning Organization or other District agencies aimed at correcting slum housing, insufficient recreational facilities, inadequate income and job opportunity, or educational deficiencies. The Youth Commission would have a specific mission—developing programs and coordinating services for those children who are particularly exposed to delinquency-producing conditions or who exhibit tendencies which require prompt community attention. Undoubtedly the youth agency and UPO would find it mutually profitable to exchange information

and expertise, and the Youth Commission's data would enable it to contribute substantially to the programs of the District's health, welfare, recreation, school, and employment agencies. Its primary focus must be, however, on the specific needs of delinquent youth.

In some instances, this will mean that the Youth Commission must itself develop and administer the necessary services and facilities where these do not now exist. It must also work jointly with agencies such as the schools or the Recreation Department in planning special programs for problem children who come within their jurisdiction. The Youth Commission should be given specific authority to evaluate services for the delinquent child provided by these agencies and to require their participation in joint treatment programs for individual children. Past experience in the District proves that the necessary interagency coordination and liaison can be effective only if a Youth Commission has statutorily defined authority which fixes responsibility and requires cooperation. Washington is strewn with the wreckage of coordinating agencies with good intentions but poorly defined authority and little support. There must be designated authority to go beyond discussion and to resolve disputes.

The Youth Commission must also integrate private agencies into an overall plan. As far as is possible within a voluntary context, the services of these agencies should be channelled into the areas where the Youth Commission's data and research indicate that there is the greatest need. The private programs can be utilized as valuable community resources. The community from which such agencies seek financial support can be made aware of the cooperative nature of the effort and of the specific prevention needs which are being met by the private agencies.[152]

The new youth agency should be given operational responsibility for the Roving Leader program and those Commissioner's Youth Council programs which deserve continuation. Consolidation within the new agency of existing preventive programs that survive evaluation is an essential first step to the coordinated and pervasive approach which is the rationale of the Youth Commission. The Roving Leader program could operate just as effectively and perhaps more aggressively within the new Commission than within the Recreation Department; it is essentially an anti-delinquency program, not a recreational one. The Area Boards of the Commissioners' Youth Council might provide the nucleus for the neighborhood bases of the Youth Commission.

Like the Council, the Youth Commission would rely heavily upon neighborhood-centered treatment and prevention activities. Decentralized neighborhood youth centers would be established and close

contact maintained with the local residents to engage their active participation in coping with delinquency and youth crime. It might be helpful to establish a central Citizens' Advisory Council, appointed by the District Commissioners, composed of members of the community active or prominent in community affairs related to the problems of youth as well as citizens from the high delinquency areas. This Council would have responsibility for assisting the Youth Commission in the framing of policy and would provide liaison with community groups. Neighborhood Councils would also be established to keep local citizens involved and interested in Youth Commission activities. The Youth Councils of the UPO-financed Youth Program Centers should play an important role in the operations of the Youth Commission.

Liaison and coordination with public agencies would be facilitated by a Coordinating Committee consisting of the heads of all public agencies with responsibility for youth-related services. This executive group would provide the major vehicle for coordination on a decision-making level and would engage in joint planning, coordination and program development. As a means of further coordination, the Metropolitan Police Department, Department of Public Welfare, Board of Education, and the Juvenile Court should assign full-time liaison personnel to the Youth Commission.

To be successful, however, the new agency must operate principally not through committees or liaison personnel but through its neighborhood centers and field workers in day-to-day contact with youths in the community. In the case of a child referred to the Youth Commission as a troublemaker in school, for example, the youth worker can size up the child, his family, the school, and the neighborhood situation and then try to solve his problems. After a case diagnosis, the Youth Commission worker can lead the child into constructive leisure-time activities, find him remedial tutoring out of school, make certain that he has supplementary food or clothing if necessary, or refer a parent to social work counseling or mental health clinics if desirable. The child's teacher will be informed of what is being done so that she can work better with the child in the classroom, and she in turn will report his school progress to the youth worker.

The central concept of a Youth Commission is that it should be responsible for contacting pre-delinquent youths and taking necessary preventive steps. To the maximum extent compatible with the child's progress, the Youth Commission should utilize the programs already available in the community, such as day-care facilities, leisure-time recreational programs, casework or group therapy programs for the families, remedial educational programs, and pre-employment counsel-

ing and vocational training for older children. When existing programs are insufficient, however, the Youth Commission must have both the authority and the money to develop necessary programs.

Handling of Juvenile Offenders

It is imperative that the agency which has the responsibility for the prevention of delinquency should also handle offenders arrested by the police or referred to court. Only in this way can continuity of responsibility and treatment be ensured. In many cases the Youth Commission will already have a file on an arrested juvenile, especially if he has previously been singled out for preventive attention, and can plot a more effective rehabilitative program. Through its research and experience with adjudicated juvenile offenders, the Youth Commission will gain incomparable expertise in its preventive efforts. The community, moreover, will have a central agency to hold responsible for all phases of delinquency prevention and rehabilitation.

Youth Aid Division Referrals

One of the major problems considered in the last chapter was the absence of any comprehensive program for those minor offenders who come to the attention of the police. One important function of the proposed Youth Commission will be to handle referrals from the Youth Aid Division, building upon and expanding the experimental referral programs of the Commissioners' Youth Council and UPO. After referral by the YAD officer, the Youth Commission would make a comprehensive evaluation of the juvenile's difficulties and set up a community-based program to help him. Youth Commission personnel could be assigned to the Youth Aid Division to assist the police in deciding whether to refer the case to court or to the Commission.

Relationship With the Juvenile Court

When a case is referred to the Juvenile Court, the Youth Commission would supply the Intake Section with its file summarizing the juvenile's history and any prior treatment received from it or from any other agency. In addition, Youth Commission personnel who worked with the child would be available for consultation. Such assistance would lighten the burden of the Intake Section's duties and make the court's preliminary investigation more comprehensive. If the intake workers decide to dismiss the case, the Youth Commission would be available to accept referrals and develop an appropriate treatment plan. Full-time Commission personnel would be stationed at the

court to fulfill these information and liaison functions. With the Youth Commission as an added resource, the court should be able to: (1) Reduce its intake burden substantially; and (2) dismiss more cases at intake with the knowledge that the child will receive needed treatment.

Even where the juvenile is processed through the Juvenile Court, the Youth Commission may be of assistance at the dispositional stage of the proceedings. In many cases where the child has had a long history of minor troubles with school or police, the Youth Commission would have a complete record which can be used by court personnel. Where no such workup already exists, the agency's resources would be available for the compilation of the social studies needed by the court. If the Youth Commission were used regularly by the court for this purpose, the court probation workers would be relieved of an enormous burden and could concentrate on youths placed on probation.

When a juvenile is placed on probation, he needs supportive help in the community which cannot be supplied by the probation officer alone. The Youth Commission would be the central facility for developing special programs for dealing with youthful probationers. We believe that it should eventually be possible for the court to designate the Youth Commission as the agency in charge of a juvenile on probation, although we recognize that the court may wish to exercise supervisory control in some cases through its own probation officers. In any event, we do not believe that the Youth Commission poses any threat to the jurisdiction of the Juvenile Court; it is, in fact, the comprehensive community resource which the court has lacked. Once such a youth agency establishes itself, the Juvenile Court can concentrate on its difficult adjudicatory and legal responsibilities, leaving community preventive and treatment programs to the Youth Commission.

Institutional and Residential Care

The proposed Youth Commission should undertake the responsibility for rehabilitation in those serious cases which the court believes require commitment and possible institutionalization. This will ensure that the child's institutional experience takes into account any prior preventive efforts and that after release he will be returned to the community under the supervision and care of an effective neighborhood-based agency.

The previous chapter in this Report identified the fundamental deficiencies in the way juvenile offenders are now being handled by the Department of Public Welfare—large, overcrowded and understaffed institutions, a paucity of community treatment programs, mingling

of delinquents and other children, no clinical or diagnostic services for individualizing treatment, and token aftercare services. The Department's myriad operations in other fields have not permitted it to devote the necessary time or care to this vital task. We therefore recommend that all those residential facilities and personnel within the Department of Public Welfare now used for juvenile correctional purposes should be placed under the administration of the Youth Commission. This includes the Receiving Home for Children, Maple Glen and Cedar Knoll schools, the new security facility under construction, and the three halfway houses or shelter facilities now in operation.

A transfer of responsibility for juvenile offenders to the Youth Commission is necessary for a critical evaluation of past practices and to introduce a new philosophy of juvenile care. The Youth Commission would undertake the task of developing a full range of treatment and rehabilitation programs at these institutions. It will also develop residential facilities and group homes in the community as alternatives to institutionalization. The Juvenile Court Act should be amended to provide for commitments to the Youth Commission, which would conduct an exhaustive diagnosis-classification review and decide whether a juvenile needed institutional care or could be supervised in the community. As is now the case with the Department of Public Welfare, the Youth Commission would be legally responsible to the court for his custody and care. Special education programs will be developed at the institutions by the Youth Commission jointly with the public school system, placing emphasis on the transition back to work and/or school when the youth moves into a halfway house, pre-release, foster care, or normal home setting. Aftercare programs should similarly be absorbed by the Youth Commission as an integral part of the overall rehabilitation scheme.

Other Commission Functions

Program Development

A prime requisite for a successful Youth Commission is a vigorous program development section which evaluates existing youth services, develops new programs, tests them on an experimental basis, and cooperates with other agencies for their implementation. The need for this kind of coordinated program development in the District cannot be overemphasized. It involves the ability to bring intellectual and practical resources to bear from such divergent fields as economics, education, mental health, housing, recreation, and employment, as well as the

more pragmatic ability to mobilize both Federal and local financial resources behind new programs.

Training

An acute shortage of trained manpower exists in every aspect of youth services in the District of Columbia. At the same time there is duplication in many functions performed by professionals and sub-professionals in the field. Thus a mixture of counseling, teaching, interviewing, case study, guidance, and leadership is a major part of the job of almost every professional in juvenile work. Little or no attempt has been made to specialize or allocate functions in the most efficient way. It is also apparent that most youth specialists now being trained are not equipped with the skills or experience for maximum effectiveness with problem youths in an urban ghetto. Finally, little attempt is made to standardize training of youth personnel in different agencies in terms of any generic approach to youth services. There is a noticeably wide and self-defeating variation in staff background and practices at different youth agencies within even so small a geographical area as the District of Columbia, although they are dealing with essentially the same population. Manpower and training needs and practices in the entire field of youth services in the District should be scrutinized carefully.

The Youth Commission should have the responsibility for developing and coordinating training programs for professionals and sub-professionals to meet the manpower needs for youth work in the District of Columbia. This should be done through the development of programs with existing training agencies, such as local universities, and through various training programs for employees of the Youth Commission and other District agencies. This would allow the Youth Commission to provide for its own professional manpower needs on a systematic basis and also to mobilize training resources for other professional personnel working with youth. Young people themselves, from the same backgrounds as those they deal with, are often the best source of sub-professional workers in youth services.[153] The Youth Commission should stimulate and develop training programs and employment opportunities for such personnel in every aspect of youth services.

Research

It is clear that research must be an important ingredient of the Commission's assignment. We recommend that a special effort be made, in conjunction with local universities and Federal agencies, to

develop major research studies which may be of long-term significance to this and other communities. Both the United Planning Organization and Howard University's Institute have research programs under way which would prove helpful to the Youth Commission. The Commissioners' Youth Council has conducted some valuable experiments with the delinquency prediction scale of the Gluecks. Long-term studies of youths and delinquency, much discussed in the scholarly literature,[154] require a substantial commitment of time and money and should be undertaken in the District of Columbia with Federal assistance at the initiative of the Youth Commission.

Public Education

A major function of the Youth Commission would be the education of the public on the problems of youth and the mobilization of community support in developing home, neighborhood, and public services. The educational mission of the new youth agency must be oriented toward the entire community through periodic reports in the newspapers, radio and public testimony. Mobilizing people to combat delinquency in their immediate neighborhoods is a vital element in any successful prevention scheme. As demonstrated by the Commissioners' Youth Council, these neighborhoods can themselves provide some of the supportive help for individual rehabilitation, such as temporary shelter, recreation and part-time work. In many cases neighborhood residents know best what their youth need and can be motivated to work for tangible benefits for their own children.

IMPLEMENTATION

The drafting of legislation to implement the Youth Commission proposal will be a complex task requiring resolution of many substantive and administrative problems. We recommend, therefore, that a special task force from the Department of Justice be assigned to draft the necessary legislation and that it utilize the advice and assistance of local research centers such as the Institute for Youth Studies at Howard University and the Institute of Criminal Law and Procedure at Georgetown University. The Youth Commission will also require extensive financial support by Congress and the Executive Branch, particularly in its initial planning and development stages. We recommend that the Department of Health, Education, and Welfare and the Department of Justice provide substantial support for the agency through their respective grant programs. We believe that the successful development and operation of a Youth Commission in the District of Columbia would be of national significance and provide

a precedent for other urban centers beset with the same juvenile problems as the District.

Although such a comprehensive Youth Commission is unprecedented, we believe it is essential. We have been greatly disappointed with the level of services provided in the District for youngsters showing clear signs of delinquency, as well as for those referred to the police, court and juvenile institutions for actual law violations. The niggardly and fragmented nature of the help given these children has been so markedly unsuccessful that we feel compelled to recommend a radically different and integrated approach. We are attracted also by the concept that responsibility for the failure or success of community efforts with such children will finally come to rest in one place; it cannot be shifted, evaded or ignored among a multitude of agencies. The community's support—financial and moral—will be mobilized behind a single agency's drive against delinquency.

Such an agency must be given massive power, resources and money and actively encouraged to stimulate experimental and innovative thinking. A new and total commitment must be made to allocating a major share of the community's reserves into diagnosing and diverting delinquency in our disadvantaged youth. Transferring facilities, staff and programs from old agencies to a new super-agency will not be enough; there must be a radical new approach of intensive care before and after the first delinquent act occurs. If such an attempt succeeds, it will be in the long run an economical venture. Without such an effort, the community must reconcile itself to another decade of increasing delinquency and crime.

SUMMARY OF RECOMMENDATIONS

1. A Youth Commission should be established in the District of Columbia to develop and administer a comprehensive anti-delinquency program for the entire city, coordinating and reviewing the activities of all public and private agencies in the field and assuming central responsibility for the handling of all delinquency-prone children as well as the treatment of all delinquents referred by the police or committed to its custody by the Juvenile Court.

2. The Youth Commission should assume responsibility for coordinating the activities of private agencies in the anti-delinquency field so that they can most effectively utilize their resources and so that duplication of services will be avoided.

3. The Youth Commission should be empowered to review programs of other public agencies which have delinquency implications and to require their conformity to the overall plan for the city.

4. All residential facilities and personnel within the Department of Public Welfare now used for juvenile offenders should be placed under the administration of the Youth Commission. The Juvenile Court should commit offenders not placed on probation to the Youth Commission, who will choose the suitable facility or program for their rehabilitation.

5. The Youth Commission should, where necessary, develop and operate its own programs for delinquent or pre-delinquent youths as well as utilizing the services of other public and private agencies in the field where appropriate. It should maintain a central referral service to which all youths exhibiting delinquent tendencies may be sent for a complete evaluation and treatment plan, including necessary services for their families. The Youth Commission should furnish appropriate information to other agencies to facilitate their treatment of children.

6. The Youth Commission should contain a research unit to conduct or arrange for long-term research into the causes and cures for delinquency and to evaluate on an ongoing basis existing programs of the Youth Commission and other agencies.

7. The Youth Commission should have the primary responsibility for developing and coordinating training programs to fill the manpower needs for professionals and sub-professionals to work in the delinquency prevention field in the District of Columbia.

8. The Youth Commission should assume the operation of the Roving Leader program. In the course of this transfer, we recommend:

a. A substantial expansion of the Roving Leader Program.

b. An increase in the salaries of supervisors and experienced workers in the Roving Leader program.

c. Greater emphasis on serving the predelinquent elementary school child.

d. A more vigorous staff development program.

9. The Youth Commission would also absorb those activities and staff of the present Commissioners' Youth Council which fit into its total plan. Insofar as possible, it should utilize the Council's organizations of neighborhood volunteers.

10. The Youth Commission should assist in the planning and implementation of special school programs for delinquent and predelinquent children. These programs would be coordinated with its other programs, to afford a total approach to the child and his family. Specifically,

a. More advanced techniques should be employed for treating the troubled pupil within the regular schoolroom context.

b. Additional specialists, particularly counselors and social workers, should be assigned to the social adjustment classes, the STAY program, the twilight schools, and Boy's Junior-Senior High School.

c. The central school administration should assume control and leadership for the social adjustment classes.

d. Pupil Personnel records must be developed to include necessary information concerning the child and his environment.

e. Pupil Personnel workers must be given special training in the problems of the ghetto child.

f. A special school program should be developed for children who have been institutionalized and are returned to the community schools.

11. The Metropolitan Police Department, the Department of Public Welfare, the Board of Education, and the Juvenile Court should assign full-time liaison personnel to the Youth Commission to facilitate coordination on a working level.

12. The Department of Justice should appoint a planning committee to prepare the legislation creating the Youth Commission for submission to Congress in early 1967. This committee should utilize the advice and counsel of experts from Federal and District agencies, as well as private research and planning groups engaged in youth programs.

Chapter 10

The Roots of Crime

The Commission was directed to investigate and report on the causes of crime and delinquency in the District of Columbia and methods for their prevention and control. Throughout this Report we have alluded to those conditions in Washington which appear to be associated with crime and criminal offenders. In this chapter the Commission examines in more detail the relationship between crime and underlying social and economic conditions in the District of Columba.

INTRODUCTION

In exploring the roots of crime in our community, we have solicited the counsel of sociologists, psychologists, psychiatrists, civic and religious leaders, judges, law enforcement officials, and even criminals and delinquents themselves. In addition, we have sponsored studies of the adult and juvenile criminal offender in the District of Columbia and examined the social and economic characteristics of the communities from which most of the District's delinquents and criminals come.

Throughout these efforts, we have been impressed by the inherent difficulties in isolating conditions or reasons which could be said to cause criminal behavior. Just as there are many different acts which may be considered delinquent or criminal, there are many different motivations. The pilfering of a piece of fruit is a crime; so also is the armed robbery of a bank. A narcotics addict who sells heroin in order to obtain funds to purchase drugs is a criminal; so too is the "professional" housebreaker, the husband who assaults his wife in anger, or the youth who takes another's bicycle. Some crimes involve willing participants, such as prostitution. Others, such as robbery, involve force and physical danger to the community. Some people guilty of a criminal act have otherwise lived a completely law-abiding existence; others have long histories of criminal conduct. Some offenders are products of slums and broken homes; others had material comforts and were blessed with responsible and concerned parents. Many are very young—36 percent of those arrested for housebreaking in Washington are 15 years of age or younger; others are much older. Certain offenders have mental or physical disabilities; others are in good health.

The difficulties in determining the causes of such varied conduct are immense. They are compounded by the limitations on society's knowledge of the true extent of the phenomenon studied and the identity and characteristics of its perpetrators. Official police statistics may record only a small proportion of the crime and delinquency which exist in the community. Since less than one-third of reported serious crime results in the apprehension of the offender, we can only speculate as to the extent to which the apprehended offenders reflect the characteristics of the total offender population. Our knowledge is limited even about those offenders "identified" through apprehension, as only the more serious offenders are customarily processed through the courts and institutions where detailed personal histories are compiled.

In short, analysis of the causes of delinquency and crime involves overwhelming difficulties. Reliable and comprehensive data are lacking, the range of conduct to be studied is great, the characteristics of the identified offenders are varied, and the environment in which crime and delinquency occurs is constantly changing. Given these limitations, it appears impossible to formulate any but the most general rule of causation:

> A human being is always the product of his personality and the situation in which he lives. In the same way that social behavior is a function of personality, situation, culture, time, and geography, so also is crime.[1]

Such a formulation, of course, does not assist in identifying the causes of crime, but it does suggest some realistic limitations to the search. As Thorsten Sellin has articulated the goal:

> Ultimately, science must be able to state that if a person with certain personality elements in a certain configuration happens to be placed in a certain typical life situation, he will probably react in a certain manner, whether the law punishes this response as a crime or tolerates it as unimportant.[2]

Significantly, the goal has been stated in terms of probabilities, not absolutes. Criminologists generally despair of ever being able to formulate precise laws for predicting individual human conduct with certainty.[3]

Consequently, most research concerning the causes of crime has been directed toward establishing meaningful correlations between personal and environmental factors and crime. Some researchers have compared the intellectual, physical, emotional, and environmental characteristics of delinquents or criminals with those of law-abiding people, hoping to isolate factors which might explain deviant behavior.[4] Other theorists have sought to describe the process by which non-conforming or criminal conduct results from particular social or personal pressures.[5]

Based on our examination of criminal offenders and crime in the Dis-

trict of Columbia, the Commission attaches particular significance to those analyses which stress environmental conditions. The report of Washington Action for Youth in 1963 conducted that a high-crime area of the District was characterized by low income, high rates of unemployment, family instability, poor housing, and other signs of social disorganization.[6] Duplicating his earlier study in Baltimore,[7] Bernard Lander concluded from an analysis of delinquency rates and 1950 and 1960 census data that there are strong correlations in the District of Columbia between delinquency, low incomes and a limited educational level.[8] Moreover, his intensive study of a single high-crime area in the city, presently the subject of further analysis, confirms the widespread assumption that official agency records do not accurately measure the number of actual delinquents in the community; it suggests that a substantial majority of youths in the area could properly be classified as delinquents, even though their violations of the law most often go undetected.[9]

The details provided by the Stanford Research Institute (SRI) study of adult offenders convicted in the U.S. District Court and of referrals to the Juvenile Court confirm these general conclusions.[10] Only 36 percent of the adult offenders came from homes where both natural parents resided together through the offender's 20th year.[11] Only 47 percent of the juvenile offenders had lived in a home with both a mother and father.[12] Almost half (46 percent) of the adult offenders had completed no more than the 8th grade, and only 14 percent had completed high school.[13] Although the average age of the juvenile offender was 15, over one-fifth (22 percent) were not enrolled in school.[14] More than half (55 percent) of the adult offenders had no history of regular employment, and 46 percent were unemployed at the time of their offense.[15] Sixty-nine percent earned less than $3,000 annually, and 90 percent earned less than $5,000.[16]

In emphasizing these environmental factors and personal characteristics the Commission is not suggesting that any one of these conditions, or even the presence of many, will inevitably produce delinquent or criminal behavior. Many adolescents exposed to these conditions do not engage in repeated delinquent acts; most mature into law-abiding, constructive members of the community. Conversely, the sharp rise in crime in suburban communities demonstrates that pressures toward deviant behavior develop even among the affluent and the educated. Crime in the District of Columbia, however, is a serious problem today because of the increasing amount of criminal behavior by young people raised in the poorer areas of this city. The high incidence of low income, broken homes, unemployment and limited education among these delinquents and criminal offenders suggests that the

interplay of these factors is contributing substantially to crime in Washington.

The precise mechanism by which such environmental conditions contribute to criminal behavior cannot be stated with certainty. Family disorganization, inadequate housing, low family income, and similar malfunctioning of the social environment can interfere with a child's effective socialization.[17] Denied an opportunity for constructive growth and confronted with extraordinary pressures, it is not surprising that so many delinquents emerge from a background of social and economic deprivation.

The home is the first "training school in behavior or misbehavior,"[18] where the child learns that others have rights to which he must make concessions. Relationships between parents and children are especially crucial, as the child should learn to modify aggressive drives at an early age. If the family structure is distorted by the absence of a parent or the presence of an inadequate one, the learning process is disturbed. Thus,

> If the family is unable or unwilling to discharge its responsibilities effectively, and if no readily available institution can step in and take over many of the tasks that are conventionally carried on by the family, the basis will be laid for deviancy in adolescence and adulthood . . . If the parent is too busy, or if he does not care, the child is not likely to learn. He is likely to grow up without knowing or caring about what is right and what is wrong.[19]

The family may be a deficient socializing institution for several reasons. Because of death, divorce or desertion, there may be no father in the home, or due to illness or limited skills the father may be unable to earn enough to support his wife and children. In such a family the boy grows up without the example of a man who performs the role of successfully caring for his family. Children used to dealing with their own problems at an early age may have difficulty in accepting the legitimate authority of teachers, policemen and other adults. Furthermore, a family without a competent male wage earner is likely to be disorganized by the burden being carried by the mother.

> While many mothers without husbands work, they are seldom able to earn enough to support themselves and their children adequately. Moreover, they are seldom able to see that their young children will be properly supervised while they themselves are away from home earning a living. Often, therefore, the child without a father becomes for all intents and purposes a child without a mother.[20]

Many other studies have demonstrated important correlations between delinquency and disturbed or disrupted family environment.[21]

Unemployment and low income can contribute to delinquency and crime in many ways. The man who is out of work or is paid marginal wages cannot provide his wife and children with a decent home and

fails as a father in a number of subtle yet important ways. Inadequate income also makes it difficult for families to obtain needed health services.[22] It hampers or precludes the participation of children from poor homes in the affluent world they see in neighboring communities or on television. Many children are reluctant to go to school poorly dressed and are embarrassed by and resentful of the possessions of others. In a variety of ways "they are shut out from much that they would like to participate in and in the process of rejection they may develop hostile responses to the world which they cannot join." [23]

The young adult who is unemployed may easily become alienated from the rest of the community. If he is handicapped by a lack of education or skills, he may soon grow discouraged and hostile. He may turn to crime both as a means of self-assertion and as a source of funds. The idleness of unemployment offers the time and often the opportunity to engage in unlawful conduct. Not surprisingly, correlations between low income, unemployment and high delinquency rates have been recorded.[24]

The school must help a child to channel his impulses into socially acceptable patterns, help him develop values and goals in harmony with society, and provide him with the knowledge and skills which will enable him to find and hold a job.[25] Yet his parents may have negative attitudes toward the school process because of their own unhappy experiences. Increasingly the school, with inadequate resources, is called upon to compensate for the deficiences in home environments. Too often the child comes to the school ill-equipped to participate in the educational process, and the school is incapable of remedying developmental deficiencies whose roots are deep. A failure in the classroom can generate a series of failures as the youth, embittered and frustrated, looks elsewhere for success and drops out of school:

> The delinquency into which many adolescents slide is often as much a reflection of the blocking of alternative routes for the purposeful use of their time and energy as it is a deliberate choice to become opponents of the status quo, fighting against the values of the society. It would be as wrong to construe their delinquent activities as directed solely or even primarily to the purpose of acquiring money through improper means as it would be to stress that their behavior is a protest against the status quo. The constellation of forces that lie back of delinquent behavior encompasses both strands.
>
> The central point, however, is that if large numbers of adolescents leave school before graduation, after many years of unhappy experience in the classroom, they will find it very difficult to develop an approved method of adjusting to the adult world. They simply lack the knowledge and the social conditioning that are required of people who work, even those who are hired for the simplest of tasks. Cut off by the absence of a bridge from school to work, blocked and frustrated at the very time they should be channeling their energies to build a

future for themselves, they start or continue in activities that will sooner or later bring them into conflict with the law. The contribution of the schools to delinquency by failing to prepare young people effectively for the tasks of adulthood cannot be overestimated.[26]

As one of many interacting factors, housing that is overcrowded and dilapidated can also contribute to criminality. Excessive rents compound the problem of inadequate income. Deteriorating structures handicap a mother who wants to keep her house neat and instill in her children a pride in their surroundings: "After a while, she stops trying. The child who receives little effective training in the care of his own and the family's possessions is likely to grow up without consideration for the property of others." [27] Overcrowding often means that the child is constantly exposed to others, rarely with a chance to be alone to sort out his emotions and experiences, and becomes aware of adult sexuality too early. Overcrowding also places barriers in the way of school success, as the lack of study space and often the lack of sleep mitigate against successful performance in school. Inadequate space in the home also means that children and young people spend their spare time in the streets; under such conditions, it becomes next to impossible even for the deeply concerned parent to exercise control.

Racial discrimination is another potent influence contributing to criminality, inhibiting the economic progress of Negroes and frustrating attempts to reach socially approved goals by socially approved means. Slums combine the ill effects of poor housing and racial discrimination:

Many slum dwellers tend to see themselves as a group apart, cut off because of their poverty from the pleasant world they see in the advertisements and other mass media. The tension between the affluent establishment and the slum dwellers is heightened when racial differences exist; it is frequently a confrontation between poor Negroes and rich whites. To "put something over" on the police therefore often becomes a goal or a means of reaching a goal. This, too, is an experience that many young people early have engraved upon them.

* * * * * * *

Segregated neighborhoods are a major deterrent to the ghetto dwellers' learning about the attitudes and behavior patterns of the dominant culture. Further, the distance between the locked-in insiders and the distant outsiders means that young people during their formative years do not develop a sense of having a stake in the larger society. They learn to make do with what exists within their ghetto area, and since little of this is stimulating or constructive, they soon become either indifferent or hostile.[28]

Many other factors contribute to a child's socialization; their absence may contribute to the complex of circumstances which produces delinquency and crime. Neglected physical defects and emotional disturbances may produce an individual who cannot adjust to society.

Similarly, the absence of adequate recreational services and facilities prevents young people from discharging their energies in healthy and acceptable undertakings.[29]

The Commission is persuaded that the community must acknowledge those deficiencies in our society which contribute to the development of lawlessness in so many of our young people. Before we can expect substantial progress, the problem, employment opportunities have to be available for persons who wish to work; families must live in sound, uncrowded dwellings, with sufficient income to provide the necessities of life; schools must devote sufficient time and resources to prepare youths for entry into the adult world; and factors which weaken the stability and strength of the family, such as ill health and slum conditions, must be attacked. Such improvements, we think, will greatly assist parents in accomplishing the increasingly difficult task of instilling proper values in their children. Moreover, they will contribute to a "sense" of community—a share in society which is to be valued and protected. As we provide a firm foundation for the belief that there is meaningful participation in society by all, we can hope for increased community stability and reduced delinquency and crime.

In the following sections of this chapter the Commission will explore some of the important social and economic conditions which we believe contribute to crime and delinquency in Washington. We have neither the specialized capabilities nor resources to examine all facets of the difficult and complex problems of unemployment, education, housing, public welfare, public health, and recreation. Based on our special concern with crime and delinquency, however, we wish to highlight the serious dimensions of the problems confronting this city, the community's present response to them, and the directions which new and expanded efforts to cope with these problems should take.

EMPLOYMENT

Analyses of the nature and extent of unemployment in the District of Columbia are severely handicapped by the paucity of detailed and current data. The United States Employment Service provides a monthly estimate of the unemployment rate in the city based on a calculated rate for the Metropolitan Area.[30] Beyond this, precise calculations of the rate, as well as the basic personal characteristics of the unemployed, must await the decennial census. These projections are subject to question, as characteristics of the District's population change from year to year. In brief, there are no current statistics available on the age, race, sex, and residence of the unemployed or the underemployed in Washington, nor on the duration of

their employment or underemployment (sporadic or part-time employment). This deficiency prompts speculation concerning the scope of the problem, inhibits intelligent planning, and makes evaluation of programs almost impossible.

EXTENT OF UNEMPLOYMENT

The United States Employment Service for the District of Columbia (USES–DC) estimated that 24,600 persons were unemployed in the Metropolitan Area in 1965, including 16,100 in the District; unemployment rates for the Area and District were 2.3 percent and 4.2 percent, respectively.[31] These figures are comparable to those of 1960, when the decennial census revealed an Area unemployment rate of 2.8 percent (23,135 persons) and a District unemployment rate of 4.1 percent (14,734 persons).[32] In 1960, the latest year for which information is available, Negro males, and particularly young (16–24) Negro males, had comparatively high rates of unemployment (Table 1).

The unemployment figures for both 1960 and 1965 understate the extent of unemployment and underemployment in the city. Census employment data are based on a person's work status in the week before he is counted.[33] An individual may thus be counted as employed even if he was unemployed for a substantial portion of the year. According to Census employment criteria, the unemployed are all persons 14 years of age or older who had made an unsuccessful effort to look for work within the 60 days preceding their enumeration.[34] The definition does not include people too discouraged to look for work, as well as seasonal laborers, students, housewives, disabled and retired people and part-time workers.[35] Taking the foregoing limitations into account, an estimated minimum of 36,000 District residents are unemployed or underemployed.[36]

Actual counts of the unemployed tend to confirm that the number of those actually unemployed exceeds the USES–DC figure. Although only approximately 29 percent of the unemployed in the Metropolitan Area draw unemployment compensation, an average of more than 13,000 District residents each year exhausted their unemployment benefits in 1963–1964.[37] About 6,000 youths between 16 and 21 without jobs are registered with USES–DC.[38] After 5 months of operation of the UPO Neighborhood Development Centers, 7,354 persons were on its active roster seeking employment assistance, of whom 95 percent were Negro and 90 percent were unemployed.[39]

TABLE 1.—*Unemployment in the District of Columbia by population group, 1960*

Population group	Number unemployed	Percent of civilian labor force group unemployed
FEMALE		
Total	6, 126	3. 8
Nonwhite	4, 551	5. 7
White	1, 575	1. 9
MALE		
Total	8, 608	4. 4
Nonwhite	5, 719	5. 6
14 to 15	108	21. 3
16 to 19	870	22. 4
20 to 24	864	8. 3
25 to 64	3, 690	4. 4
65 and over	187	6. 9
White	2, 889	3. 1
14 to 15	49	10. 5
16 to 19	224	6. 8
20 to 24	396	4. 3
25 to 64	1, 925	2. 5
65 and over	295	4. 2
Total	14, 734	4. 1

Source: U.S. Bureau of the Census, U.S. Census of Population: 1960; Detailed Characteristics, District of Columbia, Final Report PC(1)—10D, table 115 (1962).

Even if a person has a job in the District of Columbia, he may earn inadequate wages. According to the Office of Economic Opportunity (OEO), an annual income of $3,130, about $1.50 an hour for a 40-hour work week, is the minimum necessary to support an urban family of 4 without significant deprivation.[40] In 1962, 38,000 District workers in retail stores, restaurants and selected service industries were earning less than $1.25 an hour; many were paid less than $1.15 and $1.00 an hour.[41] The Senate District Committee reported that this situation was substantially unchanged in 1965.[42] Applying OEO standards, the National Capital Planning Commission estimates that 174,000 persons or 23 percent of Washington's population live "in abject poverty, the lowest level of deprivation."[43] The Community Renewal Program report found that 262,000 people—one-third of the city's population—exist at little more than a subsistence level, with "incomes inadequate to provide them with the basic necessities of life."[44]

EFFORTS TO INCREASE EMPLOYMENT

Placement Assistance

The United States Employment Service

The United States Employment Service for the District of Columbia (USES–DC) is the primary agency for job placement assistance in the city. Operating essentially as a job clearing-house, it tries to match unemployed persons, who come to the Service's office for assistance or to file unemployment compensation claims, with job openings listed primarily by Washington's larger employers. Recently, however, job registration has been supplemented by efforts at job development. Rather than waiting for employers to inform it of openings, USES–DC now contacts employers on behalf of individual applicants. With an active application file of 22,000, the Service makes 4,000 to 5,000 placements monthly.[45]

Through its Youth Activities Division (YAD), established in 1964, USES–DC offers specialized services for youths between 16 and 21 years of age. YAD attempts to place a youth in a job or a training program, and follows his progress so that supplementary assistance can be offered as needed. A YAD unit, the Apprenticeship Information Center, counsels youths with regard to opportunities in apprenticeship programs.

The United Planning Organization

UPO has established 10 Neighborhood Development Centers in economically deprived areas of the city. Each of the 10 centers has a team of employment specialists and manpower aides made up of UPO staff and, at 8 of the centers, USES-DC personnel. These teams, comprising UPO's Neighborhood Employment Network (NEN), offer a variety of services to the unemployed:

> [NEN's] main focus is to demonstrate the effectiveness of decentralized job placement and counseling services functioning in close relationship with job development efforts seeking to break down resistance to employment of the disadvantaged. The thrust of the program is to "reach out" to find jobs for people and to develop training opportunities suitable to the needs and experience of the individual applicant.[46]

UPO employs 10 people to develop job opportunities and conduct negotiations with employers on behalf of applicants. UPO also tries to persuade employers to reconstruct existing jobs into lower-skill components. The NEN is currently developing an automated central employment information system.

The response to NEN has been substantial. Although the program was planned to serve 5,000 people in its first year, over 14,000 applicants visited the centers from their inception in May 1965 through January 1966.[47] More than 2,000 were placed directly in jobs and over 5,000 in training or work-experience programs.[48]

Job Training

Placement activity, no matter how efficiently operated, cannot qualify unskilled workers for available jobs. To help these unskilled workers compete in today's labor market, Congress passed the Manpower Development and Training Act of 1962 (MDTA).[49] This Act, its subsequent amendments, and the Economic Opportunity Act of 1964 [50] have provided the focus and most of the funds for the national manpower training effort.

On-The-Job Training

Under MDTA provisions the Department of Labor sponsors on-the-job training (OJT) programs throughout the country. The Department contracts with local non-profit agencies which develop jobs with private employers and place trainees. The employee must be paid the standard salary for the position he fills, but employers are reimbursed up to a maximum of $25 a week for the worker's training costs. Training lasts from 4 to 26 weeks, depending on the degree of skill required by the position. Employers are encouraged to enter into a permanent working relationship with the trainee when the OJT period is completed.

In fiscal year 1966 three OJT programs operated in the Metropolitan Area—one each under the auspices of the Urban League, UPO, and the Bricklayers Joint Apprenticeship Committee. They placed 815 trainees at an approximate cost of $800 a person.[51] The Urban League and the Bricklayers Committee filled their respective quotas of 300 and 160, and UPO filled 355 of its 375 authorized positions.[52] The Urban League, which restricted its program to high school graduates and those who had been out of school for over a year, filled its quota easily. On the other hand, UPO aimed its program at the more disadvantaged and failed to fill its quota. Less than two-thirds of its trainees were male, and about half of its trainees dropped out of the program prior to the completion of training.[53]

Neighborhood Youth Corps

The Neighborhood Youth Corps seeks to provide full-time summer jobs, part-time work during the school year and job counseling to

help youths to stay in or return to school and to acclimate themselves to the world of work. Persons between 16 and 22 years of age from low income families are eligible. NYC projects are funded by the Department of Labor and are operated by UPO and the Urban Institute of the Council of Churches of Greater Washington. These organizations develop positions for youths and place them with governmental or nonprofit employers. The NYC trainees who are still students typically hold minor clerical and maintenance jobs in school. Trainees work for the District or private social agencies in similar capacities. In the summer most positions involve park and playground activities. NYC jobs must not displace workers already employed, must contribute to the public interest, and must increase the trainee's employability.[54] From the spring of 1965 through July 1966, about 8,600 youths participated in the NYC at a total cost of nearly $7 million.[55]

Job Corps

The Job Corps provides residential vocational training, remedial education and work experience for disadvantaged youths between 16 and 21 years of age who need a more highly structured environment than is provided in the NYC. Regional camps are operated by OEO and District placement is handled by UPO. In the year ending January 31, 1966, UPO recruited and screened 1,000 applicants and referred 648 for placement in the Corps.[56]

Pre-Vocational Training

This UPO-operated program aims at the unemployed between 16 and 18 years old who have juvenile records or lack the self-discipline needed for the NYC or the Job Corps. Funded by the Ford Foundation, the program provides a maximum of 6 months of work experience, instruction and counseling, and seeks to train and motivate participants to graduate to more demanding training programs or jobs.[57] Over 1,200 youths have been assisted, most of whom were referred to UPO from the Juvenile Court Probation Office.

Public Welfare Training Center

Established in 1961, the Center is operated by the Department of Public Welfare as a residential and day-care facility for mothers and their children who are receiving welfare assistance. With the aid of other District agencies the Center provides academic and vocational

education, homemaker training and job placement services. In fiscal year 1965 the Center helped find jobs for 100 women who had graduated from the program.[58]

Institutional MDTA Training

The Employment Service has established a wide variety of job training opportunities under MDTA. After studying the existing job market, USES determines types of jobs for which a significant demand exists. It then enlists the assistance of employer groups to develop appropriate training programs. The most common positions for which training is offered are clerk-typists, hotel workers, bricklayers and machinery maintenance workers. MDTA funds finance the training programs and are used to pay a stipend to trainees which varies according to their family responsibilities, age and past employment record. Heads of households receive from $40 to $70 a week; young people ordinarily receive $20 a week.[59]

The overall placement rate in the District was 68 percent, compared to a national average of 74 percent. Of a sample of 400 trainees, 52 percent were placed in training-related occupations, compared with the national average of 57 percent. Since the beginning of the program, about $5.5 million has been spent to train approximately 6,100 persons in the District.[60]

Opportunities Industrialization Center

The Opportunities Industrialization Center (OIC), a non-governmental training project patterned on a successful program operated in Philadelphia, has recently begun operations in the District, financed through UPO by a $1 million grant from OEO, the Department of Labor, and the Department of Health, Education, and Welfare. It is expected to train 900 people during its first year. As in Philadelphia, stipends will not be paid to trainees.[61] People enrolled in the program will be allowed to continue to receive any welfare grants to which they are otherwise entitled. A crucial aspect of the program is close involvement with the business community, which will help in planning, equipping and staffing courses. Employer-advisors have already designed the curriculum for each course, donated services and equipment, helped hire technical staff, and committed themselves to hiring center graduates.[62] Applicants will be either accepted or referred to a program better suited to their needs. In addition to job training, enrollees will receive remedial education and counseling.

Evaluation

Placement

A Department of Labor task force which studied the operation of manpower programs in Washington reported that the poor public image of USES–DC, due in part to its preoccupation with processing unemployment compensation claims, has handicapped its effectiveness in making contact with disadvantaged residents.[63] Moreover, a high proportion of the jobs available through USES are too highly skilled for the disadvantaged or are menial with such slight possibilities of advancement as to be almost totally unattractive, particularly to younger men. Finally, it has been said that the Service has failed in recent years to involve itself actively in the employment problems of the poor.[64] Thus, most District residents in the active files of USES–DC have professional, commercial or industrial skills and are unemployed only transitionally.[65]

Beyond knowing the number and identity of the unemployed, the Employment Service should be cognizant of all work openings in the community. Presently, many employers do not register vacancies with USES–DC. Even the Federal and District governments do not register many of their more attractive opportunities with the Service.[66] Accordingly, more ambitious persons seeking other than menial jobs may not turn to the Service for aid.

In its relatively short existence, UPO has made an aggressive effort to supplement USES services by developing new jobs and filling them with Washington's unemployed workers. Many UPO programs have sought to identify and motivate unemployed persons of all ages who believed themselves incapable of competing in the labor market. Decentralization of its services has greatly assisted UPO in these efforts. Nevertheless, at least one recent study has suggested that UPO must make even more intensified efforts to locate more youths from low income families and involve them in its programs.[67]

The Commission believes that more intensive steps should be taken to increase the number and variety of employment opportunities in the Metropolitan Area registered with USES and UPO. Both large and small employees should be encouraged to use the services of these agencies. Negroes, who cannot obtain housing in many areas of Maryland and Virginia, are further handicapped in seeking employment in outlying areas by transportation inadequacies. Trips to sections of suburban Maryland and Virginia require several bus changes and expenditures that cut deeply into the unskilled worker's paycheck. Making economical transportation available to these workers, even

if it required an initial subsidy, would improve the employment situation significantly.

Training

Although a variety of training programs geared to different categories of job-seekers abound in the District, many of the city's unemployed have not yet been reached. The Commission recognizes that a proliferation of programs, addressing the differing needs and qualifications of different groups of people, may be inevitable. We think, however, that far greater emphasis should be placed on programs directed to the problems of unemployed youth.

The Commission strongly supports programs such as On-the-Job Training. We agree with the Department of Labor task force's conclusion that the OJT potential in the Metropolitan Area has not been sufficiently exploited, and should be expanded.[68] The health and service fields, as well as small business firms, offer abundant opportunities for such training. Particularly in times of prosperity there is a great demand for semi-skilled workers, and employers are quite agreeable to government absorption of employee training costs.

Moreover, the Department task force has determined that institutional training under MDTA has been only "moderately successful in the District." [69] Placement is at a lower rate than the national average, due in part to inadequate knowledge of the community's occupational training needs and insufficiently aggressive job development for trainees.[70] Private industry is not sufficiently involved in the planning and operation of MDTA programs and curricula and equipment are often obsolete.[71] MDTA programs should be more closely related to the needs of large numbers of the hard-core unemployed, and should provide a broad range of supportive services in addition to vocational training.

Planning and Coordination

During the last 5 years, there has been a dramatic increase in the number of agencies and programs involved in employment placement and training. This increase has been accompanied, as might be expected, by growing pains. The city now has two major public employment agencies vying for leadership and innumerable smaller ones—both private and public—seeking to aid people with employment problems through a variety of methods.

Neither USES nor UPO by itself can plan for the Metropolitan Area's manpower needs in a comprehensive and coordinated manner.[72]

For example, USES is not sufficiently involved in the planning of NYC projects, in the recruitment, selection and referral of trainees, and in the placement of graduates.[73] Trainees are too often unable to progress to more demanding training programs because of inadequate liaison between program administrators. As the Department of Labor task force concluded, "USES–DC and UPO do not appear to be working together effectively as a team in developing a comprehensive plan and properly implementing it to meet the overall manpower needs of the disadvantaged groups in the Washington Metropolitan Area." [74]

Only in the context of a manpower program comprehending the entire Metropolitan Area can the employment problems of Washington's residents be reduced. Most of the Area's unemployed live in the District, but employment opportunities are developing most rapidly in the Maryland and Virginia suburbs. Accordingly, the Commission believes that USES offices in suburban Maryland and Virginia must work more closely with USES in the District and UPO.

New Jobs for District Residents

Improved job placement services and training programs have contributed to a brighter employment picture in Washington, but more jobs—particularly for the unskilled—are needed. The report of the Community Renewal Program suggests that the District government offer employment to every individual willing to work.[75] The Commission believes that this proposal deserves serious consideration. It would not require extensive make-work projects. The needs of this community are sufficiently large to provide constructive work for all its residents. Indeed, only by fully mobilizing available human resources and providing jobs and decent wages to all men and women who want to work can the poverty cycle be broken and the immense job of renewing our city undertaken.[76]

The Department of Labor task force has stated that construction of needed public schools, housing and health facilities would increase employment opportunities for the disadvantaged.[77] The National Commission on Technology, Automation and Economic Progress recommends that the concept of public service employment, implicitly recognized in the Neighborhood Youth Corps, "be expanded and made explicit as a permanent program." [78] We agree with that Commission's view that excessive unemployment is anomalous

> in a society confronted with a huge backlog of public service needs in its parks, its streets, its slums, its countryside, its schools and colleges, its libraries, its hospitals, its rest homes, it public buildings, and throughout the public and nonprofit section of the economy.[79]

Existing positions in government should be restructured to permit increased use of sub-professional aides, releasing highly skilled personnel for non-routine work.[80] In supporting a vigorous attack on Washington's employment problem, the Commission agrees that "employing the unemployed is, in an important sense, almost costless. The unemployed consume; they do not produce. To provide them meaningful jobs increases not only their income but that of society." [81]

RACIAL DISCRIMINATION

Apprenticeship Programs

The total number of apprenticeship openings with labor unions is small compared to the total employment needs of Negro youths, but continued racial discrimination by some unions is significant beyond those numbers. It discourages young Negroes from trying to acquire craft skills and is a blow to the morale and dignity of the entire Negro community. A joint survey conducted by the Council on Human Relations and the D.C. Apprenticeship Council showed that as of July 1, 1963, there were 1,591 apprentices, of whom only 142 (9 percent) were Negro, in programs administered by Joint (Labor-Management) Apprenticeship Committees (JAC).[82] This indicated some progress, as JAC programs had trained only 54 Negro apprentices between 1957 and 1962.[83] Since the survey, the number of Negroes in apprenticeship programs in the construction trades has continued to increase but is still disproportionately small (Table 2).

The USES–DC Apprenticeship Information Center counsels young people about opportunities in apprenticeship programs and acts as a clearing house for the Apprenticeship Council and Joint Apprenticeship Committees. The Director of the Center emphasizes that apprenticeship programs are very highly competitive, and that the disadvantaged therefore rarely qualify.[84] Past discriminatory employment practices in the apprenticeable trades, as well as the continuation of such practices in many places, discourage Negro youths from applying for the programs. The Apprenticeship Information Center is an effort to reach these young people who have been excluded from these fields partly because they lacked close contact with persons already in the crafts. The Department of Labor task force concluded that the AIC is performing a useful function in helping to break down racial barriers in apprenticeship programs.[85]

Responsibility for fostering and regulating apprenticeship programs is vested by statute in the D.C. Apprenticeship Council.[86] In

TABLE 2.—*Apprentices in selected JAC apprenticeship programs in construction trades,* [1963, 1965] *by race*

JAC's	1963		1965	
	Total	Negro	Total	Negro
Carpentry	312	5	320	23
Electrical workers No. 26*	125	2	180	9
Pipefitters No. 602	120	2	294	8
Operating engineers No. 77	95	18	66	19
Plumbers No. 5	80	2	199	8
Sheet metal workers	77	3	124	0
Iron workers No. 5	58	2	49	2
Bricklayers No. 1	30	7	52	8
Bricklayers No. 4			62	44
Painters No. 51	30	0	60	0
Stone masons No. 2	28	0	22	0
Rodmen	23	1	18	2
Lathers No. 9	23	0	18	0
Cement masons	21	10	51	30
Total	1, 022	52	1, 515	153

Source: D.C. Advisory Committee to the U.S. Commission on Civil Rights, Fair Employment in the Nation's Capital (1964); Community Advisors on Equal Employment, Equal Employment in the Nation's Capital—Progress and Prognosis (1965).

*Numbers refer to union locals.

