partments will be employed as consultants. This grant provides an opportunity to experiment with lateral entry as a means of infusing new capability and vitality into the Department. We recognize that filling posts from outside the force may cause resentment on the part of some of those who might consider themselves the natural heirs to these positions.[84] However, demonstrating that talent and qualifications are more important than rigid promotion policies may prove a salutary spur to the advancement efforts of younger officers.

Lateral entry also provides an opportunity to demonstrate to the community that the Department leadership is not encumbered for the next several years by past promotional inequities. As a result of earlier racial discrimination, the Metropolitan Police Department has no Negro deputy chiefs or inspectors, and only three Negro captains. The Commission recommends that the Department make emphatic efforts to include qualified Negroes among the civilian specialists and police personnel added during the next several months.

General Counsel

The Commission concludes that the Department would profit from having its own legal adviser. The Department now receives legal counsel on civil and criminal matters from the Office of the Corporation Counsel, and on criminal matters from the Office of U.S. Attorney. Assistance in the Department's training programs on criminal law and procedure is primarily supplied by the U.S. Attorney. As such training is an additional duty to be performed by already overburdened Assistant U.S. Attorneys, insufficient time and attention is usually devoted to the task.

A permanent legal adviser to the Department could assume a primary and continuing role in its efforts. Other major police departments retain full-time attorneys and benefit from their services.[85] In collaboration with the Planning and Development Division and the U.S. Attorney, the Department's lawyer could prepare training materials and periodic bulletins setting forth proper police procedure in the light of past and current judicial decisions. Further, detailed instruction on court appearances could be the subject of intensive lectures for recruits as well as regular training bulletins. Legal counsel could advise the Department concerning legislation directly affecting it and assist the Chief of Police in the preparation of testimony before Congressional committees. Counsel could also work with the Office of the Corporation Counsel on the general legal problems of the Department.

A Department lawyer should not usurp the legitimate prerogatives or functions of the Corporation Counsel or the U.S. Attorney. We do

not propose that a Department legal adviser would participate in pending criminal investigations, render prosecutive judgments, or in any other way intrude on the close relationship which must exist between the police and the prosecutor's office. In the Commission's view, departmental counsel could achieve a satisfactory accommodation with the U.S. Attorney and the Corporation Counsel as to areas of responsibility and provide important and continuing assistance to the Chief of Police.

TRAINING

Training "is one of the most important means for upgrading the services of a police department." [86] The intensity and relevance of the training provided recruits, supervisors and executives provide a significant measure of the Department's effectiveness, its receptivity to change, and the quality of its leadership. We endorse the conclusion of the IACP Survey that police training in this community "has not been neglected over the years, but on the other hand the effort has been handicapped by lack of overall supervision of the training program and by poor facilities." [87] In recent months the Department has begun to recognize the shortcomings in its training programs, and experimental efforts are now under