March 1965 the Council promulgated a set of standards requiring the use of objective criteria in apprenticeship selection.[87] Programs that failed to meet these criteria were to be deregistered; none have been to date. Deregistration would be a powerful lever for change. Unregistered apprentices must be paid journeymen's wages on federally financed construction projects and are ineligible for draft deferments. Moreover, deregistration might be a serious blow to the prestige of the union involved. The Director of the Council maintains that all JAC's will accept Negroes.[88] However, Table 2 indicates that some groups such as the bricklayers have made a serious effort to enlist Negroes, while others, such as the sheet metal workers, apparently have not. We recommend that the Council reexamine its enforcement policies with a view to instituting deregistration proceedings against unions that persist in discriminatory practices.

Private Employment

As only 1,534 of the District's 12,332 businesses are Negro owned and operated, and these are generally small service firms, most Negroes must compete in a labor market largely controlled by white owners.[89] Unfortunately, as the Community Advisors on Equal Employment have stated:

> Past patterns of discrimination cannot be ignored, and although specific instances of present-day discrimination are difficult to document, there is no doubt that Negro opportunities for employment and advancement are limited by stereotyped views of employers accustomed to thinking of certain jobs "for white only" or "for colored." [90]

In many employment categories, there is increasing acceptance of merit employment, but pockets of discrimination remain, notably in finance, insurance and real estate, as do the practices of keeping Negroes in menial positions, tokenism and maintaining unrealistic "qualification" requirements.[91]

A study of racial discrimination in private employment in the District conducted for the Equal Employment Opportunity Commission indicated that the banking, savings and loan, and insurance trades continue to hire only small numbers of Negroes for any but blue-collar jobs. Conducted in late 1965 and early 1966, the study showed that slightly more than 10 percent of all employees in the combined industries were nonwhite. Nonwhite employees accounted for a little more than 5 percent of all employees in white-collar jobs, but 61 percent of all blue-collar jobs. Significantly, in the 3 industries, 9 of 10 jobs are white-collar.[92]

The D.C. Board of Commissioners recognized the existence of racial discrimination in private employment in their findings preparatory to promulgating the District's Fair Employment Regulation in 1965.[93] The Regulation prohibits racial discrimination in employment practices by virtually all private employers, employment agencies and labor organizations. It is administered jointly by the Council on Human Relations and the Corporation Counsel. Action under it may be initiated only by the filing of a complaint by a person claiming to be aggrieved. In fiscal 1966 93 complaints of unlawful discrimination in employment were filed.[94]

It would be helpful if the Council had the power, as does the Equal Employment Opportunity Commission under the Civil Rights Act of 1964, to initate a complaint without waiting for a private complainant, and to initiate complaints against employer groups that exhibit a pattern of discrimination. Staff problems, however, are the severest im-

pediment to fair employment regulation enforcement. The Council has a skeletal staff of four professionals, who are concerned with fair employment in the District government and among private employers, as well as with fair housing and a multiplicity of related community activities. As a result, the Council cannot move aggressively to ensure fair employment in the District, and has insufficient manpower to engage in positive efforts designed to break down existing discriminatory employment patterns. Nearly every city in the nation of comparable size with similar regulations has a much larger staff.[95] Unfortunately, the District's 1967 request for five additional staff positions for the Council was denied.[96]

Government Employment

The Federal Government is, in terms of fair hiring practices, "the most attractive employer in the area," but Negroes continue to be clustered in lower income jobs.[97] Out of the 259,187 Federal employees in the Metropolitan Area in June 1965, 63,255 (24 percent) were Negroes, but a disproportionate percentage were in the lower-paying positions (Table 3).

As of June 1962, 48 percent of the 25,553 full-time positions in the D.C. Government, but less than 8 percent of the jobs higher than the GS–11 level, were held by Negroes. By June 1965 both figures had risen: among Classification Act employees the percentage of Negroes in grades GS–1 through GS–4 increased from 61 percent to 67 percent, in grades GS–5 through GS–11 from 28 percent to 32 percent, and in grades GS–12 through GS–18 from 7.8 percent to 9.3 percent.[98] However, many District agencies continue to exhibit employment patterns that do not reflect the community's population makeup.[99]

The National Commission on Technology, Automation and Economic Progress has suggested that the Federal Government should take the lead in expanding employment opportunities by eliminating arbitrary entrance and advancement requirements and by increasing in-service training and education.[100] In a recent successful experiment in this area, the Civil Service Commission did not require that applicants for 2,000 manual labor jobs have clean police records and pass written tests.[101] Additional steps to remove "functionally meaningless" employment criteria would undoubtedly benefit both the Federal and District governments and Washington's disadvantaged residents.[102]

TABLE 3.—*Negro and total Federal employment, Washington Metropolitan Area*

[June 1965]

Pay category	Total employees	Negro	
		Number	Percent
All pay plans	259, 187	63, 255	24. 4
Classification act or similar	201, 290	35, 800	17. 8
GS–1 through 4	45, 444	19, 243	42. 3
GS–5 through 11	94, 360	15, 463	16. 4
GS–5 through 8	62, 280	13, 022	20. 9
GS–9 through 11	32, 080	2, 441	7. 6
GS–12 through 18	61, 486	1, 094	1. 8
Wage board	37, 606	20, 585	54. 7
Up through $4,499	7, 084	6, 170	87. 1
$4,500 through $7,999	25, 195	13, 982	55. 5
$4,500 through $6,499	15, 780	11, 646	73. 8
$6,500 through $7,999	9, 415	2, 336	24. 8
$8,000 and over	5, 327	433	8. 1
Postal field service	11, 647	5, 801	49. 8
PFS–1 through 4*	8, 889	4, 983	56. 1
PFS–5 through 11	2, 579	815	31. 6
PFS–5 through 8	2, 368	807	34. 1
PFS–9 through 11	211	8	3. 8
PFS–12 through 20	179	3	1. 7
Other pay plans	8, 644	1, 069	12. 4
Up through $4,499	1, 518	807	53. 2
$4,500 through $7,999	1, 285	132	10. 3
$4,500 through $6,499	533	89	16. 7
$6,500 through $7,999	752	43	5. 7
$8,000 and over	5, 841	130	2. 2

Source: U.S. Civil Service Commission, Study of Minority Group Employment in Federal Government (1965).

*Includes 4th-Class Postmasters and Rural Carriers.

CONCLUSION

The Secretary of Labor's observation about the plight of many of the Nation's cities is unfortunately applicable to Washington:

> A significant segment of our population is not sharing in the rewards of an economy characterized by unprecedented prosperity, and high employment. Although not confined to urban areas, every major city has substantial numbers of hard-core unemployed and otherwise disadvantaged workers who are unable to compete for available jobs even in tight labor situations. Such urban poverty pockets or "ghettos" now loom as the Nation's most potential trouble spots, and the imperative need for remedial assistance is widely recognized.[103]

With little industrial employment and a job market with a substantial proportion of skilled and semi-skilled occupations, Washington provides few job opportunities for underprivileged youths, the poorly educated and older workers. Economic expansion alone will not bring full participation in our economic affluence to the hard-to-reach, high unemployment groups who require "exceptional assistance." [104]

In a variety of ways, exceptional assistance in the form of job development and training programs has increasingly been provided in the District. We strongly endorse these efforts, particularly those which recognize and attempt to resolve the serious employment problems of Negro youths. At the same time, we cannot overemphasize the need to open the surrounding communities, with their greater variety of unskilled and low-skilled positions, to the District job-seeker. As one step in facilitating the development of a truly area-wide job market, we think the job registration and placement services of the United States Employment Service need considerable strengthening. Registration of vacancies of both private and public employers should be encouraged. It has been suggested that the Federal Government—which exhorts private employers to register vacancies with USES–DC but does not do so itself—set the proper example, and that private employers doing business with the Federal government be required to register vacancies with the Employment Service.[105]

The problem of the hard-core unemployed can never be completely resolved by placement, training and development programs. Such factors as broken homes and failure in school too often produce an individual whose habits, motivation and skills are wholly inappropriate to a work environment. Nevertheless, many of the unemployed can be helped by programs which make vigorous efforts to equip them to perform useful labor, particularly when the programs are adequately staffed and financed, and are supported by the business community. These programs must, however, receive even greater support and expansion to meet the District's critical unemployment problem.

EDUCATION

Washington's public school population has increased by more than 50 percent since 1950—from 92,599 to 140,724—while the District's population has remained virtually unchanged. [106] This growth, however, masks the sharp decrease in the number of white pupils in the school system in recent years; approximately 90 percent of the pupils are Negro, as against 51 percent in 1950. [107]

Many of the District's students come from poor families. Nearly half go to school in areas with a median annual income of under $5,000 and 18 percent go to school in areas with a median income of under $4,000. [108] The Board of Education estimates that the education of over 30,000 pupils is seriously handicapped by home conditions. [109]

A recent congressional report disclosed that in the past 5 years, 18,000 pupils left school after they became 16 and before they graduated. [110] Most dropouts are Negro; the median number of years of school completed by Negroes over 25 years of age was 9.8 in 1960, compared to 12.4 among whites. [111] At the present rate, 5,000 pupils will join the dropout ranks annually for the next several years. Although a larger percentage of pupils are staying in school now than were staying 5 and 10 years ago, the dropout rate remains ominous; the chances of a dropout getting into trouble with the law are much higher than for a high school graduate. [112]

THE TASK OF THE SCHOOLS

The Dual Role of the Schools

Many pupils in the District are poorly equipped to cope with or profit from school instruction. Coming from culturally deprived homes, they have not had the experiences which prepare most children to learn to read, they lack verbal skills, and they are not used to the kind of discipline and behavior required in the classroom. Visual and hearing defects often go undetected, adding to the child's difficulty in understanding instruction.

Not unnaturally, then, many children begin school at low achievement levels and steadily fall further behind as they progress through the educational system.[113] In the District, for example, a larger percentage of students read below their grade level in the eighth grade than in the third grade.[114] Accordingly, in order to teach these children how to read and write, the schools must in large measure teach them how to live, and effectively compensate for environmental inadequacies. If the schools fail in this responsibility, they may never have the chance to succeed in performing more traditional functions.

In order to meet these demands, many innovations worthy of experimental introduction into urban school systems have been proposed.[115] New teaching techniques and materials could be geared specifically to the interests and experiences of the deprived child. New methods of grouping and testing pupils could avoid the stigma of failure and allow each pupil to progress at his own rate. Lowering the starting age for school, extending the school day and even providing overnight schools have been suggested as feasible means of counteracting the effect of a negative home environment when the child is most malleable. Offering instruction in the evenings, weekends and summers could provide educational opportunities for those whose needs cannot be met during ordinary school hours. These and similar proposals reflect a challenge to traditional approaches in the face of changing human needs, and indicate the need for extensive and continuous experimentation in our schools.

The Model School Division

The District school system's effort to develop and implement innovative educational programs has been centered in the Model School Division. The Division is a separate administrative unit within the school system composed of the 19 public schools in the Cardozo antipoverty target area serving about 16,700 students.[116] Its stated goal is the development of "educational programs designed to relieve immediately—and hopefully to prevent in the future—the plight of the undereducated, unemployable, frustrated youth of today's larger cities." [117] To fulfill this purpose, the Model School Division was designed to be an "across the board experiment—curriculum development, utilization of teachers, the management of the system itself—with provision for rapid feedback of results and rapid exploitation of new opportunities." [118]

Since the announcement of its initial grant from OEO in November 1964, the Division has been beset with serious difficulties. In recent months, the Chairman of the Advisory Committee resigned, the Advisory Committee staff issued a highly critical report,[119] and a Congressional Commitee stated that the Model School program has "failed miserably." [120] There is fairly universal agreement that the Division has been hampered by insufficient administrative independence and by bureaucratic delays, but more important, that it has failed to demonstrate "either a sense of urgency or an awareness of the need for new and different attitudes in dealing with children who have suffered emotionally, physically, and culturally the deprivations of poverty." [121]

Unfortunately, the uninspiring history of the Model School Division seems destined to continue. The District will receive approximately $6.4 million in fiscal 1967 under the Elementary and Secondary Education Act of 1965 to teach educationally deprived children.[122] According to U.S. Office of Education regulations, the money should be spent in an area "sufficiently restricted in size . . . as to avoid jeopardizing its effectiveness in relation to the aims and objectives of the project." [123] Yet the Board of Education has allotted less than 5 percent of these new funds to the Model School Division, although 20 percent of Washington's disadvantaged pupils are enrolled in its schools.[124] The school system's unwillingness to use more of these funds in the Model School Division suggests a lack of commitment to the purposes of the Division.

The Commission is disturbed by the strong criticisms leveled at the Division by those who have examined it most closely. The role of the Model School Division as an innovator in educational reform is crucial; its failure may condemn a large portion of the city's school children to lifelong handicaps.

THE RESOURCES OF THE SCHOOL SYSTEM

In addition to discovering and developing new educational methods, the District of Columbia must improve the quality of its instruction—an assignment requiring the infusion into the system of enough money to meet the immense demands on the public schools. Physical plant, the number and quality of teachers and supportive personnel, and specialized education all lag behind the District's needs and accepted standards. Moreover, available funds have not been spent where they are most needed. The Congressional report on Washington's school system found that "lower income Negro neighborhoods receive less money per elementary school child than the upper income white neighborhoods." [125] The median annual per capita expenditure for schools serving children in neighborhoods with a median annual family income of over $10,000 was $425; the corresponding figure for neighborhoods with family incomes below $5,000 was $297.[126]

Physical Plant

The physical plant of the school system is old, deteriorated, and overcrowded. The average age of all school buildings is approximately 40 years.[127] Of the 179 structures in use in 1964, 62 were built before 1920 and 32 were built before 1900.[128] Although public school population increased by 41,627 from 1953 to 1965, new construction provided

space for only 40,619 students while buildings with a capacity of 5,000 were retired.[129] In 1949 the District's public schools were studied by a panel of educational experts (the Strayer Report) ; [130] 16 years later, 22 schools which the panel said needed replacement and 37 which it found in need of modernization were still in use, substantially unchanged.[131] Even if additional construction presently authorized by Congress or recommended by the Board of Commissioners is completed on schedule, 39 of these "inadequate and unsatisfactory" school buildings will still be in use in 1972.[132]

The system's insufficient physical capacity is reflected in part-time classes, overcrowded classrooms and the use of substandard, improvised facilities. In 1965, 1,705 students in 14 elementary schools were on part-time schedules and 445 children had to be placed on waiting lists for kindergarten.[133] About 40 percent of all first grade students have never been to kindergarten.[134] The number of substandard classrooms and improvised or makeshift facilities increased from 78 in 1953 to 377 in 1964.[135] In 1965, 5,652 elementary school children were taught in specialized facilities designed for other purposes.[136] In the city's junior high schools in 1965 nearly one-third of the academic classes had 35 or more students, well in excess of the Board of Education standard of 25 students.[137]

The inadequacy of the school system's physical plant is the product of years of financial neglect. As indicated in Table 4, over the last 15 years less than half of the capital outlay funds requested by the Board of Education have been approved by the Board of Commissioners and appropriated by Congress.

Teachers

The number and quality of teachers and supportive personnel in a school system are obviously crucial to its success. This is particularly true in Washington where the large number of disadvantaged students need close and careful attention by highly qualified instructors. Yet, as reflected in Table 5, only about half of the staff increases requested by the Board of Education in recent years have been approved.

The public school system has fortunately been able to recruit teachers for virtually all available positions. Its pupil-teacher ratios in fact have steadily improved and are now only slightly above Board of Education Standards.[138] However, the increase in the number of teachers has been accompanied by an apparent lowering of qualifications. Over the last 10 years the percentage of temporary teachers (i.e., teachers who have not passed the National Teachers

TABLE 4.—*Capital funds requested and appropriated, D.C. school system*

[Fiscal years 1953–66]

Fiscal year	Board of Education's request	Approved by Commissioners		Appropriated by Congress	
		Funds	Percent of request	Funds	Percent of request
1953	$13, 088, 000	$1, 545, 400	11. 8	$1, 451, 000	11. 1
1954	10, 381, 000	3, 286, 000	31. 7	3, 313, 000	31. 9
1955	11, 511, 000	7, 488, 760	65. 1	7, 375, 000	64. 1
1956	7, 931, 350	4, 473, 300	56. 4	4, 473, 300	56. 4
1957	9, 738, 900	6, 221, 700	63. 9	6, 181, 700	63. 5
1958	17, 384, 000	11, 325, 500	65. 1	10, 642, 722	61. 2
1959	15, 155, 675	9, 748, 000	64. 3	8, 920, 300	58. 9
1960	15, 732, 675	9, 522, 000	60. 5	6, 911, 000	43. 9
1961	14, 397, 497	7, 294, 000	50. 7	6, 944, 000	48. 2
1962	12, 316, 366	9, 229, 000	74. 9	8, 886, 000	72. 1
1963	18, 475, 110	8, 138, 000	44. 0	7, 873, 000	42. 6
1964	23, 085, 200	17, 262, 000	74. 8	15, 626, 000	67. 7
1965	34, 496, 840	25, 026, 000	72, 5	14, 405, 100	41. 8
1966	40, 622, 800	29, 449, 500	72. 5	17, 568, 950	43. 2
Total	244, 316, 413	149, 918, 160	61. 4	120, 571, 072	49. 4

Source: Investigation of the Schools and Poverty in the District of Columbia, Hearings Before the Task Force on Antipoverty in the District of Columbia of the House Committee on Education and Labor, 89th Cong., 1st and 2d Sess. 91 (1965–66).

TABLE 5.—*Action on Board of Education requests for increased staff*

Fiscal year	Requested increase	Approved by Board of Commissioners		Approved by Congress	
		Number	Percent	Number	Percent
1959–62	1, 805	1, 017	56. 3	879	48. 7
1963–66	2, 782	2, 107	78. 0	1, 603	57. 6

Source: Vocational Education and the Schools of the District of Columbia, Hearings Before the House District Committee, 89th Cong., 2d Sess. 71 (1966).

Examination or otherwise have not met prescribed qualifications for permanent status) has risen from 19.1 to 43.2.[139] While a temporary teacher is not necessarily an inferior teacher, as an overall indication of teacher quality, this trend is not healthy. Moreover, temporary teachers tend to be concentrated in areas where quality instruction is most sorely needed. In schools serving neighborhoods with median annual incomes under $7,000, over 45 percent of the teachers are temporary. However, in schools serving neighborhoods with incomes over $9,000, only about 20 percent of the teachers are temporary.[140]

Improving the school system's physical plant and supporting services would undoubtedly go far toward making the District more inviting to highly qualified teachers. In addition, it has been suggested that consideration be given to substantially raising teacher salaries and to paying a bonus to teachers assigned to deprived neighborhoods.[141] Ten years ago, teacher salaries in the District ranged from a minimum of $3,900 to a maximum of $6,500. Today, after an 8.9 percent increase passed by the last Congress, the range is $5,840 to $11,170. Teachers' salaries still remain substantially below those paid to other government employees.[142] Given the less attractive nature of Washington's educational facilities, a financial inducement is necessary to allow this city to compete for instructors on equal terms with surrounding communities. The District needs to be in a superior competitive position because its culturally deprived youngsters require more and better teachers than do suburban students.

In addition to teachers, an effective school system needs many trained specialists to provide a broad range of supporting services.[143] These include counselors, social workers, psychologists, medical personnel, and librarians. Although there has been a significant increase in the size of the District's supporting staff in recent years,[144] ratios remain above those established by the District's own Board of Education and substantially higher than the standards set by national organizations.[145]

SPECIAL PROGRAMS

Vocational Education

Washington has 5 vocational high schools with an enrollment of 2,858, or 109 percent of capacity.[146] Each year over 1,000 applicants, more than half of all those who apply, must be rejected because of space limitations.[147] The lack of sufficient space results in serious overcrowding; rooms are used for purposes for which they were never intended, libraries and gymnasium facilities are inadequate, storage space is virtually non-existent, and classes are overcrowded.[148]

Because of the critical shortage of shops and classrooms, many patently useful trades are not offered and what new equipment there is cannot be properly utilized.[149]

To remedy serious deficiencies in the District's vocational education program, Congress recently passed legislation authorizing the creation of a new center of vocational education, to be called The Washington Technical Institute.[150] The Institute will consolidate all vocational education in a single comprehensive center occupying a 30 to 40 acre campus and serving upwards of 5,000 students. Its total cost is expected to be $32.3 million. The Board of Education has requested $1.7 million for fiscal 1968 for plans and specifications.[151] The Institute will greatly improve vocational education in Washington and deserves the continued support of the Congress.

Functional Illiteracy

The 1960 Census revealed that over 33,000 District adults had not completed the sixth grade, and 98,000 had not completed the eighth grade.[152] People with such limited basic education have been characterized as "functionally illiterate," in that they are likely to be deficient in those skills essential to effective communication and comprehension in contemporary society.[153]

> The illiterate adult faces the high probability of sustained unemployment . . . even in the face of labor shortages in skilled and technical occupations. He can offer meagre leadership, example, inspiration, hope, stability or security to his family. His talents and potential productive capacity are imprisoned in a being without a key to release and develop them, and so they are lost to his family, his community, and his country.[154]

In comparison to the rest of the country, Washington's rate of functional illiteracy is high. Thirty states have a smaller percentage of persons over 25 who have not completed the eighth grade.[155]

The 1965 report of the District's Citizen's Committee on Literacy concluded that "present programs are probably losing ground in attempting to alleviate the problem . . . the range of services involved is too narrow [and] that public funds available are strikingly inadequate . . . ." [156] The Committee offered extensive recommendations for adult education programs, emphasizing the needs of undereducated welfare recipients, hospital patients, and inmates of correctional institutions.[157] In the nearly 2 years since the Committee's report, little has been done to implement it despite a series of discussions within the District government. Hopes for immediate action were delayed by the employment of a special consultant in July 1966 to "further the technical development of the program." [158]

CONCLUSION

Efforts at introducing innovations into the District's educational process have failed. Available resources are disproportionately devoted to students from more prosperous, better educated families. Much of the school plant is antiquated and overcrowded. The teaching staff is underpaid and overburdened. There are too few professional personnel to aid both the troubled and the gifted student. Opportunities for vocational education are limited and opportunities for low-cost higher education have been virtually non-existent.[159] Adult education programs remain deficient.

A description of national educational problems by the Panel on Educational Research and Development also graphically depicts the situation in the District of Columbia:

> Staffed by people proud of their professionalism and supervised by boards of education drawn almost exclusively from the upper-middle and upper classes, school systems are often crippled by social parochialism in dealing with deprived and segregated children. Levels of expectation are low. Schools in the slums are seen as engaged in a salvage operation (or, at best, in the panning of gravel for occasional nuggets of gold), rather than in a quest for liberation and quality. Reliance on traditional practices generally goes unquestioned; recruitment of teachers and other personnel is conceived in narrowly professional terms, hence professional educators are usually the only adults permitted inside the classroom. Money intended for improving slum education often winds up on established "lines" in the budget, where maximum expenditure accomplishes minimum results.
>
> Unable to free their own resources for more effective use, school systems are also unable to marshal other available resources in the community. Insularity, lack of funds, and lack of freedom to develop new programs have kept the schools from tapping the resources of universities and colleges or of research centers and other nonprofit organizations, and from calling on the many individuals who could make contributions.[160]

The city's schools must provide pupils with the knowledge and skills necessary to become economically self-sufficient. In addition, for many youngsters the schools must act as socializing agencies, inculcating the mores and aspirations of society. An educational system that fails to perform these tasks is a negative influence on the community's efforts to combat delinquency and crime.

HOUSING

The District Commissioners' Committee on Community Renewal reported that a "housing crisis of unprecedented magnitude exists in the District of Columbia."[161] The National Capital Planning Commission (NCPC) concluded that the "enormity of housing needs . . .

is probably the most important single issue facing Washington today." [162] The District Commissioners' Subcommittee on A Housing Program for the Nation's Capital found that "the evidence of a critical shortage of adequate housing . . . in the District of Columbia is overwhelming." [163]

The shortage of housing is not simply a paucity of housing units but a lack of sound uncrowded housing which low and moderate income families can afford. The NCPC has comprehensively defined the problem as follows:

> Washington's housing shortage is a physical and socioeconomic insufficiency of housing supply in terms of housing unit sizes available to low income households living in the city now in accordance with minimum standards of uncrowded occupancy and in accordance with maximum proportions of income that can be afforded for rent without sacrificing other living necessities. It is also a physical shortage in terms of structurally sound condition and essential facilities of housing units to meet minimum standards of decent, safe, and sanitary housing, such as those contained in the District of Columbia Government's housing code.[164]

In terms of people, this means, according to the NCPC, that 299,900 persons (103,300 households) live in inadequate housing—housing which is structurally substandard, lacking in essential facilities, overcrowded, overpriced relative to their income, or a combination of these factors.[165]

HOUSING CONDITIONS

The District does not have many of the "rock-bottom slums" found in other cities.[166] Several years ago the Southwest Redevelopment Project removed the city's most intensive concentration of urban blight. Yet physically deteriorated structures exist throughout large parts of Washington; their consolidation would produce an area "three times the size of the Southwest." [167] Stated another way, the District has 5,000 city squares of which 2,000 (40 percent) "are in sufficiently bad condition to be a matter of major public concern." [168] Of the 270,000 housing units in the city, 25,000 have physically deteriorated to the point that they ought to be removed and replaced. Another 50–60,000 housing units need substantial rehabilitation in order to be viable in the future.[169] In terms of occupants, there are 36,400 households in the city—a renter and home-owner population of 104,700 persons, 15 percent of Washington's total household population—occupying structurally substandard units or units that lack plumbing or other essential facilities.[170]

The Committee on Community Renewal has estimated that 45,000 housing units are occupied "in excess of any reasonable standards for privacy and decency." [171] The NCPC estimates that at least 21,800

renter and home-owner households (81,000 persons) live in overcrowded (though structurally sound) units, and that a substantial percentage of the 36,400 units (104,700 persons) which are physically unsound are also overcrowded.[172] Thus, perhaps as much as 26 percent of the city's population lives in overcrowded units—with large families cramped into small quarters, extra people in the household, and doubled-up families.

Many of the 299,900 persons (41 percent of the city's population) who live in inadequate housing pay more rent (in excess of 25 percent of gross annual income) than they can afford.[173] The NCPC estimates that this group includes 45,100 renter households (114,100 persons) living in sound quarters, a substantial percentage of the 21,800 households living in sound but overcrowded units, and a substantial percentage of the 36,400 households which are structurally unsound or lacking in essential facilities.[174]

On the basis of the foregoing estimates, the NCPC calculated that at least 37 percent, and at most 62 percent, of the city's population is eligible for or needs financial assistance to occupy sound uncrowded housing in the city at rentals they can afford.[175] The minimum estimate is made up of four groups:

(1) 20,900 renter households—11 percent of Washington's total population—whose gross annual incomes exceed the maximums allowable for admittance to Public Housing.

(2) 33,600 low income renter households—17 percent of the population—that are eligible for public housing and rent supplementation, and can afford to pay at or above the minimum rentals charged by the National Capital Housing Authority.

(3) 16,700 low income renter households—7 percent of the population—that are eligible for public housing on the basis of need, but are too poor to afford the minimum rentals charged by the National Capital Housing Authority.

(4) 20,700 unrelated individuals—3 percent of the population—who are not elderly and most of whom are not eligible for any major housing assistance program.

RESPONSES TO THE HOUSING CRISIS

New Construction

Private Housing

According to the NCPC, the private housing market usually responds to a surplus of low income demand over low rent supply by converting existing units into a larger number of smaller units.

Although the housing shortage has not become so critical that "any significant number of families are living literally in the streets," overcrowding is increasing and housing stock is deteriorating rapidly.[176] Moreover, the city's supply of private low rent housing is being diminished by public and private market removals and by increasing housing rentals and prices associated with rising land values.[177] New construction and rehabilitation by private developers in parts of Capitol Hill, the downtown area, Georgetown and the Southeast are almost exclusively for the affluent and act to reduce the low income housing supply.[178]

Public Housing

Almost 43,000 people live in public housing in the District—more than 5 percent of the city's total population.[179] Nevertheless, public housing, administered by the National Capital Housing Authority (NCHA), has failed to meet the needs of the city's poor. At least 227,100 persons—32 percent of the city's household population—are eligible for or need assistance if they are to occupy decent uncrowded housing at reasonable rentals but are not receiving it.[180]

The public housing supply continues to lag far behind demand. Only 4,011 new families were admitted to public housing from July 1962 to March 1966.[181] In fiscal 1965 the NCHA admitted 1,642 families of the 4,144 that applied. [182] The waiting list at the end of that year contained 5,307 families while another 2,425 applications were not renewed, often because of discouragement after months or years of waiting.[183] The shortage of units for large families continues to be a major problem; although over 1,500 applications were on file for 4-bedroom apartments in 1965, only 74 became available.[184]

Urban Renewal

Washington's major urban renewal effort, the redevelopment of a 560-acre area in the Southwest, eliminated the city's worst slum. However, thousands of poor families, displaced without adequate relocation assistance, migrated to other blighted areas of the city, intensifying existing overcrowding and accelerating the rate of decay.

There are presently several other urban renewal projects under way in the District.[185] An 82-acre tract in the Northeast is being redeveloped for commercial anl light industrial uses, and an 18-acre area in Columbia Plaza (Foggy Bottom) is to have a high-rise apartment building and a hotel. The only renewal area currently being devel-

oped to meet the needs of low-income families is a 95-acre area in the Northwest. After renewal, the tract will have 450 units of public housing, 900 units of private, moderate-income housing and 240 rehabilitated units.

In October 1966 the Department of Housing and Urban Development approved an $18 million grant to the District of Columbia for an urban renewal project covering a 145 block area surrounding the Shaw Junior High School.[186] Approximately 40,000 people presently live in the area, one of the most extensively blighted in the city.[187] Present plans indicate that the Shaw project will not repeat the mistakes of its Southwest predecessor. Cleared land will be used primarily for low and moderate income housing. Rehabilitation rather than reconstruction is to be emphasized, and dislocation of residents is to be kept to a minimum.

Government-Supported Private Efforts

In the last two years there has been an increase in private efforts, fostered by Federal programs, to develop housing for low and middle income citizens. One Federal Housing Administration program authorizes below market interest rate loans to nonprofit private sponsors for the construction or rehabilitation of low and moderate income housing.[188] Nearly 1900 units have been completed under this program, and several others are in some stage of development or planning.[189]

One major effort by private citizens to meet the housing needs of the community is that of Community Organizations for the Improvement of Neighborhoods (COIN).[190] COIN, formed by a number of religious and social service organizations, plans to renovate 600 rental units mainly for low income families; families that cannot afford the rents charged will be subsidized. In addition, services such as job counseling and health clinics are planned.

Improvement of Existing Housing

Code Enforcement

The Housing Division of the Department of Licenses and Inspections of the District of Columbia Government has the responsibility of ensuring the maintenance of adequate standards for human habitation, preventing the development of slums, and correcting existing slum conditions through the enforcement of the city's housing regulations. The Division fulfills this responsibility through two programs: Area

Conservation and Code Compliance.[191] Under the Area Conservation Program, systematic efforts are made to enforce the housing regulations in specific neighborhoods. The General Code Compliance Program has a broad range of responsibilities, including the regular inspection of all licensed multifamily dwellings (two or more housing units) and the investigation of complaints of code violations from private and public sources. There are only 50 inspectors in the Program, which limits the annual inspection cycle to rooming and tenement houses; apartment houses are inspected once every 2 years.

Housing Division officials point to the high percentage of compliance obtained. Yet many in the community believe that code enforcement is not aggressive enough and that landlords are allowed to meet deficiencies with minimal or superficial repairs.[192] Notwithstanding present enforcement efforts, much residential property quickly regresses to its former state after repairs.[193] The Report of the Community Renewal Program states that increased expenditures of approximately $2 million annually are needed to support a significantly enlarged code enforcement program simply to prevent further deterioration of the city's housing.[194]

Code Amendments

An omnibus District housing bill was introduced but not acted on in the last session of Congress.[195] Essentially, the bill reflected a judgment that code enforcement is inadequate and that existing landlord and tenant law operates unduly to the advantage of the landlord. The bill would have enabled the tenant to take affirmative action to have housing deficiencies corrected without relying on regular code enforcement procedures. In addition, the bill sought to forbid retaliatory evictions and provided for the establishment of a housing education program to instruct the poor in the care and maintenance of dwellings.

Public hearings in July 1966 revealed a broad range of opinion concerning the bill. The majority of the witnesses supported it, but one District Commissioner believed that a consequence would be a reduction in the total number of housing units in the city. He reasoned that, to avoid the effect of the legislation, low cost housing would be torn down for such projects as parking lots or upper-middle income developments. Other witnesses felt the bill was too weak because of its failure to meet the issue of superficial repairs and because of enforcement provisions with excessive procedural limitations.[196] Although the Commission recognizes the difficulties of drafting housing legislation which protects the rights of all, we believe that there is a clear need to bring the

rights of the tenant into balance with those of the landlord.[197] Fair and effective enforcement of the housing regulations is essential to prevent the deterioration of residential property and to assure District residents safe and sanitary housing.

Racial Discrimination

Racial discrimination in the sale and rental of residential housing in the suburbs compels low and middle income Negroes to remain in the city, where, costs for comparable housing are substantially higher than in Maryland or Virginia. The increasing number of employment opportunities in Maryland and Virginia makes suburban open housing essential if Negro unemployment is to be reduced. The prospects for curbing suburban housing discrimination, however, are not good. The Federal ban on discriminatory sales of new homes built with FHA loans has had only limited impact because most suburban residential building is financed under conventional mortgages.[198] Neither Maryland nor Virginia has enacted state-wide fair housing legislation, nor have fair-housing ordinances been adopted by any of Washington's neighboring counties. The Civil Rights Act of 1966, which would have forbidden racial discrimination by commercial interests in the housing field nationally, was not passed by the 89th Congress.[199]

In 1963 the District Board of Commissioners found that "discrimination on account of race in the sale and leasing of housing accommodations exists and is practiced individually and collectively by real estate dealers, owners, lessors and others," [200] and promulgated a regulation prohibiting racial discrimination in the sale or rental of housing.[201] Responsibility for enforcement of the regulations rests with the Commissioner's Council on Human Relations and the Corporation Counsel. Because of the severe understaffing of the Council on Human Relations and weaknesses in the regulations, a group of civic associations has termed enforcement efforts a "complete failure." [202] The Council has proposed 13 changes in the regulations in order to facilitate conciliation and enforcement.[203] These include changes (1) to empower the Board of Commissioners to issue cease and desist orders on the recommendation of the Council; (2) to authorize the Corporation Counsel to seek permanent civil remedies, thereby avoiding the difficult burden of proof that must be met in seeking criminal sanctions; (3) to authorize the Council to hold public hearings on complaints it did not dismiss or conciliate; and (4) to discourage discriminatory practices outside the confines of the city by providing that a broker who does business throughout the Metro-

politan area and is found to discriminate with regard to property in Maryland or Virginia could be forbidden to operate in the District.

EVALUATION

The severity of this city's housing problem is well documented. In the judgment of the National Capital Planning Commission, nearly 300,000 people live in housing which is either unsound, overcrowded, and/or too expensive for them.[204] Over 100,000 children are growing up in housing circumstances which create psychological, social and medical impairment and make a satisfactory home life difficult to achieve.[205] The prospects for the future are not good; the amount and quality of housing available to low income families is diminishing.[206]

Traditionally, low-income housing comes from older middle-income housing in the central city or from public housing developed especially for low-income occupancy. In Washington, the natural forces of the housing market have not been able to supply the disadvantaged with adequate housing. There are a variety of steps, however, that can be taken to relieve the city's housing shortage.

Public Housing

The need for more public housing is clear. The CRP estimates that by 1975 an additional 10,000 public housing units (excluding the 2,800 now under development) must be provided simply to prevent the aggravation of the housing crisis.[207] Unfortunately, there are substantial impediments to an expanded public housing program in the District: available land and financing. In 1955 there were 2,638 acres of vacant privately owned land in the city; by 1965 only 738 acres remained.[208] Much of what remains is unsuitable for public housing because of topography, zoning or prohibitive cost; recently the NCHA examined over 40 sites and found only 5 to be suitable for public housing.[209] Use of available sites sometimes meets opposition from local property owners and neighborhood groups either because of feared over-concentration of public housing or a reluctance to have public housing in "good" neighborhoods.

The virtual elimination of vacant private tracts makes it essential for public land to be made available for housing wherever possible. One of the few open spaces in the city is the former military base in the Anacostia-Bolling area. In 1963 the Bureau of the Budget and the Department of Defense determined that the land was surplus to the needs of the Federal government.[210] Plans were developed to turn most of the land back to the District as a site for low and moderate

income housing.[211] Concerned Federal agencies and the President supported the view that the land should be made available for housing.[212] However, in September 1966 Congress decided to retain control over the area until 1970.[213] Another large piece of land in the city will soon become available when the National Training School is moved from its present site.[214] The use of this land for residential construction will also need Congressional approval.

Financial restrictions on the operations of the NCHA have severely limited its ability to provide needed public housing. Under current regulations the maximum allowable site cost per unit is approximately $4,000.[215] In view of the city's high land costs this limitation prevents the NCHA from buying and clearing developed property, particularly for preferred low density projects, and from building projects with units for larger families. Moreover, Federal funds are available only for the cost of construction; operating expenses must be met from rental payments which are set at 22 percent of net family income, regardless of the size of the apartment.[216] Therefore, the NCHA cannot assist many low income families too poor to pay a rent sufficient to cover expenses;[217] over 16,000 families earn incomes too low to qualify for public housing.[218]

The common conception of public housing as directly financed, massive, sterile apartment buildings is no longer accurate. Recent legislation has provided a variety of new techniques to increase the public housing supply. The NCHA is authorized to lease units ranging in size from single family homes to entire apartment developments and has requested a 350 unit allotment from the Public Housing Authority for this purpose.[219] It is also empowered to purchase individual homes and to finance the rehabilitation of small private developments. Under this program, it has requested a 240 unit allotment.[220] The NCHA has pioneered the "turn-key" approach, contracting for a completed building pursuant to its specifications.[221] These innovative approaches have substantial merit. They can help avoid the problems of site location and new construction. They curtail the segregation of public housing tenants from the total community. In the Commission's view, they deserve support and expansion.

Private Efforts

Large scale, nonprofit, private efforts to develop low-income housing are relatively new and provocative. They appear to have great potential and their progress in the coming years will test the community's ability to stem the growth of overcrowding and urban blight without massive Federal construction. There are, however,

major administrative problems that confront the many interested but inexperienced groups entering the complex housing field. Substantial assistance will be necessary if they are to operate efficiently.[222]

Urban Renewal

The Shaw urban renewal project deserves the full support of the community. Other large areas of the city are also in need of redevelopment or rehabilitation.[223] The Community Renewal Program Report estimates that $30 million in local funds and $240 million in Federal funds over and above existing programs is needed between now and 1975 if substantial progress is to be made in the housing field.[224] Federal support may be available under the Demonstration Cities and Metropolitan Development Act of 1966,[225] which provides substantial grants to cities which submit plans for the comprehensive redevelopment of blighted neighborhoods.[226] In addition to increasing the supply of low and moderate priced housing, the plan must be designed to improve conditions of employment, education, recreation, and public health. In brief, proposals must address the total physical and social environment of decaying urban areas. This Commission believes that the qualification of Washington as a demonstration city under the Act is a matter of the highest priority.[227]

Discrimination

The Commission believes that all steps necessary must be taken to end racial discrimination in the rental and sale of housing in Washington and the Metropolitan Area. No citizen of the District should be arbitrarily excluded solely because of race from access to any housing within his means. The District should increase the staff of the Human Relations Council and strengthen the fair housing regulation to reduce housing discrimination in the city. A new emphasis on civil remedies would make its enforcement more effective. Public hearings on the subject would have both a deterrent and an informational impact. Forbidding discriminatory real estate brokers from doing business in the District of Columbia might well help to open the suburbs to Negro citizens.

CONCLUSION

The enormity of Washington's housing needs is one of the most important issues facing the city. Although there is no panacea immediately available to public or private agencies, imaginative utilization of the wide range of Federal and local planning and grant programs should contribute to an alleviation of the crisis. In particular, we believe that the intelligent development of a variety of public housing projects is essential in the immediate future. At the same time, both tenants and landlords must fulfill their responsibilities for the maintenance of residential property more effectively. Vigorous efforts must be made to put an end to racial discrimination in the sale or rental of housing; as long as Washington's Negroes are unable to find places to live in the expanding communities surrounding the District, their severe housing problems will continue.

PUBLIC WELFARE

Under a complex Federal-State public welfare system based on the Social Security Act of 1935, money and services are supplied to specific categories of people in need. In the District of Columbia, welfare payments are provided to 26,862 people in the following categories: Old Age Assistance—2,463; Aid to the Blind—210; Aid to the Disabled—3,265; General Public Assistance—787; Aid to Families with Dependent Children (AFDC)—20,137.[228] An additional 22,000 people receive other services from the Department of Public Welfare, including institutional care for certain categories of children and adults, aid to displaced families, and foster home care.[229] Roughly 6 percent of the city's population receives assistance from the Department of Public Welfare at any one time.

AID TO FAMILIES WITH DEPENDENT CHILDREN

The largest welfare program is that providing aid to families with dependent children (AFDC). There has been controversy in recent years over the initial and continuing eligibility of aid recipients, and the adequacy of payments. Under AFDC, monthly payments are made to families with children who are deprived of financial support because of the absence or unemployability of the family wage-earner and who require the presence of the remaining parent to care for them. A family is eligible for assistance if its total available income is less than the minimum living standard set by its State. The assistance

payment, intended to make up the difference, is determined by the number of children in the family and the income available to it.

In recent years there has been a marked increase in AFDC recipients across the nation—from 1,918,000 in 1953 to 4,289,000 in 1964.[230] This increase is attributable to a rapid growth in the child population, a rise in the number of broken families with low incomes, and expanded welfare coverage.[231] In the District there has been a similar increase—from 8,454 in 1953 to 20,137 in 1965.[232]

Eligibility

Determining Eligibility

Applications for AFDC assistance are initially reviewed by a Department of Public Welfare social worker. Upon tentative approval by the worker they are referred to the Department's Office of Investigations and Collections (OIC) whose duty is to review public assistance cases "to assure that Federal and District monetary grants are properly used for the purposes for which they were appropriated."[233] After review the OIC makes an eligibility recommendation to the Public Assistance Division, which makes a final determination.

Washington is the only major city to conduct a field investigation of all welfare applications. The District has 77 welfare investigators, more than any city in the nation (there are 12 in Baltimore, 11 in Cleveland and 19 in New York City).[234] The expansion of the OIC investigatory staff is an outgrowth of a 1962 Congressional investigation which revealed that a substantial number of welfare recipients were ineligible for aid under the strict criteria established.[235]

The operations of OIC have an immense impact on the District's welfare program. Because OIC audits every application, an AFDC eligibility determination takes approximately 8 weeks, compared to a national average of 5 weeks.[236] While many States are processing applications two or three times as fast, District residents in serious need of assistance are forced to rely on their own inadequate resources for 2 months. Moreover, OIC recommends the rejection of approximately 60 percent of AFDC applications initially approved by the intake social worker and its recommendations are seldom reversed.[237] From December 1965 through May 1966, over half of all AFDC applications were ultimately rejected, most often on the basis of factors other than need.[238] The Welfare Department readily acknowledges that practically all AFDC applicants meet their financial-need criteria for assistance.[239] Finally, the adversary nature of the OIC's activities has contributed to the poor relationship between the Welfare Department and its clients.[240]

The Advisory Council on Public Welfare of the Department of Health, Education and Welfare has recommended that applicants' eligibility be established "by personal statements or simple inquiry relating to their financial situation and family composition, subject only to subsequent sample review conducted in such manner as to protect their dignity, privacy . . ." [241] The Commission shares this view. Moreover, we believe that the Welfare Department's complex regulations concerning eligibility for aid should be simplified. As the Advisory Council stated,

> the innumerable fine distinctions, sometimes rigid and arbitrary definitions and interpretations, and an avalanche of technicalities consume much time and energy of staff that could be far better spent in aiding people in trouble.[242]

The Substitute Parent Policy

To be eligible for AFDC assistance, a family unit cannot contain an employable father, or an employable "substitute" father.

> Assistance must be denied when the mother . . . has a continuing association with a man (unless he is incapacitated) whose relationship to the family is that of husband and father even though he maintains an address elsewhere.[243]

The substitute parent policy erroneously assumes that a man who has a relationship with a woman and her children is willing and able to support them. It conditions aid to needy children on the personal activities of their mother. It discourages the development of a relationship where the man grows to care for and about the woman's children, since the relationship jeopardizes the family's only income. Moreover, the policy is virtually impossible to enforce uniformly or equitably. The Department of Public Welfare lists 12 factors, any one of which may justify a finding of ineligibility.[244] Many of these are merely casual contacts, such as "takes children on walks, excursions and the like;" "visits the home to see the children;" and "donates gifts to the children." [245]

The city is virtually unanimous in its opposition to AFDC ineligibility based on the nature of a mother's relationship with a man who is not her children's father. As one District Commissioner recently said:

> I know of not one single social-minded organization in this entire city that has not spoken up in favor of doing away with the prohibition here, and every vocal group certainly has come forth and testified to this effect on numerous occasions. The entire Board of Commissioners, without exception, for 3 years certainly is favoring this.[246]

The Advisory Council on Public Welfare of the Department of Health, Education and Welfare believes that public assistance should be based on a single criterion: Need.[247] This Commission endorses

this view. The District Commissioners should amend existing regulations so that children in need are not deprived of aid because their mother has a relationship with a man who is not their father.

The Size of AFDC Grants

Until recently the average monthly AFDC payment per recipient in Washington was $33.30, less than the national average of $35.53, and much less than payments in New York ($51.17), California ($48.38), Illinois ($45.34), and many other States.[248] Although the District has a higher per capita income than any State, it spent less money per $1,000 of personal income for public assistance than did 38 States.[249]

In October 1966 Congress authorized a 13 percent increase in welfare grants.[250] This was an important contribution to a more equitable public assistance system, particularly since payment schedules had last been readjusted in 1957. However, monthly grants remain well below minimum living standards suggested by the Office of Economic Opportunity (Table 6).

TABLE 6.—*Monthly AFDC welfare payments*

Family size	Old maximum welfare grant	New maximum welfare grant	OEO minimum standard
2	$124	$140	$166
3	154	174	203
4	172	194	261
5	196	221	304
6	220	249	345
7	241	272	424

Source: Information supplied by Department of Public Welfare and National Capital Planning Commission.

An examination of that portion of an AFDC grant officially allocated to the payment of rent exemplifies the continuing inadequacy of the welfare allowance. Table 7 compares the old and new maximum shelter allowances with needed maximums recommended by the D.C. Public Welfare Advisory Council based on a detailed analysis of prevailing charges for adequate quarters in the District.[251] Accordingly, this Commission is persuaded that consideration should be given to additional increases in the size of AFDC payments, in order to provide recipients with funds sufficient to meet their basic needs.

TABLE 7.—*Old, new, and recommended shelter allowances*

Number of persons	Type unit	Old maximum	New maximum	Needed maximum
1	Rooming unit	$36.00	$40.50	$53.00
1	Efficiency	47.00	53.00	72.50
2	Rooming unit	54.00	61.00	58.00
2	Efficiency	54.00	64.00	78.00
3	1 bedroom	61.00	69.00	91.00
4	2 bedrooms	61.00	69.00	106.00
5	2 bedrooms	64.00	72.50	109.50
5	3 bedrooms	64.00	72.50	118.50
6	3-bedroom apartment	64.00	72.50	123.50
6	3-bedroom house	64.00	72.50	138.00
7	3-bedroom house or 6-room apartment	68.00	77.00	144.00
8	3-bedroom house or 6-room apartment	70.00	79.00	151.00
9	3-bedroom house or 6-room apartment	76.00	86.00	157.00
10	4-bedroom house or 7-room apartment	76.00	86.00	164.00
11	4-bedroom house or 7-room apartment	76.00	86.00	168.00
12	4-bedroom house or 7-room apartment	76.00	86.00	172.00
13	5-bedroom house or 8-room apartment	76.00	86.00	178.00

Source: Suggested Shelter Allowance and Cost Table, D.C. Public Welfare Advisory Council.

AID TO FAMILIES WITH DEPENDENT CHILDREN—UNEMPLOYED PARENTS (AFDC–UP)

The AFDC–UP Program

In 1961 the Social Security Act was amended to allow the extension of AFDC coverage to families where the father is present and employable, but unemployed.[252] Twenty-one States have implemented the program.[253] However, despite requests by the D.C. Board of Commissioners and virtually unanimous support from local citizens' organizations, the extension has not been approved for Washington. According to a U.S. Senator:

> The AFDC–UP program was requested by the District Commissioners. They want it. Their request was endorsed by the President of the United States.

He wants it. The AFDC–UP program was opposed by only 1,612 of the voters in the 1964 District Democratic primary and endorsed by about 72,000. They want it. The House Appropriations Committee and the House of Representatives approved the funds this year—as they did last year. They want it. The Senate District Committee has approved a bill authorizing the program and the District Appropriations Subcommittee approved the appropriation. They want it, too.[254]

Disagreement on the AFDC–UP issue reflects different notions of the function of welfare payments. Proponents of AFDC–UP emphasize the duty of society to assist needy children; opponents are reluctant to give aid unless a clear disability exists for fear of encouraging adult dependency.

The lack of an AFDC–UP program in the District ignores the crucial criterion of family need by conditioning eligibility on a factor beyond the family's control—the employment status of the father. The result is doubly destructive. Since relief is unavailable when an employable but unemployed parent is home, fathers desert their families, or at least cease living with them, to enable the families to become eligible for AFDC.[255] The absence of either a father or support payments can lead to a complete breakdown of the family unit.

The AFDC–UP Substitute: Temporary Assistance and Work Training

The Department of Public Welfare set up a Work and Training Opportunity Center (WTOC) in October 1965 under Title V of the Economic Opportunity Act of 1964. The Center offers maintenance grants, basic education, work training, employment opportunities, and social services to unemployed, but employable, heads of households who have at least one child at home. Trainees, male and female, are given 6 weeks of intensive literacy and acculturation courses, followed by work experience in public and private agencies.[256] While awaiting enrollment in the Training Center, and subsequent job-placement, such household heads are entitled to "Temporary Assistance for Families of Unemployed Parents" (TAFUP). This program provides maximum stipends of $50 a week for a maximum of 6 months plus social services and job placement assistance.[257]

The WTOC–TAFUP program is conceptually sound, in combining financial assistance with training and placement efforts. Nevertheless, the 6 month limit on TAFUP does not meet the needs of the families of persons who, after training, fail to get and hold a job. Moreover, the program is simply "not big enough to meet the need."[258] In the first 9 months of the program, 3,147 people applied for admission to WTOC, but only 904 were accepted, most of whom were

female.[259] Of the 904 trained, only 114 were subsequently placed in jobs.

The Commission believes that work training should be available for all present welfare recipients and for all those who will become eligible if AFDC–UP is adopted in the District. Training and remedial education is essential if many impoverished citizens are to become productive members of society. The employment problems of welfare recipients are not qualitatively different from those of other residents; their solution should be undertaken as part of an overall manpower program for the city.

HOMELESS CHILDREN

The institutionalization of children, in the absence of a particularly destructive home situation, is harmful. When a child's own family is no longer viable, he is best served by being placed in foster care where he can obtain the benefits of family life. If institutionalization is unavoidable, it must be of the highest quality in view of its potential harmful effects. Child care experts generally agree:

> The major characteristics associated with institutional care are: general intellectual retardation, retardation in language functions, and social and 'personality' disturbances, chiefly disturbances centering around the capacity to establish and maintain close personal relationships.[260]

Junior Village

Junior Village, with a resident capacity of 770, is the District's institutional residence for abandoned and neglected children between the ages of 6 months and 18 years. Its population rose from 30 in 1947 to 440 in 1959, and reached 912 in early 1965.[261] Recently, the population has declined rapidly; the average daily population in August 1966, was 591.[262] This trend has been attributed to the efforts of Child Welfare Division caseworkers, the impact of TAFUP, the Welfare Department's new emergency programs, and UPO efforts in the field.[263]

Since 1959 there have been extensive capital improvements at the Village. Over $450,000 has been spent to renovate 6 older structures, and 7 new cottages have been built.[264] Nevertheless, certain facilities at Junior Village require improvement. A new school building is urgently needed; the existing structure, a converted cottage, has been characterized as "totally inadequate." [265]

Junior Village also lacks a sufficient number of counselors. The Child Welfare League recommends a ratio of one child care worker to every six children.[266] Yet, in the infant cottages there is 1 nursing

assistant for each 9 children, in the young children's cottages there is 1 adult for each 11 children, and in the older children's cottages there is 1 adult for each 16 children.[267] Other deficiencies include an insufficient number of social workers and clinical psychologists, failure to prepare intake social histories, and inadequate space for many specialized activities. Youngsters housed in Junior Village, 50 percent of whom stay for over 3½ months,[268] have, almost by definition, deprived backgrounds. For these children to have a decent chance to develop into healthy adults, they need more than adequate care; they need intensive services.

Foster Care

Regardless of the quality of care at Junior Village, institutionization can rarely have as positive an effect on a youngster's emotional growth as normal family surroundings. In order to minimize the use of Junior Village, the Department has an active foster care program. In fiscal 1965, 1,810 children receiving child welfare services lived in 832 foster homes.[269] However, the number of children who stay at Junior Village for substantial periods indicate that there is an unmet need for foster homes. One serious handicap to the recruitment of foster families is the inadequacy of the payments for child support. Existing rates, ranging from $65 to $80 a month depending on the age of the child, generally require a foster parent to contribute his own funds to the child's maintenance.[270]

Foster care in the District has recently been strengthened by two innovative projects. With grants received from the Children's Bureau and UPO, a private social welfare agency (Family and Child Services) and the Department of Public Welfare operate 11 group foster homes, each of which holds 5 children.[271] Each set of parents receives a wage of $200 a month, full reimbursement for all child care expenses and the complete cost of housing. The cost per child for this type of foster care arrangement is considerably less than the monthly per capita cost of $297 at Junior Village.[272] In the Commission's judgment, the group foster home program has demonstrated its potential for reducing the Junior Village population and merits expansion.[273]

OTHER WELFARE SERVICES

Emergency Services

In October 1965 the Department initiated three programs to provide emergency services to destitute families. The Crisis Assistance and Service Program provides financial assistance and social services to an

individual or family facing an emergency such as lack of food or eviction. The recipient must have been a District resident for 1 year, not already receiving public assistance, and he can receive aid under the program only once. Through May 1966 this program aided 715 families.[274] The Family Emergency Services Program provides emergency financial assistance and social services to families with children receiving child welfare services. Through May 1966 it assisted 450 families.[275] Finally, the Temporary Emergency Family Shelter offers temporary housing, social and relocation services for needy District-domiciled families with children.

These emergency programs represent a salutary effort to meet a long standing problem. Certain eligibility restrictions, however, such as 1 year's residency and the limitation of aid to families not receiving public assistance, suggest that the Crisis Assistance Program's orientation is overly cautious. Guarding against abuses by limiting assistance arbitrarily to only one crisis is an unrealistic appraisal of the needs of families to whom emergencies are no rarity. In addition, the Emergency Family Shelter is able to house only about 60 percent of those who apply; its expansion seems appropriate.[276] The District ought to provide emergency services to all unfortunate persons in need of them.

Day Care

Day care facilities for children are necessary if female heads of households are to have the opportunity to earn their own living, but they are in short supply. An estimated 2.7 million children in the United States need day care services, but only 310,000 openings exist.[277] There are 4,473 day care spaces in Washington.[278] However, the great majority cost $2.50 per day per child, which may be prohibitive for many unskilled working mothers with more than one child.[279] In 1963 the Public Welfare Crisis Committee stated that there was a need for the "initiation of a city-wide program of public day care for children to include, but not be limited to, children of A[F]DC parents."[280] The need still exists.

CONCLUSION

This Commission believes that too many members of the public misconstrue welfare assistance as a dole to the indolent. This erroneous impression inhibits needed public support for a variety of welfare programs to aid the truly indigent and destitute.

One of the greatest obstacles to the improvement and expansion of public assistance and public welfare is the lack of understanding and support among com-

munity leaders and informed citizens. Many citizens who are otherwise interested in educational, charitable and civil matters simply turn their backs on public assistance . . .[281]

There is no evidence that strengthened public welfare programs encourage laziness, illegitimacy and dependence, as some critics have suggested. Rather, they represent a community's recognition of its moral duty to aid those in need. Undoubtedly some welfare recipients are lazy or are dishonest. We believe, however, the number is far smaller than the elaborate and expensive safeguards set up to guard against such cases indicate. Too cautious an approach towards helping citizens in genuine need—especially children—ultimately backfires. Children deprived of the bare necessities of life or made to pay for the sins of their parents become callous early in life towards the rights or feelings of others. The little we save today in welfare, the more we will pay tomorrow in police, courts and prisons.

PUBLIC HEALTH

The Commission has not undertaken to evaluate the full range of public health services in the community. Rather, we have chosen to comment on two areas—mental health and family planning—which bear important and discernible relationships to delinquency and crime.

We do wish to note, however, that there is substantial evidence of disproportionately poor health among many of the city's residents (Table 8).

TABLE 8.—*Selected disease and mortality rates by race*

[1964]

	White	Nonwhite	D.C.
Fetal deaths (per 1,000 live births)	12. 4	19. 7	17. 9
Infants deaths (per 1,000 live births)	23. 3	38. 1	34. 5
Maternal deaths (per 1,000 live births)	0	11. 8	8. 9
Venereal disease (per 100,000 people)	283. 1	2, 373. 4	1, 508. 1

Sources: D.C. Dept. of Public Health, Vital Statistics Summary, 38–43 (1964). D.C. Appropriations, Hearings before the Senate D.C. Appropriations Subcommittee, 89th Cong., 1st Sess. 626–28 (1965).

Over 63 percent of District males fail draft induction tests, a rate higher than that of all but two States; [282] nearly half fail because of poor physical health. Under these circumstances, it might well be advisable for the Department of Public Health to reevaluate its efforts so that it can more effectively assist those of the city's poor burdened by ill health.

MENTAL HEALTH SERVICES

Community Mental Health Centers

In 1963 Congress approved legislation authorizing grants to the States and the District of Columbia for the construction of community mental health centers. Since then, the District's Department of Public Health has prepared a survey of existing mental health services in the District and an overall plan for the development of comprehensive community mental health centers.[283] With the aid of a 5-year, $1.7 million grant from the National Institute of Mental Health it utilized existing structures at D.C. General Hospital to create the first of four projected centers in the city.[284] As of October 1966, this Center was serving approximately 1,275 patients.[285] Another 800 patients from other areas of the city which do not yet have centers are treated at what was formerly the acute psychiatry unit of D.C. General Hospital, which treats 240 in-patients.[286]

The efforts of the Department have been hampered by the absence of appropriated funds necessary to begin planning the three other centers. However, Congress recently granted the District's request for $798,000 to purchase a site for a second Community Health Center to include both general and mental health services.[287] As President Johnson said in his Message to Congress on the Nation's Capital on February 15, 1965, an

> urgent need exists for the establishment of community health centers in several parts of the city, to bring health services closer to the people for whom they are designed. These centers, by including the facilities needed for comprehensive community-based mental health services, will also bring the District to the forefront in carrying out . . . the present national mental health program . . . .[288]

Continued Congressional support will be required to attain this goal.

Facilities for Juveniles

An undetermined number of young people in the District of Columbia are emotionally disturbed and in need of medical assistance. A study of a sample of children committed to the care of the Department of Public Welfare's Child Welfare Division disclosed that 31 percent were emotionally disturbed, and an additional 14 percent had serious behavior problems short of being "disturbed."[289] Nevertheless, only one-third of these children received the psychiatric treatment recommended for them. These figures suggest that the mental health prob-

lems of a substantial proportion of the city's disadvantaged juveniles are not being adequately treated.

There is presently no public residential treatment facility in Washington for non-psychotic, emotionally disturbed juveniles, although the existing community mental health center admits some youngsters for short-term treatment. The out-patient and diagnostic services rendered by the Health Department's Child Guidance and Adolescent Clinics reach too few children after too long a delay; in 1965 these clinics had 350 patients under care, and long waiting lists existed.[290]

There has been and presently is a serious shortage of mental health services for juveniles in Washington. When additional Community Health Centers are provided, the problem may be substantially relieved. We anticipate close and continuing liaison between the Centers and the city's schools, so that emotionally disturbed pupils can be expeditiously referred for diagnosis and treatment. Congressional approval of funds requested in the District's 1968 budget for an in-patient mental health facility at D.C. Village would be a step forward.[291] In the interim, however, and particularly until additional Health Centers are established, the community sacrifices many youngsters' chances of living stable, productive lives.

FAMILY PLANNING

Of 19,001 live births in the District in 1964, 4,755 (25 percent) were illegitimate.[292] Of the illegitimate births, 2,011 were to women under 20, and 779 were to those under 17. Almost half (2,280) the births were first children. Illegitimacy rates are higher among Negroes and in low-income areas; 30 percent of all Negro births were illegitimate, and census tracts with median annual incomes under $4,000 have three times the illegitimacy rate of tracts with incomes over $8,000.[293]

These figures, moreover, mask the number of unwanted pregnacies that would result in abortions or illegitimate births but for the hasty and unanticipated marriage of expectant parents. It has been estimated that half of all girls who marry in their teens are pregnant, as are 80 percent of teenagers who marry while of high school age.[294] These marriages only substitute one tragedy for another; 5 years after teenage marriages, half have been broken by divorce.[295]

In an effort to reduce the number of illegitimate births in the city, the Department of Public Health initiated an active birth control program in April 1964. Women who deliver at D.C. General or are patients in public maternity clinics, and women referred by the Department of Public Welfare, will, if they choose, receive individual

guidance in family planning and instruction in contraceptive methods.[296]

The Health Department's family planning program will help reduce the number of illegitimate and unwanted births, and should be expanded. Specifically, we believe that women who are not mothers ought to be eligible for participation; intelligent family planning considers the desirability of the first child as well as succeeding ones. Marital status should continue to be irrelevant to eligibility for the program. It is at least as important to reduce the number of children born out of wedlock as those who are legitimate but unwanted. The human misery that stems from illegitimacy and the great number of illict and crudely performed abortions must be stopped.[297]

The Commission believes that eligibility for participation in the city's birth control program should extend to all females 16 years of age and older, regardless of maternal or marital status. UPO recently proposed an experimental birth control program that would provide contraceptive devices to unmarried girls who have never had a baby or been pregnant.[298] We endorse this proposal as an important first step in a realistic confrontation of the tragedies of unwanted and illegitimate children. We do not believe that providing such assistance will, as some have suggested, contribute to a decline in public morality. Rather, we believe it unwise, and far more immoral, to prohibit public health officers from helping many uneducated and impoverished young women, who are most in need of birth control assistance.

RECREATION

The District of Columbia Recreation Department provides a variety of recreational activities in major recreation centers, playgrounds, community centers, and social centers, in schools, parks and other publicly owned buildings. Although the Department has moved forward in recent years, and has initiated important services such as the Roving Leader program and summer day camps, its programs need strengthening in several areas. As the Department itself has acknowledged:

> (a) More and better playgrounds must be provided for in slum neighborhoods.
> (b) Efforts should be made to . . . place the best staff personnel in these areas.
> (c) A definite need exists for Teen Centers in slum areas and other selected areas of the city.[299]

These deficiencies confirm President Johnson's observation that "recreation facilities in the District remain well below needs and accepted standards."[300]

The Commission is not equipped to review and evaluate all the city's recreation programs. Rather, we wish to comment on a few areas where we think improvements are vital to a healthy and constructive environment for the youth of Washington.

RECREATION CENTERS AND PLAYGROUNDS

Recreational facilities are located according to the city's Recreational System Plan, which contemplates the establishment on a geographic basis of 26 major recreation centers. These centers usually include a school building and associated play areas, and are distributed so that no resident lives more than 2 miles from one. Attached to each major center are from four to six satellite playgrounds to serve the immediate neighborhood.

Because the Recreational System Plan has a geographic basis, recreational facilities are not distributed equitably according to population density. The distribution of recreational facilities among Washington's neighborhoods has disturbed the community for some time. One newspaper recently commented editorially that, "This city's recreation program is grossly out of balance, to the disadvantage of the neighborhoods that need it most." [301] The then Superintendent of the Department agreed that there was "a need to correct an uneven distribution of services." [302]

While some degree of maldistribution is generally acknowledged, there is serious disagreement as to its extent. A survey by the Health and Welfare Council of the National Capital Area revealed that the poorest 40 percent of the city's census tracts have only 2 fewer recreational facilities than the richest 40 percent but have a population nearly 50 percent greater.[303] This distinction between geographic and population distribution reflects the basic conceptual inadequacy of the Recreational System Plan. Although the city soon may have a major center within 2 miles of every resident, it will not have an equitable distribution of facilities unless comparable numbers of people live within these 2 mile limits throughout Washington. We believe that the Recreational System Plan should be revised to account for population as well as geography.

The paucity of recreational resources in the Capital East area illustrates the plight of central city neighborhoods with high population density.

According to D.C. Recreation Department Standards, Capital East should have 101 acres of supervised playspace (one acre per thousand residents). It has, in fact, 28.2 acres, a shortage of 72.8 acres, or more than 70 percent. Capital East has about one acre of playspace for every 1,000 residents in the 5 to 17 year

age bracket; in contrast, Northwest Washington has nine acres per 1,000, a difference of 900 percent. . . . Sixteen percent of Washington's children (and the poorer ones) should have 16 percent of the city's public recreation facilities and programs instead of having to rest content with less than 5 percent of its supervised playspace . . .[304]

Increasing recreational resources in older areas of the city like Capital East is complicated by a serious shortage of open land throughout Washington, particularly in the central city.[305] Clearing developed land frequently raises costs to a prohibitive level. It is thus less expensive to meet the needs of neighborhoods on the periphery of the city. In order to provide adequate recreational resources for all Washington residents, capital expenditures must be increased. Although the Department requested $4.2 million in capital funds for fiscal 1967, the District asked for only $1.9 million and received only $1.1 million.[306] More realistic capital outlays are needed to provide adequate recreational facilities to central city areas.

RECREATION PERSONNEL

Given the inadequate recreational resources in low income neighborhoods, it is essential that maximum use be made of existing facilities by extending hours of operation and expanding programs. These goals cannot be achieved with a recreation staff of insufficient size. Playgrounds presently have two full-time recreation workers and one part-time aid; the Superintendent of the Department indicates that twice as many are needed to operate a well structured program.[307] Evening centers for teenagers and adults operate between two and five nights a week. Additional manpower is needed so that they can operate every evening and on Saturdays.[308]

In its 1966 budget the Department requested 100 more recreation workers; the District reduced the request to 51; Congress authorized 25.[309] The 1967 District budget asked for 54 more recreation workers and Congress provided 43.[310] The Commission recommends continued recognition by Congress of the personnel needs of the Recreation Department.

SWIMMING POOLS

The Department operated eight outdoor and two indoor pools this past summer, only one of which was built later than 1935.[311] Existing pools are consistently overcrowded and people must be turned away. In August 1966, as an emergency measure, UPO and the Recreation Department set up 17 temporary wading pools suitable only for children below 12 years of age.[312]

Under its Six Year Public Works Program, the Board of Commissioners hopes to build eight new pools and replace seven old pools by 1972.[313] One new pool became operative in September 1966 and two more are scheduled for completion by the summer of 1967. The Board's policy is to request funds each year for the construction of two pools and the planning of two more. Unfortunately, this plan has already been disturbed, as the District's fiscal 1966 request for money to plan one projected pool was denied. Therefore, the District fiscal 1967 budget sought funds for the planning of three pools, but received planning funds for only two. Adherence to the Commissioners' pool development plan is necessary to even a minimal acknowledgement of the recreational needs of the city's youth.

SPECIAL PROGRAMS FOR YOUTH

Pre-School Program

For over 20 years the Recreation Department has conducted a 2 hour daily program during the school year for pre-school children between 3 and 5 years old. The Recreation staff works with the children's mothers who take turns as volunteer assistants helping to run the program.

> The purpose of the pre-school program is two-fold: it is to provide the young child with guided learning experience in an environment away from home that is designed to meet his developing intellectual, emotional, and physical needs; and it is to provide the parents with an opportunity to increase their skills both as parents and as adults in the broader community.[314]

As of May 1965, there were 92 pre-school groups operating with an average of 29 children in each group serving a total of over 2,700 children.[315] The program has been so popular in recent years that it has had to be restricted to older pre-schoolers.[316] We believe that the capacity of the Department's pre-school program should be expanded so that all pre-school children over the age of 3 in the District will have the opportunity to take part in it.

Step-Up

Beginning in the summer of 1965, with grants from UPO and the Office of Education, the Department instituted a combined recreation, education and free lunch program entitled Summer Adventures for Youth (now called Step-Up). The program is designed to provide pupils with free lunches, previously available only during the regular school year, in conjunction with educational and recreational activities.

The program operated for 9 weeks in the summer of 1966, serving about 9,000 children.[317] Most of the children were of elementary school age; many were recipients of free lunches during the school year. In its fiscal 1968 budget the Department requested $1 million to enable the District to finance this project itself.[318] The Commission believes that Step-Up has proven successful and should be continued.

CONCLUSION

In this chapter the Commission has explored what it considers the most glaring deficiencies in community life which incline people toward crime and delinquency. We are aware that more subtle pressures stemming from the tensions of urban life and international events and from the effects of the communications media may also contribute to our crime problem. The link between the District criminal offender and poor schools, not enough jobs, lack of mental health facilities, broken homes, and illegitimacy is, however, so pervasive and so graphically described by our studies as to justify concentration on these matters.

Moreover, these are problems on which the community can take action. If the District's citizens and governors would realize how closely related our crime problem is to our school problem, our employment problem, and even our health and recreation problems, the focus of preventive efforts might become more effective. If the social evils detailed in this chapter are allowed to continue or to worsen, it will be difficult to formulate solutions to our crime problems, no matter what action is taken in the police, court or correctional fields.

We are not so naive as to suggest that curing the city's social and economic ills will put an end to all criminal behavior. We do believe that the number of youth—undereducated, unemployed and without hope for the future—who turn to crime in defiance of society can be significantly reduced. Without such efforts by the community to provide the climate in which healthy bodies and minds grow, exhortations to morality, increased parental responsibility and more rigid discipline of children can be expected to accomplish little.

> No society, no matter how affluent and wise, will ever free itself completely from the scourge of delinquency and criminality. These are deeply engrained in the nature of man and society. But a people that takes its commitments to freedom and equality seriously; a people that is determined to compensate for the ill fortune of history, race and poverty; a people that is humane in its dealings with those who suffer misfortune—such a people can hope and expect that it will suffer less delinquency and less crime. This will be one of its rewards.[319]

SUMMARY OF RECOMMENDATIONS

EMPLOYMENT

The number and job needs of Washington's unemployed and underemployed are not accurately known. More active job registration and placement services are required. Work training opportunities for the unskilled unemployed must be expanded. Efforts must be made to facilitate employment for District residents throughout the Metropolitan Area. Racial discrimination in employment must be eliminated.

1. Comprehensive detailed surveys of the extent of unemployment and the characteristics of the unemployed should be conducted periodically by USES–DC.
2. USES–DC and UPO should effect better coordination of job registration and placement activities.
3. Through increased publicity and decentralization, USES–DC should make more extensive efforts to locate, motivate and place the unemployed.
4. Registration of job vacancies with USES–DC by government agencies and private employers should be encouraged.
5. The variety of job development and training programs in Washington should be expanded and strongly supported by the District Government and the business community.
6. As steps in the effort to end racial discrimination in employment, the staff of the Commissioner's Council on Human Relations should be increased and the District of Columbia Apprenticeship Council should strengthen its enforcement policies against discriminatory apprenticeship programs.
7. The District Government should seriously explore proposals that it provide employment to all residents willing and able to work who cannot obtain employment elsewhere.

EDUCATION

Washington's school system is hampered by a history of inadequate financial support and tradition-bound educational policies offering limited benefits to great numbers of disadvantaged students. School buildings are antiquated, teaching materials in short supply, teachers are underpaid and underqualified, specialized services grossly insufficient, and teaching methods are unrelated to the needs and abilities of many pupils.

8. Vigorous efforts must be undertaken to make the educational process more flexible to accommodate the special needs and abilities of disadvantaged youth.

9. The school system's physical plant must be renewed; the replacement of antiquated school buildings must be expedited.

10. A maximum effort must be made to enhance the quality of instructional services in the public schools; teachers' salaries should be increased, needed supportive personnel should be authorized, and all inducements necessary to attract highly qualified teachers to schools in disadvantaged areas of the city should be offered.

11. Sufficient funds should be made available to ensure the prompt establishment of the planned vocational education center.

HOUSING

Washington's housing crisis demands an unswerving commitment to major remedial efforts. The natural forces of the housing market have not met the needs of a great number of the city's low and middle income families. Dilapidated dwellings, overcrowding and high rentals are commonplace. Racial discrimination hampers the mobility of the city's population throughout the Metropolitan Area.

12. Urban renewal and public housing construction should be undertaken at a scale sufficient to make substantial inroads into the city's housing problem.

13. Land at the Anacostia-Bolling site in the Southeast section of the city should be made available for the construction of public housing.

14. To maintain and improve the quality of existing housing, code enforcement should be strengthened, and housing education programs for the poor should be expanded.

15. The efforts of nonprofit sponsors to provide housing for low income families should be supported and encouraged.

16. Washington must qualify for a grant as a Demonstration City with an imaginative and comprehensive project.

PUBLIC WELFARE

Too many of the city's poor are deprived of desperately needed assistance by virtue of inappropriate welfare eligibility criteria, overly complex administrative procedures, and inadequate welfare grants. Institutional care of the city's homeless youth is in need of substantial

improvement. Available emergency services to destitute families are offered in too limited measure.

17. To the maximum extent possible, welfare eligibility should be based solely on the criterion of need; the substitute parent policy should be abandoned, the eligibility requirements and screening procedures of the Welfare Department should be simplified, and an AFDC–UP program instituted in the District of Columbia.

18. A more appropriate ratio between funds spent for welfare application investigations and for social services provided to welfare recipients should be established; eligibility for welfare assistance should be determined primarily on the basis of interviews by social workers, with limited supplemental investigation conducted as needed.

19. Public assistance stipends should be increased to conform to the minimum standards of the Office of Economic Opportunity.

20. Greater capital outlay and operational funds should be devoted to Junior Village to equip it to render child care services of the highest quality, and more group foster homes should be provided.

21. The emergency services of the Department of Public Welfare should be expanded, and existing eligibility restrictions made more flexible.

22. The District should significantly expand low cost day care services for children of working parents.

PUBLIC HEALTH

Mental and physical health services should be freely available to all residents who need them. The District's public health programs must meet the difficult challenges presented by slum areas.

23. The development of sorely needed additional community mental health centers should be expedited.

24. The city must meet the urgent need for greatly expanded mental health services for emotionally disturbed juveniles.

25. The birth control program of the Department of Public Health should be expanded, and services should be provided regardless of maternal or marital status.

RECREATION

Recreational facilities in the District of Columbia must be designed to provide a maximum number of the city's youth with the opportunity for healthful constructive activity.

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26. The Step-Up and Pre-School programs of the Department of Recreation have provided needed services to many children in the District, and deserve support and expansion.

27. The Recreational System Plan should be reevaluated so that recreation facilities are planned for distribution according to population density as well as geography.

Chapter 11

Conclusion

In the earlier chapters of this Report the Commission has reviewed the scope of Washington's crime problem and the adequacy of the city's response. We have considered in detail the operations of the police, courts and other institutions and have offered specific recommendations designed to enhance the success of efforts to control and prevent crime. In this final chapter the Commission will emphasize some general conclusions which we have reached during the course of our assignment.

The high incidence of crime in Washington fully justifies grave concern by the community. Preliminary information for fiscal 1966 indicates that there were 34,765 serious (Part I) offenses reported to the police, 72 percent more than 1950 and 123 percent over the recent low of 1957. During 1959–1965 the District of Columbia has had an increase in serious crime nearly double the average increase of comparable cities. Between 1960 and 1965 the number of homicides and housebreakings per thousand population in the District has doubled, and the rate for robberies and auto thefts has practically tripled. These statistics do not reveal the full magnitude of the problem, however. Recent studies have indicated that a substantial number of crimes are never reported by the victims to the police, and that in many cases the police fail to record properly the criminal offenses which are reported to them. Whatever the significance of annual or monthly fluctuations in crime statistics, there is no denying the great volume of criminal conduct which has plagued the community for years and which continues to do so.

During the last 30 years crime in the District of Columbia has been the subject of repeated investigations. Public concern about rising crime rates has caused periodic increases in the authorized size of the Metropolitan Police Department; it has prompted extensive legislative consideration of the penalty provisions of our criminal laws; and it has focused public attention upon certain controversial judicial rules relating to limitations on police interrogation and the treatment of the mentally ill offender.

This Commission is convinced that a successful challenge to crime in the District requires more than sporadic changes in the criminal law or increased expenditures on the traditional tools of law enforcement.

We have concluded that basic reforms are required in virtually all of the institutions in this community which deal with antisocial behavior. Radical reduction of crime over the long run will require basic social and economic changes, and we urge that action to address these underlying problems begin promptly. But there are many specific steps which must be taken in the immediate future to improve the law enforcement process. We believe that this Report furnishes the basis for a comprehensive plan of action which, if implemented, may significantly reduce the incidence of crime in this community. The following are some of the most important areas requiring immediate attention.

INFORMATION DEFICIENCIES

The Commission's efforts to analyze the crime problem in the District and to formulate appropriate recommendations have been handicapped by major deficiencies in the information available about crime and criminal offenders. Much of the energy and resources of the Commission have been devoted to gathering the basic facts. These informational deficiencies deserve a high priority on the community's agenda for crime control and prevention.

The quality of records maintained by the Metropolitan Police Department must be improved. The records of reported offenses are essential for an accurate assessment of the frequency, location and character of crime in Washington. The Department's monthly and annual reports relating the offenses reported, arrests and clearances provide a vital measure of the degree to which our law enforcement agencies are meeting their responsibilities. The study conducted on behalf of the Commission by the International Association of Chiefs of Police (IACP) disclosed numerous defects in the record-keeping procedures of the Department, and this Commission strongly endorses the suggestions made by the IACP to increase the reliability and usefulness of police records.

The Commission's investigation has also revealed substantial gaps in the information maintained regarding the dispositions of charges filed against persons arrested by the police. The police, courts and correctional institutions maintain records for their separate purposes, with very little effort to standardize their procedures or to avoid duplication. As a result, we have no accurate or comprehensive view of the entire criminal process—where it succeeds, how it fails, and what happens to the people in it. It is currently impossible, for example, to determine the precise dispositions of the criminal cases of persons arrested in a particular year for serious crimes such as robbery, housebreaking or aggravated assault. In the absence of such information,

it is difficult to assess accurately the reasons why more felony cases are not being prosecuted in the District Court or the extent to which the large numbers of cases disposed of by the prosecutors through dismissals or pleas to lesser offenses are justified.

Equally serious informational deficiencies exist in the area of juvenile offenders. According to the Stanford Research Institute (SRI) study, the social files maintained by the Juvenile Court are inadequate; critical data relating to educational, intellectual, familial, and other characteristics are lacking in so many cases as to preclude a complete and reliable description of juvenile offenders who come before the court. The city's multitudinous programs to prevent delinquency—from the Commissioners' Youth Council and Roving Leaders through the varied United Planning Organization and private efforts—operate with sparse information about the young people served, the previous attempts made to diagnose and treat their underlying problems, or the outcome of their own efforts. One of the most important goals of the new youth agency proposed by this Commission is to develop and maintain comprehensive information on all delinquents through its central intake service and data bank.

There is also an appalling lack of firm data on recidivism in the District of Columbia. Millions of dollars are expended annually to prevent crime and rehabilitate offenders. Yet we have only the most fragmentary basis upon which to assess the success of our efforts. The SRI portrait of felons convicted in the District Court reveals that 92 percent had been previously arrested at least once, 52 percent 6 or more times, and 26 percent 11 or more times; 83 percent of the adult offenders had been previously convicted and 65 percent had been previously institutionalized. A recent recidivism study by the Federal Bureau of Investigation reports that 83 percent of persons arrested in the District for felonies and selected misdemeanors from January 1963 through July 1965 had prior arrest records. The D.C. Department of Corrections indicates that about 80 percent of the inmates in its institutions were known to the Department through previous confinement. If we were to rely exclusively on this information, we would be compelled to conclude that our agencies are failing badly in deterring offenders and protecting the community. We recognize that these reports do not reveal the percentage of those passing through our courts and prisons who are not subsequently apprehended for new crimes. This essential information simply does not exist, and it has handicapped our efforts to evaluate preventive programs, probation techniques or institutional programs.

We make numerous recommendations in our Report for specific measures to improve agency procedures for collecting and analyzing

statistics. We also strongly recommend the creation of a Bureau of Criminal Statistics within the District of Columbia Government, which will have responsibility for receiving, processing, analyzing, and publishing all data necessary to a comprehensive annual report on crime in the District of Columbia. The Bureau would receive data on each offense reported and cleared, each arrest, each charge, the disposition of each charge and each suspect by the courts or the prosecutors, and the handling of each prisoner by the correctional authorities. It would also keep long-term records on the rate of recidivism among offenders who pass through the system. In order to accomplish this, the new bureau must have statutory authority to initiate changes in the record-keeping procedures of all the agencies engaged in the law enforcement and criminal justice arena.

Such fact-finding reforms are essential if we hope to maintain close and continuing scrutiny of the District's efforts to reduce crime. In addition to Congress, several agencies within the District can play a significant role by periodic evaluation of our system of law enforcement and criminal justice: The U.S. Department of Justice, the District's Council on Law Enforcement, the Judicial Conference of the District of Columbia, and the Institute of Criminal Law and Procedure at Georgetown University. Without a sound base of current information, however, none of these agencies can effectively review current operations, evaluate agency performance, identify critical problems, and propose solutions.

LACK OF PERSONNEL

The Commission has discovered serious shortages of trained personnel in the various institutions which deal with criminal offenders. The Metropolitan Police Department has an authorized strength of 3,100, but its actual strength is now only 2,820. The Probation Office of the Court of General Sessions is so understaffed that it is unable to prepare indispensable presentence reports for many misdemeanor offenders. The overwhelming caseloads for probation officers in this court and in the Juvenile Court negate any possibility of effective supervision and treatment services for early offenders. Too often, placing a person on probation means merely that once a month the probationer and his probation officer will have a routine conference of 10 to 15 minutes. The correctional institutions, both for adults and juveniles, suffer from an extreme shortage of trained specialists, such as psychiatrists, psychologists, social workers, educational specialists, and vocational training experts. Without adequate staffing, our

agencies are unable to cope effectively with the critical rehabilitative assignments entrusted to them by the community.

We agree, of course, that available personnel should be used more efficiently. This is one of the reasons underlying our endorsement of the reorganization of the Metropolitan Police Department proposed by the IACP. This reorganization promises, among other things, to release many policemen from administrative tasks to assume more urgent responsibilities of preventing crime and apprehending offenders. Our recommendation that the present 14 precincts be consolidated into 6 districts is predicated on the need to free policemen desperately required to protect the citizens of the community. We believe that this consolidation can occur gradually as new police facilities are developed without adversely affecting important relationships between the police and the citizens they serve; there is no necessary correlation between the number or location of precinct stations and good police-community relations. Rather, good relationships depend on the quality of the police service rendered, the behavior and attitudes of the police in their contacts with citizens, and the composition and nature of a particular local community. We emphasize in our Report the need to improve police-community relations; effective law enforcement requires the commitment and support of all segments of the community.

To achieve more efficient use of personnel, we have also suggested a reorganization within the Social Service Department of the Juvenile Court to make more probation workers available for the presently understaffed Probation Section. The consolidation of correctional services proposed in our Report also allows more effective use of personnel now allocated among the Department of Corrections, the D.C. Board of Parole, and the Probation Department of the Court of General Sessions. Our recommendations for improved calendaring in the courts and increased attention to court administration are designed to maximize judicial and prosecutor manpower.

Chronic personnel shortages require more imaginative and aggressive recruiting efforts. We attach a high priority to recommendations concerning police recruitment, particularly those steps necessary to increase the number of policemen recruited locally from among citizens of the District. Our recommendations for increased use of civilian specialists and for lateral entry into the Department of trained civilians and police officers are also designed to bolster the police department at a time when its existing personnel need help in responding to an increasingly complex mission. Where appropriate, the Commission has recommended that agencies reach out to train and employ sub-professional workers and volunteers more creatively, particularly in dealing with juvenile delinquents. More experimentation is vitally

necessary to respond to present personnel shortages and to enable currently employed professional workers to concentrate on assignments which require their special training.

In the long run, attempts to attract capable personnel in the law enforcement and criminal justice field will be successful only if their professional stature is enhanced. We have stressed the need to upgrade the educational attainments and training of such personnel and increase their compensation accordingly. Within the police department significant changes already have been made to improve recruit training, enlarge the amount of in-service training, and provide specialized training for supervisors and executives. We think these efforts, combined with implementation of our other recommendations regarding police personnel and the cadet program, offer hope that the police assignment will increasingly be viewed as a prestigious one, and will attract qualified young men in the District of Columbia. Similarly, there is a need to expand the training and professional opportunities for our correctional and rehabilitative specialists. We have urged the creation of an institute for correctional training, in conjunction with a local university, which will ensure that such personnel acquire the latest information on rehabilitative techniques and are constantly stimulated to meet the challenges of their difficult assignment.

NEED FOR MORE RESOURCES

Repeatedly in this Report we have called the community's attention to the dismaying lack of resources for our crime prevention and control agencies. We are convinced that our crime problem today is at least partially the result of decades of neglect of our schools, delinquency prevention agencies, courts, and prisons. Without a major commitment of financial resources to these institutions and to the social services required by the city, we cannot begin to make progress. The extent to which such resources are provided as part of an overall plan to reduce crime in Washington will provide a true index of the community's determination to act, as well as debate, about crime.

The community's crime prevention efforts must be based on a full appreciation of the extent to which young people are responsible for serious crime. In 1965 arrests of juveniles (under 18 years of age) for serious (Part I) offenses increased 53 percent over 1960, although adult arrests decreased 11 percent during the same period. In 1965 juveniles accounted for 37 percent of all Part I arrests in the District; children *15 years and under* were the subject of 36 percent of all housebreaking arrests, 27 percent of all robbery arrests, 27 percent of all

auto theft arrests, and 28 percent of all petit larceny arrests. In light of these figures, the importance of efforts to provide our young people with an environment conducive to the development of sound values cannot be overstated.

Our examination of the handling of youthful offenders revealed a desperate need for facilities and services which can meet the personal, emotional, educational, and vocational needs of the youths who commit crime in the District. Because such resources are presently lacking, the police often are required to send a potential delinquent through a meaningless "hearing" or else send him unnecessarily to the Juvenile Court. These procedures have failed; the SRI study showed that 61 percent of the referrals to the court had been there before and 42 percent had been referred twice previously. We have recommended that the proposed Youth Commission be charged with developing and supplying services for those potential delinquents first contacted by the police or referred to the Commission by the schools, other public agencies or their families. If the District of Columbia wishes to halt the spiral of increasing juvenile crime, it must begin by demanding the necessary resources for treating and diverting the delinquents who are now setting out on a lifetime of crime.

We have described the obsolete and inadequate facilities with which the community now attempts to deal with its offenders. The Receiving Home for Children is but one deplorable example. The Receiving Home is designed for 90 children, but it is regularly crammed with an average of 150, and it has occasionally accommodated 200. Until recently the D.C. Jail, constructed in 1872, was another striking example of an institution so overcrowded that even the physical supervision of prisoners was seriously handicapped and efforts going beyond the custodial function were out of the question. Facilities for the Court of General Sessions have long been deficient; the situation is now aggravated by the recent addition to that court of five new judges together with the necessary supportive personnel. Yet this court must project the image of justice for more District citizens than any other court; special attention to its problems is long overdue and should be accorded very high priority.

The Commission has reluctantly made recommendations for new facilities, with full recognition that new or expanded physical structures are expensive. In many instances we have disagreed with agencies and concluded that expansion of their facilities is not necessary. In other cases, however, we are convinced that new or improved facilities are imperative in the public interest. We believe that the recommendations in this Report will eventually reduce the economic burden being borne by the community in the handling of

criminal offenders. Our proposals for new agencies to enhance efficiency and centralize responsibility will produce substantial economies over the long term. The blunt truth of the matter is, however, that the District is already spending millions of dollars on crime prevention and control—but with too little success. Even if reduction of crime entails unusual budget expenditures, it promises also to reduce the daily costs of crime now borne by the citizens of this city.

FLEXIBILITY AND INDIVIDUALIZED TREATMENT

The labelling of many kinds of problem behavior as criminal, with the resultant need to process offenders through the courts and prisons, deserves reevaluation. In many cases incarceration without treatment can do little to help such offenders or to protect the community from their compulsive behavior after release. We recommend comprehensive revision of the District's criminal code. In addition to clarifying the law and eliminating archaic provisions, this review should evaluate sentencing provisions and seek to introduce new treatment concepts into the code.

The handling of intoxication offenders is a prime example of an area in which the criminal law has been an unsatisfactory vehicle for dealing with what is essentially a public health problem. Since a decision by the U.S. Court of Appeals in March 1966 that chronic alcoholics cannot be convicted for public intoxication, the District of Columbia has been going through a crisis of conscience in the handling of intoxication offenders. This Commission has recommended the development of health resources and an appropriate legal structure so that the police, courts and prisons can begin to play a constructive, rather than destructive, role in treating chronic alcoholics.

The handling of juvenile offenders has also been characterized by a limited approach. In our Report we emphasize the need for greater discretion by the police, the Juvenile Court and the Department of Public Welfare in order to provide the individualized attention which is necessary to treat the special problems of delinquents and potential delinquents. Too many minor offenders are now referred by the police to the Juvenile Court. It is at this early stage, however, that the community can most economically and effectively treat the underlying causes of juvenile delinquency and crime, provided it has the right resources and procedures. Only the serious cases require the special sanctions and the consequent labelling of the Juvenile Court. One of the immediate tasks of the proposed Youth Commission should be the development of programs and facilities to deal with potential and early delinquents who come to the attention of the police

but do not require referral to the court. The intake service of the Youth Commission will be responsible for analyzing the youngster's background, aptitudes and problems in order to develop a program which offers more hope of meeting his personal difficulties and reducing the probability that he will mature into one of the city's criminals.

We have been critical of the minimal treatment services provided by the Department of Public Welfare at large, overcrowded institutions handling dependent, neglected and delinquent children. We have found too heavy an emphasis on institutionalization rather than community-based care. The Department has appeared to ignore the experience of other jurisdictions which indicates that individualized handling in specialized facilities or in the community, rather than in large institutions, is the most productive method for dealing with juvenile offenders. We have therefore recommended that the present Receiving Home for Children should not be expanded, but should be replaced by a new reception and diagnostic center for juvenile offenders. The proposed Youth Commission should be made responsible for developing halfway houses, facilities for the emotionally disturbed, community-based treatment programs, and other selective techniques for the treatment of juvenile offenders. In our view, this approach promises not only greater success in reducing juvenile recidivism but also inevitable economies over the long term.

Rehabilitative programs for adults convicted of serious crime must be substantially enlarged and varied. We anticipate that the restructured Department of Correctional services will undertake the development of new corrective programs, both in the institutions and in the community. The need for more effective vocational training programs for adult offenders is urgent; we have recommended that the Federal Prison Industries of the Bureau of Prisons assume responsibility for this program in the District's correctional institutions. The Department must enlarge its diagnostic and classification facilities in order to be more discriminating in the development of rehabilitative programs for individual offenders. This is, in fact, one of the principal reasons we have suggested a new detention center for adults to replace the archaic and inadequate facilities of the D.C. Jail. If this center is properly staffed and operated, it can serve as a creative and important mechanism for designing rehabilitative programs and reducing recidivism. It will also provide the much needed central facility for administering community-based rehabilitative programs for probationers, parolees and prisoners on work-release programs or in transition between an institutional program and self-sufficiency in the community.

INCREASED COORDINATION

Throughout this Report we have stressed the heavy dependence of enforcement and criminal justice agencies on one another and the crucial need for consistency in their policies. We have made many recommendations designed to increase the coordination between the policies and practices of these technically independent agencies. We are hopeful that an improved criminal information unit spanning the entire range of the system will contribute substantially to more productive collaboration among agencies such as the police, courts, correctional institutions, and preventive agencies.

In several areas we have made recommendations for structural change to further the goal of a single, unified anti-crime program in the District. Perhaps the most important of these is our recommendation for a new Youth Commission. There are presently a multiplicity of overlapping Federal, District and private programs aimed at reducing and controlling juvenile delinquency in Washington. The youth agency which we have recommended would have the sole governmental responsibility under the D.C. Board of Commissioners for developing, operating and evaluating delinquency prevention programs; the Roving Leader program of the Recreation Department and the antidelinquency programs of the Commissioners' Youth Council would be consolidated under the aegis of the new agency. We have also recommended linking in one agency efforts devoted to preventing delinquent behavior and efforts aimed at rehabilitating offenders who have come to the attention of the police and the Juvenile Court; the personnel and resources of the Department of Public Welfare's institutional program for delinquents, including the Receiving Home, Cedar Knoll and Maple Glen Schools, and the halfway houses and shelter facilities, would be transferred to the Youth Commission.

In the adult field, a new Department of Correctional Services for adult offenders has been proposed by the American Correctional Association. This Department would include not only the present programs and institutions of the Department of Corrections but also the field supervision responsibilities of the D.C. Parole Board and the probation supervision responsibilities of the Probation Department of the Court of General Sessions. This reorganization preserves the independence of the D.C. Parole Board, which would be expanded to three full-time members and retain authority to decide whether to release a prisoner back into the community. The proposal would ensure continuity of treatment from the time an offender is sentenced through his final unconditional return to community life.

The Commission also recommends that the District of Columbia begin working toward a reorganization of its present court structure. We suggest the creation of a Family Court which would be vested with the responsibility for handling family problems now considered by the Juvenile Court, the Court of General Sessions, and the Commission on Mental Health. We recognize that the creation of such a court presents complex problems of court reorganization. But we believe that it is worth the effort in order to encourage a coordinated approach to the family problems which underlie much of the criminal behavior which so profoundly concerns the community.

PRIORITIES

Many of our recommendations, if implemented promptly, should produce visible results in the short term. In particular, we believe that our proposals for reorganization of the Metropolitan Police Department and for improvements in its operations can result in a significant increase in the Department's capacity to prevent crime and apprehend offenders. The Board of Commissioners and the Chief of Police have already taken some steps to implement the recommendations made by this Commission in July 1966, and we are confident that Congress will provide the resources necessary to transform our police agency into the finest in the country. Improved police service must be accompanied by more active citizen support and cooperation with our police, and this in turn can come only with more nonadversary contacts, clearly defined rules for the conduct of both police and citizens in volatile situations, and a greater appreciation by District citizens of the demands of police work.

In many areas we have suggested legislative authority to eliminate uncertainties or remedy gaps in law enforcement powers. The Commission has recommended legislation to provide explicit guidelines for the interrogation of arrested suspects by the police. In effect, the Commission's proposal would amend the existing requirement of presentment before a judicial officer without "unnecessary delay" in order to permit necessary and desirable investigative activities of police officers if they are accomplished within a "reasonable" time in strict conformity with the mandate of the Supreme Court in the recent *Miranda* decision or with the consent of the defendant.

We are concerned by the substantial number of additional crimes committed by persons released on bail: In a special study of 2,776 persons released on bail pending disposition of felony charges, we found that 207 (7.5 percent) were held for action of the grand jury on one or more felonies allegedly committed while still on bail. We have made

several recommendations designed to reduce serious crimes by such offenders. These include: (1) Amendment of the Bail Reform Act to permit judges to consider danger to the community in setting the terms of pretrial release; (2) doubling the penalties for crimes committed by persons released on bail pending trial or appeal; (3) legislation to authorize revocation of the pretrial release of defendants judicially charged with additional crimes; (4) expedited trial for defendants considered by the prosecutor to be dangerous to the community; and (5) legislation authorizing pretrial detention for those defendants whose release poses an extremely high danger to the community.

We recommend stringent new controls on the possession of firearms in the District of Columbia in an effort to reduce the alarming amount of handgun crime in this city. In 1965 robberies increased by 50 percent, while the number of handgun robberies increased over 100 percent. The District has a much higher rate of crimes committed with handguns than does New York, which strictly regulates their possession. While cognizant of the many legitimate interests involved in owning or using guns, the Commission has recommended the enactment of a handgun licensing law aimed at severely curtailing the purchase and possession of handguns by District residents.

Many administrative steps can also be taken promptly by our law enforcement and judicial agencies to enhance the deterrent impact of our criminal law. We believe that potential criminals will be more effectively deterred by a system characterized by omnipresent and efficient police action, vigorous prosecution of offenders, and expedited judicial handling from indictment through appeal. Throughout our judicial machinery, however, we have found inefficiencies and delays. Analysis of the disposition of felony arrests, for example, suggests that the U.S. District Court is processing as felons only 24 percent of those reportedly arrested for felonies by the police, and that a disproportionate number of felony offenders are being handled as misdemeanants in the Court of General Session. The backlog of felony cases in the U.S. District Court is higher than at any time in the last 15 years; the average felony prosecution in 1965 took 17 months from indictment through appellate disposition by the Court of Appeals. We attach a high priority to our recommendations addressed to the prosecutor and courts aimed at increasing the number of felony prosecutions and expediting the processing of all offenders.

Some recommendations in this Report cannot be quickly realized; they will require painstaking efforts as well as constant attention for years to come. They must, however, be included in any comprehensive strategy for reducing crime over the next 5 or 10 years. Although the

full impact of the new youth agency proposed by this Commission may be several years distant, it is essential that work begin immediately to draft the necessary legislation for consideration by Congress. Similarly, the personnel needs revealed in this Report—for probation workers, correctional officers, treatment specialists—require immediate consideration so that the budget for fiscal 1968 will reflect the dimensions of the need and the beginning of efforts to recruit and train such personnel.

This Report describes a crisis and invites change. The crisis has to do with the problems of the city and the requirement for change begins with government itself. Systematic and orderly progress can be achieved only by total commitment of people, resources and responsible leadership. The issue is even broader than the question of Home Rule for the District of Columbia or the kind of self-government that is most desirable or attainable. Even if Washington obtains Home Rule, the basic requirements for self-knowledge, skilled personnel, added resources, better coordination of official effort, and legislative change will still confront us. The responsibility and authority to get things done must be lodged in accountable hands, elected or appointed. A mix of divided and limited powers, of local and Federal prerogatives, of volunteer and paid policy makers is a luxury of another era and one that Washington and its Metropolitan Area will continue to afford at the peril of us all, from the inner city slum to the pleasant suburbs of nearby Maryland and Virginia.

There is an unfortunate impulse in this community to oversimplify the crime problem and look for a convenient scapegoat—police, courts, white establishment, or Negro criminals. Because most serious crime is committed by Negroes, for example, there are those who argue that any effort to achieve more effective law enforcement inevitably penalizes the impoverished, undereducated Negro. It is clear, however, that Negro citizens are currently bearing the brunt of serious crime in the District and that Negroes—like whites—are calling for more police protection, and will benefit from more efficient administration of the criminal laws. We believe the time has come for all District citizens as well as the mass media to put stereotypes and simplistic answers aside and settle down to the ardous task of informed criticism and thoughtful consideration of alternative remedies. The debate about crime may perhaps become more difficult, but the resulting efforts will undoubtedly be more productive than the fragmented, sporadic responses of the past.

The consequences of continued failure extend beyond the injury and loss that daily beset our city. Our inability to deal with crime invites

a gradual and increasing deterioration in the quality of life in the Nation's Capital, provoking hostilities and tensions among a frustrated and fearful community. This Report is submitted in the hope that implementation of its recommendations will stem the tide of criminality and make Washington a safer and finer place in which to live.

Separate Statements by Members of the Commission

MINORITY REPORT OF DAVID A. PINE*

I am constrained to disagree with the Majority of the Crime Commission in several respects, and accordingly file this Minority Report. There are two areas of disagreement in respect of which I have set forth my views rather extensively. They relate to *Court Decisions as a Causative Factor in the Commission of Crime* and the *Durham Rule*, respectively. My views on these subjects are contained herein in two separate sections, which follow. My views on other areas are contained in a third section.

I am authorized to state that Commissioner Bittinger concurs in this Minority Report.

I am also authorized to state that Chairman Miller joins in my Minority Report on the *Durham* rule to the extent stated at the conclusion of that Section.

I am also authorized to state that Commissioner Ballard agrees with this Minority Report on the burden of proof question contained in section II hereof dealing with the *Durham* rule.

I am also authorized to state that Commissioner Ballard agrees basically with the report dealing with court decisions contained in Section I hereof in respect of the extent to which the Court of Appeals appears to be departing from the harmless error rule. He feels that while the Court is doing so from the highest motives, as do I, the extent to which this tendency is being carried frequently results essentially in a search for error rather than truth.

FOREWORD

In order to place this Minority Report in context I feel that it is appropriate to make a few general observations.

Serious crime [1] rose 84 per cent in the years 1960 through 1965 in the District of Columbia,[2] while it rose only 34 per cent over the same

*Concurred in by Commissioner Bittinger and in part by Commissioners Miller and Ballard.

[1] By "serious crime" I mean felonies ranging from murder down to larceny of $50 or more. I do not include misdemeanors.

[2] The most recent statistics available disclose that serious crime increased

period in the nation, and only 51 per cent in cities of comparable size.[3] It is common knowledge that our city's streets are no longer safe, that our police are often ineffective in our protection and in solving crimes, and that our courts do not dispense swift, certain and sure justice. In short, crime has increased, law enforcement has lost the respect it once had, and criminals now go free.[4]

In recognition of this deteriorating situation the President took positive steps to reverse the trend. On February 15, 1965, in a message to Congress, he specifically focused his attention on our city for the reason that, "[t]he Nation's Capital should be a city in which every American can take justifiable pride." The President said of crime that:

> [t]he problems run deep, and will not yield to quick and easy answers.
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> *Crime will not wait while we pull it up by the roots.* We must have *a fair and effective system of law enforcement to deal with those who break our laws. We have given too low a priority to our methods and institutions of law enforcement, our police, our criminal courts and our correctional agencies.* This neglect must not continue, and the District should be the first to remedy it. (Italics supplied.)
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> These needs are urgent, and our responses in the District will aid and encourage efforts throughout the nation. It will not do merely to attempt minor changes; the problem is too big and too important to the community. We must seek the broadest and most imaginative improvements in the entire legal and social structure of our criminal law and its administration. To do this I shall establish a commission which will concern itself specifically with crime

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28% in July 1966 over July 1965; 36% in August 1966 over August 1965; 42% in September 1966 over September 1965, and 29% in October 1966 over October 1965. Monthly Reports of the Metropolitan Police Department.

[3] Compilation of the Uniform Crime Reports, Federal Bureau of Investigation, 1960–1965. The magnitude of crime is really not known, but an analysis of crime in this city by the Bureau of Social Science Research, Inc., concludes that five times as many offenses occur as are reported to the police and that city-wide, there are 22,300 actual offenses reported to the police against "mature individual citizens." *Preliminary Technical Report: Salient Findings on Crime and Attitudes Toward Law Enforcement in the District of Columbia*, Bureau of Social Science Research, Inc., p. 40 (May 28, 1966).

[4] The chances are 1 in 28 that an adult felon whose crime is reported to the police will ever be held accountable for it. (The factor of unreported crimes makes the felon's chances of escaping justice even greater. See note 3 *supra.*) Considering the 25,648 felony offenses reported to the police in fiscal 1965, the breakdown is as follows: 24.4% (6,266) of these crimes resulted in an arrest, 9% (2,315) were charged as felons by the police, 5.9% (1,526) were indicted, and 3.6% (927) were finally convicted. Table 4, p. 32, Staff Document on Prosecution of Criminal Cases in the District of Columbia.

and law enforcement in the District. It will enlist the best advice and assistance available . . . .

And on July 16, 1965, at the signing of the District of Columbia Appropriation bill, the President said: ". . . Americans want Washington, D.C., to be an example of a clean and safe city where law is respected, where order prevails, and where every citizen is safe in his home or on the streets. . . . There is *no place* where this malignant growth troubles us more than here in the capital city of Washington . . . . *It is not possible to record in statistics the inconvenience and the alarm that is felt by thousands of* [*Washington, D.C.*] *residents and visitors* who change the course of their daily lives for fear of becoming a victim and statistic of crime. . . . [*W*]*e are not going to tolerate hoodlums who mug and rape and kill in this city of Washington.*" (Emphasis added.)

It was on this day, July 16, 1965, that the President's Commission on Crime in the District of Columbia was created by Executive Order. Its mandate, is to "inquire into" the "causes of crime and delinquency and measures for their prevention, the organization and adequacy of law enforcement and the administration of justice, the correction and rehabilitation of offenders, the adequacy and effectiveness of the criminal laws," and other matters related to crime, its causes and its prevention. In other words, the overall problem, embracing every factor, large and small, is the challenging responsibility of this Commission.

Acting under a charter of this magnitude, I do not believe the Commission should gloss over, or minimize the importance of, one of the subjects to which this Minority Report is addressed, namely, *Court Decisions as a Causative Factor in the Commission of Crime.* Surely court decisions are an integral part of the overall problem, and my views on that subject are contained in Section I hereof, which follows.

The Commission in its report does address itself rather extensively to the *Durham* rule, another subject of this Minority Report, but its approach and treatment of *Durham* are defensive of its merits and resistant to any change. With this I disagree for the reasons set forth in Section II and the addendum thereto of this Minority Report.

In addition to these subjects, I am constrained to dissent generally in other respects in which I think the Commission has fallen short of the goals to which it is committed. Indeed, throughout its deliberations it seemed to me it was concentrating on minutiae, statistics and social and economic studies. This is reflected in its report and in the voluminous reports submitted by the Commission's staff. I do not disparage their relevancy or importance. Neither do I dispute

that socioeconomic ills are a vital causative factor in the commission of crime, and that steps should be taken to alleviate them, but there are other causes to which I think the Commission might well have given greater attention than it did.

That there are other causes would seem to be supported by history. I remember that during the dark days of the Great Depression in the early 1930s there existed over the land abject poverty, distress and misery, but I do not recall at that time that there was a vast upsurge in crime.[5]

Amelioration of social and economic ills, as well as the improvements recommended for the police department, correctional institutions, court and juvenile offender procedures, the reclamation and rehabilitation of prisoners, *etc.*, in which I have concurred, will take time and in many instances are long range in character.[6] However, I have had a belief that immediacy of action, where possible, should be one of our objectives. In that connection I have felt that one of the immediate, urgent ways to repress crime was swift, certain and impartial justice and that the Commission should have placed greater emphasis on this phase of the problem. My experience has caused me to believe that once wrongdoers are convinced that the law is not to be trifled with and that they will be called to account for their misdeeds, crime will decrease. I had hoped that the Commission, with all its prestige of Presidential imprimatur, would issue a clarion call to this end, addressed to all engaged in the complicated process of law enforcement—police, prosecutors and the courts.

Instead, I have not infrequently been confounded by the course our discussions have taken and the type of staff reports submitted.

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[5] From 1931 to 1935, while the nation's population grew by better than 3 million persons, the number of robberies and auto thefts decreased 35.2%, burglaries decreased 8.9%, and aggravated assault and larceny remained relatively constant. There was also a decrease in murder and nonnegligent manslaughter from a daily average of 4.5 in 1931 to 4.0 in 1935. The only increase reported was in the rape category, from a daily average of 3.5 rapes in 1931 to 4.4 in 1935. *Uniform Crime Reports*, Federal Bureau of Investigation, Vol. VI, No. 4, pp. 9–11 (1936).

[6] That social ills are not being overlooked, may I call attention to the fact that, at present, more than one-half of the District's operating budget of $277,400,000 is expended annually, directly or indirectly, on poverty and the social conditions which produce crime and delinqunecy, *i.e.*, on welfare, health, housing, police, courts and prisons. Testimony of D.C. Commissioner Walter N. Tobriner on H.R. 5688 and S. 1526, S. 1320, S. 1632, S. 1718 and S. 1719 before the Senate Committee on the District of Columbia, 89th Cong., 1st Sess. 254 (1965). This amounts to about $170 for every man, woman and child in the District of Columbia. Also, this does not take into account the vast sums of money made available to the District of Columbia out of general appropriation acts, nor the sums expended by the many private agencies.

On occasions I have been perplexed to find that some members of the Commission and its staff seemed to believe it to be our responsibility to suggest means for making the lot of the wrongdoer a little easier rather than to find ways for reducing crime. The latter, I felt, was the purpose of our creation.

I have also been mystified by reports of the staff and recommendations of some of the Majority in connection with many matters that seem to be ungermane to the task before this Commission of reducing crime.

My views have been known to the members of the Commission for some time. On the two principal subjects of this Minority Report, and on one other, they were submitted by me in writing for their consideration long prior to the submission by the Commission staff of the reports now made the basis of the Commission's Report. This submission of views by me came about under the following circumstances: At a meeting held on April 30, 1966, I pointed out that, so far as I knew, no consideration had been given by the Commission to these subjects and little had been given by its staff. I further commented that the complete report of the Commission, as I understood, would be due on or before July 16, 1966, then only two and one-half months away, and that the time to act had arrived. The Chairman shared my concern, and I agreed to prepare a draft report on each of these subjects without delay. This I did, and on May 4, 1966, I submitted to the Commission a draft report relating to *Court Decisions as a Causative Factor in the Commission of Crime*, on May 11, 1966, a draft report on the *Mallory Decision*, and on June 6, 1966, a draft report on the *Durham Rule*. Thereafter, these draft reports were rejected by a majority of the Commission. Subsequently a report on the *Mallory* decision was agreed to by a majority of the Commission containing some of the recommendations I had previously made. There is, therefore, no minority report by me on that subject.

I also wish to note that the Majority Report on the two remaining subjects has relied on some statistically-based conclusions which I do not believe can be sustained, and also makes statements which I consider incorrect. I shall discuss these points and make other brief comments on the Majority Report in an addendum to each of the following Sections I and II. I shall also make brief comments on two other subjects in Section III hereof.

I shall now proceed to a discussion of these subjects, the first of which is *Court Decisions as a Causative Factor in the Commission of Crime*, contained in Section I.

SECTION I. COURT DECISIONS AS A CAUSATIVE FACTOR IN THE COMMISSION OF CRIME

By his Executive Order, the President, in addition to an inquiry into causes of crime, directed this Commission to make recommendations to "prevent and control" it.

There are many causes of crime, some with the deepest of roots, and there is no simple solution and no single remedy. This Commission is thus confronted with the duty to ascertain, as I have stated, all causes, and then to make recommendations for their prevention or control. The Commission has sought out and ascertained many causes and has made recommendations thereon in which I have concurred, but for the reasons given in the two reports of the Commission it does not include among them any recommendations on the subject matter of Section I of this Minority Report.

Contrary to the views of the Majority, my studies, observations and experience have led me to the conclusion that the tenor of some decisions of the United States Court of Appeals for the District of Columbia are among the indirect causative factors in the commission of crime. I do not place these decisions as a top factor in causation by any means, but I think that it is one that cannot be ignored, and should be considered and acted upon.

This conclusion is not in disparagement of the judiciary, which I know has been motivated in their decisions by the highest principles of protecting the innocent, but I would be recreant in my duty as a member of this Commission, if I did not "speak out" and respectfully set forth my conclusions in this regard. I think their decisions have gone too far in one direction. This is not a happy position for me to find myself, as I am a member of the judiciary on the trial court level of over 26 years tenure; and I would not state the conclusion herein reached did I not have an abiding conviction of its validity.

These court decisions, to some of which I shall hereinafter advert, have created, in my opinion, a climate hospitable to the belief that punishment of the guilty is far from certain and may be avoided by technicalities and loopholes in the law. I subscribe to the view that punishment and fear of punishment are deterrents to crime, and that punishment should be continued as a weapon against its commission.[7] I believe that when certainty of punishment is lacking by reason of technicalities, without regard to guilt, its prophylactic effect is substantially lessened, and the commission of crime is encouraged. In-

[7] This view is contrary to the view of others, but that is the premise on which my conclusion is reached.

deed, it is axiomatic that when law enforcement is weak and vacillating, disrespect for the law ensues, and crime begins to flourish. I am not referring herein to decisions involving constitutional safeguards, where the need for their preservation is paramount to all other considerations.

The court decisions referred to herein are given as examples[8] which form the basis for my views. They are not intended to be all embracing, as numerous others could be cited. I have grouped them under separate headings, and at the conclusions, have made suggestions as to such measures as appear to be open for a change in climate. I have also quoted from some of the dissenting opinions which display the same concern as mine. There is some overlapping, inasmuch as the points involved cannot be neatly placed in separate categories, and furthermore, it is the totality of this decisional law emphasizing form over substance, as I see it, which is the basis for my views.

These decisions concern District of Columbia cases only for the reason that the Executive Order creating this Commission embraces only the geographical limits of the District of Columbia. Nationwide problems are within the purview of the President's National Commission on Crime, created at or about the same time as this Commission.

Technicalities and Search for Error on Which To Reverse

I shall first discuss decisions of the Court of Appeals in which technicalities, and not substance or verities, appear to form the basis for a reversal of convictions. I shall also discuss decisions in which there has been a quest for "error" in order to find grounds for reversal. These exemplify the character of decisions which have tended, in my opinion, to create a belief among wrongdoers that they can "get away with it," to use a colloquialism not infrequently employed by them.

In this discussion I shall give, in most instances, a short recital of the facts in the cases referred to (cast histories so to speak) in support of my view that these decisions are based on reasons which appear to me to be gossamer thin in the context of realities, and should not form the basis for allowing guilty men to go unpunished.

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[8] Opinions of the character herein discussed have continued since the writing of and submission of this chapter to the Commission in both direct appeals and in collateral attacks on convictions: *E.g.*, *King* v. *United States*, —— U.S. App. D.C. —— (No. 20,138) decided October 24, 1966 (conflict of opinion in panel decision); *Rouse* v. *Cameron*, —— U.S. App. D.C. —— (No. 19,863) decided October 10, 1966 (search for error); *Gregory* v. *United States*, —— U.S. App. D.C. —— (No. 19,599) decided July 28, 1966 (Rule 52, Fed R. Crim. P.); *Levin* v. *Katzenbach*, —— U.S. App. D.C. ——, 363 F. 2d 287 (1966) (technicalities and search for error).

The first case I cite is one of the most disturbing of the examples given. It is *Killough* v. *United States*, 114 U.S. App. D.C. 305 (1962). In that case, defendant was indicted for the first degree murder of his wife, and he was brought to trial. There the Government offered in evidence a confession made by defendant to the police. It was held to be inadmissible by the trial court and excluded on the ground that it was violative of the *Mallory* rule. The Government then offered a second confession. This was made subsequently at the jail after defendant was no longer in police custody. It was also made after defendant had been warned of his rights, not only by the police, but by the United States Commissioner and the deputy clerk. Specifically, at the Commissioner's hearing, prior to this second confession, defendant was told that he need not make any statements, that any statements he might make could be used against him, that he had a right to counsel, and that he could have a hearing where either he or his counsel could cross-examine witnesses. This second confession was made to a police officer who was receiving instructions from defendant at the jail as to the disposition of his wife's body, in the course of which defendant restated the essentials of his crime to such a degree that there could be no doubt that he had strangled his wife to death. Indeed, throughout, there has never been doubt of his guilt. The trial court received this second confession in evidence, and defendant was convicted of manslaughter. From this conviction he appealed. His conviction was reversed by the Court of Appeals in a 5 to 4 decision. The basis for the reversal was the admission in evidence of this second confession, which the majority of the Court of Appeals found to be inadmissible on the ground that it was the fruit of the earlier inadmissible confession. The dissenting judges expressed their views in forceful and unequivocal language. Examples of their views are given in the following quotations from their dissenting opinions. One of these judges stated that "it would be difficult to overstate the enormity and scope of this incredible 'interpretation' of Rule 5(a)," the basis for the *Mallory* decision. Another dissenting judge declared that the majority opinion "has struck a grievous blow at the administration of criminal justice." Still another dissenting judge stated that "in our concern for criminals we should not forget that nice people have some rights too." Further, he stated that the majority decision was "another example of what I think is the Court's tendency to emphasize technicalities which protect criminals and hamper law enforcement, against which I have repeatedly protested."

The case was thereafter retried after the reversal, and again defendant was convicted of manslaughter. The Government, of course,

did not use the two confessions above referred to which had been held to be inadmissible, but relied on still another, or third confession. This confession was likewise made at the jail but to a classification intern employed there who was in no way connected with the police, during a routine jail inquiry. It was not known to exist at the time of the first trial, and was essentially the major component of the Government's basis for a second conviction. This confession to the classification intern was received in evidence by the trial court.

Defendant again appealed from the second conviction, and in a 2 to 1 decision it was again reversed, this time on the ground that the confession to the classification intern was "impliedly confidential," [9] and inadmissible in evidence. In his dissenting opinion from this reversal the dissenting judge detailed the then law in the District of Columbia, "that if an accused shall have received [a warning from the Commissioner] . . . he is thereafter free to talk or not, and if the accused, under such circumstances, voluntarily admits his crime his confession may be received against him." He further stated that, "it had become obvious that *Killough* wanted to talk about the episode. He carried around and exhibited—perhaps proudly— clippings from the newspapers which had detailed the crime." Expressive of his view that this reversal was a miscarriage of justice, the dissenting judge summarized as follows:

> Meanwhile, following our opinion of October 4, 1962, our judgment of remand reached the District Court on November 26, 1962. On December 11, 1962 *Killough* was released on bail. Two days later he married Miss Holmes [his girl friend to whom he had also related the details of the crime and who testified for the prosecution at *Killough's* first trial]. When called as a witness at the second trial, she asserted her privilege as his wife and *her* lips were sealed. Talk about fruits of wrongdoing! This case has reached a nadir. . . . [O]nce again, this court has painted itself into a corner.

At what was to be Killough's third trial, the case was dismissed and *Killough* was set free by the trial judge because, all the confessions then having been held inadmissible by the Court of Appeals, the Government was left without evidence upon which to proceed and convict.

Next, I cite *Baber* v. *United States*, 116 U.S. App. D.C. 358 (1963), as an example. There the charge was housebreaking and assault with intent to commit rape. Defendant was convicted on both counts, but the second count (assault with intent to commit rape) was reversed with directions to enter a judgment of acquittal thereon. It appears that the complaining witness went to bed about 2:30 or

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[9] *Killough* v. *United States*, 119 U.S. App. D.C. 10 (1964).

3:00 o'clock on the morning in question. She slept in a bedroom on the ground floor with her four-year old child. About 4 a.m., she was awakened by something "feeling over" her. She thought it was her child, but then she felt her skirt being torn. She saw that it was a man leaning over her and was "scared". She struck him, knocking him down. She then jumped up and turned on the light. She recognized the intruder as the defendant. He fled. The Court of Appeals found that there was clearly an assault, that defendant tore the complaining witness' skirt, and that there was an evident intent to have carnal knowledge, but reversed on the ground that evidence of a purpose to carry into effect this intent with force and against the consent of the complainant was lacking, apparently because the defendant made no threats, indeed said nothing at all, and apart from tearing her skirt did not use physical violence. The tearing of her skirt, to one other than a theorist, would seem to be sufficient to allow the jury to determine defendant's purpose, as it did affirmatively, especially when the Court of Appeals in its decision conceded that there was "an evident intent to have carnal knowledge." How it could do otherwise would strain my credulity when defendant "had his pants open and his privates exposed" as stated in the decision.

In *Smith* v. *United States*, 118 U.S. App. D.C. 235 (1964), is another example. There, two defendants were convicted on three counts, and appealed. They were charged with the unauthorized use of an automobile in each of the first two counts, and the illegal interstate transportation of one of these automobiles in the third count. They were each given concurrent sentences. The sentence on one count was reversed by the Court of Appeals because of an illegal search and seizure, and the case was remanded on the other two for determination by the District Court as to whether the admission of incompetent evidence on the one count which was reversed was sufficiently prejudicial to require reversal of all three. This brought about a divided court of 2 to 1, and the following are extracts from the opinion of the dissenting judge: "[t]he evidence introduced by the Government in support of [the sentence which was reversed] was quite different from that adduced by the Government [under the other two counts]" and "[I]n no sense did the Government's evidence on the [reversed count] depend upon, include, or duplicate its proof under the [other counts]. Further, he stated that "neither appellant suggested any potential prejudice from the joinder of the counts, and made no motion that the counts be tried separately." He could find no basis for the reversal and concluded his dissenting opinion as follows:

"Decisions like this, which I regard as giving undue comfort to convicted criminals, have come to be commonplace in this court." Thereafter, the case was dismissed.

Another example is *Hunt* v. *United States*, 115 U.S. App. D.C. 1 (1963). There the defendant was charged with robbery, which in this jurisdiction embraces purse snatching. The complainant while boarding a bus was subjected to the normal jostling of a bus stop crowd. On entering the bus she noticed that her purse was open and her wallet was missing. She looked through the window toward the bus stop whence she had come, saw the defendant and co-defendant shaking hands, alighted at the next stop, and accompanied by two policemen, proceeded toward the place where she had boarded the bus. There she saw the two defendants who immediately began to run. The officers gave pursuit and arrested one of the defendants who threw complainant's wallet in the gutter. The other defendant continued to run but was later caught and brought back to confront the other. Initially both defendants denied knowing each other, but later one admitted knowing the other and fleeing with him on sighting the police. The District Court submitted the case to the jury on the charge of robbery for which he had been indicted. But the Court of Appeals held that it should have been submitted only on the basis of petty larceny on the theory that the accused "might" have picked up the complainant's wallet knowing it was hers and failed to return it. Accordingly, the conviction was reversed and the case remanded for a new trial on the lesser offense of petty larceny *only*, a misdemeanor, without ever allowing a jury to draw its own inferences as to whether defendant took the wallet from complainant or "might" have picked it up. Thereafter the case was dismissed.

In the Court's decisions along this line there also appears to be a frequent search for error as a basis on which to reverse. In *Stewart* v. *United States*, 366 U.S. 1 (1961), a District of Columbia case, one of the justices, in a dissenting opinion, quoting from an earlier case, states that:

> To turn a criminal appeal into a quest for error no more promotes the ends of justice than to acquiesce in low standards of criminal prosecution.

Defendant in that case was charged with first degree murder for the killing of the proprietor of a grocery store in the perpetration of a robbery. He had previously been convicted three times, each with a mandatory death penalty, and the conviction was reversed the third time on the sole ground that the prosecutor asked "This is the first time you have gone on the stand, isn't it Willy?" This decision caused one of the justices of the Supreme Court to exclaim in his dissenting

opinion that the defendant "can laugh up his sleeve today for he has again made a laughing stock of the law."

Another case disclosing a tendency to search for errors on which to reverse is *James H. Williams* v. *United States*, 109 U.S. App. D.C. 18 (1960). Before the court was a motion for appointment of counsel, which was granted. This evoked a dissenting opinion. In it, the dissenting judge stated that the action of the majority was "simply an effort to have a third court appointed lawyer to try to find what his predecessor reported was non-existent (if that lawyer is to be believed), namely a non-frivolous question for appellate review," and that he was "unwilling to ask the members of our bar, especially the younger men who look to the courts for guidance on ethical standards, to stultify or prostitute themselves by our pressing them, in circumstances like those presented here to search out some technical basis for reversal in the face of what has been reported to us."

Another case which appears to magnify technical error over substantial justice is *Isaac Williams* v. *United States*, 119 U.S. App. D.C. 177 (1964). There the Court of Appeals, after finding that certain statements were producible under the Jencks Act,[10] held that the error in not requiring their production was not harmless and reversed the conviction of assault with a dangerous weapon. The statements in question were statements given to a clerk of a grand jury unit by two witnesses for the prosecution who saw the events which led to defendant's indictment and who testified at the trial in that regard. The rule for determining whether or not the failure to require production was harmless, in the words of the majority, is "whether counsel should have had the choice of using the statements to test the witnesses' credibility; that is, in the present context, to test whether the witnesses gave true accounts of what occurred."

The majority listed three "discrepancies" which they deemed to be not harmless and upon which they based their reversal, namely: (1) the statements of the witnesses that the appellant struck his victim twice with a bar stool, while the witness testified that he struck him only once; (2) one witness' statement said that appellant arrived at the bar "starting at 7 p.m.," while in his testimony he stated that he arrived "around about 5 o'clock;" (3) the same witness' statement called the appellant a troublemaker, while the witness testified that he had always liked the appellant and had no grudge against him.

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[10] This Act, Sec. 18–3500 U.S.C., briefly, requires the production by the Government, on motion of defendant, of any statement made by a witness called by the Government who has testified.

As the dissenting judge stated, "These are points of difference but they are not discrepancies which could have enabled appellant to impeach [the witnesses] on cross-examination. The exact hour of appellant's arrival at the bar and whether he struck his victim once or twice with a bar stool seem to me to be of little moment. And there is nothing inconsistent between [the witness' statement] that appellant was a troublemaker, and [his] testimony that he had no grudge against him." The dissenting judge found nothing substantial in the statements which was not already in the trial testimony, and that the production of the statements would have given the appellant no information additional to that which was obtained from the examination at trial. The following pertinent language of the Supreme Court in *Rosenberg* v. *United States*, 360 U.S. 367, 371 (1959), was also quoted by the dissenting judge:

> . . . However, when the very same information was possessed by defendant's counsel as would have been available were error not committed, *it would offend common sense and the fair administration of justice to order a new trial. There is such a thing as harmless error and this clearly was such* . . . . (Italics supplied.)

Thereafter defendant was allowed to plead guilty to the lesser offense of simple assault, a misdemeanor, and was placed on probation.

It might be pointed out that in searching for error on which to base a reversal, the Court appears to go counter to one of its own opinions in which the following statement appears:

> Appeals are for the purpose of correcting errors; they are not for the purpose of affording a review of an entire trial and substituting the views of the appellate court for the decision of the trial court upon all questions which the trial court is called upon to decide in the course of the trial. *Lewis* v. *United States*, 111 U.S. App. D.C. 13, 15 (1961).

Also, as apposite to this point, reference should be made to the case of *Anthony Williams* v. *United States*, 120 U.S. App. D.C. 244 (1965), in which one of the Judges of the Court of Appeals in a concurring opinion speaks of the "Disneyland" contentions now being made in that Court by court-appointed lawyers, and then makes the following pertinent comment: "We will all do well to bear in mind the admonition that a criminal trial is not a sporting contest and that an individual's guilt and society's protection are not irrelevant."

And still more recently, in *Cooper* v. *United States*, —— U.S. App. D.C. ——, 357 F. 2d 274 (1966), where the defendant had been convicted of robbery, the dissenting judge, addressing himself to the same subject matter had this to say: "The other ground relied on for reversal represents another manifestation of this Court's tendency to

require not merely a fair trial but a perfect trial. A fair trial is sufficient. *Lutwak* v. *United States*, 344 U.S. 604, 619 (1953)." Thereafter the case was dismissed.

Again as recently as June 7, 1966, in the case of *Corley* v. *United States*, —— U.S. App. D.C. ——, 365 F. 2d 884 (1966), the dissenting judge had the following to say in connection with the Court's search for error: "[H]owever, I see no basis for reversal, especially none which justifies the majority's finding plain error in an issue that was not briefed or argued. Again this Court reaches out for issues not considered important by the parties either at trial or on appeal."

It is my view that opinions of the foregoing character provide a basis for a belief that the Court places emphasis on technicalities and searches for error on which to reverse. Such belief would encourage the commission of criminal acts of a premeditated character, such as robbery and housebreaking, for a man bent on committing crime, holding this belief, might well reason that, if apprehended, he would have a good chance to go unpunished through loopholes and technicalities in the law.

Of course such a person would normally get his information as to decisions of the Courts through gossip or newspaper accounts which may, or may not, be accurate, but it is rare that such accounts are loathe to bring to the attention of the reading public instances which are regarded as breakdowns in the administration of criminal justice. While the potential criminal would probably not be aware of the nuances of these decisions, the general impression left with him would be that this is a "soft" place for the commission of crime. Moreover, it is significant that in recent years many persons after conviction of criminal offenses and while incarcerated personally transmit complaints to the court, apparently without the aid of counsel, which show a familiarity with court decisions not usually encountered among lay people.

But apart from inferences of general knowledge of court decisions on the part of wrongdoers, which to me are unassailable, I have examples of convincing direct evidence derived from spontaneous utterances from the lips of persons directly involved. I cite two examples:

A defendant who had been sentenced and had reached the cellblock adjacent to the courtroom was holding a conversation with his attorney who had followed him there. My clerk at that time took to him forms to be filled out for an appeal *in forma pauperis*. The attorney was expressing regret at the outcome of the case, when the defendant was heard to say, "Don't worry Bud, as soon as I get upstairs I will be out on the streets." Upstairs, in the vernacular, means the Court of Appeals.

Another example of this attitude of defendants is the following: A detective testified that while he was processing the forms necessary for booking, *etc.*, after an arrest, the accused told him, according to the transcript, to—

> Hurry up and make up these forms, because he wasn't worried about the Courts or the grand jury or the rest of this stuff, but he just wanted to get to the Court of Appeals, where he would beat this case.

For the foregoing reasons, I believe that the Crime Commission should have included in its report a discussion of this subject and a recommendation to the District Attorney that when confronted with decisions of this character, he should move for a rehearing, or a hearing *en banc*, and vigorously urge that the court re-examine the case involved to make certain that legal technicalities have not superseded substantial justice, and that the scales have not been tipped in favor of protecting the accused to the detriment of society.

I realize that cases of this kind involve subjective judgment and are difficult of appraisal. Further, I recognize that the Court of Appeals in most cases is the final arbiter in these matters, and I have no thought of impugning its considered judgment for which I have the highest respect. All I suggest is that an opportunity be provided for the Court of Appeals to make a critical re-examination of its decisions to assure itself that realities have not been subordinated to legalisms and that in protecting the rights of the accused the correlative rights of society have not been neglected—in other words a vigorous and fearless plea for a searching "second look."

Adherence to Rules 30 and 52(a)

I shall now discuss decisions of the same import, but which additionally have to do with adherence to certain rules of the Federal Rules of Criminal Procedure. These rules, promulgated by the Supreme Court, have the force and effect of statutes of the United States. They are Rules 30 and 52, Fed. R. Crim. P.

Rule 30 provides that "no party may assign as error any portion of the charge or omission therefrom unless he objects thereto . . . stating distinctly the matter to which he objects and the grounds of his objection." This rule is designed to give the trial judge an opportunity to correct any error he may have made in the charge so as to avoid a reversal and retrial. Another purpose of this rule as stated in *Tatum* v. *United States*, 101 U.S. App. D.C. 373, is "to preclude a defendant from exploiting his own failure to make timely objections . . . To encourage, or even tolerate this one-sided 'Russian Roulette' with the courts could lead to a breakdown of all law enforcement in a system already plagued by multiple trials."

Rule 52(a) provides that "any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

Rule 52(b) provides that "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

Rule 52, which was derived from a section of the Judicial Code of the United States, has for its purpose, as stated by the Supreme Court, the preservation of a check upon arbitrary action and essential unfairness in trials, but at the same time is designed "to make the process perform that function without giving men fairly convicted the *multiplicity of loopholes* which any highly rigid and minutely detailed scheme of errors, especially in relation to procedure, will engender and reflect in a printed record." [11] Italics supplied.)

Notwithstanding these rules, the decisions hereinafter referred to disclose that their purpose, as above stated, has not always been realized; that Rule 52(a) has not been taken into account at all on occasions, and on others has been so construed that its salutary purpose to prevent a resort to technicalities in order to free men "fairly convicted" has been impaired.

Rule 30, Fed. R. Crim. P., having the same ultimate purpose as Rule 52(a), but a different approach, likewise, has on occasions not been considered. Technicalities and "loopholes", in the language of the Supreme Court, have prevailed over substance, and guilty men have gone unpunished.

The need for adherence to these rules is not limited to my personal views, but has been referred to time and again by Judges of the Court of Appeals in dissenting opinions, quotations from some of which are included in this Minority Report. One of these Judges in referring to these rules stated that they evince the "deep concern in the Congress as to the course which the Courts had been taking," [12] and later in the same opinion he quoted from a Supreme Court case [13] holding that a "verdict should not be reversed on account of a defect *so obviously technical and unsubstantial.*"

I shall now refer to several examples of these decisions, and give a short recital of the facts in each, as support for my view that the full effect of these rules has not been attained.

The first example I cite is *Barry* v. *United States*, 109 U.S. App. D.C. 301 (1961). There the defendant was charged with the unlawful transportation in interstate commerce of a falsely made check. An

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[11] *Kotteakos* v. *United States*, 328 U.S. 750, 760 (1946).
[12] *Jackson* v. *United States*, 121 U.S. App. D.C. 160 (1965).
[13] *Hagner* v. *United States*, 285 U.S. 427, 432 (1932).

integral part of this offense is knowledge by the accused that the check was falsely made and forged. The conviction was reversed by the Court of Appeals on the ground that the District Court in its charge to the jury "failed to make this clear."

The District Court had stated in its charge to the jury that the accused was charged with presenting at a filling station in Maryland a forged check *knowing it to be forged;* that he requested that the check be cashed and it was cashed, and that thereafter the forged check being drawn on a bank in Washington was transported from Maryland to the District of Columbia. The Court further in its charge stated that the burden of proof was on the Government to prove guilt beyond a reasonable doubt, and that unless the Government sustained this burden and proved beyond a reasonable doubt that the defendant had committed every element of the offense charged, the jury must find him not guilty. Thereafter in its charge the Court quoted from the statute, under which defendant was indicted, containing the words "knowing the same [check] to have been falsely made," and stated that one of the elements of the offense was that the defendant committed the act with a fraudulent intent. It would seem that the "error" above referred to, if it be error (and the dissenting Judge in the Court of Appeals found it was not, and it is difficult for me to discern it), was of such a technical nature that a jury could not have been misled. Furthermore, the district court was not asked to enlarge or clarify its charge on this point. The reversal of the conviction therefore did not accord with Rule 30, *supra*, unless it came within the purview of Rule 52(b), *supra*, which provides that plain errors affecting substantial rights may be noticed although not brought to the attention of the Court. The "error," if any, providing the basis for the reversal would appear to be entirely formalistic and not within the category of "plain" error, but instead would be within the ambit of Rule 52(a), *supra*, which provides as above stated, that any error which does not affect substantial rights shall be disregarded. The dissenting Judge in this case found that the charge was entirely adequate, that the evidence of appellant's guilt was overwhelming, and that there was no justification for resorting to Rule 52(b), *supra*, providing that appellate courts may notice plain error "affecting substantial rights."

Another instance which would appear to be contrary to Rule 52(a), *supra*, is *Hansford* v. *United States*, 112 U.S. App. D.C. 359 (1962). In that case the indictment charged a violation of the narcotics laws. The defense was "entrapment." In that connection the District Court charged the jury that "if an otherwise innocent person, not inclined to commit a criminal offense, is induced, is lead into, is enticed by a

police officer to commit a criminal offense, the prosecution can have no benefit from it and he would not be guilty." The Court of Appeals in an *en banc* decision, with two judges dissenting, held that the use of the word "innocent" in the charge was error, notwithstanding it was the language of the Supreme Court in two of its previous decisions announcing the law of entrapment;[14] and, in reversing the conviction, decided that the word "innocent" in the context of entrapment meant that the defendant would not have perpetrated the crime with which he was charged but for the enticement of the police officer, and should have been so explained to the jury.

After the reversal the defendant was tried again, and again convicted. Again he appealed, and on July 6, 1966, —U.S. App. D.C. —, 365 F. 2d 920, the Court of Appeals reversed this latest conviction. The holding this time was that "despite the earlier finding of competency [to stand trial], the trial court had erred by failing to inquire further at the time of the trial," and the case has been sent back again for still another trial. As stated by the dissenting Judge, "Not once, by direction or indirection, in argument or otherwise, did counsel assert before the trial judge that *Hansford* was incompetent to stand trial. On this appeal, not once, either in his main brief or in his reply, was it contended that *Hansford* was not competent at trial."

In the case of *Johnson* v. *United States*, 115 U.S. App. D.C. 63, 70 (1963), subsequent to the first *Hansford* case, *supra*, the dissenting Judge in *Johnson* stated that the Court of Appeals in the latter case, "took a step which I believe shackles the efforts of the police to curb the traffic in narcotics" and that "the extension of existing principles of the doctrine of entrapment here undertaken will compound the difficulties of the police, for we now offer the defense of entrapment in a situation quite outside the ambit of *Sorrells*, *Sherman* [Supreme Court cases] or any theory of that defense with which I am acquainted.

In *Naples* v. *United States*, 113 U.S. App. D.C. 281 (1964), although no objection was made, either at trial or on appeal, to the admission of certain testimony under the "adoptive admission" rule and no cautionary instruction was requested, the Court of Appeals held that it was "plain error" to permit its admission. On this point, one of the dissenting Judges had this to say: "[T]he majority of this court, on its own initiative, not only raises the question but, without opportunity on the part of the Government to argue the point, decides as a *matter of law* that [the defendant] did not assent to (and thereby adopt) [the police officer's] recital . . . . Since this is obviously a question of

[14] *Sherman* v. *United States*, 356 U.S. 369 (1958); *Sorrells* v. *United States*, 287 U.S. 435 (1932).

fact, and since there was neither objection nor a request for instruction on this point in the trial court or here, it is not a case of 'plain error' affecting substantial rights." On retrial he was again convicted of murder in the first degree and again he has appealed.

In *Awkard* v. *United States*, 122 U.S. App. D.C. 165 (1965), the Court of Appeals, after stating that "there was clearly sufficient evidence for the jury to convict," reversed the convictions of simple assault and assault with intent to kill because the "trial judge . . . clearly abused his discretion in permitting the prosecuting attorney to cross examine defendant's character witnesses on appellant's prior arrests." Previously it has been the rule in this jurisdiction that a character witness may be impeached in cross examination by inquiry as to whether he has heard of defendant's arrests as bearing on the credibility of the witness as to defendant's character. The Court of Appeals found, although I do not perceive its relevancy to the point involved, that the direct testimony of one character witness "was weak to begin with" and "had already been impeached," and the other witness testified "that she did not know defendant's reputation in the commuity for peacefulness and good order, the character traits relevant to the crime charged." Under these facts, even though the trial judge "copiously provided" cautionary instructions, the court reversed, without discussing whether or not the "error" was "harmless" under Rule 52(a). Thereafter defendant was retried and acquitted.[15]

Because of decisions of this character, of which the foregoing are examples, I believe that the Crime Commission should have included in its report a recommendation to the District Attorney that, in his presentation of cases before the Court of Appeals, he vigorously urge upon that court the vitality and potency of Rule 52(a) and Rule 30, Federal Rules of Criminal Procedure, to the end that avenues of escaping just punishment may not appear to be open and provide a basis for a belief that technicalities transcend guilt.

I would cite other examples on the foregoing points, but that would needlessly protract this already, but I think necessarily, protracted Report.

I conclude this section of chapter I by the following relevant quotations from two of the great jurists and legal scholars of our time.

The first is a quotation from Justice Benjamin N. Cardozo, as follows: "Justice, though due to the accused, is due to the accuser also.

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[15] All those engaged in the practice of criminal law recognize that the likelihood of acquittal on a second trial is usually greater than at the first trial for numerous reasons, among others, unavailability of witnesses, fading memories, opportunity for impeachment of witnesses by testimony given at the first trial.

The concept of fairness must not be strained till it is narowed to a filament. We are to keep the balance true." [16]

The second is from Judge Learned Hand, as follows: "Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime." [17]

Conflict of Opinion in Panel Decisions

I shall now discuss "Conflict of Opinion in Panel Decisions" which have tended to create a belief that the law is unequally administered and uncertain and weak, as follows:

The United States Court of Appeals for the District of Columbia, consists of 9 Circuit Judges and several Senior Circuit Judges. At times they have the assistance of Judges from other jurisdictions who sit by designation. They usually hear cases in panels or divisions of three. On occasion the decisions of one division is contrary to the decision of another division.

On this point several recent examples might be given, as follows:

In *Ross* v. *United States*, 121 U.S. App. D.C. 233, decided June 30, 1965, a conviction was *reversed*, and defendant was released on the ground of delay between the date of the offense and the date of arrest. One of the panel of three dissented.

In *Powell* v. *United States*, 122 U.S. App. D.C. 229, decided August 30, 1965, two months later, by another panel of the Court, a conviction was affirmed notwithstanding a similar delay, one judge dissenting. One of the judges who voted to affirm in the later (*Powell*) case was the dissenting judge in the former (*Ross*) case. That the opinions in the two cases are conflicting is acknowledged by the dissenting Judge in the later case, who stated in his dissent that the opinion "looks 180 degrees in the opposite direction from the panel opinion" in the earlier (*Ross*) case.

In *Davis* v. *United States*, 120 U.S. App. D.C. 224 (1965), a panel of the Court of Appeals allowed a defendant bail pending appeal, overruling the District Court which had refused such bail. Defendant had been convicted of violating the narcotics laws. He was a wholesale dealer in narcotics on a relatively large scale. The District Court Judge in refusing bail set forth in his opinion that de-

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[16] *Snyder* v. *Massachusetts*, 291 U.S. 97, 122 (1934).

[17] *United States* v. *Garrison*, 291 Fed. 647, 649 (S.D.N.Y. 1923).

fendant had a record of several prior convictions, including burglary and sale of narcotics, and after considering the large number of persons affected by the activities of a wholesale supplier of narcotics, and the "appalling distress, wretchedness and dire misery, sometimes beyond belief," stemming from this illicit traffic believed that defendant was a danger to society and not entitled to release. On appeal from that decision, the Court held that the Government had not met its burden of persuasion that bail should not be granted, and released defendant on bail, with one Judge dissenting.

In *Hansford* v. *United States*, 122 U.S. App. D.C. 320 (1965), six months later, another panel of the Court of Appeals, with one Judge dissenting, had before it a parallel case of a defendant convicted of violating the narcotics laws. He likewise was a dealer in narcotics with a criminal record. At the time of his arrest he had in his possession heroin of a market value of approximately $750, which gives an idea of the scale of his operations. Motion for bail pending appeal in this case, however, was denied by the Court of Appeals. One of the Judges joining in the opinion denying bail in this later (*Hansford*) case was the dissenting Judge in the former (*Davis*) case, and the dissenting Judge in the later case was the writer of the opinion in the latter case.

In *Wider* v. *United States*, 121 U.S. App. D.C. 129 (1965), the Court of Appeals found that there had been an inadequate determination of defendant's competency to stand trial. In selecting a remedy, the Court said, "We think that *Dusky* v. *United States*, 362 U.S. 402 (1960), is authority for the proposition that an inadequate determination of competency is not curable by a *nunc pro tunc* hearing," and reversed and *remanded* the case for a *new trial* to be preceded by a proper competency hearing.

Three weeks later, a different panel in *Pouncey* v. *United States*, 121 U.S. App. D.C. 264 (1965), [one Judge dissenting], similarly held that a defendant's competency had been inadequately determined. But, instead of remanding the case for a new trial as in the preceding case, the court, notwithstanding the *Dusky* and *Wider* decisions, *supra*, remanded for a *nunc pro tunc* hearing because "justice will be better served."

There are other conflicting decisions between panels of the Court of Appeals which could be mentioned, e.g., the decisions under the "*Mallory* decision" discussed in the Commission Report, but these would appear to be sufficient to point up this topic.

Because of this conflict, confusion and uncertainty results, and inequality of treatment is accorded to defendants. This invites a belief

that the law is uncertain, weak and unequally administered, and thereby encourages the commission of crime.

I, therefore, believe that the Crime Commission should have included in its report a recommendation that the Court of Appeals adopt a rule requiring adherence to division or panel opinions in cases thereafter coming before different panels unless and until an *en banc* decision of the Court overrules or reverses the division.[19]

Addendum I: Court Decisions as a Causative Factor in the Commission of Crime

This addendum is written without the benefit of a finalized report of the Commission. Accordingly, inasmuch as I must answer contentions as they were presented in drafts prior to the printed one, I must deal with the Majority's contentions as I have known them and as I anticipate them. As of the date of this writing, December 5, 1966, as I understand it, the Majority will just barely touch on the subject of Section I of my Minority Report on Court Decisions and Commissioner Krash, who has filed a separate statement, will treat this aspect of the total discussion of the United States Court of Appeals for the District of Columbia Circuit. His views are concurred in by Commissioners Wald and Ferguson and for the time being, Judge Lawson has reserved her decision.

My views, as they have been known to the Commission for some time, are that the tenor of some decisions of the United States Court of Appeals are among the indirect causative factors in the commission of crime in that the totality of these decisions has created a climate hospitable to the belief that punishment of offenders is far from certain and that punishment may be avoided by loopholes in the law. It is my belief that when certainty of punishment is lacking by reason of loopholes and technicalities, the deterrent effect is substantially lessened and the commission of crime is thereby encouraged.

The Majority has in the past commented that the Court "is not just another agency to curb crime." To me, the whole judicial system, including the Court of Appeals, is an "agency" by which those justly and properly convicted of committing crimes are punished, and by being an "agency" for meting out punishment, a deterrent to the further commission of crime is provided. The courts have the duty and responsibility to see that no guilty person is set free and, at the same time, they have the correlative duty and responsibility to see

[19] There is in existence an informal rule to this effect in the Court of Appeals, but I believe that it would be desirable to have it formalized by written rule.

that no innocent person, or one unjustly or improperly convicted is punished.

Commissioner Krash states that, "[t]he Commission has not discovered the *slightest evidence* to support the thesis that the Court of Appeals has caused or contributed to the present high incidence of crime in this community (emphasis added);" and that the "contention that the courts . . . specifically appellate decisions . . . are the 'cause of crime' is . . . an erroneous diagnosis of a serious social disorder;" and that "[s]ix of the nine members . . . agree that it is incorrect to assert that rulings by the Court of Appeals contribute to crime." With this view, as seen from the Minority section on this subject, we disagree. However, the Minority has *never* contended that appellate decisions are *the* "cause of crime." The Minority position is, as already stated, that the totality of decisions are among the indirect causes of crime following the syllogism I have just set forth several paragraphs ago.

The point of departure or cleavage between the Minority and the other Commissioners is that, while we well recognize the *roots* of crime ("a variety of social, economic and psychological factors") they will not recognize the totality of appellate decisions as being conducive to the creation of a climate in which crime can flourish and prosper. This recognition of the role of court decisions on crime I do not rate as a top factor, but like others [20] I believe the decisions are a factor; one which cannot be ignored and one which the Commission should have considered.

Commissioner Krash states: "[t]he Commission has found no evidence . . . [or] . . . empirical study . . . which lends support to the conclusion that judicial decisions contribute to the initial decision by offenders to commit a crime." To me, it is extraordinary that Commissioner Krash feels it necessary to have "empirical" data to establish an obvious and well recognized fact of life, namely, that crime increases when the law enforcement process is lax or uncertain. This premise is axiomatic. Law violations must follow and be encouraged by loopholes and technicalities in the judicial process. Commissioner Krash does footnote that he has no "clear evidence that crime is 'caused' by . . . [poverty, inferior schools and inadequate training, substandard housing, and unstable family structure] . . . but that "many competent investigators believe that these factors create circumstances conducive to antisocial behavior." Besides the two examples I cite in my report, I believe my evidence to be as strong

[20] In years past and presently, the FBI in its *Uniform Crime Reports* refers to courts among their "Crime Factors".

as that of Commissioner Krash; in fact, our logic supporting causality is identical. Moreover, I too have "many competent investigators" who entertain views similar to mine. Thus, I submit there is more than "the slightest evidence" in support of my conclusion.

The Krash report to which I am herein making answer, banks on the fact that other cities ". . . in 500,000 to 1 million population class . . ." are likewise afflicted with the same increase or similar increases in crime, and that our Court of Appeals decisions do not apply to these cities. I do not find high incidence of crime in cities surprising since it is well recognized that urban conditions breed crime. Neverthless, I do not confine myself to a few isolated cities, but I compare our crime rate to all such similar cities in the Minority Report. It is there shown that our crime increase has been 84%, while in these comparable cities crime increased 51%. Further, for that matter, I can point out that there are cities with social and economic problems that dwarf ours, but they do not experience the incidence (in rate) of crime that we do (New York, Chicago, Detroit, *etc.*)

While answers to most of the other points and contentions raised by Commissioner Krash do little more than end in a semantic battle, I would like to address myself to the reversal rate of the Court of Appeals from two aspects:

First, there are indications that the rate of reversal as reported by that court, used by the Majority and referred to by Commissioner Krash, is as stated in staff paper, *infra*, "incorrect" and "misleading". In this staff paper dated October 4, 1966, dealing with the need for the establishment of a statistical bureau in the District of Columbia, there is sufficient evidence to impeach the entire study of reversal rate. (Page 21–25 of that report should be read.) It is therein stated: "The incidence of improper reporting . . . [by the Court of Appeals of cases reversed] . . . suggests more than random error is involved." [21] It is further stated that in 1965 *alone*, six cases were deleted from the reversal count. This, of course, adversely affects the rate. Further, statistically, remands for further proceedings are not counted. These remands, which have become frequent in this circuit and which are not affirmances, may result in dismissal. A remand then may be in effect a reversal which is not counted as such.

Second, in this connection, when comparing our rate of reversal to that in other circuits, it might be pointed out that this jurisdiction ac-

[21] "[This does not] . . . mean to suggest that these cases were intentionally reported incorrectly . . . [but it is concluded] . . . that the reports being made to the Administrative Office are not receiving proper supervision and that, as a result, some of the available data on the court must be viewed with scepticism (sic)."

counts for 25.3% of all criminal cases terminated in the United States Court of Appeals in the 11 judicial circuits of the United States. This circuit, however, accounts for only 3.7% of criminal cases terminated by trial in the entire federal system. (See Table I which compares the number of criminal cases terminated at trial and on appeal for each of the circuits.) Does this disparity not suggest that there is a climate of uncertainty and a belief in the efficacy of exploiting technicalities and finding loopholes for reversal?

In answer to Commissioner Krash's ". . . [demonstration] that the Court of Appeals has not decided an unusually high number of cases in reliance upon Rule 52(b) . . .", several things must be noted. First,

TABLE I.—*Comparison by circuit of the percentage of criminal cases terminated a trial level and at appellate level*

[Fiscal year 1965]

Circuit	Number of cases terminated at trial level	Percent of total	Number of cases terminated at appellate level	Percent of total
D.C.	1, 184	*3. 7	257	25. 3
1st	658	2. 1	34	3. 4
2nd	2, 239	7. 0	129	12. 7
3rd	1, 586	5. 0	52	5. 1
4th	3, 434	10. 7	69	6. 8
5th	8, 540	26. 6	128	12. 6
6th	3, 217	10. 0	76	7. 5
7th	1, 641	5. 1	65	6. 4
8th	1, 651	5. 1	47	4. 6
9th	6, 129	19. 1	85	8. 4
10th	1, 796	5. 6	72	7. 1
Total all circuits	32, 078		1, 014	

Source: Annual Report of the Director of the Administrative Office of the United States Courts, 1965.

*Rounded off to nearest tenth.

it is true that this jurisdiction accounts for about ⅓ of all Rule 52(b) cases, and that this may be compared to the 25.3% of all criminal cases terminated for all the circuits. But this too must be viewed in the light of the disparity between the percent of cases terminated on appeal (25.3%) and the percent of cases terminated by the local federal district court (3.7%).

Second, the ⅓ of the total Rule 52(b) cases must be viewed in the light of the drastic increase in the number of convictions appealed in recent years. In fiscal year 1961, 91 criminal cases were appealed. This is nearly trebled by the figure for fiscal year 1966 in which 252 cases were appealed. Stating it percentagewise, in the District of Columbia, in fiscal year 1961, 28.7% of the cases where the defendant was convicted after trial were appealed and in fiscal year 1966, 92.6% of these cases were appealed; an increase of over 175%. Indeed, this cannot be solely attributed to "the equalization of opportunity to appeal" either, as has been stated by the Majority. To be sure, free appeals, free counsel on appeal and free transcript on appeal are available to indigents under federal law, but these are equally available in all of the other 10 federal circuits and therefore, the increase in appeals cannot solely be attributed to the equalization of the opportunity to appeal but may be viewed as one of the byproducts of the Court of Appeals' reliance on technicalities, loopholes and Rule 52(b).

SECTION II. THE DURHAM RULE

I shall now discuss the *Durham* Rule, one of the bases for the Minority Report.

In the District of Columbia, during the last twelve years, criminal law and procedure relating to the defense of insanity have undergone rapid and unique development. Designed to eliminate the disparity between the law and present day psychiatry, the Court of Appeals in 1954 rejected the standard for determining criminal responsibility which had existed for more than a half-century and substituted a standard similar to that used in one other jurisdiction.[22] Since then, this standard has been rejected in at least twenty-two states and five federal jurisdictions.[23] It has been adopted only in one jurisdiction and a version of it in another.[24] Quite recently it has also been rejected by the United States Court of Appeals for the Second Circuit.[25]

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[22] See *State* v. *Pike*, 49 N.H. 399 (1870).

[23] Krash, *The Durham Rule*, 70 Yale L.J. 905, 906 n.8 (1961).

[24] See 14 Virgin Island Code Ann. § 1, 14 (1957); 15 Me. Rev. Stat. Ann. § 102 (1963).

[25] *United States* v. *Freeman*, 357 F. 2d 606 (2d Cir. 1966).

The new standard was announced in *Durham* v. *United States*, 94 U.S. App. D.C. 228 (1954),[26] and has become known as the *Durham* Rule. It brings the law more in conformity with present day psychiatry, particularly by broadening the insanity defense to include mental illnesses theretofore not recognized in law but recognized in psychiatry. However, due to confusion in judicial interpretations, melange of statutes, disagreements among psychiatrists, the vagueness of the subject matter, and burden of proof, the defense of insanity under the *Durham* rule has become a misused concept in some instances and has furnished defendants a means of avoiding deserved punishment. Consequently crevices in the law have been created, public safety has been endangered, and the commission of crime encouraged.

Prior to July 1, 1954, in the District of Columbia, the standard for testing the mental responsibility of persons committing crimes in the District was a combination of the "right-wrong" test [27] and the "irresistible impulse" test.[28] Essentially, this meant that an accused could not be held criminally responsible if, because of his mental condition, he was not able to discern the difference between right and wrong, or if able so to do, was compelled by an uncontrollable impulse to perpetrate the crime. On July 1, 1954, the Court of Appeals in *Durham* v. *United States*, *supra*, found that the "right-wrong" test was inadequate in that it did "not take sufficient account of psychic realities and scientific knowledge" and was "based upon one symptom and so cannot be applied in all circumstances." The "irresistible impulse" test was found to be inadequate in that it gave "no recognition to mental illness characterized by brooding and reflection and so relegated acts caused by such illness to the application of the inadequate right-wrong test." [29] Consequently, the court concluded that a broader test should be adopted. The test announced was "simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." [30] The word "disease" was defined as "a condition which is considered capable of either improving or deteriorating" and the word "defect" was defined as "a condition which is not considered capable of either improving or deteriorating and which may be either

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[26] Defendant *Durham* was indicted for housebreaking and grand larceny. He was found guilty. On appeal this case was reversed. In this case the *Durham* Rule was announced. He were thereafter retried and again found guilty, and again appealed. His case was again reversed. He was again brought on for retrial, and this time he pleaded guilty to petty larceny only, and was sentenced to one year in prison.

[27] *United States* v. *Guiteau*, 12 D.C. 498, 550, 1 Mackey 498, 550 (1882).

[28] *Smith* v. *United States*, 59 App. D.C. 144 (1929).

[29] *Durham*, *supra*, 94 U.S. App. D.C. at 240.

[30] *Id.* at 241.

congenital, or the result of injury, or the residual effect of a physical or mental disease." [31] The court left unchanged the procedure for trying the insanity issue, namely, that once an accused has shown "some evidence" that he suffered from a mental illness at the time the unlawful act was committed, and has thereby overcome the initial presumption of sanity, the burden is on the Government to prove beyond a reasonable doubt that the accused was *not* suffering from a mental illness, or if he was, that the offense charged was *not* the product of the mental illness.[32] Stated another way, once the insanity defense is sufficiently raised by "some evidence," unless the jury believes beyond a reasonable doubt either that the accused "was *not* suffering from a diseased or defective mental condition" at the time of the offense, or if he was so suffering, "that the act was *not* the product of such abnormality, [it] must find the accused not guilty by reason of insanity." [33]

The choice of the adverb "simply" by the Court of Appeals in setting forth their new test has proved to be illusory. In applying the *Durham* rule and its concommitants, the District Court and the Court of Appeals have been plagued with difficult problems of interpretation. Since 1954 there have been a hundred or more cases on this subject in the Court of Appeals, many with dissenting and concurring opinions. For examples of the problems, there may be mentioned the following: What types of afflictions can constitute a "mental illness or mental defect?" [34] What does the word "product" mean? [35] What is "some evidence" under *Durham*? [36] Of the last example, I refer to *Logan* v. *United States*, 109 U.S. App. D.C. 104 (1960), where there was testimony that actions of defendant when drinking were "different from what other people would do" in the same condition, and to *Clark* v. *United States*, 104 U.S. App. D.C. 27 (1958), where there was testimony of the defendant that he "must have been insane." This evidence was considered sufficient to satisfy the requirement of the "some evidence" rule and thereby place the burden on the prosecution to establish, *beyond a reasonable doubt*, a negative, *i.e.*, that defendant was *not* suffering from a mental disease, *etc.*

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[31] *Ibid.*

[32] *Davis* v. *United States*, 160 U.S. 469 (1895).

[33] *Durham*, *supra*, note 29, at 241.

[34] See *e.g.*, *Blocker* v. *United States*, 107 U.S. App. D.C. 63 (1959); *Carter* v. *United States*, 102 U.S. App. D.C. 227 (1957). See also, *Overholser* v. *Leach*, 103 U.S. App. D.C. 289 (1958).

[35] See *e.g.*, *Campbell* v. *United States*, 113 U.S. App. D.C. 260 (1962); *Carter* v. *United States*, *supra* note 34.

[36] See *e.g.*, *Goforth* v. *United States*, 106 U.S. App. D.C. 111 (1959); *Clark* v. *United States*, 104 U.S. App. D.C. 27 (1958); *Lebron* v. *United States*, 97 U.S. App. D.C. 133 (1955).

Also, it should be pointed out that underlying these problems are the varied use of medical terms by psychiatrists and the question of the weight to be given expert testimony as opposed to lay testimony. "In considering *Durham* it was noted that a reputable school of phychiatrists considers most antisocial acts to be symptomatic of mental disease or defect and that since under *Durham* mental disease or defect excuses from criminal responsibility, in most cases at least a sound ground exists for a juror's reasonable doubt as to almost *any* defendant's legal sanity." [37] (Italics supplied.) Since common sense dictates that a psychiatric interview and testimony based thereon should be given substantial, if not determinative, weight,[38] in many cases the expert may usurp the jury's function—allowing little or no credence to a layman's views on insanity. Indeed, in *Douglas* v. *United States*, 99 U.S. App. D.C. 232 (1956), the Court of Appeals, by implication at least, held that lay testimony alone of sanity was insufficient to overcome psychiatric testimony of insanity and prevent a directed judgment of acquittal by reason of insanity.

However, the case of *McDonald* v. *United States*, 114 U.S. App. D.C. 120 decided October 8, 1962, answered to a degree some of the above mentioned perplexities that the *Durham* decision had created. As to the amount of evidence needed to overcome the initial presumption of sanity, and to place the burden of proof on the Government, the court, at 122, stated that:

> The subject matter being what it is, there can be no sharp quantitative or qualitative definition of "some evidence". Certainly it means more than a scintilla,[39] yet, of course, the amount need not be so substantial as to require, if uncontroverted, a directed verdict of acquittal [by reason of insanity].

Relating to the variety of psychiatric labels and the weight to be given to expert psychiatric testimony, the court said this:

> [T]he jury, in considering an insanity plea, must weigh all the evidence, including the presumption of sanity . . . . Whether uncontradicted expert testimony overcomes the presumption depends upon its weight and credibility, and weight and credibility ordinarily are for the jury. . . . Our purpose now is to make it very clear that neither the court nor the jury is bound by *ad hoc* definitions or conclusions as to what experts state is a disease or defect. What psychiatrists may consider a "mental disease or defect" for clinical purposes, where

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[37] Kuh, *The Insanity Defense*, 110 U. Pa. L. Rev. 771, 799 (1962).

[38] See generally, Krash, *supra* note 23, at 918, 919, n. 70, where an interview is described.

[39] Some decisions subsequent to *Durham* and prior to *McDonald* had implied that a scintilla was sufficient to raise the insanity issue. See *e.g.*, *Clark* v. *United States*, *supra*, note 36, where the mere assertions by the defendant that he was insane were sufficient, and *Logan* v. *United States*, discussed *supra*.

their concern is treatment, may or may not be the same as mental disease or defect for the jury's purpose in determining criminal responsibility.[40]

Finally, and perhaps most importantly, the court set forth an additional definition of "mental disease or defect," namely, "a mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls."[41]

Thus, in *McDonald*, the trial courts were given some guidelines as to how much evidence is needed to raise the insanity defense and shift the burden of proof to the prosecution, and, once the defense is raised and the burden shifted, the weight the jury or court should give to expert and lay testimony in determining the criminal responsibility of the accused. *McDonald*, as did *Durham*, left the ultimate burden of proving the defendant's sanity beyond a reasonable doubt upon the prosecution.

While *McDonald*, as stated, relieved some of the difficulties inherent in the *Durham* rule, like the redoubtable Hydra, problems survived the decision and more have arisen. What follows is a discussion of some of these existing problems with specific recommendations for remedies where they would seem to be appropriate.

Several cases have illustrated that there has also arisen a dispute in the Court of Appeals about the meaning of *McDonald*, especially with regard to what constitutes "some evidence" and the weight that should be accorded to expert testimony.[42] I feel that this is unfortunate, but see no alternative to leaving the matter to judicial interpretation. An *en banc* decision further delineating and defining "some evidence" would be helpful, in providing uniformity and certainty in the law.

In *Whalem* v. *United States*, 120 U.S. App. D.C. 331 (1965), the Court of Appeals dealt with the situation where the defendant chooses not to raise the insanity defense, but where such a defense might be appropriate. Said the court at 337 "[A] defendant may not keep the issue of insanity out of the case altogether. He may, if he wishes, refuse to raise the issue of insanity, but he may not, in a proper case, prevent the court from injecting it." In other words, regardless of the position taken by the defendant, the trial court, in its discretion, and "in a proper case" has a duty to raise, *sua sponte*, the insanity defense. As long as this rule is completely within the discretion of

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[40] *McDonald*, *supra*, 114 U.S. App. D.C., at 123, 124.

[41] *Id.* at 124.

[42] *E.g.*, *Heard* v. *United States*, 348 F. 2d 43 (D.C. Cir. 1964); *Hightower* v. *United States*, 117 U.S. App. D.C. 43 (1964); *Gray* v. *United States*, 115 U.S. App. D.C. 324 (1963).

the trial court, which has been the case in later decisions,[43] and not a requirement that the trial court *sua sponte* raise the insanity issue whenever any evidence of mental incapacity is raised, I see no need for limiting the rule and make no suggestions in respect thereto.

But I do have a recommendation, and that is on the subject of burden of proof, which I shall now discuss. I had hoped this recommendation would be included in the Commission Report, and its rejection by the Commission is one of the bases for this Minority Report.

In 1895 the Supreme Court in *Davis* v. *United States*, 160 U.S. 469, 486, held that once the issue of insanity is raised by "some evidence" the Government has the burden of proving sanity of the accused beyond a reasonable doubt. Essentially, this burden was so placed in order to conform with the traditional presumption of innocence of an accused and the requirement that guilt be proved beyond a reasonable doubt.[44]

Since that year, this rule of law has remained unchanged, in the District of Columbia. But the test for determining insanity, *i.e.*, greatly broadened since, *e.g.*, the "irresistable impulse test" contained in *Smith* v. *United States*,[45] and, more recently, the revolutionary enlargement of the periphery of mental diseases and the broadening of the test for determining insanity, contained in the *Durham* decision. In addition, numerous statutes have been enacted for the treatment of persons who have been found not guilty by reason of insanity.[46]

There has thus occurred a dramatic enlargement of the boundaries of the law in respect of the defense of insanity, without a reciprocal or compensating change in respect of the burden of proof.

It therefore becomes appropriate to discuss the effect of this imbalance which is the foundation for my view that the burden of proof should be shifted to the defendant to establish his insanity by a preponderance of the evidence.

As hereinbefore mentioned, there are psychiatrists who believe antisocial acts are symptomatic of a mental disease or defect. Stated more bluntly, these psychiatrists have the opinion, and will so testify, that any person who commits a crime is suffering from a mental disease and that the crime is the product of the disease. When a psychiatrist

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[43] See *Trest* v. *United States*, —— U.S. App. D.C. ——, 350 F. 2d 795 (1965); *Harper* v. *United States*, —— U.S. App. D.C. ——, 350 F. 2d 1000 (1965).

[44] *Davis, supra*, 160 U.S. at 486.

[45] The test was "the accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject . . . ." *Smith* v. *United States, supra*, note 28 at 145.

[46] *E.g.*, 21 D.C. Code 501, *et seq.* (Supp. V, 1966); see *Lynch* v. *Overholser*, 369 U.S. 705, 720 (1962); 24 D.C. Code 106, 301 (1961).

of this school testifies as to the criminal responsibility of one who commits a crime, an antisocial act, "a sound ground exists for a juror's reasonable doubt as to . . . defendant's legal sanity," [47] and this is all that is required for a verdict of "not guilty by reason of insanity." In such cases, the prosecution is thus placed in the position of being required, by reason of the burden of proof, to remove any and all reasonable doubt that the accused was *not* mentally ill in order to avoid a verdict of "not guilty by reason of insanity." This burden, which in many cases is insuperable, results in a defendant, with such psychiatric testimony at his disposal, being found not guilty by reason of insanity and placed in a mental institution eligible for an early release from custody under circumstances hereinafter set forth. In this manner the public safety is endangered, disrespect for the law is generated, and fear of punishment is decreased. This latter encourages infractions by others because of a belief that if they violate the law and are apprehended, they can "bug out," to use their picturesque, but expressive vernacular.

In the District of Columbia the problem has become more acute for still another reason, which I shall now discuss. In addition to whatever opinions a defendant is able to obtain from private psychiatrists who adhere to the view above expressed that antisocial conduct can be equated with mental disease, the official staff position of Saint Elizabeths Hospital, to which the Government looks for psychiatric testimony, since 1959 has been that "people suffering from sociopathic personality disturbance should be 'labeled' as diseased, as mentally ill." [48] Some staff psychiatrists of the hospital have wavered in, and some have disagreed with, this view, but the staff position has remained unchanged since then. On the other hand, there is substantial psychiatric support for the previously held opinion of Saint Elizabeth's Hospital that antisocial acts are not necessarily indicative of a mental disease or defect. For example, the Commission on Mental Health of the District Court adheres to this earlier opinion of long standing, and in the American Law Institute Model Code, in order to prevent miscarriages of justice flowing from this relatively recent concept, it is provided that antisocial conduct be expressly excluded from the terms "mental disease or defect".[49]

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[47] See Kuh, *supra* note 37.

[48] See *Blocker* v. *United States*, *supra*, n. 34, at 64. Halleck, *The Insanity Defense*, 49 Geo. L.J. 294, 311–13 (1960). See also, *Overholser* v. *Leach*, *supra*, note 34 (reflecting the disagreement among psychiatrists).

[49] A.L.I. Model Penal Code § 4.01(2). (See comments.) See generally, Gasch, *Prosecution Problem Under The Durham Rule*, 5 Catholic Lawyer 5, 32 (1959). But see Wiehofen, *The Urge to Punish*, 85–90 (1956). See also 15 Me. Rev. Stat. Ann. § 102 (1963), *supra*, n. 24.

I do not subscribe to the view that an abnormality manifested only by antisocial acts should be completely excluded from the term "mental disease or defect," as provided in the A.L.I. Model Code, because I feel that the criminal responsibility of a sociopath or psychopath depends upon the degree of the "illness," and that an antisocial act in some cases may be symptomatic of a "mental disease or defect." I only say that the present requirement of the law which places the burden on the Government to prove beyond a reasonable doubt that the defendant was *not* suffering from a mental illness at the time of the offense in cases involving sociopathic behavior is an unjustifiable burden and on occasions results in otherwise guilty defendants going unwhipped of justice. Placing the burden, as I have suggested, would avoid this onerous requirement of the law, and tend to remove this avenue of escaping punishment. It would at the same time still provide defendants with the full spectrum of psychiatric defenses and testimony.

In this connection, it is interesting to mention how this changed position of Saint Elizabeths Hospital came about in 1959. In *Blocker* v. *United States*, 107 U.S. App. D.C. 63, defendant, who had been indicted for murder in the first degree, defended on the ground of insanity. This defense was rejected by the jury, and he was found guilty, sentenced to death, and appealed. Three psychiatrists testified at his trial, two called by the defense and one called by the prosecution. All three were on the staff of Saint Elizabeths Hospital. The psychiatrist called by the Government testified that he found nothing wrong with defendant. The other two concluded that he suffered from a sociopathic personality disturbance with chronic alcoholism, but that this was not considered to be a mental disease or defect, thus removing the evidential basis for the insanity defense under the *Durham* rule. Less than a month after this verdict was returned, the Assistant Superintendent of Saint Elizabeths Hospital testified in another case that the Superintendent and he were then agreed "that people suffering from sociopathic personality disturbance should be 'labeled' as diseased, as mentally ill, mentally sick, suffering from mental disease." Counsel for defendant Blocker, on learning of this testimony, moved for a new trial on the basis of "new medical evidence". This motion was denied, but the Court of Appeals thought it should have been granted and the case was reversed and remanded for a new trial.

This later position of Saint Elizabeths Hospital, which as we have stated has since become its official position, was an abrupt about-face from the position previously taken. Defendant Blocker was accord-

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ingly retried, but in the retrial the court placed the burden of proof on the defendant and he was convicted a second time and sentenced to death. Again the case was appealed and again was reversed, this time because of the Court's instruction placing the burden on the defendant to establish the defense of insanity. He was later tried for the third time and convicted of second degree murder. On appeal from this last conviction, the sentence was affirmed on the lesser included offense of second degree murder.

Another reason for my recommendation, which pertains to all mental illnesses, including those of the sociopathic variety, is that by placing the burden of proof by a preponderance of the evidence on defendant, a harmful hiatus would be removed from the law. This hiatus or inconsistency in the law, and evils flowing therefrom, arise from the difference in the quantum of proof required to acquit a defendant by reason of insanity (that is a failure by the prosecution to prove beyond a reasonable doubt that defendant was *not* suffering from a mental disease, or if he was that the crime was *not* the product of the disease) and the quantum of proof required to enable a defendant found not guilty by reason of insanity to gain his release after commitment to Saint Elizabeths Hospital, as hereinafter set forth. At present, as stated, any reasonable doubt of an accused's sanity requires a jury to acquit him by reason of insanity. Such an acquittal, however, is not an adjudication of insanity or mental incapacity, *Green* v. *United States*, 122 U.S. App. D.C. 33, 35 (1965), but is merely a finding by the jury that the government failed to carry its burden as above stated. However, once acquitted, and committed to a mental hospital, pursuant to D.C. Code 24–301(d) 1961, a preponderance of the evidence that he "has recovered [sic] his sanity and will not in the reasonable future be dangerous to himself or others" is sufficient for defendant to obtain his unconditional release by habeas corpus under D.C. Code 24–301(e). It thus takes less proof for a defendant to obtain a verdict of not guilty by reason of insanity than it does to obtain a release after such a verdict; and it might be argued at first blush that this is desirable from the standpoint of protection of society. But it does not work out that way. For example, an accused whose mental condition at the trial stage meets the unconditional release test above stated, may nevertheless be found not guilty by reason of insanity if he can muster up "some" evidence of insanity (*e.g.*, evidence that criminal conduct connotes insanity) requiring a verdict of not guilty by reason of insanity under the onerous burden now placed on the Government to establish sanity beyond a reasonable doubt. In such circumstances, the accused would be committed to a mental hospital and shortly thereafter would be

unconditionally released and commingling with the public, freed from punishment for his criminal acts. This is a fact and not a theory.

In this connection, and in further support for a shift in the burden of proof from the Government to the defendant, it is appropriate to lay bare some of the bizzare results growing out of the acceptance by the staff of Saint Elizabeths Hospital that a sociopathic personality disorder, *per se*, constitutes a mental disease. Almost one-fourth of all admissions to Saint Elizabeths Hospital after verdicts of not guilty by reason of insanity are classified as persons suffering from a personality disorder. These are defendants some of whom would otherwise be found guilty and held accountable to society for their crimes. Instead, they escape punishment, not for the reason that they have been found to be mentally ill because, as above stated, a verdict of not guilty by reason of insanity is not such a finding, but because the prosecution has been confronted with the almost impossible burden of proving beyond a reasonable doubt that they were not suffering from a mental disease at the time of the offense, in the face of psychiatric testimony from Saint Elizabeths Hospital that they were. If the burden of proof were shifted to the defendant, where the testimony could be weighed to determine whether or not it preponderated in defendant's favor, without the necessity for the government to remove every reasonable doubt, I think it can be reasonably assumed that a large number of defendants where the degree of the personality disturbance is slight would not escape by a verdict of not guilty by reason of insanity.

Typifying the problems and difficulties that have arisen from a practical standpoint from the classification of all personality disorders as a mental disease are the critical remarks of Dr. David J. Owens, Clinical Director and supervising psychiatrist of the John Howard Pavilion of Saint Elizabeths Hospital. This is the maximum security unit for the criminally insane. He is one of the city's most respected and most experienced psychiatric experts on the criminally insane, and is in almost daily attendance in the United States District Court giving his expert opinion in the multitude of cases arising in that court either on pretrial determinations of mental competency, the actual trial of cases where the mental condition of the accused at the time of the criminal act is in issue, or on petitions for writs of habeas corpus where defendants having been found not guilty by reason of insanity are petitioning for release on the ground that they have "recovered" their sanity. Dr. Owens gave voice to these remarks in an address before a recent convention (June 1966) of the National District Attorneys Association held in Washington, D.C. In that address he stated that "in the beginning" he was one of the "greatest advocates of . . . the Durham Decision," that it was a "great decision", a "wonder-

ful" decision, and that he thought "society was finally becoming enlightened." He then added that he was *now* "more unenlightened" than he has ever been and felt that "some changes are needed in the Durham Decision." He said further that at the time of this address he was "not clear what [the Durham Decision] means," and "he doesn't believe the District Attorneys or the defense attorneys are clear about it either," particularly the definition of the "product part of the test." He further stated that he believed the Court of Appeals was not clear as to its meaning "because since the Durham Decision was handed down there have been over 100 clarifying decisions handed down by the United States Court of Appeals in order to clarify what they meant." Now as to persons suffering from personality disorders, he had this to say:

> The jails as well as *the community* are filled with individuals having personality disorders . . . . *Once you say these persons are sick, you have a hospital full of sociopaths or other types of personality disorders . . . to the point that we could almost do away with the jails* because nearly all prisoners would be in the hospital under this definition. . . . [I]n the District of Columbia [we are heading in the direction that] if an individual commits a crime or has a personality disorder or any type of illness, then he must be found not guilty by reason of insanity. . . . [Once the sociopath or person with a personality disorder is] returned to the Hospital for treatment, *no one seems to know exactly what we are supposed to treat, or how, or what we are to treat them with.* We don't have the pill or treatment that will cure hem. . . . *The problem of personality disorders following the Durham Decision has pretty well snowed the Hospital under with problems arising as a result of it.* . . . At times it appears that the courts do not help the matter any as there are several judges on the Court of Appeals who apparently believe that once an individual commits a crime, then he is ill regardless of what the opinion of the phychiatrist may be. . . . [These individuals are] usually primarily interested in avoiding being arrested or avoiding a jail sentence. Immediately after he comes to the Hospital . . . [*h*]*e puts in a writ of habeas corpus in the District Court. Then we have to go to Court and defend the writ. . . . We are having to defend the patient's being in the hospital after being found not guilty by reason of insanity with a diagnosis of personality disorder.* (Emphasis supplied.)

This, then, is the problem as Dr. Owens defines it, which as seen from the above quotation and from the remainder of his address, might be summarized as follows:

Whether or not the hospital is of the opinion that a defendant is mentally ill, a defendant may avail himself of his right to an independent psychiatric examination and he may shop around for a doctor to testify that he is mentally ill. Then the patient once committed to the hospital, again having the use of independent psychiatrists if he wishes, may attempt to obtain his release by a writ of habeas corpus, because the psychiatrists are of the opinion that he is not mentally ill.

Among the fantastic results now occurring in this connection, I cite the case of *United States* v. *Brown*, Cr. No. 274–63. Brown was tried, convicted and took an appeal. On appeal the case was reversed and late in 1965 he was retried and found not guilty by reason of insanity. At his second trial two psychiatrists from Saint Elizabeths Hospital called by the Government testified that Brown was without mental disorder. Defendant Brown called two psychiatrists in private practice. They testified to the contrary, and planted the seed of reasonable doubt in the minds of the jury as to defendant's sanity. He was therefore found not guilty by reason of insanity, and committed to Saint Elizabeths Hospital. Shortly thereafter he sought a writ of habeas corpus for his release from the hospital and it was obvious that in support of his writ Brown would have available the hospital doctors who could only testify that he was sane, having been of that opinion from the beginning. This placed the prosecution on the horns of a dilemma, namely, either to allow the defendant to be released from custody and thereby escape punishment, or to petition the Court for an "independent psychiatric" examination, in the hope that testimony could be produced sufficient to continue defendant's further confinement. The government adopted the latter course and the Court being made cognizant of the Government's predicament permitted it to obtain an independent examination. I leave to the moralists an answer to whether the prosecution is within ethical bounds in calling for an independent examination when confronted by a defendant who has available for testimony the very doctors who testified *against* him at his trial and who necessarily would testify *for* him in his petition to be released as a person of sound mind.

Brown was released as the result of a hearing thereafter held because the Government's independent phychiatrists were of the opinion that Brown was not then mentally ill, as were the psychiatrists from Saint Elizabeths Hospital at this trial. This example is not an oddity. There are others just like it, causing the prosecution and Saint Elizabeths Hospital to take contradictory positions, rightly or wrongly, to avoid a complete miscarriage of justice. Unbelievable situations of this kind and others mentioned herein, such as the shocking *Schurmann* case, *infra*, involving the rape of a 12-year-old girl will continue to occur, perhaps with increasing frequency, unless some positive steps are taken. These situations provide another reason for changing the burden of proof as suggested herein, which it would be my hope would at least ameliorate the condition.

It is significant to take note at this point that this defense of insanity is often interposed in cases of the most serious nature where the

Government's evidence is such that there appears to be no other defense and no other avenue of escape.

To remedy this condition, and to eliminate, in part at least, such miscarriages of justice and the basis for a belief that technical means are available to avoid the full rigors of the law, I am, as above stated, of the opinion that legislation should be enacted placing the burden of proof on the defendant in cases where he relies on the defense of insanity, and that he should be required to carry this burden by a preponderance of the evidence.[50] At least twenty-one states have this requirement,[51] and its constitutionality could hardly be successfully challenged in view of the Supreme Court's decision in *Leland* v. *Oregon*, 343 U.S. 790 (1952).

Quite recently, on July 6, 1966, in the case of *Hansford* v. *United States*, — U.S. App. D.C. —, 365 F. 2d 920, the dissenting Judge therein expressed the same opinion for a change in the burden of proof in the following language: "It is high time that the burden of establishing the defense of insanity be placed upon the accused. If one charged with the commission of crime shall claim that by reason of insanity he is entitled to exculpation from responsibility, he should be required affirmatively to assert and prove the basis upon which he seeks to be excused."

Later on in his dissent he stated on the same subject as follows: "For my part, I have become quite persuaded that Congress should place upon an accused the burden of establishing his entitlement to a verdict of not guilty by reason of insanity."

I recognize that statistical data are not always a reliable source for drawing definitive conclusions, and that not infrequently diametrically opposed conclusions may rationally be drawn from the same statistics. Nevertheless, I feel that this report would be incomplete without a reference to some of them.

These statistics disclose the following:

During the three and one-half years prior to the *Durham* decision, 3 persons were found not guilty by reason of insanity and committed to Saint Elizabeths Hospital. During the fiscal years after the *Durham* decision, namely, 1955–1965, 588 persons were found not guilty by reason of insanity and committed to this hospital. Of these, 361 were committed by the United States District Court for the Dis-

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[50] Gasch, *Prosecution Problem Under The Durham Rule*, *supra*, note 49, at 32 (where the author advocates this test for the District of Columbia). See also A.L.I., Model Penal Code, § 4.03(1) (Tent. Draft No. 4, 1955), which proposes the same test as an "affirmative defense."

[51] Gasch, *supra*, note 49, at 32.

trict of Columbia. The crimes charged were felonies, includng murder, manslaughter, aggravated assault, housebreaking, robbery, rape and grand larceny. Fifty-three of these defendants were charged with murder, 16 with rape, 30 with narcotics violations, 49 with robbery, 49 with housebreaking and 38 with aggravated assault. Of this total number of 588, 360 were given conditional or unconditional releases prior to December 31, 1965, and 202 escaped from the hospital, some more than once. Of those who were released (not escaped) from the hospital 134 later were involved in crime. Fifty-nine of these were subsequently arrested for felonies of whom 24 were arrested for more than one felony, and 116 were arrested for misdemeanors.

It cautiously can be assumed that some of these releases were due to the incongruities growing out of the burden of proof problems hereinabove discussed. I find support in these statistics for the view hereinabove expressed that the burden of proof should be placed on the defendant when the insanity issue is raised. They probably could be used, with equal validity, to support the view that the *Durham* rule, itself, should be revised, perhaps by adoption of § 4.01 of Art. 4 of the Model Penal Code approved by the American Law Institute in 1961, but I would not favor it. A completely new law does not now seem to me to be desirable in view of the manner in which the *Durham* rule has become refined to some extent, as above pointed out. The enactment of an entirely new law, however desirable it might appear to be, would, I fear, inaugurate another long period of interpretation and construction with attendant uncertainty in the law and inequality of justice. Therefore, balancing whether *Durham* as refined is superior to the proposal of the American Law Institute, it seems to me to be in the best interest of the District of Columbia to continue with the body of law under *Durham* if amended as herein suggested.

Still another reason for proposing a change in the burden of proof, and one which is the subject of a further recommendation, concerns an accused who raises the insanity defense and refuses to cooperate with the Government psychiatrists in making their necessary examinations. In order to carry its burden under existing law, once the defense is raised, "the government may be compelled to produce expert testimony that the accused is of sound mind, particularly if the defendant offers experts in his behalf." [52] It consequently seems intolerable "to impose the burden of persuasion upon the government while allowing the accused to foreclose access to essential data which can be obtained only from the defendant himself and which the prosecution

[52] Krash, *supra*, note 23 at 919.

requires in order to discharge its burden." [53] An uncooperative defendant who takes advantage of a recognized defense, but precludes the government from carrying its burden, thwarts the entire adversarial system and its search for truth.

To illustrate the consequences of such a situation, the recent case of *United States* v. *Schurmann*, Cr. No. 688–64, in the United States District Court for the District of Columbia (1965), is apposite.

In that case defendant was indicted for carnal knowledge (rape by force in this case) of a female child of 12 years of age. It appears that the complainant boarded a bus in New York City in the night time for transportation to Nashville, Tennessee. When she arrived in the District of Columbia, in the early morning hours, the bus came to a temporary stop, and she, with other passengers, alighted. Defendant approached her and persuaded her to take a walk with him to a nearby park where with force and threats with a knife he raped her. Defendant was indicted and released on bond, and then consulted a private psychiatrist who filed a report stating that in his opinion defendant was suffering from a mental disease at the time of the alleged offense and that the offense committed was the product of this mental illness. The United States thereupon filed a motion for the commitment of the defendant for a mental examination. The defendant, through his attorney, opposed this motion on the ground that such commitment would be in violation of the defendant's constitutional rights. Over these objections, the District Court granted the government's motion and committed the defendant for a period of ten days for a determination of his mental competency to stand trial, as well as his mental condition at the time of the crime.

At Saint Elizabeth's, where he was committed, the defendant refused to cooperate in an examination by members of the psychiatric staff in that he refused to converse with them. Consequently, being deprived of the principal psychiatric tool in making a mental examination and for arriving at a conclusion of mental condition, they were unable to reach any opinion regarding his mental condition. When the case came on for trial, the Government was thereby rendered incapable of offering any expert testimony regarding defendant's mental condition, and indeed his counsel objected to any testimony by the Government psychiatrists, or comment by the prosecution, on the defendant's refusal to cooperate. The trial court, however, overruled this objection and allowed such testimony and comment. Whether this ruling would be approved by the Court of Appeals is in the realm of uncertainty and could not be determined by this case, as the first

[53] *Ibid.*

trial, by reason of actions of defendant not pertinent hereto, resulted in a mistrial.

It was, therefore, necessary that the case be retried, and at the beginning of the second trial, upon motion of the government, the defendant was committed to Saint Elizabeths Hospital over a weekend for a determination both of his competency to stand trial and his mental condition at the time of the alleged offense. This time, the defendant cooperated, and the staff reached the opinion that he was competent to stand trial, but "because of the brief duration of his hospitalization" [54] was unable to render an opinion as to whether the defendant was suffering from a mental illness on the date of the offense or whether the offense was the product of such illness, if any. The determination of competency to stand trial, however, was made "on the basis of psychiatric examinations which indicate that there is no disturbance of thought processes or of his emotional reactions. There is no evidence of hallucinatory or delusional experiences at the present time or in the past. Perception, comprehension and orientation were considered normal." [55]

Again, as at the first trial, the Government was unable to provide any expert testimony relative to defendant's mental condition at the time of the offense. The only expert testimony available to the Government as to his mental condition related solely to his competency to stand trial, and, under *Durham* v. *United States*, *supra*, this is inadmissable at the trial stage on the issue of his mental condition at the time of the offense. Therefore, with no expert testimony from the Government involving defendant's mental condition at that time, and having before it only the uncontroverted expert testimony offered by defendant that he was insane within the *Durham* rule,[56] the jury had no alternative but to find defendant "not guilty by reason of insanity." This was the verdict, and defendant was committed to Saint Elizabeth's Hospital pursuant thereto on September 23, 1965. He then cooperated with the psychiatrists at the Hospital, who found he was not insane. Three and a half months later, on January 12, 1966, he was unconditionally released from custody, pursuant to the statute, *supra*, upon certification of the Superintendent of Saint

[54] Letter from Superintendent of Saint Elizabeths Hospital to Clerk of Criminal Division, United States District Court, dated September 19, 1965 and filed September 20, 1965.

[55] *Ibid.*

[56] Whenever the words "insane" or "insanity", or "sane" or "sanity" are used herein, they are used as a shorthand method of expressing the meaning contemplated under the *Durham* rule, embracing both mental condition and productivity.

Elizabeths Hospital that defendant was not suffering from an abnormal mental condition at that time and would not be dangerous to himself or others by reason of mental disorder in the reasonably foreseeable future and that he was entitled to unconditional release.

The shocking character of this particular case, standing alone, is probably sufficient to justify a change in the law to prevent a recurrence. But aside from the character of this or any particular case, there seems to be no escape from the conclusion that the burden now resting upon the prosecution to establish sanity beyond a reasonable doubt cannot be carried, when a defendant, by the simple device of refusing to cooperate, prevents the government from obtaining expert testimony of his mental condition; and a verdict of "not guilty by reason of insanity" is inevitable. In this manner any uncooperative defendant who has the advantage of uncontroverted independent psychiatric testimony of insanity, which later may be found not to be in accord with the views entertained by the psychiatric staff of the mental hospital to which he will be committed upon a verdict of not guilty by reason of insanity, may escape all punishment except perhaps a few months' incarceration in the hospital while the psychiatrists there, with his then willing cooperation, make the necessary examinations to determine his mental condition. Nor can the example of the *Schurmann* case, above given, be classified as an isolated instance of a miscarriage of justice which should not be made the basis for any change in an otherwise desirable law, for this uncooperative-defendant procedure has been encountered in other cases. Indeed, it takes no prophet to assert that it will be followed more and more frequently, now that independent expert testimony is provided for at government expense for indigent defendants under the Criminal Justice Act of 1964, 18 U.S.C. 3006A(e) [57] hereinafter discussed. Also, it is well known that astute lawyers are quick to embrace and take advantage of procedures of this kind which inure to the benefit of their clients.

It will thus be seen that under the new Criminal Justice Act, *supra*, any indigent accused, after obtaining private psychiatric examination at the expense of the government, can prevent the government from obtaining its own expert testimony be refusing to cooperate. Thus, in *all* criminal cases involving the insanity de-

[57] "Upon finding . . . that the services [of an expert] are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on the behalf of the defendant. . . . The court shall determine reasonable compensation for the services and direct payment to the person or organization that rendered them. . . ." 18 U.S.C. 3006A(e) 1964.

fense, the accused under existing law can effectively render the government powerless to offer expert testimony on the issue of insanity.[58]

I do not believe that a change in the burden of proof, as recommended, would alone solve this uncooperative-defendant problem, and, in my opinion, something more is necessary in the form of a sanction. More particularly, assuming that the burden of proof of insanity by a preponderance of the evidence should be placed upon the defendant, he could still, in a less forceful way than at present, probably carry his burden of proof and produce the same result as at present by refusing to cooperate with the government psychiatrists. By such tactics he erects a wall against any psychiatric testimony except that which favors him, and by changing the burden of proof the only difference would be that the burden would be shifted to him to rebut the presumption of sanity and to establish his insanity by a preponderance of the evidence. This might prove a little more difficult for a defendant than the present requirement placing the burden upon the Government to establish sanity beyond a reasonable doubt, but that is about all it would do, and alone would not solve the uncooperative-defendant problem. In addition it should be noted that, by this expedient, a defendant can circumvent the judicially imposed duty of the government to insure a proper mental examination when the accused's mental condition is in issue.[59]

Therefore, I believe that a legislative sanction is necessary. There is nothing revolutionary about this, and in that connection two provisions of the D.C. Code are of parallel significance, as follows:

Under § 22–3506(a), a defendant examined under sexual psychopath legislation must answer questions by psychiatrists under penalty of contempt of court. Section 14–307 (Supp. V, 1966), setting forth the physician-patient privilege, provides that such privilege does not apply to "evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity. . . ."

As a means of correcting this anomaly in our judicial system which is created by a defendant's refusal to cooperate, and by way of a sanction, I would recommend that legislation should be enacted providing that any defendant who intends to present psychiatric testimony of his incompetency to stand trial or of his lack of criminal responsibility shall be required to submit himself for examination at reasonable times

[58] See Note, *Pretrial Mental Examination and Commitment, Some Procedural Problems in the District of Columbia*, 51 Geo. L. J. 143 (1962).

[59] *Cf.*, Krash, *supra*, note 23 at 918–921.

and places by the psychiatrists on the staff of Saint Elizabeths Hospital or otherwise selected by the Government [60] and to cooperate in their examination to the extent of answering questions propounded by them, and that failure to do so will be the basis for excluding the psychiatric testimony tendered by defendant, unless the court after a hearing determines that his mental condition is such as to excuse such failure. A similar sanction is proposed in the A.L.I. Model Penal Code, § 4.02(2), where the defendant fails to give timely notice of his intention to rely on an insanity defense.

I am of the opinion that legislation of this character would not run afoul of the defendant's fifth amendment right against self-incrimination [61] for the following reasons:

Section 18–4244 U.S.C. (passed in 1949) (1964), provides that a Court may order an accused committed for psychiatric examination, with or without his consent, but that no statement made by him in the course of such examination on the issue of guilt shall be admitted in evidence against him. While this is a federal statute, it has application to the District of Columbia.

Section 24–301, D.C. Code (1961 Ed.) likewise provides that the District Court may commit an accused for psychiatric examination, and § 14–307, D.C. Code (1961 Ed. Supp. V, 1966), as already mentioned, prohibits, without consent of the patient, disclosure by a physician of any confidential information received by him from the patient, except evidence relating to the sanity of an accused in criminal trials where the accused raises the defense of insanity.

The two sections of the D.C. Code are silent as to statements made by the accused with respect to guilt of the offense charged, but the

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[60] Under the 1966 amendments to Federal Rules of Criminal Procedure, Rule 16, the defendant, upon motion may be permitted to discover and copy ". . . (2) results or reports of . . . mental examinations" made by the government. Thus the defense will not be surprised at trial by "unfamiliar" medical testimony and they are afforded opportunity to prepare their examination of the experts.

[61] There are state cases to the contrary, *e.g.*, *State* v. *Olson*, —— Minn. ——, 143 N.W.2d 69 (1966); *French* v. *District Court*, 153 Colo. 10, 384 P. 2d 268 (1963); see also Danforth, *Death Knell for Pre-Trial Medical Examination? Privilege against Self-incrimination*, 19 Rutgers L. Rev. 489 (1965). These authorities, however, may readily be distinguished since the state statutes do not protect the defendant's privilege against self-incrimination, as is the case in this jurisdiction, and thus the holding of these courts is the mode of enforcing such privilege. See text discussion, *infra*. But the state cases on this point are by no means uniform. See, *e.g.*, *State* v. *Grayson*, 239 N.C. 453, 458, 80 S.E.2d 387, 390 (1954), "self-incrimination . . . does not extend to . . . mental condition as evidence when such evidence is relevant and material, even when such evidence is obtained by compulsion."

Court of Appeals in *Edmonds* v. *United States*, 104 U.S. App. D.C. 144, 146 (1958), has held that it was clear that Congress in encating these statutes meant to remove the privilege from statements relative to mental competency or sanity, but to retain privileged statements relevant to the issue of guilt or innocence.[62]

By the qualification in the federal statute and by the Court of Appeals decisions, these statutes requiring compulsory examination are saved from invalidity under the fifth amendment because incriminating statements made by the accused to a psychiatrist as to guilt are excluded from evidence.

Therefore when an accused under an order of the court refuses to be examined, a sanction prohibiting the testimony of a private psychiatrist would be a means of enforcing obedience to the court order. There might be other means, such as contempt of court, which likely would be inadequate under circumstances such as those here involved and certainly would delay the trial, but the court is not limited to one means only.

For these reasons, I see no constitutional impediment to applying the sanction here suggested.

Moreover, an accused is not compelled to raise the insanity defense, but when he does he impliedly "waives" the right to object to a compulsory examination,[63] and therefore the court may impose sanctions to compel obedience. The theory of this waiver it bottomed on the need to protect society's interest where the defendant intends to rely on the defense of insanity by giving the prosecution the information, and thereby the ability, to rebut that defense, if spurious. Clearly, to foreclose this information from the prosecution under these limited circumstances where the defendant's fifth amendment rights are protected by holding inadmissible declarations not germane to the mental issue, and where there is but a single source of information, namely the compulsory examination, would frustrate the prosecution from bearing whatever burden of proof may be assigned to it. If a defendant were allowed to refuse to cooperate and still have a psychiatric defense, a trial would no longer be a search for truth, but would be a one-way street to his early freedom.

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[62] See also, *Carey* v. *United States*, 111 U.S. App. D.C. 300 (1961). Compare, *Schmerber* v. *California*, 384 U.S. 757 (1966), where the privilege was not violated by extracting blood from a suspected drunken driver against his will. It was held that the privilege applied only to "evidence of a testimonial or communicative nature . . . ." But here communicating is only a means for obtaining the same character of "internal" evidence allowed in *Schmerber* and has to be free of incriminating statements to be admissible.

[63] See Note, *supra*, fn. 58 herein at 145–146, and State Statutes from 23 states and cases cited therein.

The recommendations made in this Minority Report are consistent with the proscription against punishing a person so mentally ill [64] that he is incapable of making a decision.

The foregoing constitutes my Minority Report and recommendations on the *Durham* rule.

I am authorized to state that Commissioner Bittinger concurs in this Minority Report.

I am also authorized to state that Commissioner Ballard agrees with me on the burden of proof question.

I am further authorized to state that the Chairman, Commissioner Miller, concurs in my report on the *Durham* rule. He, though, would require the defendant to introduce substantial evidence before he could avail himself of the insanity defense, but would still require the government to meet its "traditional" burden of proof. He also feels the American Law Institute test, *supra*, is superior to *Durham*, but he recognizes the validity of the problems I raise in my analysis.

Addendum II: The Durham Rule

Specific Comment on the Majority Report [65]

The Minority Report on the *Durham* rule was written before the Majority Report of the Commission was submitted to me in final form, and this addendum contains comments on, and answers to, some portions of the Majority Report.

As I read their report, the Majority contention is that insanity law in this jurisdiction has evolved under *Durham-McDonald* into a workable standard and that problems with the insanity defense have been largely settled. In other words, the Majority appears to believe that we have reached a state of reasonable perfection, and that, with one minor exception hereinafter referred to, no changes are necessary or desirable. I disagree, for the reasons set forth in the Minority Report, but shall also specifically answer in this addendum some of the points made by the Majority, as follows:

The Majority Report states that the "*Durham* rule does not appear to offer a readily available opportunity for criminal offenders to escape the consequences of their acts." I do not understand the meaning exactly intended to be conveyed by the expression "readily available opportunity," but if it means "easily" available, which is one of its

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[64] See *Overholser* v. *Lynch*, 109 U.S. App. D.C. 404, 409 (1961), *rev'd on other grounds*, 369 U.S. 705 (1962).

[65] I regret that I am generally unable to give the page and table numbers herein where I refer to the Majority Report. That report had not been printed at the time this addendum was prepared.

dictionary meanings and which I think is the meaning intended, it appears from the Majority's own statistical table that the *Durham* rule has been available and is utilized in a significant number of cases. That table shows that from District Court 5.5% of defendants found not guilty by reason of insanity were classified by Saint Elizabeths to be without mental disorder and that 24.1% were diagnosed as suffering from personality disorders. The total of these two figures is nearly 30% of all defendants found not guilty by reason of insanity in District Court and, in numbers, this 30% represents 107 defendants. The 5.5% figure alone, namely those who were found to be "without mental disorder" is significant to me, especially if the charge is murder. It might reasonably be assumed that some of the 5.5% were charged with this crime since the Majority's statistics show that of those charged with murder and found not guilty by reason of insanity, three were released in less than six months and four were released in less than a year. Further, every defendant in the 5.5% classification was charged with a felony, for that is the only category of crime over which District Court has jurisdiction and the table relates to District Court cases only.

As for the 24.1% of the defendants committed to Saint Elizabeth's who were diagnosed as having personality disorders, all of them, as pointed out in the Minority Report, cannot be classified as so mentally ill as to be ineligible for release. In fact, Dr. Owens, of Saint Elizabeths Hospital, in his address, referred to and quoted from in part in the Minority Report, spoke of the difficulty of drawing the line between those mentally ill and those not mentally ill who are in the category of persons suffering from personality disorders.[66] He said that "the jails, as well as the community, are filled wih individuals having personality disorders." He further stated "once you say these individuals are sick, you have a hospital full of sociopaths or other types of personality disorders, . . . to the point that we would almost do away with the jails because nearly all prisoners would be in the hospital under this definition."

Further, it appears from the Majority's statistics that in fiscal 1965, in District Court, there were 35 verdicts of not guilty by reason of insanity in a year in which there were 265 convictions resulting from a trial. Therefore, stating these numbers as an approximate ratio: for every 8 defendants convicted at trial, 1 defendant is found not

[66] While this address by Dr. Owens is cited by the Majority (footnote 38) it is interesting to note that they do not mention nor apparently do they give credence to his airing of the *many* problems involved with this class of mental patient.

guilty by reason of insanity. Accordingly, I do not perceive how these statistics prove the conclusion reached by the Majority on this point. Certainly the number of defendants whose criminal behavior is excused under the *Durham* standard can hardly be characterized as "relatively small" as stated by the Majority Report.

The Majority Report of the Commission speaks of the declining number of persons "absolved on grounds of insanity" since the *McDonald* case was decided in October 1962. The decline was irregular from 53 to 23, to 35, to 26. To be sure this is a decline, but not one sufficient to indicate that the problems have been largely settled since the *McDonald* decision, as would seem to be the general tenor of the Commission's Report, particularly when the types and seriousness of the crimes involved are considered.

The Majority Report states that no person acquitted by reason of insanity may be released "without prior approval of the court." I assume that this is included in order to give the impression that improvident releases are guarded against by this requirement. But the Majority Report does not state that court approval is necessarily predicated upon what is brought to its attention and when the psychiatrists report that such a person is without mental disease, and there is no evidence to the contrary, approval by the court becomes a perfunctory matter. This is the case in most instances. It could not be otherwise in the case of a defendant against whom the Government was unable to provide evidence removing a reasonable doubt from the jury's mind and yet is eligible for release under the criteria for release, all as fully discussed in the Minority Report as such.

Attempting to establish that defendants found not guilty by reason of insanity spend more time as patients in Saint Elizabeths Hospital than convicted defendants spend in jail has been an important goal of the Majority in the portion of the chapter dealing with "Duration of Confinement." Their reasons are obvious: this thesis, if proven, would give support to their major conclusion that the *Durham* rule needs no substantial revision. They further intended to show that it is not to the defendant's advantage to plead insanity because it will cost him more, in time institutionalized, than if he faced a jail sentence. The majority has never been able to support this, but they have been unrelenting in their attempts. The methods employed to prove this thesis have precipitated considerable controversy between the staff and the Majority on one side and the Minority on the other side. This controversy resulted in many drafts and revisions by the Majority of both the approach used to prove their point, and in the

subsequent dilution of the conclusion to be drawn from the "available" statistics.

In the early drafts of this section the text and tables clearly stated the Majority's now abandoned view, that, "[t]able 10 [what is now table 9] shows that . . . the median length of insanity acquittal commitment is longer than the median imprisonment of a convicted felon in the District of Columbia and in the Nation as a whole."

Still, this portion as it has now evolved, in its present state, must have fault taken with the accuracy of the statement attributed to the Saint Elizabeths' statisticians [67] and with even the diluted versions of the tables and the conclusion that "[if] this measure is relied upon, the median confinement at Saint Elizabeths Hospital appears to be greater than the median confinement of District felons in prison in every crime category with the very important exception of homicide and the less important exception of forgery, 'other felonies,' and possibly narcotics."

In an independent discussion with the chief statistician from Saint Elizabeths Hospital on November 30, 1966, it was learned that he feels the "all patients" category (column 3 in the Majority's table 9) which is principally relied on by the Majority for comparison to the prison data, does best represent the situation at the hospital. But this "all patients" category, he stated, is weighted to make it comparable to similar data. The weighting is necessary, said the Saint Elizabeths statistician, due to the short period of experience (12 and a fraction years) the hospital has had under *Durham*. Whether or not the "all patients" medians are subject to a fair comparison with only a sampling of the prison population,[68] as he put it, "still presents a question." Thus, while the Majority states that the "all patients" column is most comparable to "*prison sentences served by felons*," this does not mean that the weighted Saint Elizabeths medians are necessarily comparable to the partial population used by the "National Prisoner Statistics" which is unweighted. (See footnote 68.) In this regard the readers should be aware that the authors of the National Prisoner Statistics were wary of comparisons between the District of Columbia and the states. They footnote that: "Although the District of Columbia had the highest median served, the *comparison with other jurisdictions is*

[67] This is not the first occasion that even a cursory independent investigation has shown a lack of accuracy.

[68] The Majority gives three columns of medians. Principally they rely on the "all patients" medians which encompasses patients *both released and still hospitalized*. The prison population medians given by the "National Prison Statistics" are for prisoners *released only*. Thus, the Majority, speaking figuratively, compares oranges and onions.

spurious in that it is the *only jurisdiction which deals with* an exclusively urban population." (Emphasis added.)[69]

The Saint Elizabeths Hospital statistician is of the opinion that sufficient data are available to make a valid comparison between the two populations (prison and hospital) and that this data could be presented in a manner, as he said "which would make for a more legitimate comparison." Although the Saint Elizabeths Hospital statistician does not approve of the following table (other statistical experts have approved of this presentation of the data) he would choose a method similar to the one herein set forth. He too would work in percentages of releasees for both populations over a given period.[70]

Without belaboring the question further, it would appear that a more valid comparison of this data is that of time served by felony prisoners before first release with the time served by those acquitted by reason of insanity before first release. Such a table showing the *percent of persons* so *released within a given time interval follows:*

TABLE II.—*Percentile time served by felony prisoners before first release*

	Total Number	Time served (percent)					
		Less than 1 yr.	Less than 2 yrs.	Less than 3 yrs.	Less than 4 yrs.	Less than 5 yrs.	5 yrs. and over
National Prisons	*65, 201	20. 5	58. 0	77. 7	86. 9	91. 3	8. 7
D.C. Prisons	*645	10. 2	34. 1	52. 7	66. 9	79. 5	20. 5
Saint Elizabeths	**203	23. 6	53. 2	73. 9	88. 2	95. 6	4. 4

*"National Prisoner Statistics," p. 68, Table R2–1960.

**Data compiled by the Commission's staff from Saint Elizabeths records, current to December 31, 1965.

[69] The nature of exclusively urban crime varies from the nature of state crime which is both urban, suburban and rural. Further density of population per square mile is a factor. In the District of Columbia the density of population per square mile is 12,523; in the most densely populated of the 50 states, Rhode Island, it is 812.4; and in the entire United States it is 50.5. *The Random House Dictionary of the English Language*, (unabridged ed.) N.Y. 1966, p. 1950, based on the 1960 census.

[70] The Saint Elizabeths Hospital expert questions the effect the percent of the population in the "5 year and over" category would have on the percentages in the other categories. He is wary of the fact that no one in Saint Elizabeths Hospital could have been confined more than 12 years while this is not so for the prison population. The Minority, of course, were limited by using only what was made available to us by the staff (table 8) and could only present it in what we believe to be a more honest fashion.

The Minority believes that the table above graphically, definitely and fairly demonstrates that persons released from the District of Columbia prisons after felony confinement generally serve longer terms than those released from Saint Elizabeth's Hospital after a verdict of acquittal by reason of insanity. The same is true in 3 out of the 5 time categories for all felony prisoners in the United States.

The Majority Report also states that "[t]he *Durham* test, as amplified by *McDonald*, is similar to the 'substantial capacity standard' of the American Law Institute." It may be similar but it certainly is hardly its equivalent, as seems to be the impression sought to be conveyed. The American Law Institute Model Penal Code, Section 4.01, reads as follows:

> (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.
> (2) . . . the terms 'mental disease or defect' do *not* include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The *McDonald* decision amplifies the *Durham* test as follows:

> A mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls.

It is thus seen that, unlike *Durham-McDonald*, under the A.L.I. standard, many of the 24.1% of defendants who are diagnosed as suffering from personality disorders would not be among those acquitted by reason of insanity.

The Majority Report also states that under "the *Durham* test, it is for the jury to determine *whether* a defendant with the personality traits of a sociopath suffers from a mental disease such that he should be held criminally responsible." This is not a correct statement of the law, because the jury does not make any such determination, but only determines whether the Government has, or has not, established *beyond a reasonable doubt* that the defendant is *not* suffering from such a mental disease. It does not determine his insanity or mental incapacity. (*Green* v. *United States*, 122 U.S. App. D.C. 33, 35 (1965)). This is quite different from determining *whether* a defendant is suffering from a mental disease. The difference in concept is amplified in the Minority Report.

The Majority Report states that since the *McDonald* decision, "insanity acquittals have stabilized at 2 to 3% of all defendants." It is therefore apparently concluded that the *Durham* rule is not an important factor in law enforcement, and nothing need be done about it.

The Majority Report supports this conclusion by statistics, which, in its view, disclose that the impact of *Durham* is minimal.

I challenge the validity of this conclusion arrived at from these statistics. The "2 to 3%" referred to is the percentage of *all* defendants whose cases were *terminated*. This includes all types of dispositions including the many which are dismissed and those in which defendants elect to plead guilty to lesser offenses or to fewer counts. The latter usually is induced by a belief on the part of the defendant that it is in his best interest to make such a disposition, irrespective of his possible defenses, rather than to stand trial on the indictment. The cases which are dismissed or result in a plea to lesser offenses or fewer counts would not be a proper comparable for determining the impact of *Durham*, as they are not in the stream of criminal trials. It would have been more meaningful, but by no means conclusive, in determining this impact to compare the percentage of the number of persons found not guilty by reason of insanity with the number of persons "tried." Since *McDonald* 9.5% of the defendants tried have been found not guilty by reason of insanity.

A similar comparison is made in another context in the Majority Report where the overall impact of *Durham* is being discussed, but such a comparison is not made at this point to support the finding that "insanity acquittals have stabilized . . . ." Overall, the Commission's table of statistics disclose that for the period, 1954–1965, the number of persons "*tried*" was 5,588 and the number of persons whose cases were "*terminated*" was 17,208, and that the percentage of the number of persons found not guilty by reason of insanity was 6.5% of the defendants whose cases were "tried." This is 209% greater than the 2.1% figure used. The total number of persons found not guilty by reason of insanity for this period was 361. Further, the Majority Report includes tables which are based on fiscal year 1954. This was the year prior to *Durham* and it is thus improper to measure *Durham's* current effect by statistics *Durham* did not affect.

Aside from percentages, this is a significant number and hardly minimal as seems to be the purport of the Majority Report.

Be that as it may, the hard fact remains, according to the Majority's own statistics, that of the 53 defendants charged with murder and found not guilty by reason of insanity, 3 spent less than 6 months in the hospital before release, 4 spent less than 1 year, 7 spent between 1 and 2 years before release, 5 spent between 2 and 3 years before release, 5 spent between 3 and 4 years before release, and 3 spent between 4 and 5 years before release. The maximum penalty for murder in the first degree is death, and the minimum penalty is life imprisonment. The maximum penalty for murder in the second degree is

imprisonment for life, or not less than 20 years. This disparity in this most serious of all crimes, between the time spent by those found not guilty by reason of insanity, and the penalties is apparent.

The Commission's table of statistics show the same pattern of disparity in relation to the time spent in the hospital by defendants found not guilty by reason of insanity who were charged with the serious crimes of rape, robbery, housebreaking and aggravated assault. As the Commission's table does not give the maximum penalty for these offenses I set them forth, for comparison, as follows: rape, not more than 30 years or the death penalty where the jury adds that to their verdict; robbery, 15 years but not less than 6 months; housebreaking, 15 years; assault with intent to kill, etc., 15 years; assault with a dangerous weapon, 10 years.

Further, may I point out that 52.4% of the persons found not guilty by reason of insanity were charged with the crimes of murder, robbery, housebreaking or aggravated assault. Since the *Durham* decision, 16.6% of all persons charged with murder have been found not guilty by reason of insanity. This proportion is considerably higher than the ratio for any other crime category. Almost twenty-five percent of those released from the hospital under District Court commitments involving felonies have been released in less than 1 year.

On the basis of the foregoing it is difficult to understand the apparent conclusion reached by the Commission in its report that the impact of the *Durham* rule is not an important factor in law enforcement. Congress felt that *Durham's* impact was sufficient enough to merit adoption of the American Law Institute standard as set forth in the Omnibus Crime Bill of 1966, since vetoed. Further, let it be repeated that, not only numbers or percentages, but the character of the crimes involved has a significant impact.

The Majority Report does support one proposal (and is the only change it recommends) that a defendant shall give written notice to the District Attorney of his intention to rely upon the defense of insanity, if there be no court order for mental examination. This requirement was contained in the Omnibus Crime Bill recently passed by Congress. The Majority Report recommends adoption of this provision. I likewise favor this proposal, but the difficulty is that it does not reach the problems involved, and is probably proposed by the Majority as a diversionary tactic of recommending something to escape responsibility for recommending nothing when a remedy is sorely needed. Certainly, it would not be sufficient if the defendant, as mentioned in the Minority Report, acquires "some evidence" on which

to secure a verdict of acquittal by reason of insanity and is yet able to meet the standards for early release. This would be particularly true of the mild cases of personality disorders which, as stated, comprise almost 25% of those found not guilty by reason of insanity.

In addition, in the vast majority of cases, the notice would be useless. Sixty-eight per cent of the defendants proceed at government expense, and a court order would be required in those cases for a mental examination either by the psychiatrists at Saint Elizabeths Hospital or outside psychiatrists. In most of the remaining cases where insanity is a defense, defendants have in the past, as a matter of practice, obtained court orders for examination by the psychiatrists at Saint Elizabeths Hospital. In both instances the District Attorney would necessarily have notice.

The Majority Report opposes any change in the burden of proof. The Majority does not wish to depart from the "traditional" burden of proof. This seems strange to me coming as it does from those who find little or no flaws in the *Durham* rule, which in itself was a departure from tradition. The Minority Report has discussed fully the reasons and need for a change in the burden of proof, and there is no need to say more, except on one point not covered, viz.: The Majority Report speaks of the burden of proof being upon the prosecution in all federal courts, apparently to support its view that there should be no change. Of course the burden of proof is on the prosecution in all federal courts under the Supreme Court decision placing it there, as pointed out in the Minority Report (*Davis* v. *United States*, 160 U.S. 469 (1895)). But no other federal court has adopted the *Durham* rule and no federal court other than the *District of Columbia*, has had the experience and problems under it which makes the need for the legislation recommended for a change in the burden of proof.

In opposing any change in the burden of proof, the Majority Report reaches the conclusion that "there is a substantial question" whether such a change "would be upheld by the Supreme Court." It recognizes that the Supreme Court has decided contrary to this conclusion in upholding a state statute requiring defendant to prove sanity beyond a reasonable doubt (*Leland* v. *Oregon*, 343 U.S. 790 (1952)), but relies on a dissenting opinion in that case, as the basis for the doubt expressed by the Majority. I do not possess the omniscience of the Majority in forecasting the future, and therefore do not believe that we should hesitate to recommend a needed change on the basis of a prediction that the Supreme Court will, in effect, overrule what it has already decided because of a dissenting opinion.

The Majority Report states that "the Court emphasized in *McDonald* that the issues should be left in the hands of the jury." This leaves the reader with the impression that the jury in all events will decide the issue and that it can be safely left in its hands. This is, in effect, an assertion that directed verdicts of acquittal are abolished. I do not read the *McDonald* case that way and refer to the quotations therefrom in the Minority Report in refutation of this statement. Directed verdicts of acquittal are still part of the law, and a case still must be taken from the jury by a directed verdict of acquittal by reason of insanity if it meets the requirements of *Curley* v. *United States*, 81 U.S. App. D.C. 389 (1947).

So far as the uncooperative defendant is concerned, the Majority Report states that it "believes" that the "prosecution should be permitted to prove and comment upon the defendant's refusal to cooperate in the examination." It is interesting to note that the Majority reaches this "belief" as to what should be done, but makes *no* recommendation as to how it should be accomplished, whether by legislation or hope for a judicial pronouncement, and leaves in limbo any solution to this most important problem exemplified by the *Schurmann* rape case referred to in the Minority Report.

The Majority Report states that "sanctions which aim at compelling cooperation are permeated with constitutional problems." I have discussed this question in the Minority Report and further discussion would be repetitive, but I am mystified that the Majority Report finds sanctions of the kind suggested by me to be "permeated with constitutional problems" when it sponsored a requirement for a written notice (prior to the passage of the D.C. Omnibus Crime Bill) when the defendant intends to rely on the insanity defense *with the sanction that failure to give such notice would deprive defendant of that defense.* The proposal in the Minority Report is not that broad. It would only deprive the defendant of the psychiatric testimony upon failure to cooperate and *not* deprive him of the defense, which might be successful in cases where a defendant is obviously psychotic, in the absence of psychiatric testimony. There is another exception in my proposal to exclude only the psychiatric testimony, and that is in cases where the court after a hearing determines that defendant's mental condition is such as to excuse his failure to cooperate. That is not contained in the broad sanction espoused by the Majority Report for failing to give notice.

The foregoing constitutes my comments and direct answers to some of the points raised by the Majority Report.

SECTION III

Drug Abuse

I am opposed to one of the recommendations of the Commission in Chapter 7 concerning "Drug Abuse." On the contrary I would not seek amendment to the Narcotic Addict Rehabilitation Act of 1966, which recently was signed into law by the President.

Stated in abbreviated form: I am opposed to the recommendation of the Commission for legislation which would permit pretrial civil commitment for those addicted sellers "who are in the trade only to support their own habits." The basis for my opposition is that such legislation would permit preferential civil commitment treatment to all persons charged with selling narcotic drugs if they sold "only" to support their own habit.

The report of the Stanford Research Institute prepared for the Commission states that 86% of the offenders under the drug statutes were addicted. While there is no breakdown in these statistics, it may be assumed that a large number of the offender-addicts were sellers of narcotics because a sale is the general method by which offenders under the drug statutes are apprehended. It may also be confidently assumed that a large proportion of these seller-addict-offenders would ask for this preferential civil commitment treatment claiming the sale was "only" for the purpose of supporting their habit, rather than to suffer the rigors of a long term sentence.

I, like Congress, which considered a very similar provision that would have allowed pretrial civil commitment where "the sale was for the sole purpose of enabling the individual to obtain a narcotic drug" for his personal use, perceive no proper basis for preferential civil commitment treatment of narcotics law violators who are both sellers and addicts. These offenders dispense the same devastating poison as does the seller-nonaddict. They cause the same wreckage in human lives as the other. And they too spread the disease of narcotic addiction. Frequently, in addition, the seller-addict is the retail outlet for a supplier. He is known in the trade as a "street peddler," "pusher" or "bag man." He is the "go between," the middleman between the supplier, and the ultimate consumer-purchaser; it is he who facilitates the flow of narcotics traffic. He sells to the latter at a profit, out of which he usually satisfies his narcotic needs and at times pays his living expenses. Generally, he would come within the purview of a provision making him eligible for preferential pretrial treatment. With him, the supplier has the immunity of anonymity, while he, the "peddler," takes the risks. Without him, the supplier would be less

likely to continue in business. For all practical purposes this shield of immunity is impenetrable. An addict is not likely to disclose the source of his supply for fear that he might be deprived of it in the future.

To give the seller-addict preferential civil commitment treatment would encourage narcotics traffic because it would provide a probable escape hatch for him if caught. Further, the present fear of severe punishment would be withdrawn.

The Mallory Rule

As I have indicated, the Majority and the Minority were able to reach an accord on a recommendation to modify the *Mallory* Rule. There is therefore no minority report on that subject. Nevertheless, I feel that in light of the scarcity of data showing the effect of statements on the law enforcement process, the Commission should have presented, for what it is worth, the records kept by the United States Attorney over a three and one-half year period, from June 1957 to February 1961, showing the impact of *Mallory*. From these records it appears that in only about one-half of the cases involving the *Mallory* decision did the Court admit the statement in evidence or the outcome was otherwise unaffected by this decision. In the other half of the cases, the Court excluded the defendant's statement or the assistant United States Attorney elected to accept a plea to a lessor offense, or go to trial without the statement. This record also discloses that 138 defendants were involved with *Mallory* problems, and as bearing on the seriousness of its impact, it discloses that 22 of this number were charged with criminal homicide, 11 with rape, 32 with robbery, 7 with aggravated assault, and 25 with housebreaking, or a total of 97 out of 138.

Also as possibly bearing on the impact of the *Mallory* decision is the fact that the trial conviction rate was at its highest up until *Mallory* and it has since fallen off although it now appears to be climbing back slowly. The same is true of the percent of cases the police are able to clear; it too has fallen off since *Mallory*, but it has not climbed back at all.

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The Commission has not discovered the slightest evidence to support the thesis that our Court of Appeals has caused or contributed to the present high incidence of crime in this community. To the contrary, a study made by the Commission of the characteristics of the typical adult offender in the District points clearly, in my view, to the conclusion that crime is rooted in a variety of social, economic, and psychological factors unrelated to appellate court decisions. The contention that the courts—specifically appellate decisions—are the "cause of crime" is, I respectfully submit, not only an erroneous diagnosis of a serious social disorder but diverts attention and energy from appropriate remedial measures.

The majority of the nine members of the Commission agree that it is incorrect to assert that rulings by the Court of Appeals contribute to crime. However, decisions by the Court have provoked extensive controversy in this community during the past decade, and two members of this Commission have filed a dissent to the present report in which they maintain that appellate decisions are "among the causative factors of crime." I am generally in accord with the discussion of the Court in the Commission report, but in view of the foregoing circumstances and the obvious importance of the issue, I thought it desirable to set out this separate statement of my views.

I

The short answer to the argument that the high incidence of crime in this community is the product of decisions by our Court of Appeals is the fact that the same high incidence exists in almost every major metropolitan area in this country. Indeed, the crime rate in a number of cities is higher than the rate in the District of Columbia. Statistics maintained by the F.B.I. show that among cities in the 500,000 to 1 million population class, Baltimore, St. Louis and San Francisco reported a greater number of total offenses than the District in 1965, and the crime rate in Houston was closely comparable.[1] I do not mean in any way to minimize the gravity of the high rate of reported crime in this community. The point is that decisions by our Court of Appeals are not binding outside the District and its decisions obviously

1. FBI, Uniform Crime Reports (1965).

have nothing to do with the high crime rate throughout the country. What other communities do have in common with the District are comparable social and economic conditions and these, I submit, do have an important bearing on the incidence of crime.

II

The psychological factors which motivate crime are still imperfectly understood. I am not aware, however, of any reliable evidence which supports the conclusion that appellate decisions motivate crime. The Commission has found no evidence—and I know of no empirical study—which lends support to the conclusion that judicial decisions contribute to the initial decision by offenders to commit a crime. I know of no evidence that individuals contemplating a robbery or a housebreaking ponder whether they will escape punishment, *if caught*, by reason of decisions of the Court of Appeals. I agree that reasonable certainty of detection and arrest have a deterrent effect. But decisions by the Court of Appeals have only the most remote bearing on the likelihood that an offender will be apprehended by the police. It is true that *after arrest and while in custody* defendants will make every effort to exploit procedural points. However, in my judgment, this has nothing to do with the decision these individuals made initially to commit a criminal act.

There is no proof that persons are induced to commit criminal acts by the remote contingency that a conviction will be reversed on appeal. In point of fact, relatively few felony prosecutions ever result in a reversal on appeal. Statistics compiled by the Commission staff demonstrate that over 50 percent of the persons accused of felonies in the District Court plead guilty; defendants in this posture seldom have grounds for appeal. Only about one-fourth of all felony prosecutions yield an appealable judgment, and of the cases appealed, only one in five result in reversal. Many of the cases reversed on appeal ultimately result in a conviction.

It has been argued, however, that decisions by the Court of Appeals have generated a climate of permissiveness which encourages the commission of crime. I am not aware of any reliable proof that this feeling exists among offenders. Even if such a feeling were demonstrated to exist, it would be necessary to prove that appellate decisions, as distinguished from various enforcement practices or other factors, have contributed in a significant way to its existence, and it would also be necessary to establish that this feeling encourages the commission of crime.

If it is true that a feeling of permissiveness exists, I suggest it may be due to other factors connected with the law enforcement process.

The report of the Commission underscores the high rate of attrition in prosecution of persons arrested for felonies, caused, among other things, by crowded court dockets. The inordinate delays which characterize criminal proceedings in the trial courts, leading to dismissals and pleas to lesser offenses, do have an important bearing on efforts to control the incidence of crime. These procedural problems, however, must be sharply distinguished from the appellate decisions which some persons maintain have increased the incidence of crime.

It is true that decisions by the Court of Appeals have required an adjustment in enforcement practices by the police and prosecuting attorneys. The police doubtless would find it easier to function, and the burden on prosecutors might well be eased, if the police, for example, were not required to bring a suspect without unnecessary delay before an independent judicial officer who advises the accused of his rights. But police and prosecutorial efficiency—important as they may be—are not the community's only concern. There are other values at stake, including the principle that citizens should be treated fairly and justly by the state. I do not believe that vigorous and effective law enforcement is incompatible with decent procedures by the police or a fair trial.

III

There is no single cause of crime; a combination of factors may coalesce to produce a particular offense.[2] The study made for this Commission by the Stanford Research Institute of the traits of the typical adult offender in the District shows that he is a Negro with a history of juvenile delinquency, unemployed and from the lowest income group, poorly educated and unskilled, and the product of a broken home.[3] In other words, crime tends to be associated with poverty, inferior schools and inadequate training, substandard housing, and an unstable family structure.[4]

A combination of many circumstances—the destruction of the Negro family unit in slavery, the historic treatment of the Negro in this country, discrimination and segregation, and poverty—have produced a breakdown of many Negro family units with resultant delinquency in many of them. The relationship between the economic position of the Negro male and the structure of Negro families has been under-

2. The myriad elements which produce crime are described in a paper prepared for the Commission by Professor Eli Ginzberg of Columbia University, an eminent sociologist. See App. (Ginzberg).

3. See App. (SRI), 515–16.

4. There is no clear evidence that crime is "caused" by these factors, but many competent investigators believe that these factors create circumstances conducive to antisocial behavior.

scored by many thoughtful observers. The highly unstable family structure of the lower class Negroes—more than one out of every four Negro households is headed by a woman—has been attributed to a lack of good jobs for Negro men, to welfare programs which make it easier for families to get relief when the father has departed, and to serious educational deficiencies. The deterioration of the position of the Negro male worker produces broken homes and the rearing of children without fathers. This, in turn, is undoubtedly a contributing factor to a pattern of youths dropping out of school as a first step that too often leads to delinquency and criminal conduct.

The current high incidence of crime in this city is thus, at least in part, a tragic byproduct of a social revolution sweeping the large cities of the nation. In essence, this revolution has its origins in the migration of large numbers of Negroes from the rural areas of the south into the great cities of the north, coupled with an exodus of white persons from the "central city" to suburban areas. In 1960, more than half of the District's nonwhite population—200,000 persons—were first generation migrants from the south or children born to them after their arrival.[5] These Negroes are by and large relatively uneducated and untrained, they are improverished, and they are the victims of decades of terrible injustice. In a recent report, the National Capital Planning Commission estimated that 174,000 persons, or nearly one-quarter of the District's population, live "in abject poverty, the lowest level of deprivation."[6] The wretched living conditions in the slums, contrasting so vividly with nearby affluence—not the opinions of our appeal courts—spawn the high incidence of street crime which so deeply concerns our community.[7]

IV

The Court of Appeals is also criticized by a minority of the Commission on the ground that it has reversed a substantial number of judgments because of "technicalities." I do not join in this criticism of the Court for the following reasons:

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5. Commissioners' Committee on Community Renewal, Community Renewal in the District of Columbia: Three Alternative Courses of Action, 2 (1966).
6. National Capital Planning Commission, Problems of Housing People in Washington, D.C., 2 (1966).
7. I do not subscribe to the simplistic notion that poverty "causes" crime. The causes are complex. The vast majority of the poor are law abiding, and criminal behavior is not confined to the poor. Poverty does, however, appear to be intimately related to an unstable family structure among some groups—particularly, to the absence of a father—and this in turn leads by steps to antisocial conduct.

First: There is no objective standard to determine whether a particular ground of decision is "technical." Points which seem "technicalities" to some persons, particularly laymen, may be deemed of fundamental importance by others. Some of the decisions challenged relate to such matters as the right to a prompt trial, over-reaching by the prosecution, and improper police interrogation.

Second: No post-judgment reappraisal can be confidently attempted without a meticulous study of the record of the proceedings in each case which was at the disposal of the appellate court. In many cases, the court's decision may have been motivated by the impression, resulting from a study of the record as a whole, that the trial had been prejudicially unfair, although its opinion may have focused on only one or a few of the inequities.

Third: Statistical evidence shows that the Court of Appeals has not reversed an abnormal number of criminal cases compared to other Federal courts of appeals. The data set out in the Commission report shows that the rate of reversal in criminal cases by our Court of Appeals during the 15-year period 1950–65 was 21.1 percent of all criminal cases considered by the court; percentage of criminal cases reversed by all other courts of appeals during the same period was 19.9 percent.

Fourth: It can also be demonstrated that the Court of Appeals has not decided an unusually high number of cases in reliance upon Rule 52(b) of the Federal Rules of Criminal Procedure which, in substance, authorizes an appellate court to overturn a verdict if a plain error affecting substantial rights occurred in the trial court though not called to its attention. During the past 15 years, the Court of Appeals commented on Rule 52(b) in about 100 cases; 33 of these cases were reversed or remanded on grounds not presented to the trial court. The average number of cases reversed on 52(b) grounds is thus only about two cases per year. It has been said that our Court of Appeals accounts for about one-third of all 52(b) cases decided in all of the Federal courts of appeals throughout the country. It must be noted, however, that this percentage of 52(b) cases corresponds roughly to the percentage of all Federal criminal appellate cases decided by our Court of Appeals. Statistics compiled by the Director of the Administrative Office of the United States Courts show that in the fiscal year ending June 30, 1965, there were 1,014 criminal cases terminated in all courts of appeals, and 257 of these cases (or more than 25 percent, of the total) were terminated by the United States Court of Appeals for the District of Columbia Circuit.[8] The percentage of reversals on

8. Annual Report of the Director of the Administrative Office of the U.S. Courts, Table B1, p. 158 (1965).

the basis of Rule 52(b) by our Court of Appeals is, therefore, not abnormal.

V

Finally, I do not believe—and I trust I shall not be understood to suggest—that the Court of Appeals is or should be immune from criticism. On the contrary, I believe the Court would benefit from increased professional criticism. It is likewise proper and appropriate that the court's decisions and operations should be debated and challenged by the press and the public generally. I submit, however, that there is no substance to the claim that the Court of Appeals, in some strange way, has been or is responsible for the high incidence of crime in this community.

PRETRIAL PREVENTIVE DETENTION: COMMISSIONER WALD, JOINED BY COMMISSIONERS KRASH AND FERGUSON

We are unable at this time to concur in the recommendation of a majority of the Commission that a statute be passed authorizing a judge or United States Commissioner to suspend the right to bail in non-capital cases. Crimes committed while on bail present a serious threat to the community which must be dealt with and it is for that reason we join in the other recommendations. We do not believe, however, that the majority's recommendation for a preventive detention law will provide an effective remedy. At this time, we believe a more promising approach to this problem lies in the creative application of the new Bail Reform Act of 1966, together with determined efforts to expedite trials of high-risk defendants.

The majority proposes in substance that a judge or United States Commissioner be empowered to deny bail to a felony defendant where he finds there is a high probability the man will cause the death of or inflict serious bodily harm on another or be a "grave menace to the physical safety of the public" during the period preceding trial. We doubt that such a statute would achieve its intended law enforcement objectives, we doubt the ability of a judge to distinguish between those offenders who represent a danger to the community during the pretrial period and those who do not, and we have doubts as to the constitutionality of such a measure.

Recent empirical studies reveal the extraordinary difference pretrial freedom can make in the outcome of the trial and in the offender's punishment. Before deprivation of so vital a right can be justified, a strong showing must be made that a real reduction in post-release criminal activity will, in fact, result; that the community has no other feasible way to protect itself; and that the means for predicting pretrial wrong-doing are fair and accurate. Otherwise, the procedure becomes a lottery at which punishment without trial is the price of holding the losing chance.

Our views are reinforced by a detailed examination of the records of the 207 bond offenders encompassed in the Commission's survey. In this survey, 1 in every 13 accused persons in the District Court was charged with committing a new felony while on bail. The pertinent question is whether or not a judge, at the time of the offender's first appearance before him, could have picked that defendant out from the other 12 who remained law-abiding until trial. Even more difficult would have been the task of choosing the ones who would commit crimes of personal violence as prescribed by the majority's recommen-

dation. Out of the 2,776 persons who came before the District Court in the survey period, 207 (7.5 percent) were charged with committing a new crime on bail, but only 124 (4.5 percent) with a crime of actual or potential violence which, under the majority's proposed legislation, would be considered heinous enough to justify pretrial detention if it could have been predicted.

Even more unpredictability is assured by the proposed statute's invocation of detention at the point of arrest, before extensive screening of charges has been done by the prosecutor or grand jury. In other chapters of this Report, we point out that about 75 percent of the felony arrests reported by the Metropolitan Police Department never reach the District Court at all or are not tried as felonies, but are dismissed altogether or tried as misdemeanors. Yet such defendants might be detained under the majority's proposal, since it applies to anyone *arrested* for a felony. The Commission's survey dealt only with the bail abuse rate among defendants actually bound over to the District Court; we do not even know the dimensions of the problem among the much larger group who are arrested for felonies but never reach the grand jury. It might indeed be much lower since the defendants where cases are "broken down" presumably represent a less acutely criminal population. At such an early stage in the process, the majority's recommendation may, in fact, involve asking a judge or commissioner to pick out the 1 in 50 or 1 in 100 defendants who will commit a crime before trial.

If a preventive detention statute is to accomplish its purpose of curbing crime on bail, it should focus on those defendants who exhibit identifiiable characteristics reasonably associated with pretrial criminal behavior. At the same time, it must avoid detaining the majority of defendants who will not commit another crime if released, and who need their freedom to prepare for trial and to preserve the structure of family and job if they are ultimately found innocent or placed on probation. Maintaining this difficult balance requires precise predictive factors which in most cases will allow a judge to make the right decision. No such factors are set out in the proposed statute. Judicial discretion may be a cornerstone of our criminal procedure, but where the right to bail is involved for a man still presumptively innocent, we do not think the judge's intuition a sufficient safeguard. Given our present knowledge, we do not see how the majority's recommendation can avoid detaining too few bad risks or too many good ones.

The legislation proposed puts forth two general criteria for predicting future crime at the time release conditions are set: (1) The

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nature of the charge, and (2) the accused's past criminal record.[1] We have examined the charges originally lodged against the 207 bond offenders in the Commission Survey, as well as their past criminal records, and we cannot find that as a group they are distinguishable on either count from all District Court offenders.

(1) The crime with which the bond offender in this survey was originally charged did not necessarily give any clear indication as to the type of offense he would commit while on bail.[2] It was not even possible, apparently, to predict that a man charged with a nonviolent or impersonal crime would adhere to this type of crime if he did stray, or that a defendant charged with a crime involving the potential for personal violence would repeat that particular type of offense if he committed another crime while on bail.[3] Over one-fourth of the bond offenders (57) alternated between impersonal or exclusively property crimes and those involving personal contact with victims, 32 going from impersonal to personal crimes and 23 from personal to impersonal ones. For instance, 10 out of 28 auto theft defendants were charged with subsequent crimes of assault, robbery, murder or housebreaking while on bail. Even among ascertained bail offenders the results of this survey thus provide few clues for predicting, on the basis of the first charge, who will commit a subsequent murder, assault or rape. When a judge must pick out the potentially dangerous bail offender not only from all bail offenders, but from the vast majority of defendants who will commit no new crime at all while on bail, his task becomes monumental. In short, the charge against the accused does not provide a reliable predictive tool for separating those who

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1. The majority's proposed legislation also talks about a "pattern of vicious antisocial behavior." What kind of evidence—hearsay, direct testimony, presentence-type reports—this would permit at the detention hearing is unclear, but raises deeply troublesome questions as to a man not yet convicted.
2. The 11 murders were committed by people originally charged with carnal knowledge, manslaughter, robbery, housebreaking, grand largency, weapon concealment, and auto theft. The rapes or attempted rapes were committed by offenders charged initially with robbery and forgery. The 19 aggravated assaults committed on bail were evenly spread among defendants charged originally with robbery, assault, housebreaking, auto theft, narcotics, and othert heft.
3. In the following discussion, for clarity we will refer to bond and release offenses, although fully aware that not all the defendants in this survey were actually convicted of either or both the original and subsequent offenses. In fact, among those cases disposed of, about 70% were convicted on the release offense and 45% convicted on the bond offense.

will commit serious offenses if released pending trial from those who will not.

(2) The second and seemingly more compelling basis for prediction in the proposed preventive detention statute would be the offender's past record. The assumption behind this criterion is that bond violators will have a discernibly different and worse record than regular offenders. But this assumption is not borne out in the sample study. There is a pragmatic proof of this in the fact that 40 of the bond offenses (16 percent), including two murders, one rape, and nine robberies, were charged to offenders who might have been detained at judicial discretion under *existing* law; they had originally been charged with capital crimes or were already convicted and awaiting appeal, and present law allows bail to be denied in such cases if the judge thinks the offender dangerous.

In the rest of the cases, the records of the bond offenders in the Commission Study do not compare unfavorably in any dramatic way with the Stanford Research Institute's composite sample of all convicted felony defendants in the District Court.[4] Among the 11 offenders charged with committing murders while on bond, four had no prior convictions in the Ditsrict at all and another four had only a misdemeanor conviction record. The other three had a single felony conviction apiece. There was not a single prior felony conviction in the group who committed rapes or attempted rapes on bail. Forty-eight percent of those who committed robberies on bail had no prior felony conviction record; nearly 40 percent had one prior felony conviction and 12 percent had more than one felony conviction. Among those who committed aggravated assaults on bail, only one out of 17 (less than 6 percent) had more than one prior felony conviction, four (24 percent) had one such conviction, and the other 12 (71 percent) had no prior felony conviction record. Fifty-four percent of the defendants who committed housebreakings on bail had no felony conviction record; 28 percent had one prior felony conviction; and

4. It should be noted, however, that the SRI Study deals with convicted felons, and the bond offender group with accused felons. The rate of conviction in the District Court is slightly more than 75%. Furthermore, only Metropolitan Police Department criminal records of the bond offenders were compiled in the Commission's Survey and these include only offenses committed in the District. The SRI Study included prior records both within and without the District. It should also be noted, however, that at the time the decision on detention or release would first be made under the proposed detention law, only prior District criminal records are ordinarily available to the judge or commissioner. The SRI Study also indicated that 76% of the composite sample of offenders lived in the District for 5 years or more. App. (SRI), 529.

18 percent had more than one. Moreover, the survey showed no correlation between the man's record and the time lapse between release and commission of the bond offense; the accused persons with the worst records did not return to crime the fastest.

A comparison between the records of the SRI composite of defendants convicted of robbery in 1965 and the released robbery defendants in the Commission Survey who committed subsequent crimes shows that a higher percentage of the bond offenders had no prior conviction record (discounting minor misdemeanor charges). The percentage of first offenders in the SRI robbery sample was 11 percent compared to 38 percent first offenders in the group of robbery defendants who committed bond offenses. In fact, 52 percent of all robbery defendants in the SRI Study had prior convictions for crimes of violence, sex crimes, or other crimes against the person and 67 percent for crimes against property.[5]

Even when prior arrests were taken into account (and a substantial legal question exists whether arrests not terminating in convictions could or should be used against a man in a preventive detention hearing) the differences were not striking. Table 1 compares the prior criminal records of the Commission's bond offenders in the largest crime categories and the prior criminal records of the defendants in the SRI Study. It shows that the bond offenders, rather than having worse criminal records, were more likely to have had no prior convictions and that fewer of them had heavy prior adult arrest records. The Commission's data do not, therefore, provide a reliable basis for concluding that either prior conviction or prior arrest records can be confidently used for predicting pretrial behavior.

TABLE 1.—*Comparison of prior criminal records between bond offenders and convicted felons*

Prior criminal record	Release offense (bond offenders) or offense for which convicted (SRI)							
	Robbery		Housebreaking		Auto theft		Narcotics	
	Bond offenders	SRI	Bond offenders	SRI	Bond offenders	SRI	Bond offenders	SRI
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
No convictions	38	11	38	4	46	15	7	8
No arrests	20	20	18	11	29	26	0	7
1 or 2 arrests	29	29	37	20	46	27	20	8
6 or more arrests	13	25	24	43	7	27	43	66

Source: Commission Bail Study (Metropolitan Police Department criminal records) and Stanford Research Institute Study, App. (SRI), 594, 605. See footnote 4 for differences in these sources.

5. App. (SRI), 605.

Much more detailed comparison must and should be made between bond offenders and those charged with similar crimes who do not violate the law during the release period. The Commission unfortunately was unable to compare bond offenders' characteristics or past records with releasees who were not charged with felonies on bond. We are convinced such research must be carried on before a rational preventive detention statute can be drafted and its basic constitutional problems resolved with any real sense that law enforcement aims will be accomplished. The study we have done, while a beginning, indicates that we cannot leave the solution to intuition, untested assumptions about prior records, or even judicial discretion. We need facts and proven experience before we are justified in detaining some and freeing others before conviction. Early returns do not seem to support the assumption that present charge or past record can be relied upon to distinguish the bail offender in advance. Alternative routes such as psychological testing may have to be tried.

In the meantime, we need not sit back and let these offenders abuse their release privileges. Our system is not so bankrupt of devices to limit crime during the period from arrest to trial. There is no reason why the courts may not now single out putative high-risk offenders for expedited trial. A speedier trial for such offenders is an obvious and desirable goal behind which we can all muster our support without constitutional qualms. A reduction in the period between arrest and trial almost certainly will significantly reduce the volume of offenses committed by individuals on bail. Less than one-fifth (21 percent) of personal violence crimes in the Commission's survey were committed within 30 days of release. Trial within a month from arrest is not an impossibility in this jurisdiction; it has been done in the past, and its benefits far transcend the sphere of bail abuse. Certainly a 30-day trial priority could be established for the so-called high-risk group. Picking out the high risks for early trial would also serve as an effective testing ground for prediction theories.

The Bail Reform Act, in effect only since September 1966, permits a judge to attach a variety of conditions to release. Their function now is to insure reappearance for trial, but under our proposed amendments that function would be broadened to assure good behavior as well. Such conditions can include curfews; prohibitions on association with particular individuals, attendance at particular trouble-spots, or contact with potential victims; restrictions on drinking, driving, or carrying weapons of any kind; requirements of supervision during certain hours; psychiatric or medical treatment; and even return to custody during certain hours, nighttime or on weekends. It

is inconceivable that a creative use of such conditions would not have an effect on curbing pretrial crime. It may be possible to revoke bail for the first offense with a finding of probable cause that the accused had committed a subsequent crime. In this survey, revocation after the first bail offense would have avoided 1 murder, 14 robberies, 7 assaults, 8 housebreakings, and 16 other offenses.

We should not forget that our courts have long engaged in a form of unsuccessful preventive detention; in the past, the bail system has been widely used as a mechanism for detaining supposedly dangerous defendants by the setting of high money bail they could not meet. It is obvious that the system has not worked well to curb pretrial crime. Reform has now minimized the role of money in the bail system, and it can no longer be used as a tool for preventive detention. But before we substitute a new and equally haphazard system of detention, with an equal potential for unfairness, we should take the time to gather and analyze the necessary data for formulating workable standards—if they can be formulated. Hard problems do not lend themselves to easy solutions; the price we pay for a wise solution may be time; the price we pay for haste may be fundamental injustice without any real increment in community protection.

Footnotes

Footnotes to the various chapters in this Report begin on the following pages:

Material printed in the Appendix to this Report is referred to in the footnotes in the following manner:

App. (IACP)—Survey of the Metropolitan Police Department: International Association of Chiefs of Police.

App. (SRI)—A Description of Active Juvenile Offenders and Convicted Adult Felons in the District of Columbia: Stanford Research Institute.

App. (ACA)—Organization and Effectiveness of the Correctional Agencies: American Correctional Association.

App. (Ginzberg)—The Social Order and Delinquency: Eli Ginzberg.

CHAPTER 1

1. D.C. Commissioners' Committee on Community Renewal, Community Renewal in the District of Columbia, Three Alternative Courses of Action [hereinafter cited as Community Renewal], 6, 8, 9 (Aug. 25, 1966). The "subsistence level" standard is based on the Bureau of Labor Statistics' City Worker's Family Budget, which establishes a minimum allowance for living in an urban area in light of the size and type of family, age of head of household, and income. People who do not meet the subsistence level are unable, within the limits of their income, to obtain standard uncrowded housing simultaneously with adequate food, clothing and other necessities. The large families (6 or more persons) referred to as "completely or partially indigent" are those that have incomes less than $5,700, which would qualify them for continuing occupancy in public housing.
2. E. Grier, Understanding Washington's Changing Population, 2 (Washington Center for Metropolitan Studies, 1961).
3. Interview with Robert Gold, Chief of Research, National Capital Planning Commission, March 8, 1966.
4. Bureau of the Census, U.S. Dept. of Commerce [hereinafter cited as Census Bureau], U.S. Census of Population 1960, Reports PC(2)–2B and PC(2)–2C, Mobility for States and State Economic Areas and Mobility for Metropolitan Areas, Tables M12, M15 (1962).
5. Grier, supra note 2, at 18.
6. Census Bureau, U.S. Census of Population: 1950, Census Tract Statistics, Washington, D.C., and Adjacent Areas, Bulletin P–D59, Table 1 (1952); U.S. Censuses of Population and Housing 1960, Report PHC–1(166), Washington, D.C., Maryland, Virginia Standard Metropolitan Statistical Area [hereinafter cited as Censuses of Population and Housing], Table P1 (1962).
7. Community Renewal Program, D.C. Office of Urban Renewal, Estimated Population of D.C. Census Tracts and Statistical Areas July 1, 1964 (1965).
8. Censuses of Population and Housing, Table P1.
9. A special study in 1957, not since updated and thus not reflecting the extensive white migration to the suburbs in recent years, indicated that 48% of Negro family heads and 37% of white family heads had resided in the city for more than 20 years; 13% of the Negroes and 9% of the whites had lived in Washington between 15 and 20 years; and 6% of the Negroes, compared with 18% of the whites, had lived here 1 year or less. Special survey conducted in 1957 by the Census Bureau for the D.C. Dept. of Public Health.
10. Grier, supra note 2, at 19–24.
11. Id. at 24–25.
12. Id. at 25–26.
13. Census Bureau, U.S. Census of Population 1960, Report PC(1)–10C, District of Columbia, General

Social and Economic Characteristics [hereinafter cited as Census], Table 61 (1962).
14. Id., Table 63.
15. Letter from Fred Z. Hetzel, Director, U.S. Employment Service for the District of Columbia, Sept. 9, 1966.
16. Census, Table 53.
17. Id., Table 60.
18. Government of the District of Columbia, An Equal Employment Opportunity Ordinance for the District of Columbia, 97–102 (1965).
19. Community Renewal, 9.
20. Letter from Herman P. Miller, Chief, Population Division, Census Bureau, July 21, 1966.
21. Real Estate Research Corporation, Preliminary Forecasts of Economic Growth, Population and Housing, 58b–58c (1965).
22. Ibid.
23. Community Renewal, 8.
24. Census Bureau, U.S. Census of Population 1960, Report PC(1)-10D, District of Columbia, Detailed Characteristics, Table 139 (1962).
25. D.C. Dept. of Welfare, Annual Report, 63 (1965).
26. Report of the Commissioner's Subcommittee on a Housing Program for the Nation's Capital, 7 (1966).
27. National Capital Planning Commission, Problems of Housing People in Washington, D.C., 5 (1966).
28. Id. at 6.
29. Id. at 3. This estimate does not include low income home owners and moderate income home renters who are also estimated to be in need of housing assistance.
30. Id. at 50.
31. Id. at 6.
32. Census, Table 61.
33. Community Renewal, 9.
34. Department of General Research, Budget, and Legislation, D.C. Board of Education, Number of All White, All Colored, or Integrated Schools and Number of Pupils in Each Group on October 21, 1965; Fifteen Year Enrollment in the Public Schools of the District of Columbia by Race: Senior High, Junior High, and Elementary (1966). In 1966 the percentages of Negro students increased slightly to 92 percent for elementary schools, 91 percent for junior high schools, and 86 percent for senior high schools.
35. Task Force on Antipoverty in the District of Columbia of the House Committee on Education and Labor, a Task Force Study of the Public School System in the District of Columbia as it Relates to the War on Poverty, 89th Cong., 2d Sess. 9–11 (1966).
36. Dept. of General Research, Budget, and Legislation, D.C. Board of Education, Age of Public School Buildings, Nov. 1964 (1964).
37. Census Bureau, supra note 24, at Tables 105 and 109.
38. Census, Table 50.
39. Biostatistics Section, D.C. Dept. of Public Health, Vital Statistics Summary 1964, Table 10 at 38–40 (1965).
40. Id., Table 7, at 29.
41. Office of Policy Planning and Research, U.S. Department of Labor, The Negro Family, 21 (1965).
42. Census Bureau, supra note 24, at Table 109.

CHAPTER 2

1. The enumerated crimes are classified by the MPD as Part I or serious offenses, and include both felonies and misdemeanors. Tables in this chapter refer to "actual offenses" reported and exclude those offenses reported which are later determined to be unfounded. Unless otherwise stated the sources for all statistical data are the Annual Reports (1950–1965) of the Metropolitan Police Department which are published on a fiscal year basis. Preliminary data for fiscal 1966 was supplied by the Office of the Chief Clerk, MPD; this data will not be published until the end of calendar year 1966.
2. See, e.g., H. Mannheim, Comparative Criminology, 109 (Houghton Mifflin Co., 1965).
3. Bureau of Social Science Research, Inc., Washington, D.C., Preliminary Technical Report: Salient Findings on Crime and Attitudes Toward Law Enforcement in the District of Columbia, 41 (May 1966).
4. The term "offender" is not to be construed as a judgment as to the guilt or innocence of those who have not been judicially processed. Prior to fiscal 1964, the MPD's arrest statistics referred to charges placed against persons arrested rather than to the number of persons taken into custody. Since 1964 police arrest statistics refer to the number of persons arrested. The change in statistical reporting means that in years prior to 1964 the number of "charges" may in fact overstate the actual number of persons arrested. In the absence of more accurate data, however, the Commission has relied on the MPD's "arrest" statistics for the description of arrested persons by age, race and sex. The Annual Reports list offender and victim race data by non-white and white. In view of the statistical insignificance (less than 2 percent) between the city's non-white and Negro populations, Negro-white categorizations will be used by the Commission.
5. Population data based on statistics supplied by the Biostatistics Section, D.C. Department of Public Health.
6. Ibid.
7. The Commission's study of first and second degree murder includes the capital offense of felony murder which is the killing of another, whether or not intentional, while committing any one of several statutorily specified felonies. 22 D.C. Code § 2401 (1961).
8. 22 D.C. Code § 2401, 2403 (1961), 22 D.C. Code § 2404 (Supp. V, 1966).
9. The Commission survey findings were compared with a study of 588 homicide cases occurring in Philadelphia from 1948 to 1952. M. E. Wolfgang, Patterns in Criminal Homicide (Univ. of Pa., 1958). The findings were roughly similar: murder is geographically confined to a relatively small number of a city's police precincts; 86.0 percent of the victims surveyed by the Commission were Negroes while 72.6 percent of the Philadelphia victims were Negroes; 92.5 percent of offenders surveyed by the Commission were Negroes as compared with 60.3 percent of the Philadelphia offenders; alcohol was found to be a significant factor by both studies; 12.5 percent of the Philadelphia victims were murdered by strangers as compared with 20.9 percent of the Washington, D.C. victims. Both surveys showed a high percentage of victims being murdered by relatives

or close friends; both found that a substantial number of murders take place in the home of the victim or offender.

10. 22 D.C. Code § 2801 (1961).
11. References to the crime of rape include assault with intent to commit rape, a felony punishable by 15 years imprisonment, 22 D.C. Code § 501 (1961), and attempted rape, a misdemeanor, 22 D.C. Code § 103 (1961).
12. Written instructions accompanying Commission survey forms set forth the following criteria for defining "poor reputation": (a) the victim engaged in a criminal occupation; (b) the victim had a prior criminal record for sex offenses, prostitution, habitual drunkenness or disorderly conduct, use or possession of narcotics; (c) the victim had a history of prior specious complaints of sexual assault; (d) investigation reflected that the victim was considered to have a generally unfavorable reputation; (e) substantiated statements by offender(s) that the victim was generally known to be a "loose" or "easy" object of sexual assault.
13. Of 200 offenders surveyed 97 percent were residents of the District; 128 (64 percent) resided in Precincts 5, 9, 10, and 14. Twenty-one percent resided in Precinct 9 alone. Sixty-six (33 percent) of the 200 offenders surveyed were students, 41 (21 percent) were laborers, 32 (16 percent) were service workers and 23 (12 percent) were unemployed. Of the 200 offenders 68 (34 percent) had juvenile records and 63 (32 percent) had adult criminal records.
14. The retrospective nature of the Commission rape survey made it difficult to determine accurately the number of offenders who had been drinking prior to committing offenses.
15. See M. Amir, Patterns in Forcible Rape, (unpublished doctoral thesis, Univ. of Pa., 1965). The Philadelphia study was limited to forcible rape while the Commission survey included carnal knowledge offenses. Victims and assailants were acquainted in 48 percent of 646 cases studied by Amir. In 9.6 percent of the cases the victim had "general knowledge" of her assailant even though he was formally a stranger. Complete strangers were assailants in 42.3 percent of the cases—6.1 percent higher than in the Commission survey cases.
16. 22 D.C. Code § 2901 (1961).
17. Ibid. This study includes the offense of attempted robbery, a felony punishable by 3 years imprisonment, 22 D.C. Code § 2902 (1961), and assault with intent to commit robbery, a felony punishable by 15 years imprisonment, 22 D.C. Code § 501 (1961).
18. 22 D.C. Code § 501, 502 (1961).
19. Criteria employed in the reclassification of an assault included the type of weapon used, the extent of injury inflicted, and a determination as to the assailant's intent. The immediate effect of reclassification in fiscal 1956 was to reduce aggravated assaults by 1,724 and to increase simple assaults (misdemeanors) by the same figure. Because totals for aggravated assault between 1950 and 1955 included some offenses which presumably would have been reclassified, the Commission has used aggravated assault statistics only during the period from 1956 through 1965.
20. The Commission's survey findings were compared with a study of 241 of 965 aggravated assaults occurring in St. Louis in 1961. Pittman and Handy, Patterns in Criminal Aggravated Assault, 55 J. Crim. L., C. & P.S. 462 (1964). Over 60 percent of the St. Louis offenders

but only 40 percent of the Washington offenders had prior arrest or conviction records. In both studies the great bulk of offenders and victims were Negroes; most offenses occurred on Friday, Saturday and Sunday during the late evening and early morning hours; most victims were between 30 and 50; alcohol played a more significant part in the District—only 25 percent of St. Louis' victims and offenders had been drinking; and most victims in both cities were acquainted with their assailants. The St. Louis findings indicated a higher incidence of street assaults.

21. 22 D.C. Code § 1801 (1961). This study will include the offense of attempted housebreaking, a Part I misdemeanor. 22 D.C. Code § 103 (1961).
22. 22 D.C. Code §§ 2201, 2202 (1961).
23. Information supplied by MPD officers indicates that changes in crime reporting and law enforcement practices may have accounted for the increase in reported petit larceny offenses, rather than an increase in the actual number of such crimes. It appears that in prior years many petit larcenies were improperly reported as Miscellaneous Complaints rather than crimes, and that recent changes in reporting procedures have produced a statistical increase (see chapter 4, p. 189). Further, recent changes in the processing of petit larceny offenses in the courts, allowing private detectives to handle a case without the need for the presence or testimony of a police officer, have prompted increased activity on the part of the store detectives. Interviews with MPD officers, July 20, 1966.
24. 22 D.C. Code § 2204 (1961).
25. The Commission's findings were compared with those of a 1-month nationwide survey on auto theft conducted by the Federal Bureau of Investigation in November 1962 F.B.I. Law Enforcement Bulletin (July 1963). Over 23,000 auto thefts in 1,603 jurisdictions were reported during the FBI survey. Of these, 68 percent occurred after sunset, 39 percent were taken from residential area streets and 21 percent from commercial area streets. Keys were left in the vehicles or the ignition was unlocked in 42 percent of the thefts. Eighty-seven percent of the vehicles were recovered during the survey, 80 percent by police agencies in whose jurisdiction the vehicles were stolen. The survey did not elicit data concerning the identity of auto theft victims. Of those offenders who were apprehended, 64 percent were under 18, and 59 percent had previously been arrested at least once.
26. Federal Bureau of Investigation, U.S. Department of Justice (FBI), Uniform Crime Reports, vii (1965). See also International Association of Chiefs of Police, The Police Yearbook, 211 (1964).
27. FBI, Uniform Crime Reports, vii (1965).
28. See chapter 4, pp. 188–91.
29. FBI, Uniform Crime Reports (1959–1965). Unlike the MPD category of Part I crimes, the FBI Index offenses exclude negligent homicide, non-forcible rape and larceny of property worth less than $50. In addition, pickpocketing and purse snatchings not involving force are classified as larcenies rather than robberies.
30. While the population of the District of Columbia increased by an estimated 6.4 percent between 1960 and 1965, during the same period the suburban population increased from 1,237,941 to an estimated 1,578,000 for an increase of 27.4 percent. Population estimates supplied by the National Capital Regional Planning Commission.

31. Part II offenses as listed in the Annual Reports of the MPD also include "other assaults," receiving stolen property, offenses against the family (i.e., non-support, desertion, etc.), vagrancy, fugitive from justice and "other offenses."
32. MPD Ann. Rep. (1950). This figure excludes fugitive from justice, driving while intoxicated, drunkenness, disorderly and traffic offenses.
33. O. W. Wilson, Police Administration, 229 (McGraw-Hill, 1963).
34. Sellin, "Organized Crime: A Business Enterprise," 347 Annals 12 (May 1963). For a scholarly discussion of the theory, practice and prevention of organized crime see articles by Woetzel, Edwards, Miller, Tyler and others. Id. at 1–112.
35. Letter from Sheldon S. Cohen, Commissioner of Internal Revenue, May 9, 1966.
36. Ibid.
37. Letter from George H. Gaffney, Acting Commissioner of Narcotics, Bureau of Narcotics, Treasury Department, March 31, 1966.
38. Letter from Commissioner Cohen, supra note 35; letter from John B. Layton, Chief of Police, MPD, Feb. 21, 1966.
39. Ibid.
40. Letter from Chief Layton, supra note 38.
41. Letter from J. Edgar Hoover, Director, FBI, Feb. 15, 1966.
42. Letter from David G. Bress, United States Attorney for the District of Columbia, Aug. 16, 1966.
43. During April 1965, 73 petit larcenies were reported in the 3rd Precinct while 199 petit larcenies were reported in April 1966. Thus, petit larcenies increased 173 percent and accounted for 126 of 184 Part I offenses which caused the 3rd Precinct's 96 percent increase. See note 23, supra.
44. Chapter 4, footnote 35.

CHAPTER 3

1. A social file is prepared in all cases referred to the Juvenile Court. A social study, eliciting more detailed information about the juvenile, is generally prepared in those cases not disposed of upon intake or at initial hearing. See chapter 8.
2. Twenty-seven cases referred to the Juvenile Court in 1964 involving charges of rape were included in the sample, since there were only 15 such referrals in 1965. App. (SRI), 465. The adult sample included 132 cases from 1964. Id. at 512.
3. E.g., B. Lander, Report to the President's Commission on Crime in the District of Columbia.
4. Offenders originally charged with felonies in the U.S. District Court but ultimately convicted of misdemeanors were not included in the sample.
5. D.C. population estimate prepared by Biostatistics Division, D.C. Department of Public Health.
6. App. (SRI), 468 (Table 4).
7. Id. at 466. SRI grouped offenses in three categories: Violence—aggravated assault, simple assault, robbery, rape, purse-snatching; property—grand larceny, petit larceny, housebreaking, taking property without right, unauthorized use of a motor vehicle; and other—disorderly conduct, unlawful entry, drunkenness, weapons possession, delinquent acts, other sex offenses.
8. Id. at 533.

9. Federal Bureau of Investigation (FBI), U.S. Dept. of Justice, Uniform Crime Reports, 23–25 (1965).
10. App. (SRI), 536.
11. Id. at 470.
12. Ibid.
13. Id. at 529.
14. Id. at 531 (Table 14), 532. Information as to length of residence was not available in 7 percent of white offenders and 3 percent of Negro offenders.
15. Id. at 535 (Table 18).
16. Id. at 473 (Table 18).
17. A sample of 200 cases referred to the Juvenile Court (100 in 1961 and 100 in 1964) indicated that 50 percent of the delinquents, none of whom were identified by race, resided in four statistical areas (6, 7, 10, 15) in 1961, and 54 percent in the same areas in 1964. See Hearings on H.R. 5688 and S. 1526 Before the Senate Committee on the District of Columbia, 89th Cong., 1st Sess., 242–47 (1965).
18. App. (SRI), 546.
19. Id. at 552 (Tables 39, 40).
20. Id. at 474–75.
21. Bureau of the Census, U.S. Dept. of Commerce, U.S. Census of Population 1960, Report PC(1) 10C, Washington, D.C. General Social and Economic Characteristics [hereinafter cited as Census], Table 50.
22. App. (SRI), 550 (Table 37), 553 (Table 41), 554 (Table 42).
23. A 1965 study by the D.C. Dept. of Corrections of 60 inmates of the Lorton Youth Center, however, showed that 40% of the sample had 4 or more siblings. Hearings on H.R. 5688 and S. 1526, supra note 17, at 367–73. The study concluded that the Youth Center inmates "do not generally come from excessively large families for the most part." Id. at 371. The study also found that 67% of the inmates come from broken homes.
24. See App. (SRI), 479 (Table 30).
25. Census, Table 110 (Averages based upon 91,058 nonwhite families.)
26. Id. at Table 109.
27. App. (SRI), 555.
28. Id. at 563, 564 (Table 56), 565 (Table 57).
29. Id. at 631 (Table B).
30. See Id. at 546, 547 (Table 31).
31. Id. at 544, 545 (Table 29), 546, 632 (Table E).
32. Id. at 540, 543 (Table 26), 544 (Table 27).
33. Id. at 526.
34. Id. at 527 (Table 10).
35. Census, Table 47.
36. App. (SRI), 474.
37. Id. at 557, 558 (Table 47).
38. Letter from Fred Z. Hetzel, Director, U.S. Employment Service for District of Columbia, Sept. 9, 1966.
39. App. (SRI), 556 (Table 44).
40. Id. at 564 (Table 56).
41. Census, Table 59. Skilled (including semi-skilled) occupation groups were comprised of craftsmen, foremen and kindred workers; operatives and kindred workers; protective service workers; waiters, bartenders, cooks and counter workers. Unskilled occupation groups included private household workers, other service workers, farm laborers, and laborers.
42. App. (SRI), 562 (Tables 52, 53).
43. Id. at 562 (Table 52).
44. Census, Table 65.
45. App. (SRI), 475, 479 (Table 29).
46. Letter from J. Edgar Hoover, Director, FBI, Nov. 26, 1965.
47. App. (SRI), 591 (Table 89).
48. Id. at 591.
49. Id. at 596 (Table 95).
50. Id. at 604 (Table 106).
51. Id. at 607 (Table 110).
52. Id. at 607 (Table 111).
53. Id. at 608 (Table 112).
54. Supra note 46.
55. Id. at 597, 598 (Table 98).
56. Id. at 600, 601 (Table 103).

57. Id. at 617 (Table 124).
58. Id. at 611.
59. Id. at 612 (Table 118).
60. Id. at 617.
61. Id. at 620, 621 (Table 129).
62. Id. at 620.
63. Id. at 623, 624 (Table 132).
64. Id. at 577, 579 (Table 76).
65. Id. at 490.
66. Id. at 492, 493 (Table 59).

CHAPTER 4

1. Donnelly, "Police Authority and Practices," 339 Annals 91 (1962). See also M. Banton, The Policeman in the Community (Basic Books, 1964); Wilson, "The Police and Their Problems: A Theory," Public Policy Yearbook of the Graduate School of Public Administration (Harv. Univ., 1963); Wolfgang, "The Police and Their Problems," Proc. Inst. on Police and Community Relations (May 1965).
2. E.g., Miranda v. Arizona, 384 U.S. 436 (1966) (defining Constitutional restrictions on police interrogation of suspects).
3. See The Chicago Police Department, The Chicago Police, A Report of Progress: 1960–64, 33 (1965). See also The New York Times, Apr. 5, 1966, p. 1.
4. A Survey of the Metropolitan Police Department by The International Association of Chiefs of Police (April 1966). The IACP is a professional, nonprofit association whose members include the heads of all major city and state police agencies in the United States. Its Field Operations Division conducts detailed surveys of police departments and recommends improvements in their administration and operations.
5. Metropolitan Police Department, Washington, D.C. [hereinafter cited as MPD], A Brief History of the Metropolitan Police Department, 1 (1946).
6. District of Columbia, Reorganization Order No. 46, D.C. Board of Commissioners, June 26, 1953.
7. D.C. Dept. of General Administration, Budget Estimates of the District of Columbia, Fiscal Year 1967.
8. App. (IACP), 14–15. The median is based on costs of departments of 15 selected cities with populations over 600,000.
9. MPD Annual Report [hereinafter cited as MPD Ann. Rep.], 33 (1965).
10. App. (IACP) 32.
11. Id. at 27.
12. Id. at 27, 30.
13. Id. at 30.
14. Id. at 65.
15. Id at 66.
16. Id. at 47–48.
17. Id. at 71–72.
18. Ibid.
19. Id. at 253.
20. Id. at 267.
21. Id. at 230.
22. Id. at 174.
23. Id. at 193.
24. Id. at 264.
25. Id. at 184.
26. Id. at 239.
27. Id. at 196.
28. Id. at 197.
29. Id. at 176–79.
30. Id. at 183.
31. Id. at 33–37.
32. Id. at 72–79, 116–18, 195.
33. Id. at 179–80.
34. Indeed, the Oakland Police Department serves a 53-square-mile area with all units operating out of police headquarters.
35. We believe it important that District boundaries be designed to coincide with census tract boundaries, so as to facilitate the collection and use of crime data.
36. See Hearings on H.R. 5688 and

S. 1526 Before the Senate Committee on the District of Columbia, 89th Cong., 1st Sess., pt. 1, 403 (1965).

37. Interview with Inspector Jerry V. Wilson, Assistant Chief Clerk, MPD, Nov. 14, 1966.
38. App. (IACP), 50.
39. Id. at 49.
40. Id. at 103–08.
41. MPD Recruitment Report (March 1966).
42. Ibid.
43. Ibid.
44. Information supplied by Office of the Chief Clerk, MPD, Nov. 15, 1966.
45. As of Nov. 1, 1966, the Department numbered 2,808 sworn personnel. Seven officers were on military leave of absence. There were 285 vacancies.
46. App. (IACP), 96.
47. Century Research Corporation, Arlington, Va., Recruitment and Retention Factors in the Metropolitan Police Department (Draft Report) [hereinafter cited as Recruitment Study] 2 (June 1966).
48. App. (IACP), 96.
49. Information supplied by Office of the Chief Clerk, MPD, October 1965.
50. Recruitment Study, 28.
51. Ibid.
52. Id. at 30.
53. Id. at 24.
54. Recruitment Study (Survey Data Report, May 1966), 11.
55. Recruitment Study, 39.
56. Id. at 31.
57. Id. at 44.
58. Id. at 50.
59. Id. at 51.
60. Id. at 7, 9.
61. App. (IACP), 103–04.
62. Id. at 104.
63. Id. at 105–06.
64. Pub. L. No. 810, 89th Cong., 2d Sess. (Nov. 13, 1966).
65. App. (IACP), 127.
66. Id. at 126.
67. Id. at 104.
68. Application for Institutional Training Program under the Manpower Development and Training Act, Project No. NY(R) 6117, Dec. 17, 1965.
69. Information supplied by Bureau of Employment Security, U.S. Department of Labor, July 12, 1966.
70. App. (IACP), 116.
71. The Comptroller General of the United States, Special Report on Review of Certain Administrative Policies and Practices of the MPD, District of Columbia Government, 42 (1964); Government of the District of Columbia, Commissioners' Council on Human Relations, Human Relations Program in the MPD—A Progress Report (1966) [hereinafter cited as Progress Report].
72. App. (IACP), 111.
73. Id. at 117–18. See also discussion at 110–17.
74. Id. at 167.
75. Information supplied by Recruiting Bureau, MPD, July 14, 1966.
76. App. (IACP), 168.
77. Id. at 167.
78. Interview with Gene Muehleisen, Assistant Director, President's Commission on Law Enforcement and Administration of Justice, June 30, 1966.
79. District of Columbia, Board of Commissioners Order No. 65–1600 (Nov. 5, 1965).
80. Information supplied by Office of the Chief Clerk, MPD, Nov. 15, 1966.
81. Progress Report, 22.
82. Information supplied by Office of the Chief Clerk, MPD ("Civilian Positions Authorized as of June 6, 1966").
83. See Remarks of Senator Wayne Morse and Chief of Police John B. Layton, 111 Cong. Rec. 27509–27515 (daily ed. Oct. 22, 1965).

84. Further, it may be hampered by problems of the transfer of retirement credits, problems which the Department and the Civil Service Commission must address and solve.
85. R. L. Bancroft, "Municipal Law Enforcement 1966," Vol. 4, No. 2, Nation's Cities, 24 (Feb. 1966).
86. App. (IACP), 147.
87. Ibid.
88. Id. at 149.
89. Id. at 195.
90. Id. at 153.
91. Id. at 150.
92. See O. W. Wilson, Police Administration, 165, 429 (McGraw-Hill, 1963).
93. App. (IACP), 149.
94. Id. at 150.
95. Id. at 150–51.
96. Id. at 151.
97. Id. at 152.
98. Id. at 153.
99. Ibid.
100. Id. at 152.
101. Id. at 155–57.
102. Id. at 156.
103. Id. at 157.
104. Id. at 162.
105. Id. at 162.
106. Id. at 164.
107. Id. at 428.
108. Id. at 435.
109. No formal request has been made by the MPD for funds under the Law Enforcement Assistance Act but a preliminary proposal has been prepared for submission to the Office of Law Enforcement Assistance, U.S. Department of Justice. Information supplied by the Office of the Chief Clerk, MPD, July 15, 1966.
110. App. (IACP), 434.
111. Ibid.
112. Id. at 434–35.
113. Id. at 443.
114. Ibid.
115. Ibid.
116. Id. at 446.
117. Id. at 445, 449–50.
118. Id. at 443. See Wilson, supra note 92, at 446–447.
119. App. (IACP), 441.
120. Id. at 442.
121. Ibid.
122. Id. at 379–84.
123. Id. at 382.
124. Id. at 388.
125. Id. at 389–90, 391–92.
126. Id. at 390–91.
127. Id. at 389–402.
128. Id. at 315.
129. Id. at 316.
130. Ibid.
131. Ibid.
132. Ibid.
133. Id. at 315–18.
134. Id. at 317.
135. Id. at 324.
136. Id. at 340.
137. Bureau of Social Science Research, Inc., Washington, D.C., Preliminary Technical Report: Salient Findings on Crime and Attitudes Toward Law Enforcement in the District of Columbia [hereinafter cited as BSSR Report] (May 1966).
138. Id. at 40–42.
139. Letter from Chief of Police John B. Layton, June 17, 1966.
140. Ibid.
141. App. (IACP), 332.
142. Federal Bureau of Investigation, U.S. Dept. of Justice (FBI), Uniform Crime Reporting Handbook, 48 (1965).
143. Ibid.
144. FBI, Uniform Crime Reports, 22 (1964).
145. Staff examination of MPD records, June 1966.
146. App. (IACP), 283–84.
147. Id. at 353.
148. Sheppard v. Maxwell, 384 U.S. 333 (1966).
149. App. (IACP), 359.
150. Id. at 363.
151. Id. at 197.
152. Id. at 354.
153. Id. at 354–56.

154. Id. at 184–85.
155. Id. at 188.
156. Ibid.
157. Id. at 200.
158. Id. at 201.
159. Ibid.
160. Id. at 203.
161. E.g., Wilson, supra note 92, at 240, 242.
162. App. (IACP), 203.
163. Id. at 207.
164. MPD, Brochure on the Canine Corps, 3 (1966).
165. App. (IACP), 209.
166. Id. at 133.
167. Id. at 210.
168. Ibid.
169. Id. at 206–08.
170. For a legislative history of the Tactical Force see Hearings Before the Senate Committee on the District of Columbia, 89th Cong., 1st Sess., pt. 1, 262 ff. (1965).
171. App. (IACP), 217.
172. Id. at 218.
173. Id. at 217.
174. Ibid.
175. Progress Report, 17.
176. Information supplied by the Police Academy and Training Section, MPD, July 14, 1966.
177. Progress Report, 19.
178. Interviews with police officials in attendance at Police Operations Seminar sponsored by the President's Commission on Crime in the District of Columbia and the MPD, Airlie House, Warrenton, Va., Jan. 23–28, 1966.
179. App. (IACP), 294.
180. Id. at 253.
181. Id. at 259–60.
182. Id. at 269.
183. Id. at 268.
184. Id. at 275–76.
185. Id. at 277.
186. Id. at 286.
187. Id. at 13.
188. Joseph Boskin, A History of Race Riots in Urban Areas, 1917–65, Report submitted to Governor's Commission on the Los Angeles Riots (1965).
189. BSSR Report, 46–47.
190. Id. at 47.
191. Id. at Summary, v. 46.
192. Id. at 47.
193. Id. at 59.
194. Id. at 57.
195. Id. at 51.
196. Id. at 53.
197. Approximately 106 complaints were filed during this period. Interview with Rev. Edward A. Hailes, Executive Secretary, District of Columbia Branch, NAACP, Apr. 5, 1966.
198. Information supplied by the Office of the Secretary to the District of Columbia Board of Commissioners, July 13, 1966.
199. The Washington Post, June 9, 1966, reported a statement by an Assistant Corporation Counsel that 90 percent of such cases are dismissed for lack of prosecutorial merit.
200. 22 D.C. Code § 1121(2) (1961).
201. Recruitment Study, 56.
202. See C. Epstein, Intergroup Relations for Police Officers, 186 (Williams and Wilkins Co., 1962).
203. See Siegel, Federman and Schultz, Professional Police-Human Relations Training (Charles C. Thomas, 1963) for a comprehensive discussion and outline of such a program.
204. App. (IACP), 416.
205. Id. at 417.
206. Id. at 418.
207. Id. at 420.
208. Id. at 421–23, 427.
209. Police-Community Relations Unit, MPD, Annual Report—1965.
210. App. (IACP), 405–06.
211. Id. at 407.
212. See response of Chief of Police John B. Layton to Report on the Interreligious Committee on Race

Relations, MPD Press Release, Apr. 16, 1966.

213. There are, of course, other terms which are viewed as derogatory by Negroes and other groups, which should be specified in the order. See, e.g., Chicago Police Department General Order 66–9, issued Apr. 22, 1966.
214. MPD Manual (as amended), 51, 129 (1948). Training Division, MPD, Training Materials, "Law of Arrest," 13–14 (1954).
215. Opinion of the District of Columbia Corporation Counsel, "Authority of Police Officer to Order Persons Congregating on Public Streets to Move On," June 7, 1966.
216. App. (IACP), 407–08.
217. Id. at 137–43.
218. Id. at 137.
219. Id. at 139.
220. Id. at 140.
221. District of Columbia, Board of Commissioners Order No. 302, 430/6, Oct. 21, 1948 (as amended) provides for a special Police Trial Board to hear cases arising from sworn complaints of citizens and for a regular Trial Board to hear cases involving infractions of discipline arising from reports made by police officials.
222. App. (IACP), 139.
223. District of Columbia, Board of Commissioners Order, supra note 221.
224. Interview with Emanuele Crupi, Staff Assistant, Secretary to the Board of Commissioners, District of Columbia, in Washington, D.C., Mar. 1966.
225. Note, "The Administration of Complaints by Civilians Against the Police," 77 Harv. L. Rev. 499, 510 (1964).
226. Report of the Police Practices Subcommittee, Due Process Committee, National Capital Area Civil Liberties Union, on the "Operations of the Complaint Review Board," submitted to the District of Columbia Commissioners on June 12, 1964. The "odds were two to five that one filing a complaint alleging police misconduct would become the defendant in a criminal action for filing a false report." Id. at 10.
227. District of Columbia, Board of Commissioners Order No. 65–798, June 11, 1965.
228. Interview with Irving Ferman, Chairman, Complaint Review Board, Washington, D.C., Mar. 15, 1966.
229. Ibid.
230. District of Columbia, Board of Commissioners Order, supra note 227.
231. Information supplied by the Office of the Secretary, District of Columbia Board of Commissioners, July 13, 1966.
232. Report of the Complaint Review Board to the District of Columbia Board of Commissioners (May 1966).
233. App. (IACP), 141.
234. See e.g., Sixth Annual Report, Police Advisory Board, Philadelphia, Pa. (Dec. 1964).
235. App. (IACP), 143.

CHAPTER 5

1. Metropolitan Police Department, Washington, D.C. [hereinafter cited as MPD], Annual Report, 46–47 (1965). There were 523,986 reported "arrests" altogether, of which 333,642 were for parking violations and 7,953 were arrests of juveniles. See note 15 infra relating to the accuracy of these figures.
2. 11 D.C. Code § 963 (Supp. V, 1966).
3. Id., § 741.
4. Id., § 521.

5. 28 U.S.C. §§ 1291, 2255 (1964); 11 D.C. Code § 321 (Supp. V, 1966).
6. 23 D.C. Code § 101 (1961).
7. 2 D.C. Code ch. 22 (1961).
8. See chap. 7, section I, footnote 5; MPD Ann. Rep., 49 (1965). "Other dispositions" in the Annual Report includes fines and forfeitures, but most are the latter.
9. From among the more than 182,000 adult arrests for violations excluding parking, supra note 1, approximately 12,600 (see infra note 22) were arrests for felonies or serious misdemeanors prosecuted by the U.S. Attorney and not subject to collateral forfeiture. The remaining 170,000 reduced to 35,988 cases in the D.C. Branch of the Court of General Sessions and 33,643 cases in the Traffic Branch. D.C. Court of General Sessions Annual Report [hereinafter cited as CGS Ann. Rep.], table I (1965).
10. 16 D.C. Code § 704 (Supp. V, 1966), implemented by orders of the Board of Judges, Court of General Sessions, Nov. 13, 1961, as amended, and Oct. 8, 1959, as amended.
11. 4 D.C. Code § 140 (1961).
12. F.R. Crim. P. 5(a). See 11 D.C. Code § 963 (c) (Supp. V, 1966).
13. A letter from Tim C. Murphy, formerly Chief Assistant U.S. Attorney, Court of General Sessions Criminal Division, Aug. 16, 1966, accounts for 1,112 "no papers" in the Court of General Sessions. An additional 316 (estimated) are no papered by the Assistant U.S. Attorneys assigned to the U.S. Commissioner and the grand jury.
14. The sum of original grand jury indictments (267), arrested persons brought before the U.S. Commissioner (1,093), and arrested persons brought before the Court of General Sessions (9,462). Sources: Staff count based upon reports of actions by the grand jury filed by the U.S. Attorney with the Criminal Clerk's Office, U.S. District Court; staff computation based upon the monthly reports of the U.S. Commissioner; and staff count of the U.S. Marshal's list, D.C. Court of General Sessions.
15. The overcount apparently occurs through the police practice of filing a new IBM card on each offender whenever there is a change of charge or a reduction of charge by the prosecutor. Although the second charge is not supposed to be counted as a new arrest, the proper procedures are not always observed. Interview with Lt. S. W. Stickley, Statistical Bureau, MPD, Sept. 6, 1966; Interview with patrolmen of the 3d Precinct, MPD, Sept. 12, 1966.
16. Sum of the persons held for the grand jury by the Court of General Sessions (1,299–1,388), plus persons held for the grand jury by the U.S. Commissioner (600), plus original indictments (267), plus original informations (110). Sources: Staff computation based upon an adjusted 25% sample in the docket books, U.S. Branch, D.C. Court of General Sessions [hereinafter cited as CGS 25% docket sample]; staff computation based upon the monthly reports of the U.S. Commissioner; and staff count based upon the reports of actions by the grand jury filed by the U.S. Attorney with the Criminal Clerk's Office, U.S. District Court.
17. Staff computation based upon CGS 25% docket sample.
18. 16 in the Court of General Sessions and 22 before the U.S. Commissioner. Sources: CGS 25% docket sample; staff computation based upon monthly reports of the U.S. Commissioner.

19. The 158 figure is based upon a staff count of the reports of actions by the grand jury filed by the U.S. Attorney with the Criminal Clerk's Office, U.S. District Court. However, a sample count of the grand jury dockets, Criminal Clerk's Office, U.S. District Court, indicates 247 ignoramuses by the grand jury.
20. Based upon staff sample count of grand jury dockets, U.S. District Court. Grand jury referrals are listed separately and numbered 208. In addition, there were some 236 "dismissals" of which an estimated 60% were referrals to the Court of General Sessions by the Assistant U.S. Attorneys (giving 142 such referrals).
21. U.S. Commissioner "discharges" numbered 485 based upon staff computations from the monthly reports of the U.S. Commissioner. Applying a fiscal 1966 ratio of the number of such cases which were referrals to the Court of General Sessions, based upon informal records kept by the U.S. Commissioner, gives 263 referrals for fiscal 1965.
22. Calculated from MPD Ann. Rep., 46–47 (1965), and from information supplied by the Statistical Bureau, MPD. These calculations show 6,266 adults arrested for felonies and 6,358 adults arrested for serious misdemeanors.
23. H. I. Subin, Criminal Justice in a Metropolitan Court [hereinafter cited as Subin Report], 25 (U.S. Dept. of Justice, 1966); statement by Acting Corporation Counsel Milton D. Korman, Judicial Conference of the District of Columbia Circuit, May 25, 1966.
24. See CGS Ann. Rep., table I (1965); supra notes 17, 20, 21; Annual Report of the Director, Administrative Office of the U.S. Courts, table D1 (1965). The Administrative Office kept no adjusted records on number of defendants in cases filed during 1965. The figure 1,526 given is a staff estimate based upon the ratio by which the number of defendants exceeded the number of cases in fiscal years 1962 and 1963. 1,295 cases thus yield 1,526 defendants for fiscal 1965.
25. District Court: 15% equals 198 out of 1,286 (information supplied by the Administrative Office of the U.S. Courts). Court of Gen. Sess.: 43% equals 2,826 nolle prosequis plus 407 dismissed for want of prosecution out of 7,583 cases filed in the U.S. Branch, D.C. Court of General Sessions (CGS 25% docket sample).
26. 39% equals 2,949 out of 7,583 in the Court of General Sessions; 56% equals 716 out of 1,286 in the District Court. Sources: supra note 25.
27. Table 3 infra.
28. 981 convictions in the District Court and 3,741 convictions in cases prosecuted by the U.S. Attorney in the Court of General Sessions, out of 10,822 estimated actual arrests.
29. Table 32 infra.
30. Table 44 infra.
31. 11 D.C. Code § 521 (Supp. V, 1966).
32. Id., § 963.
33. Subin Report, 4.
34. See 28 U.S.C. ch. 85 (1964).
35. 31 D.C. Code § 101 (1961).
36. 28 U.S.C. § 133 (1964). See also U.S. Const. art. III, § 1; art. II, § 2.
37. 28 U.S.C. §§ 135, 136 (1964).
38. See 28 U.S.C. § 294 (1964).
39. Staff research based on mimeographed notices of judges' assignments retained by Clerk's Office, U.S. District Court for the District of Columbia.
40. 23 D.C. Code § 101 (1961).

41. 28 U.S.C. §§ 501, 504 (1964).
42. Letter from David G. Bress, U.S. Attorney for the District of Columbia, Aug. 22, 1966.
43. Memorandum with attachments from Joseph P. Gillespie, Administrative Officer, Office of the U.S. Attorney, Mar. 4, 1966.
44. Letter from David G. Bress, supra note 42; memorandum, supra note 43; staff computatations based on data from Department of Justice annual stastics, Administrative Office of the U.S. Courts, and public court records.
45. Supra note 24.
46. CGS 25% sample.
47. Annual Report of the Director of the Administrative Office of the U.S. Courts, table D3 (1965).
48. Commission survey of 10% of the "no papers" issued in fiscal 1965 in robbery, assault and larceny cases by the Court of General Sessions Criminal Division, U.S. Attorney's office.
49. See, e.g., Easter v. District of Columbia, 209 A. 2d 625 (D.C. Ct. App. 1965), *rev'd on other grounds*, 361 F. 2d 50 (D.C. Cir. 1966).
50. D. J. Newman, Conviction, 197–230 (Little, Brown and Co., 1966).
51. Conviction ratios are usually reported in terms of the combined convictions resulting from pleas and findings of guilty at trial. Data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts, show that jury conviction ratios generally have risen in the U.S. District Court for the District of Columbia. 66% (384 of 581) of all persons tried by jury were convicted in fiscal 1950 and 79% (247 of 311) in fiscal 1965. Non-jury conviction ratios have fluctuated, but in fiscal 1950 77% (53 of 69) of the persons tried without a jury were convicted whereas in fiscal 1965 the conviction rate was 30% (18 of 61). There has been a 6% shift toward a larger proportion of non-jury trials.
52. See Ohlin and Remington, "Sentencing Structure: Its Effect Upon Systems for the Administration of Criminal Justice," 23 Law & Contemp. Prob. 495, 502 (1958).
53. Statistical Report of the U.S. Attorney for the District of Columbia, September 12, 1966.
54. See The Washington Post, Mar. 22, 1966, p. G2.
55. App. (SRI), 588, 617.
56. See, e.g., The Illinois Crime Survey, 417 (1929).
57. For example, examination of U.S. Attorney files revealed cases where police had charged assault with a dangerous weapon and the "weapon" was "human bite" or "shod foot." These are legally accurate charges, although often involving intra-family disputes where the prosecutor elects to no paper the case.
58. The reports prepared by court clerks for the Administrative Office of the U.S. Courts contain space for indicating multiple indictments against the same defendant. The count made by the Administrative Office during 1950–1963 excluded multiple indictments. Information furnished by Research and Evaluation Branch, Administrative Office of the U.S. Courts.
59. E.g., Letter from John C. Conliff, former U.S. Attorney, Dec. 5, 1966.
60. E.g., Letter from Tim C. Murphy, former Chief Assistant U.S. Attorney, Court of General Sessions Criminal Division, to Ramsey Clark, Deputy Attorney General, Aug. 13, 1965. Cf. Acheson, Professional Responsi-

bility and the Workload of the Federal District Courts, 52 Geo. L. J. 542, 548 (1964); "Felony Case 'Dumping' is Denied," The Washington Post, Dec. 13, 1966, p. B5.

61. CGS Ann. Rep., 3 (1965).
62. Supra note 60.
63. Staff conference with several former Assistant U.S. Attorneys, March 28, 1966; letters from former Assistant U.S. Attorneys; and individual staff interviews with former Assistant U.S. Attorneys.
64. California Bureau of Criminal Statistics, Crime in California—1964, 74 (1965).
65. Staff computation based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.
66. Memorandum by William E. Carr, Assistant Superintendent, Youth Center, to Thomas R. Sard, Director, D.C. Dept. of Corrections, pp. 11–12 (Oct. 14, 1965). See also Nutter, "The Quality of Justice in Misdemeanor Arraignment Courts," 36 Los Angeles Bar Bull. 338, 360 (1961).
67. D. Epstein, Biography of a Prosecutor (1966) (mimeo).
68. Ibid.
69. The Washington Post, February 28, 1966, p. B1; D. Epstein, Report to the Commission on Facilitating Witness Participation in Criminal Cases in the District of Columbia, May 9, 1966 (mimeo).
70. See, e.g., A. L. Levin and E. A. Wooley, Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania, 5–8 (U. of Pa., 1961); H. Zeisel, H. Kalven, Jr., and B. Buchholz, Delay in Court, 42–57 (Little, Brown & Co., 1959); Nims, "The Law's Delay: The Bar's Most Urgent Problem," 44 A.B.A.J. 27 (1958); Proceedings, Attorney General's Conference on Court Congestion and Delay in Litigation, 188 (1958).
71. Data furnished by the D.C. Department of Corrections, September 9, 1966.
72. Washington Criminal Justice Association, Crime in the Nation's Capital—1936 (1937) (43.5% within 5 weeks); Id.—1938 (1939) (75% within 4 weeks); Id.—1939 (1940) (75% within 3 weeks); Id.—1950 (1951) (41.5% within 3 weeks).
73. Ohio Dept. of Mental Hygiene and Correction, Ohio Judicial Criminal Statistics, 12 (1964).
74. California Bureau of Criminal Statistics, Crime in California—1964, 130–32 (1965).
75. California Penal Code § 1382.
76. Statistical Report of the U.S. Attorney for the District of Columbia, Sept. 12, 1966.
77. Laws, "Improving the Administration of Justice in the District of Columbia," 21 D.C. Bar J. 45, 46 (1954).
78. See Table 15, item 1. See also Table 2. The figures in the two tables differ because Table 2 is on a fiscal year basis and Table 15 is on a calendar year basis, and because the Administrative Office of the U.S. Courts (Table 2) counts certain actions as "cases" which are not necessarily reflected on the dockets used to obtain the figures in Table 15.
79. Staff computation based on data collected by C-E-I-R, Inc., show 13 retrials in cases commenced in calendar 1950, 24 in 1955, 25 in 1960, and 23 in 1965 (as of May 1, 1966). In 1965 mistrials rose to 14 over 4, 7 and 5 in the years being compared.
80. Durham v. United States, 214 F. 2d 862 (D.C. Cir. 1954). See Report of the Committee on Problems Connected with Mental Examination of the Accused in

Criminal Cases, Before Trial, 147 (1965).

81. Rollerson v. United States, 343 F. 2d 269 (D.C. Cir. 1964).
82. Mallory v. United States, 354 U.S. 449 (1957).
83. 18 U.S.C. § 3500 (1964).
84. Coor. v. United States, 325 F. 2d 1014 (D.C. Cir. 1963), *cert. denied*, 382 U.S. 1013 (1966).
85. Supra note 83.
86. The Special Advisory Committee on Pretrial Proceedings of the American Bar Association Committee on Minimum Standards and the Advisory Committee on Criminal Rules of the Judicial Conference of the United States are both preparing recommendations.
87. Memorandum of Instructions from the U.S. Attorney for Connecticut to his assistants, Sept. 21, 1966, establishing procedures for pretrial discovery and informal pretrial conferences in criminal cases in his district.
88. U.S. District Court Crim. Rule 87 as amended June 22, 1966.
89. The Washington Post, Oct. 8, 1966, p. A1. Estimates on the number of judge days in an average year vary considerably. The former Clerk of the Court, Harry M. Hull, found a range of 110 to 175 days per judge in a study which he made in 1948. Assuming five judge days in 52 weeks per year yields a maximum of 260 judge days per year, but this figure must be reduced by 7–9 legal holidays, by over a week of recess days each at Christmas and Easter, and by vacations of of the judges which are of unknown duration, but which range in excess of 30 days. Official holidays in the District of Columbia are designated in 28 D.C. Code § 616 (1961). The court also observes Veterans' Day.
90. Supra note 38.
91. 11 D.C. Code § 963 (Supp. V, 1966).
92. 11 D.C. Code §§ 961, 1141, 1301 (Supp. V, 1966). See also 11 D.C. Code § 962 (Supp. V, 1966) providing for transfer of civil actions commenced in U.S. District Court to the Court of General Sessions.
93. 11 D.C. Code § 902 (Supp. V, 1966).
94. Ibid., as amended by Pub. L. 89–598, 80 Stat. 825 (1966).
95. CGS Ann. Rep., 3 (1966).
96. 11 D.C. Code §§ 904, 1102 (Supp. V, 1966) providing for assignment of Domestic Relations Branch judges only if the work of that branch will not be adversely affected.
97. 16 D.C. Code § 705 (Supp. V, 1966).
98. 11 D.C. Code § 906 (Supp. V, 1966).
99. CGS Ann. Rep., table XII (1966).
100. Id., table VIII (1956).
101. 23 D.C. Code § 101 (1961).
102. Subin Report, 25.
103. Letter from David G. Bress, U.S. Attorney for the District of Columbia, Aug. 22, 1966.
104. Letter from Milton D. Korman, Acting Corporation Counsel, July 11, 1966 [hereinafter cited as Korman Letter]; 23 D.C. Code § 101 (1961).
105. Supra note 9.
106. For example, a felony charge of robbery creates one docket number as a robbery complaint. It may later be reduced to unlawful entry, petit larceny and simple assault, creating three more docket numbers.
107. Staff count of U.S. Marshal's daily list containing the names of persons coming before the court on a given day. The only persons excluded are referrals from the grand jury or the U.S. Commissioner. For further de-

scription of the Marshal's list see Subin Report, app. B.

108. A rate of "case mortality" measures cases not prosecuted. This measure was used in most criminal justice studies of the 1920's and 1930's, e.g., Criminal Justice in Cleveland, 25 (Cleveland Foundation, 1922).
109. Downie, "Prosecutor Tells Lawyers," The Washington Post, April 16, 1966, p. B1.
110. Subin Report, 84.
111. Id. at 74, 85.
112. Some comparable metropolitan courts try even a larger percentage of their tried cases before the court, e.g., the Court of Common Pleas in Allegheny County (Pa.). Information furnished by Administrative Office of the Court.
113. See, e.g., CGS Ann. Rep. (1965).
114. The court received funds for data processing in its fiscal 1967 budget. Information supplied by Joseph M. Burton, Jr., Clerk of Court, Dec. 13, 1966.
115. S. Rep. No. 624, 89th Cong., 1st Sess. 6 (1965).
116. Staff computation based on MPD Ann. Rep. for 1955 and 1965.
117. Supra notes 19, 20, 21.
118. Subin Report, 76.
119. CGS Ann. Rep., 2 (1966) reports 2 weeks between jury demand and calendaring for hearing. All prior years show 30 days. This reduction appears attributable to creation of a second jury calendar.
120. Hearings on S. 2255 and S. 2263 Before the Senate Committee on the District of Columbia, 89th Cong., 1st Sess., unpublished stenographic transcript at 11–12 (Aug. 3, 1965); CGS Ann. Rep., 2 (1965); Hirzel, "General Sessions Caseload Climbs to Record in 1965," The Evening Star (Washington, D.C.), Feb. 5, 1966, p. B1.
121. See Table 27, infra, showing 178 cases scheduled in a 2-week period and 90 continued.
122. 11 D.C. Code § 1520(a) (Supp. V, 1966).
123. Simonds, "Helping to Jail Thief Costs Man 5 Days' Pay," The Evening Star (Washington, D.C.), Sept. 17, 1965, p. A1.
124. Downie, "Charge Is Filed in Slaying After Police Quiz 600 Near Scene," The Washington Post, Nov. 7, 1965, p. B2.
125. See e.g., M.B. Virtue, Survey of Metropolitan Courts, Final Report of American Bar Association Committee on Metropolitan Trial Courts (1962); Desmond, "Current Problems of State Court Administration," 65 Colum. L. Rev. 561 (1965); Note, "Metropolitan Criminal Courts of First Instance," 70 Harv. L. Rev. 320 (1956); Institute of Judicial Administration, Inc., Survey of Eight Metropolitan Courts (1952). See also, Nutter, "The Quality of Justice in Misdemeanor Arraignment Courts," 36 Los Angeles Bar Bull. 338, 360 (1961): "The problem of maintaining justice in a mass society, with a population exploding in geometric ratios, may be one of the greatest challenges of our democracy. Justice cannot be mass produced. We must be ever alert that concepts of justice are not eroded by the sheer volume of cases which are now flooding our courts. Under present physical conditions . . . it is increasingly more difficult to give even the appearance of justice."

    The early crime commission surveys also recognized these problems. See, e.g., Criminal Justice in Cleveland, 278 (Cleveland Foundation, 1922); Illinois Association for Criminal Justice,

The Illinois Crime Survey 393 (1929); U.S. Department of Justice, Administration of Criminal Justice in Denver (undated), Administration of Criminal Justice in the Recorders Court of Detroit (April 29, 1966), Administration of Criminal Justice in the Municipal Court of Baltimore (April 5, 1966) (all unpublished).

126. Virtue, supra note 125, at 54.
127. Staff observations and computation based on 5½ judge days per week in D.C. Branch.
128. 361 F. 2d 59 (D.C. Cir. 1966) (en banc). The *Easter* decision and the problem of the drunkenness offender are discussed in chapter 7.
129. Subin Report, 73; Downie, "Trial by Jury Becoming Rarity," The Washington Post, Feb. 10, 1966, p. A23.
130. The Washington Post, Oct. 6, 1966, p. B1.
131. H. W. Jones, "The Trial Judge," in The Courts, the Public and the Law Explosion, 124, 125 (Prentice-Hall, 1965), quoting Lord Herschell.
132. See Criminal Justice in Cleveland, supra note 125, at 278; The Illinois Crime Survey, supra note 125, at 393.
133. Jones, supra note 131, at 125, 126.
134. Justice Bernard Botein, "The Case Against Instant Justice," New York Law Journal, Feb. 7, 1966.
135. Supra note 120.
136. Staff examination of jury calendars prepared by the Criminal Clerk's Office, D.C. Court of General Sessions.
137. E. L. Barrett, "Criminal Justice: The Problem of Mass Production," in The Courts, the Public and the Law Explosion, 109 (Prentice-Hall, 1965).
138. Murphy letter, supra note 60.
139. Sentencing in the U.S. Branch of the court is discussed in chapter 6.
140. Court of General Sessions Crim. Rule 14, amended effective December 1, 1966; for earlier efforts see also "New Branch May Cut Sessions Court Delay," the Washington Post, April 16, 1966, p. D4.
141. Hirzel, "Speedup Set for Cases Rejected by Grand Jury," The Evening Star (Washington, D.C.), April 12, 1966, p. B2.
142. The Board of Directors of Bar Association of the District of Columbia, on Nov. 3, 1966, recommended a 24-hour magistrate. See also "Criminal Court to Be Open Here 24 Hours a Day," The New York Times, Nov. 18, 1966, p. 1.
143. Summons procedures are discussed in chapter 7, section II.
144. A. L. Levin and E. A. Wooley, Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania, 25–26 (U. of Pa., 1961); Justice William Brennan, Modernizing the Courts, 2 (Institute of Judicial Administration, 1957); M. Rosenberg, Court Congestion: Status, Causes and Proposed Remedies," in The Courts, the Public and the Law Explosion, 46 (Prentice-Hall, 1965); Address by Chief Justice Earl Warren, American Law Institute Annual Meeting, Washington, D.C., May 16, 1966; Peck, "Court Organization and Procedures to Meet the Needs of Modern Society," 33 Ind. L. 182, 183 (1962).
145. See "EDP [Electronic Data Processing] for the Administration of Justice Systems and the Enforcement of Law," especially the address by Judge Henry Ellenbogen, "EDP: Last Hope for the Jury System," in Proceedings, Conference on EDP Systems for State and Local Governments, 9–30, especially 26–30 (N.Y. Univ.

and Systems Development Corp., Sept 30–Oct. 2, 1964).

146. Staff computation based on annual reports of the Court of General Sessions and the Administrative Office of the U.S. Courts. In fiscal 1965 the Court of General Sessions had 235,535 cases filed; the U.S. District Court had 6,942 cases filed. Financial data furnished by Stephen Swaim, Budget Analysist, D.C. Budget Office and published in part in the District of Columbia Government Budget Estimates for Fiscal Year 1967, p. 13–1 (Dept. of General Administration, January 1966).
147. CGS Ann. Rep., table IV (1965).
148. Administrative Office of the U.S. Courts, Annual Report, 127–50 (1960).
149. Federal Salary and Fringe Benefits Act of 1966, Pub. L. 89–504 (1966); supra note 37. See Note "Metropolitan Criminal Courts of First Instance," 70 Harv. L. Rev. 320, 324 (1956).
150. Domestic relations jurisdiction was transferred in September 1956, 11 D.C. Code § 1141 (Supp. V, 1966), and the jurisdictional amount of the Court of General Sessions was increased from $3,000 to $10,000 in January 1963, 11 D.C. Code § 961 (Supp. V, 1966).
151. E.g., the vacancy created by death of Judge John H. Burnett in August 1965 was not filled until the appointment of Judge Richard R. Atkinson in October 1966.
152. Subin Report, 25 n. 2.
153. E.g., "Pretrial Drinks Get Lawyer 15-Day Term," The Washington Post, May 3, 1966, p. A–1; Downie, "Unified Action Is Urged on General Sessions Ills," The Washington Post, April 3, 1966, p. B4—one judge explained that he refuses to assign criminal cases to defense lawyers who consistently fail to protect their assigned client's rights by not raising important and often obvious legal points during trials and hearings; "Many in D.C. General Sessions Court Have 'Less Than Adequate' Lawyers," The Washington Post, Feb. 10, 1966, p. A1. See generally, Subin Report, 91–95.
154. App. (ACA), 685–96; Subin Report, 103–04.
155. Id. at 181–86.
156. Budget Estimates for Fiscal Years 1965, 1966 and 1967, D.C. Government (Dept. of General Administration); testimony of Chief Judge John Lewis Smith, Jr., Hearings Before the House District of Columbia Appropriations Subcommittee, 89th Cong., 1st Sess. 639 (1965).
157. Supra note 146; information furnished by Joseph M. Burton, Clerk, D.C. Ct. of Gen. Sess., Dec. 8, 1966.
158. 15 D.C. Code § 714 (Supp. V, 1966).
159. 28 U.S.C. § 1821 (1964).
160. The Washington Post, Mar. 27, 1938, p. A12.
161. Staff observation and interviews with Walter F. Bramhall, Clerk, D.C. Ct. of Gen. Sess., Nov, 10, 1965, Dec. 15, 1965.
162. Interview with Robert C. Engle, Chief, Program Planning Division, D.C. Department of Buildings and Grounds, Jan. 11, 1966.
163. See Virtue, supra note 125, at 158–60.
164. 11 D.C. Code § 321(b) (Supp. V, 1966).
165. Address by Chief Judge William E. Richardson, reprinted in 11 D.C. Bar J. 87 (1944).
166. 11 D.C. Code § 741 (Supp. V, 1966).
167. Ibid.
168. Ibid.
169. Id., § 742.

170. Id., § 702.
171. Id., § 703.
172. Interview with Newell Atkinson, Clerk of D.C. Court of Appeals, June 30, 1966.
173. D.C. Ct. App. Rule 27.
174. It appears that the D.C. Court of Appeals counts each charge as an appeal if the charges were separately papered in the Court of General Sessions. Thus one defendant with two charges arising out of one incident would have two appeals. Interview with Newell Atkinson, Clerk of D.C. Court of Appeals, September 19, 1966.
175. Staff computation based on CGS 25% docket sample.
176. 359 F. 2d 245 (D.C. Cir. 1966).
177. See Hardy v. United States, 375 U.S. 277 (1964); Coppedge v. United States, 369 U.S. 438 (1962); Ellis v. United States, 356 U.S. 674 (1958).
178. 359 F. 2d at 253.
179. Ibid.
180. Criminal Justice Act of 1964, 78 Stat. 522, 18 U.S.C. § 3006A; United States v. Walker, Crim. No. 363, D.C. Ct. of Gen. Sess., opinion of Greene, J., filed Feb. 23, 1966.
181. 18 U.S.C. § 3006A(c).
182. Killough v. United States, 315 F. 2d 241, 265 (D.C. Cir. 1962) (Miller, C.J., dissenting).
183. Cooper v. United States, 357 F. 2d 274, 283 (D.C. Cir. 1966) (Burger, J., dissenting).
184. 28 U.S.C. §§ 1291, 2255 (1964); 11 D.C. Code 321 (Supp. V, 1966).
185. 28 U.S.C. § 1291 (1964). Appeals from Federal agencies include the National Labor Relations Board, 29 U.S.C. § 160 (1964); the Tax Court of the United States, 26 U.S.C. §§ 7482, 7483 (1964); the Federal Communications Commission, 47 U.S.C. § 402 (1964); the Federal Trade Commission, 15 U.S.C. § 45 (1964). See also 11 D.C. Code § 321 (Supp. V, 1966).
186. 28 U.S.C. § 44 (1964); U.S. Const. art. I, § 2; art. III, § 1.
187. 28 U.S.C. § 294(c) (1964).
188. 28 U.S.C. § 46(c) (1964).
189. F.R. Crim. P. 39(d).
190. Id., 37(a)(2).
191. Supra note 188; D.C. Cir. Rule 26.
192. F.R. Crim. P. 39(c); D.C. Cir. Rule 18 (a) and (b).
193. See F.R. Crim. P. 39(d).
194. 28 U.S.C. § 1915(d) (1964); Criminal Justice Act of 1964, 78 Stat. 552, 18 U.S.C. § 3006A.
195. There were 228 criminal and 2,168 civil appeals filed in the other Federal Courts of Appeals in fiscal 1950; in fiscal 1966 there were 1,206 criminal and 5,180 civil appeals filed. Annual Reports of the Director of the Administrative Office of the U.S. Courts, tables B1 (1950, 1966).
196. Supra note 177.
197. Cases requiring "deliberation" are those submitted for decision by the court after briefs by the parties or after briefing and oral argument. Cases terminated without hearing or submission include those dismissed by the parties, by order of court, or by consolidation with other cases.
198. Information supplied by Nathan J. Paulson, Clerk of Court.
199. Staff research based on data provided by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.
200. Compare Table 11.
201. Supra note 199. The six pending more than 2 years were Nos. 17838, 17839, 17841, 17877, 18038, 18040. All were reversed or remanded, three on issues of speedy trial.
202. D.C. Cir. Rules 12(a), 18(a).
203. Figures involving numbers of *defendants* in appellate cases (see particularly Tables 42, 46, 47, 48) are based on staff re-

search from data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. Figures involving numbers of *cases* are taken directly from Annual Reports of the Administrative Office of the U.S. Courts. Each defendant in an appeal is initially assigned a separate docket number, becoming a case for Administrative Office purposes. Multiple defendants may occur through consolidation of appeals. Thus, there may be more than one defendant in a reversed case; the Administrative Office would list one case as reversed, and the additional defendants would each appear as a consolidated case. A number of discrepancies were noted by the staff while doing the research for Tables 42, 46, 47 and 48. Neither the Administrative Office nor these tables include remands. The discrepancies have been corrected in Tables 42, 46, 47 and 48.

204. National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement, 346 (1931).
205. 328 U.S. 750, 759–60 (1946).
206. Supra note 183.
207. Jackson v. United States, 348, F. 2d 772, 776 (D.C. Cir. 1965).
208. Based upon staff research of published opinions; cases were not counted as reversals on Rule 52(b) grounds in which the court concluded that the error had been brought to the attention of the trial court. See, e.g., William v. United States, 263 F. 2d 487 (D.C. Cir. 1959).
209. Shepard, Federal Reporter Citations (1965 Supplement and Supplement for Jan. 1966), lists 90 citations for the U.S. Court of Appeals for the D.C. Circuit and 305 citations for the other Federal circuits. Cf. Table 38.
210. 40 Stat. 1181 (1919), 28 U.S.C. § 391 (1946).
211. Supra note 204.
212. 28 U.S.C. § 46(c) (1964).
213. See Civil Aeronautics Board v. American Air Transport, Inc., 344 U.S. 4, 5 (1952).
214. See, e.g., Davis v. Peerless Insurance Co., 255 F. 2d 534, 536 (D.C. Cir. 1958); Insurance Agents' International Union, AFL-CIO v. National Labor Relations Board, 260 F. 2d 736 (D.C. Cir. 1959), *aff'd on other grounds*, 361 U.S. 477 (1960). See also 40 N.Y.U. L. Rev. 563, 726 (1965).
215. Information supplied by the Chief Judges and the Clerks of the United States Courts of Appeals for the First through the Tenth Circuits.
216. Sixth Cir. Rule 3(2). The First Circuit, with only three judges, always sits en banc and therefore needs no such rule.
217. National Commission on Law Observance and Enforcement, Report on Prosecution, 11 (1931).
218. See, e.g., D. J. Newman, Conviction, 4-5, 197–230 (Little, Brown and Co., 1966); Note, "Prosecutor's Discretion," 103 U. Pa. L. Rev. 1057 (1955); Williams, "Through the Looking Glass: The Office of the United States Attorney," 3 Prac. Law. 49 (Nov. 1957); Moss, "The Professional Prosecutor," 51 J. Crim. L., C. & P.S. 461, 463 (1960); Note, "Guilty Plea Bargaining: Compromise by Prosecutors to Secure Guilty Pleas," 112 U. Pa. L. Rev. 865 (1964); Cates, "Can We Ignore Laws?—Discretion Not to Prosecute," 14 Ala. L. Rev. 1, 6–8 (1961).
219. Memorandum from Harry L. Alexander, Principal Assistant U.S. Attorney, Feb. 1966.
220. Responses by the judiciary to Commission questionnaires circulated in Feb. 1966 and staff con-

ferences with members of the judiciary.

221. For example, new standards of criminal responsibility under Durham v. United States, 214 F. 2d 862 (D.C. Cir. 1954); revised law concerning the admissibility of confessions, Mallory v. United States, 354 U.S. 449 (1957); Miranda v. Arizona, 384 U.S. 436 (1966). Trial of criminal cases now takes an average of 2.8 days compared with 1.9 days in 1950 (Table 18).
222. Data furnished by the Institute of Defense Analysis, Science and Technology Task Force of the President's Commission on Law Enforcement and Administration of Justice, shows a District of Columbia conviction rate in Part I offenses of 75 percent, compared with 76 percent in Connecticut, 86 percent in Massachusetts, and 87 percent in California. Part I offenses include homicide, rape, aggravated assault, robbery, burglary, grand theft, and auto theft.
223. Interview with Harry L. Alexander, Principal Assistant U.S. Attorney, Feb. 1966.
224. E.g., prior to recent increases, an Assistant United States Attorney's starting salary was $7,252 compared to $7,479 in the Department of Justice. Within 3 to 4 years the salary gap widened and assistants were paid about $2,000 less than their counterparts in the Department of Justice.
225. Letter from William J. Brady, Jr., Assistant to the Deputy Attorney General, April 2, 1966, reporting 80% comparability. See "U.S. Attorneys in District Get Salary Raises," The Washington Post, Dec. 6, 1966, p. B10, reporting 100% comparability.
226. Supra note 63.
227. Information furnished by Harry L. Alexander, Principal Assistant U.S. Attorney, March 1966.
228. Moss, supra note 218, at 463.
229. E.g., Criminal Law Institute of the Junior Bar Section, Bar Association of the District of Columbia; Georgetown Law Center Legal Internship Program. For comment on the impact of improved defense counsel in the District of Columbia see McGill v. United States, 348 F. 2d 791, 794 (D.C. Cir. 1965); Young v. United States, 346 F. 2d 793 (D.C. Cir. 1965); Blue v. United States, 342 F. 2d 894, 898 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 944 (1965); Editorial, 49 A.B.A.J. 561 (1963).
230. Information furnished by Richard L. Braun, Criminal Division, U.S. Department of Justice.
231. Williams, supra note 218.
232. The Evening Star (Washington, D.C.), April 27, 1966, p. A1; letter from David G. Bress, U.S. Attorney for the District of Columbia, Aug. 22, 1966.
233. Supra note 63.
234. Letter from Tim C. Murphy, Chief Assistant U.S. Attorney, Ct. of Gen. Sess. Criminal Division, Sept. 1, 1966; CGS 25% docket sample; Subin Report, 6, 25.
235. Computation from staff study of indictments returned in March 1966 in the U.S. District Court.
236. The Washington Post, March 22, 1966, p. B2.
237. Supra note 235; Table 13.
238. United States v. Kennedy, Crim. No. U.S. 763, D.C. Ct. of Gen. Sess., charges dismissed March 24, 1966.
239. The Evening Star (Washington, D.C.), April 27, 1966, p. A1.
240. Interview with Frank Q. Nebeker, Chief Assistant U.S. Attorney, Appellate Division, March, 1966.
241. Supra notes 63, 67.
242. Supra note 63.
243. Ibid.
244. App. (IACP), 213.

245. See the views set forth in Acheson, "Professional Responsibility and the Workload of the Federal District Courts," 52 Geo. L.J. 542, 548 (1964).
246. U.S. District Court Rule 87, which became effective Oct. 1, 1966, places new responsibilities in the U.S. Attorney's office. Court of General Sessions Crim. Rule 14, as well as the additional judges for that court, indicates that assistants will now be required to appear before more than two judges in that court.
247. Subin Report, 52–57, 122. Cf. Brezner, "How the Prosecuting Attorney's Office Processes Complaints," 27 Detroit Lawyer, 3 (1959).
248. Government of the District of Columbia, Ann. Rep., p. 5–1 (1965); letter from Milton D. Korman, Acting Corporation Counsel, July 11, 1966 [hereinafter cited as Korman letter].
249. Ibid.
250. Published by American College of Trial Lawyers; Korman letter.
251. Ibid.
252. Supra note 248.
253. Supra note 15; see discussion below on police data deficiencies.
254. D.C. Government Annual Report, supra note 248.
255. See chapter 7, section I, note 5.
256. MPD Ann. Rep., 49 (1965), "Other dispositions" in the Annual Report includes fines and forfeitures, but most are the latter.
257. Schoshinski, "Substandard Housing in the District of Columbia: A Need for Administrative and Statutory Reform," 15 Am. U.L. Rev. 223, 227 (1966).
258. Attributed to Tim C. Murphy, Chief Assistant U.S. Attorney, Court of General Sessions Division.
259. Korman letter.
260. 1 D.C. Code § 301 (1961).
261. Korman letter.
262. The office requested 6 additional attorneys for fiscal 1967; Congress appropriated funds for 2 positions. The office has requested four positions for fiscal 1968.
263. See The Washington Post, Dec. 14, 1966, p. B1.
264. Easter v. District of Columbia, 361 F. 2d 50 (D.C. Cir. 1966).
265. Statement by Acting Corporation Counsel Milton D. Korman, Judicial Conference of the District of Columbia Circuit, May 25, 1966.
266. U.S. Const. amend. VI.
267. F.R. Crim. P. 44; Court of Gen. Sess. Crim. Rule 24.
268. Arrest: Through arrangement by the U.S. Attorney for the District of Columbia, the Neighborhood Legal Services Project and the Bar Association of the District of Columbia, attorneys have been made available at the police precincts. Letter from David G. Bress, U.S. Attorney for the District of Columbia, to Chief of Police John B. Layton, May 20, 1966. Preliminary Hearing: See F.R. Crim. P. 5(b), as amended effective July 1, 1966; Blue v. United States, supra note 229 (counsel provided before U.S. Commissioner); Court of Gen. Sess. Crim. Rule 24. Trial: see note 267 supra; see also Johnson v. Zerbst, 304 U.S. 458 (1938). Appeal: See Coppedge v. United States, 369 U.S. 438, 441 (1962); Hardy v. United States, 375 U.S. 277 (1964).
269. Court of Gen. Sess. Crim. Rule 24. See also Tate v. United States, 359 F. 2d 245 (D.C. Cir. 1966).
270. Staff observation in D.C. Branch and Traffic Branch, D.C. Ct. of Gen. Sess.
271. Junior Bar Section, Bar Association of the District of Columbia, The Appointment of Counsel Sys-

tems in the District of Columbia, 6, 12, 19 (1965) [hereinafter cited as Junior Bar Counsel Report], sets forth estimates of 60% retained counsel in the Court of General Sessions, 38% retained in the United States District Court, and 10% retained in the U.S. Court of Appeals.

272. Staff computation based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.
273. Subin Report, 91.
274. See, *e.g.*, Blue v. United States, supra note 229, at 898: "[T]he District is unique in the lead which it, thanks in large part to an enlightened bar which has shouldered a truly professional responsibility of staggering scope, has attained over other jurisdictions in the quest of one of the ideals of a free society—equal justice for all." See also McGill v. United States, supra note 229, at 794.
275. 18 U.S.C. § 3006A.
276. Plan for Furnishing Representation for Indigent Defendants in Criminal and Quasi-Criminal Cases, approved by the Judicial Council for the D.C. Circuit, June 1965.
277. Information supplied by the Criminal Clerk's Office, U.S. District Court.
278. Junior Bar Counsel Report, 6.
279. See also Legal Aid Agency for the District of Columbia, Annual Report, 33 (1965) [hereinafter cited as Legal Aid Report], listing 934 appointments for 59% of the defendants.
280. 28 U.S.C. § 1915(a) (1964).
281. Junior Bar Counsel Report, 11.
282. Supra note 276.
283. Junior Bar Counsel Report, 12–14.
284. See Tate v. United States, supra note 269, at 253, n. 11.
285. Junior Bar Counsel Report, 15.
286. United States v. Walker, Crim. No. U.S. 363, D.C. Ct. of Gen. Sess., opinion of Greene, J., filed Feb. 23, 1966, held the Criminal Justice Act applicable to misdemeanors prosecuted by the U.S. Attorney in the Court of General Sessions. Vouchers for payment to attorneys under the act were approved by the Comptroller General of the United States on June 15, 1966.
287. Report of the Committee on Implementation of the Criminal Justice Act in the Ct. of Gen. Sess., July 8, 1966.
288. Junior Bar Counsel Report, 19.
289. Id. at 22.
290. Ct. of Gen. Sess. Crim. Rule 24 (prior to amendment).
291. Ibid.
292. Subin Report, 91–95; Junior Bar Counsel Report, 17.
293. Id. at 18, 20, 21.
294. Supra note 269.
295. Junior Bar Counsel Report, 22–23.
296. Id. at 23.
297. 359 F. 2d at 253, 256.
298. Ibid.
299. Supra note 287, at 19.
300. 2 D.C. Code § 2201 (1961).
301. Information supplied by Addison Bowman, Deputy Director, Legal Aid Agency, Dec. 13, 1966.
302. Pub. L. 89–743 (1966).
303. Legal Aid Report, 6–7 (1965). A condition of the grant is that the District must supply "matching funds to provide these improved services on a permanent basis after the project has withdrawn its assistance."
304. Legal Aid Report, 33–35, 38 (1965).
305. Id. at 11, 27.
306. L. Silverstein, Defense of the Poor in Criminal Cases in American State Courts, vol. 2, p. 132

(American Bar Foundation, 1965).

307. Information supplied by William W. Greenhalgh, Director, Georgetown Legal Internship Program.

308. Pye, "Legal Internships: Georgetown's Experiment in Legal Education," 49 A.B.A.J. 554, 557 (1963); Legal Aid Report, 33 (1965); Junior Bar Counsel Report, 17.

309. See, e.g., Hansford v. United States, 303 F. 2d 219 (D.C. Cir. 1962); Gordon v. United States, 229 F. 2d 117 (D.C. Cir. 1962).

310. For a general description of the project see P. M. Wald, Law and Poverty: 1965, 74–76 (1965).

311. Ibid.; information supplied by Lorenzo W. Jacobs, Jr., Deputy Director, NLSP, Nov. 29, 1966.

312. Letter from David G. Bress, U.S. Attorney for the District of Columbia, to Chief of Police John B. Layton, May 20, 1966.

313. Supra note 268. Although appeal is not recognized as a "stage" of the proceedings where right to counsel is constitutionally guaranteed, Griffin v. Illinois, 351 U.S. 12 (1956), and Coppedge v. United States, 369 U.S. 438, 441 (1962), suggest that due process may require counsel for indigents. It is the practice in the District of Columbia to appoint counsel on appeal. Junior Bar Counsel Report, 12, 22.

314. Id. at 7.

315. People v. Witenski, 15 N.Y. 2d 392 (1965) (right to assignment of counsel in petty larceny case).

316. E.g., W. Pincus, Legal Aid Brief Case, 46 (Legal Aid Society, 1965): "Lawyers are often unfairly or tardily assigned, inexperienced or lack the services of investigators and other experts . . ." Local defense counsel have been charged with excessive aggressiveness. Young v. United States, 346 F. 2d 793 (D.C. Cir. 1965). See also Silverstein, supra note 306, vol. 1 at 50–52.

317. Id. at 80, 298.

318. Statement by Julian R. Dugas, Director, NLSP., quoted in The Washington Post, Aug. 1, 1966, p. C1.

319. Silverstein, supra note 306, vol. 1 at 68.

320. See Plan for Furnishing Representation for Indigent Defendants, supra note 276.

321. McGill v. United States, 348 F. 2d 791, 794 (D.C. Cir. 1965); Young v. United States, supra note 316; Blue v. United States, 342 F. 2d 894, 898 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 944 (1965).

322. Responses by the judiciary to Commission questionnaires circulated in Feb. 1966 and staff conferences with members of the judiciary.

323. Legal Aid Report, 35; Junior Bar Counsel Report, 17.

324. Subin Report, 91.

325. "Many in D.C. General Sessions Court Have 'Less than Adequate' Lawyers," The Washington Post, February 10, 1966, p. A1.

326. Subin Report, 95, n. 7.

327. Downie, "Unified Action Is Urged on General Session Ills," The Washington Post, April 3, 1966, p. B4.

328. "Pretrial Drinks Get Lawyer 15-Day Term," The Washington Post, May 3, 1966, p. A1.

329. The Washington Post, February 11, 1966, p. A1.

330. D.C. Court of General Sessions Crim. Rule 5 I 13. The penalty for violation is suspension from doing business "until further order of this Court." It does not appear that any suspensions have been ordered under the rule.

331. As to the existence of fee-splitting elsewhere, see J. Carlin, Lawyers on Their Own, 108–109, 147–148 (Rutgers Univ. Press,

1962); Sweet, "Bail or Jail," 19 Record of N.Y.C.B.A. 11, 18 (1964). As to abuses by professional bondsmen generally, see D. J. Freed and P. M. Wald, Bail in the United States: 1964, 34–35 (1964).

332. Subin Report, 93.

333. Remarks of Court of General Sessions Judge Charles W. Halleck, quoted in The Washington Post, April 3, 1966, p. B4.

334. Subin Report, 92.

335. Plan for Furnishing Representation for Indigent Defendants, supra note 276, at 3.

336. Report of the Committee on Implementation of the Criminal Justice Act in the Ct. of Gen. Sess., July 8, 1966.

337. United States v. Walker, Crim. No. U.S. 363, D.C. Ct. of Gen. Sess., opinion of Greene, J., filed Feb. 23, 1966, p. 20.

338. Information supplied by Deputy Coordinator Robert Niles indicates that after implementation of the Criminal Justice Act many lawyers left the Court of General Sessions to represent defendants in the U.S. District Court where they received fees.

339. Peck, "Court Organization and Procedures to Meet the Needs of Modern Society," 33 Ind. L.J. 182, 182–83 (1962): "The administration of justice is not a business in the sense of marketing the machine made and mass produced. But it is a business in the very real sense of being affected in the quality, quantity, cost and delivery of its product by the same factors which make any business a success or failure. Functional efficiency of organization, competency and industry of personnel, economy and productivity of processes, play the same part in court operations as in business operations." See also M. Rosenberg, "Court Congestion: Status, Causes and Proposed Remedies," in the Courts, the Public and the Law Explosion, 46 (Prentice-Hall, 1965); A. L. Levin and E. A. Wooley, Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania, 25–26, 76 (U. of Pa., 1961); W. J. Brennan, Modernizing the Courts, 2 (Institute of Judicial Administration, 1957); H. Karlen, Attitudes of Bench and Bar Toward the Law's Delays, 6 (Institute of Judicial Administration, 1958); Tolman, "Court Administration: Houskeeping for the Judiciary," 328 Annals 105 (1960).

340. Proceedings, Attorney General's Conference on Court Congestion and Delay in Litigation, 28 (1956).

341. D.C. Ct. of Gen. Sess. Crim. Rule 14 as amended.

342. E.g., L. H. LaMotte, "Adequate Personnel in the Courts and for the United States Attorney for the District of Columbia," Proceedings, 15th Judicial Conference of the D.C. Circuit, 45–54 (June 24, 1956); C. E. Ford, "Changing the Mechanics of the System of Assigning Cases in the District Court," Proceedings, 11th Judicial Conference of the D.C. Circuit (June 6, 1947); Acheson, "Professional Responsibility and the Workload of the Federal District Courts," 52 Geo. L. J. 542, 549–50 (1964); Laws, "Improving the Administration of Justice in the District of Columbia," 21 D.C. Bar J. 45, 46 (1954).

343. Laws, "A Modern Judicial System," 25 Fla. L.J. 135, 139 (1951).

344. National Conference of Commissioners on Uniform State Laws, Model Court Administration Act, 9 Uniform Laws Ann. 253 (1957).

345. The following jurisdictions have offices of court administration:

Alaska, California (Los Angeles), Colorado, Connecticut, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Puerto Rico, Rhode Island, Virginia, Washington, Wisconsin, the United States Courts, and, soon, Hawaii. See also Minimum Standards of Judicial Administration, ed. A. Vanderbilt (N.Y.U. Law Center, 1949).

346. 11 D.C. Code § 903 (Supp. V, 1966).
347. Tolman, supra note 339.
348. Address by Chief Justice Earl Warren, American Law Institute Annual Meeting, Washington, D.C., May 16, 1966.
349. E. L. Barrett, Jr., "Criminal Justice: The Problem of Mass Production," in The Courts, the Public and the Law Explosion, 123 (Prentice-Hall, 1965).
350. E.g., work by the Institute of Defense Analysis, Science and Technology Task Force of the President's Commission on Law Enforcement and Administration of Justice. Professional managerial advice is credited with elimination of the civil backlog in Pittsburgh. Court of Common Pleas of Allegheny County (Pa.), Annual Report (1965). Other courts are developing modern scheduling methods in cooperation with managerial firms. See, e.g., Kaufman, "Decongestion through Calendar Controls," 328 Annals 84 (1960); Aerojet-General Corporation, Proposal to State of California Department of Finance for a Systems Analysis and Cost Effectiveness Study of Control, Containment, and Release of the Criminal and Mentally Ill Population (1964); Arthur D. Little, Inc., Congestion and Delay in the Court (1961). See also Judicial Council of California, Administrative Office of the Courts, A System for Weighting the Workload of District Courts of Appeal (1966); A Weighted Caseload System for Measuring Judicial Workload of Superior Courts (1966).
351. Quoted in Warren, "The Problem of Delay: A Task for Bench and Bar Alike," 44 A.B.A.J. 1043, 1045 (1958).
352. A. T. Vanderbilt, The Challenge of Law Reform, 36–39 (Princeton University Press, 1955).
353. MPD Ann. Rep., 46–47 (1965).
354. Ibid. Item 26A of this table in the MPD report, "All Other Offenses—misdemeanors," includes offenses cognizable in both the United States and the District of Columbia Branches of the Court of General Sessions. The number of U.S. Branch arrests is estimated to be 1,112, based upon a letter from Lt. S. W. Stickley, Statistical Bureau of the MPD, July 6, 1966, which revealed that there were 556 U.S. Branch offenses out of 3,460 during January through June 1965.
355. Supra notes 16 and 17.
356. Supra note 13.
357. Letter from Chief of Police John B. Layton, August 30, 1966.
358. Supra note 10.
359. General Order 3–B, Series 1962.
360. Interview with Lt. S. W. Stickley, Statistical Bureau, MPD, Sept. 6, 1966; Interview with Patrolmen of the 3rd Precinct, MPD, Sept. 12, 1966.
361. 11 D.C. Code § 907(c) (Supp. V, 1966).
362. See e.g., CGS Ann. Rep., *passim* (1965).
363. 11 D.C. Code § 963 (Supp. V, 1966).
364. CGS Ann. Rep., table I (1965).
365. 28 U.S.C., §§ 604, 610 (1964). The Court of General Sessions, the D.C. Court of Appeals,

and the Juvenile Court are not under the direction of the Administrative Office. Id., § 610.

366. See 28 U.S.C. § 604(a) (1964) which gives the Director supervisory power over only the clerks and administrative personnel of the courts.

367. 11 D.C. Code, ch. 7 (Supp. V, 1966). See, e.g., D.C. Court of Appeals Statistical Report for the Fiscal Year Ending June 30, 1966 (1966).

368. Conclusion based on interview with Newell Atkinson, Clerk of D.C. Court of Appeals, Sept. 15, 1966.

369. E.g., some cases terminated prior to hearing or submission may be reversals and are not counted as such; cases reversed as to some charges and affirmed as to others are recorded as "Affirmed and Reversed" and ultimately merge with affirmed cases; consolidated cases show the outcome only of the case with which consolidated, whereas multiple defendants do not always have their cases decided in the same way. Administrative Office of the United States Courts, Bulletin No. 508, pp. 6, 8, app. 2 (July 1964); Interview with James A. McCafferty, Chief, Research and Evaluation Branch, Administrative Office of the U.S. Courts, Feb. 18, 1966. A number of case dispositions were reported incorrectly to the Administrative Office, as found by comparing data based on staff survey of the court's dockets and opinions with data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts for fiscal years 1960–1965. The Clerk's Office also reported some cases as having complete records filed prior to the filing of the trial transcripts. This appears to be contrary to instructions contained in Bulletin No. 508.

370. See e.g., Statistical Report of the U.S. Attorney for the District of Columbia, Sept. 12, 1966.

371. Ibid.; data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.

372. Interview with James A. McCafferty, supra note 369.

373. U.S. Department of Justice, U.S. Attorneys Statistical Report—Fiscal Year 1965, tables 1, 2, 4 (1965).

374. See, e.g., Administrative Office of the U.S. Courts, Persons Under the Supervision of the Federal Probation System—Fiscal Year 1965 (1966).

375. See, e.g., D.C. Dept. of Corrections, Selected Criminological Data (1965).

376. See, e.g., D.C. Dept. of Corrections. Ann. Rep.—Fiscal Year 1966 (1966).

377. Data maintained by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.

378. Criminal Justice in Cleveland (The Cleveland Foundation, 1922).

379. National Commission on Law Observance and Enforcement, Report on Criminal Statistics, 5–6 (1931).

380. Cal. Penal Code §§ 13000–13020.

381. Washington Criminal Justice Association, Crime in the Nation's Capital—1936, 1–2 (1937). See also its subsequent annual reports.

382. 2 D.C. Code § 1901 (1961).

383. Ibid.

384. Report of the Committee on Juvenile Crime, chaired by Newell Ellison, Esq. (1954).

385. Report of the Committee on Mental Disorders as a Criminal Defense, chaired by George L. Hart, Jr., Esq. (1955). This report provided a basis for the Insane

Criminal Act of 1955, 69 Stat. 609, 24 D.C. Code § 301 (1961).

386. Report of Committee on Narcotics Addiction, chaired by Donald Clemmer, Director, D.C. Dept. of Corrections (1956).

387. Staff interviews with former and present members David C. Acheson, Hugh F. Rivers, Judge Morris Miller, Newell Ellison, Judge George L. Hart, Jr. and DeLong Harris, May–June 1966.

CHAPTER 6

1. Policies and Standards for Sentencing Formulated by the District of Columbia Sentencing Institute, 1960, U.S. Court of Appeals (Apr. 4, 1960).
2. Ibid.
3. Ibid.
4. See, e.g., S. Rubin, Crime and Delinquency, 123 (Oceana Publications, Inc., 1961); Address by J. V. Bennett on "Sentencing Procedures Available to District of Columbia Courts," before the D.C. Sentencing Institute, Washington, D.C. (Jan. 30, 1960).
5. 22 D.C. Code § 2404 (Supp. V 1966).
6. 24 D.C. Code § 203(a) (1961).
7. 22 D.C. Code § 2901 (1961).
8. 18 U.S.C. § 3651. This section was made applicable in the District by the partial repeal of 24 D.C. Code § 102 (1961) by 72 Stat. 216 (1958).
9. Ibid.
10. 18 U.S.C. §§ 5005–26.
11. Id., §§ 5010(b), 5017(c).
12. Id., §§ 5010(c), 5017(d).
13. American Correctional Association, Survey Report, U.S. District Court for the District of Columbia [hereinafter cited as ACA Survey Report], 41–42 (1966).
14. 18 U.S.C. § 4208(b).
15. Id., § 5010(e).
16. Staff computations based upon data provided by the Administrative Office of the U.S. Courts. In addition the court requested 44 presentence examinations from Legal Psychiatric Services in fiscal years 1964–65. Letter from Dr. D. A. Lanham, Chief, Legal Psychiatric Division, Dept. of Public Health, July 6, 1966.
17. Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court for the District of Columbia [hereinafter cited as CEIR Study].
18. Includes a small number of offenders whose sentences were suspended without probation.
19. Youngdahl, Sentencing the Auto Thief to Probation or Prison—as Youth or Adult, 26 F.R.D. 300, 302 (1959).
20. Administrative Office of the U.S. Courts, Ann. Rep., 139 (1965).
21. Id. at 137; Herlands, "When and How Should a Sentencing Judge Use Probation," 35 F.R.D. 487, 488 (1964).
22. This view is not new. In 1931 the Wickersham Report stated: "No man should be sent to a penal institution until it is definitely determined that he is not a fit subject for probation. . . ." Quoted at 26 F.R.D. 302 (1959).
23. Proposed Official Draft, § 7.01 (1962).
24. See Sentencing Institute and Joint Council for the Sixth, Seventh and Eighth Circuits, 30 F.R.D. 401 (1961); Herlands, supra note 21, at 497.
25. Administrative Office of the U.S. Courts, Persons Under the Supervision of the Federal Probation System, 29, 39 (1965). See note 58.
26. Ibid.

27. Federal Bureau of Prisons, Characteristics of State Prisoners 1960, 50–51 (undated).
28. Staff computations based on information supplied by Research and Statistics Branch, Federal Bureau of Prisons.
29. Information supplied by Donald Miller, Supervisor, National Prisoner Statistics Program, Federal Bureau of Prisons, Dec. 14, 1966.
30. D. Glaser, The Effectiveness of a Prison and Parole System, 36 (The Bobbs-Merrill Co., Inc., 1964).
31. Chappell, "Federal Parole," 37 F.R.D. 207, 209 (1965).
32. Information supplied by D.C. Department of Corrections [hereinafter cited as Dept. of Corr.], Nov. 17, 1966.
33. Staff computations based on data provided by the Administrative Office of the U.S. Courts.
34. Quoted in Van Dusen, "Trends In Sentencing Since 1957 And Areas of Substantial Agreement And Disagreement In Sentencing Principles," 35 F.R.D. 395, 398 (1964).
35. Supra note 33. Plea to the same offense includes pleas to an offense different from, but of equal seriousness to, the most serious charge in the indictment.
36. CEIR Study, supra note 17.
37. See Comment, "The Influence of the Defendant's Plea on Judicial Determination of Sentence," 66 Yale L.J. 204 (1956); Newman, "Pleading Guilty for Consideration: A Study of Bargain Justice," 46 J. Crim. L., C. & P. S. 780 (1956).
38. 2 Attorney General's Survey of Release Procedures 426 (1939).
39. 28 U.S.C. § 334.
40. Through October 1964 there had been 15 such institutes. 37 F.R.D. 115–16 (1965).
41. 27 F.R.D. 389–91 (1960). These criteria were cited with approval by the Highland Park Sentencing Institute for the Sixth, Seventh and Eighth Circuits, 35 F.R.D. 398 (1964).
42. Policies, supra note 1.
43. See, e.g. the standards for the application of the FYCA adopted by the Sentencing Institute of the Sixth, Seventh and Eighth Judicial Circuits, supra note 34. See also 37 F.R.D. 115 (1965); 35 F.R.D. 403 (1964); 30 F.R.D. 271 (1961).
44. Summary, Recommendations and Concluding Remarks, Lompoc Sentencing Institute, 37 F.R.D. 111, 189–190 (1965).
45. Testimony of B. J. George, Jr., Hearings on S. 2722 Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. 106 (1966). See Doyle, "A Sentencing Council in Operation", 25 Fed. Prob., No. 3, at 27 (1961).
46. Summary, supra note 44.
47. See Hearings, supra note 45.
48. Id. at 111–12.
49. Id. at 35.
50. H.R. 5688, 89th Cong., 2nd Sess. (1966). See H.R. Rep. No. 2295, 89th Cong., 2nd Sess. (1966).
51. Ibid.
52. 24 D.C. Code § 401 (1961).
53. D.C. Code § 710 (Supp. V, 1966).
54. 24 D.C. Code § 208 (1961).
55. App. (ACA), 690–93.
56. Data in this section are based on a 25 percent staff sample in the U.S. Branch docket books for fiscal 1965.
57. See Table 1.
58. Probation violation rates can be calculated in two different ways—the ratio of violators to all persons on probation in the year or the ratio of violators to persons removed from probation in the year. Under the former formula, the violation rates in

the Court of General Sessions and the U.S. District Court were 5 percent and 10 percent, respectively, in fiscal 1965. App. (ACA), 693; information supplied by Probation Office, U.S. District Court for the District of Columbia, Dec. 6, 1966. Under the latter formula the rates were 10 percent and 28.5 percent. Staff computation based on information supplied by E. W. Elwin, ACA, Dec. 7, 1966; Administrative Office, supra note 25, at 39.

59. Dept. of Corr., Patterns of Recidivism Among Offenders Committed to the Department of Corrections, Table IV.0 (1965).
60. S. Rubin, The Law of Criminal Correction, 488 (West Publishing Co., 1963).
61. H. I. Subin, Criminal Justice in a Metropolitan Court, 87–90 (U.S. Dept. of Justice 1966). Present practice in the court is to allow a defendant who desires to plead guilty to do so before the judge of his choice so long as the particular judge agrees.
62. 18 U.S.C. § 5025; the Act is not applicable to misdemeanants between 22 and 26, 18 U.S.C. § 4209. One judge recently committed a youthful offender under the provisions of the Act for the first time.
63. 18 U.S.C. §§ 5010(b)(c), 5017(c)(d).
64. A Commission staff study found 14 instances in fiscal 1965.
65. The Probation Department of the District Court provides parole services only for those Youth Center inmates who were committed under the Youth Corrections Act.
66. ACA Survey Report, 6–8.
67. Id. at 27–28.
68. Id. at 32.
69. Id. at 19.
70. Interview with George Howard, Chief Probation Officer, U.S. District Court, Sept. 22, 1966.
71. Interview with George Howard, Chief Probation Officer, U.S. Distric Court, Sept. 26, 1966. Mr. Howard stated that his Department should still devote more time to supervision.
72. Administrative Office of the U.S. Courts, Ann. Rep., 230 (1965).
73. Interview with George Howard, Chief Probation Officer, U.S. District Court, Nov. 21, 1966.
74. National Council on Crime and Delinquency, Standards and Guides for Adult Probation, 29 (1962).
75. Interview with George Howard, Chief Probation Officer, U.S. District Court, Nov. 17, 1966. An "incomplete" investigation occurs when another jurisdiction asks for some specific information concerning a parolee from the District Court.
76. ACA Survey Report, 42.
77. Id. at 45.
78. App. (SRI), 581.
79. Ibid.
80. Id. at 583.
81. Administrative Office of the U.S. Courts, U.S. Probation Officers Manual [hereinafter cited as Probation Man.], ch. 6.
82. The community advisor bears no responsibility for the parolee's conduct, but is expected to provide counseling and advice.
83. Probation Man., ch. 8.
84. ACA Survey Report, 49.
85. Id. at 54.
86. Id. at 56.
87. Ibid.
88. Id. at 57.
89. Id. at 68–69.
90. Id. at 69.
91. Id. at 70–71.
92. Id. at 70.
93. Information supplied by Probation Department, U.S. District Court, Dec. 6, 1966.

94. Probation Man., ch. 8.
95. The Alcoholic Rehabilitation Unit is discussed in chapter 6, where the Commission recommends that the Unit be disbanded.
96. Comparable figures for 1965 were 173 work units computed on the basis of 128 supervision cases per officer, and 9 investigations per month, performed by 8 officers supervising 1,021 cases. App. (ACA), 688.
97. Id. at 695.
98. Id. at 696.
99. Ibid.
100. Committee on Prisons, Probation and Parole, Prisons, Probations, and Parole in the District of Columbia [hereinafter cited as Karrick Report], 153 (1957).
101. The Municipal Court for the District of Columbia, The Annual Report of the Business of the Municipal Court for D.C., Part I, 2 (1957); D.C. Court of General Sessions, Ann. Rep., 2 (1966).
102. Interview with Robert J. Conner, Director of Probation, Court of General Sessions, Sept. 20, 1966.
103. Interview with Dr. E. Preston Sharp, General Secretary, ACA, Oct. 12, 1966.
104. App. (ACA), 687.
105. Ibid.
106. Ibid.
107. Ibid.
108. Ibid.
109. Id. at 691.
110. Ibid.
111. Id. at 689.
112. Id. at 690.
113. In contrast, the Probation Department of the U.S. District Court has prepared a thorough manual of procedure.
114. Interview with Edward W. Elwin, Consultant for the ACA, Nov. 4, 1966.
115. Ibid.
116. Id. at 696.
117. Ibid.
118. Subin, supra note 61, at 104; The Washington Post, April 5, 1966, p. A1.
119. App. (ACA), 697.
120. Id. at 698.
121. Pub. L. 89–803, 89th Cong., 2d Sess. (Nov. 10, 1966), § 4.
122. The Bail Agency and some aspects of the problem of pretrial release are discussed in chapter 6.
123. Interview with Boyd McDivett, Deputy Director, Office of Probation, Criminal Courts of New York City.
124. Id. at 698.
125. Id. at 690.
126. Id at 691. The parents of a 19-year old girl arrested on another shoplifting charge while under jurisdiction of the Probation Department were never contacted by the probation officer when their daughter was originally placed on probation. The girl told the Department that she did not know their address and no attempt was made to locate them. The Evening Star (Washington, D.C.), Dec. 2, 1966, p. B4.
127. App. (ACA), 691.
128. Ibid.
129. Id. at 692.
130. Ibid.
131. Ibid.
132. Ibid.
133. Subin, supra note 61, at 102.
134. App. (ACA), 692.
135. Id. at 693.
136. Ibid.
137. Ibid.
138. Ibid.
139. Probation Dept., D.C. Court of General Sessions, Ann. Rep., 3 (1966).
140. The data for 1965 indicate only a slight change in the number of home visits. See App. (ACA), 695.
141. Id. at 694.
142. Ibid.
143. Ibid.

144. Id. at 695.
145. Office of Juvenile Delinquency and Youth Development, U.S. Dept. of Health, Education and Welfare, Program for the Control of Crime and Delinquency, Grant No. 66004, Dec. 1965–Dec. 1966.
146. See The Washington Post, Nov. 29, 1966, p. A8.
147. Reorganization Order No. 34 (1953), as amended, Parts I–III, D.C. Code, Title I, app. (1961).
148. Bureau of Prisons, U.S. Dept. of Justice, National Prisoner Statistics Bulletin, 15 (Nov. 1965).
149. Interview with William R. Nelson, Assistant Director, Dept of Corr., Dec. 1, 1966.
150. App. (ACA), 661.
151. Interview with William R. Nelson, Assistant Director, Dept. of Corr., Oct. 31, 1966.
152. App. (ACA), 662. According to the ACA, these minimum workload standards include 30 cases per month for the reception process and 150 inmates per counselor in the general institutional programs. Ibid.
153. Id. at 664.
154. Letter from Kenneth L. Hardy, Acting Director, Dept. of Corr., Nov. 15, 1966.
155. App. (ACA), 659.
156. Ibid.
157. Id. at 657.
158. Letter from Murray Grant, M.D., Director, D.C. Dept. of Public Health, to Commissioner John B. Duncan, Sept. 30, 1966. On Nov. 2, 1966, the Department of Corrections also assumed responsibility for operating the top two floors of the Women's Bureau as a detention center for unsentenced females. Fifteen staff members from the Women's Reformatory were transferred to this unit as were 26 unsentenced females who had been detained at the Jail.
159. App. (ACA), 669.
160. Information supplied by the Records Office, D.C. Jail, Dept. of Corr., Sept. 21, 1966.
161. Ibid.
162. Letter from William R. Nelson, Assistant Director, Dept. of Corr., to George Trubow, Deputy Counsel, Senate Subcommittee for the Improvement of Judicial Machinery, May 12, 1966.
163. 361 F. 2d 50 (D.C. Cir. 1966) (en banc).
164. The Jail Division, Dept. of Corr., Ann. Rep. 1 (1966).
165. Information supplied by the Records Office, D.C. Jail, Dept. of Corr., Aug. 30, 1966.
166. Information supplied by the Office of the Director, Dept. of Corr., Nov. 15, 1966.
167. App. (ACA), 671.
168. Ibid.
169. Id. at 670.
170. Junior Bar Section, Bar Association of the District of Columbia, Report of the D.C. Jail Study Committee, Appendix D (1966).
171. App. (ACA), 673.
172. Id. at 671–73.
173. The Evening Star (Washington, D.C.), Mar. 21, 1966, p. A1.
174. Bureau of Prisons, U.S. Dept. of Justice, Trends in the Administration of Justice and Correctional Programs in the United States, 57 (1965).
175. App. (ACA), 737.
176. Id. at 673.
177. Id. at 680.
178. Id. at 681.
179. Ibid.
180. Id. at 742.
181. Dept. of Corr., Department Order 19–6, 2 (1965).
182. Psychological Services Center, Reformatory Division, Dept. of Corr., Ann. Rep., 1, (1966).
183. Interview with William R. Nelson, Assistant Director, Dept. of Corr., Aug. 31, 1966.
184. App. (ACA), 673.

185. The Workhouse Division, Dept. of Corr., Ann. Rep., 2 (1966).
186. App. (ACA), 678.
187. Records and Mail Unit, The Youth Center, Dept. of Corr., Ann. Rep. (1966).
188. App. (ACA), 678–79.
189. Id. at 678.
190. Ibid.
191. L. D. Barton, Coordinator, Manpower Task Force, Manpower Administration, U.S. Dept. of Labor, Report on Manpower Administration Programs in the Metropolitan Washington Area, 21 (Mar. 1966).
192. Psychology Unit, The Youth Center, Dept. of Corr., Ann. Rep., 1 (1966).
193. ACA, Manual of Correctional Standards [hereinafter cited as Manual], 425 (1966).
194. Id. at 439.
195. App. (ACA), 743.
196. Ibid.
197. Id. at 662.
198. Two manuals, Perspectives for Correctional Practice and Manual of Regulations and Orders, set forth the philosophy and aims of the Department in addition to historical and factual data about each institution.
199. App. (ACA), 741.
200. Id. at 740.
201. Federal Prison Industries, Inc., U.S. Dept. of Justice, Schedule of Products, Report No. 160, 6.
202. Ibid.
203. Interview with William R. Nelson, Assistant Director, Dept. of Corr., Nov. 22, 1966.
204. App. (ACA), 742.
205. The Prisoner Rehabilitation Act, Pub. L. 89–176 (1965).
206. See E. V. Long, "The Prisoner Rehabilitation Act of 1965," Federal Probation Quarterly, 7 (Dec. 1965).
207. Address by V. L. Bounds, Director of Prisons, N.C., before the Southern Regional Institute for Wardens and Superintendents of Correctional Institutions, Athens, Ga., July 17, 1966. New York City is developing plans for an experimental work-release program. The New York Times, Dec. 12, 1966, p. 1.
208. District of Columbia Work Release Act, Pub. L. 89–803 (1966).
209. Ibid.
210. Report, supra note 192, at 5.
211. J. J. Galvin, ed., Treating Youth Offenders in the Community, 139–44 (Correctional Research Associates, 1966).
212. App. (ACA), 729.
213. Manual, 136.
214. App. (ACA), 659.
215. Id. at 738.
216. Id. at 737.
217. Id. at 737–38.
218. Office of Law Enforcement Assistance, Dept. of Justice, Evaluative Research on the Correctional Process, Grant No. 089 (Oct. 10, 1966).
219. Interview with Garland M. Keeney, D.C. Board of Parole, Nov. 7, 1966; Interview with Richard S. Collins, Administrative Officer, D.C. Board of Parole, Nov. 7, 1966.
220. Information supplied by the Budget Office for the District of Columbia, Nov. 14, 1966.
221. App. (ACA), 718.
222. Id. at 717; Karrick Report, 159–60.
223. App. (ACA), 717–18.
224. Id. at 717.
225. Ibid.
226. Id. at 706.
227. This is the practice in Ohio. Information supplied by George F. Denton, Chief of the Adult Parole Authority, State of Ohio, Nov. 16, 1966.
228. Karrick Report, 157, 164–65. During fiscal year 1965, the United States Board of Parole granted parole for 37% of its applicants. Federal Bureau of Pris-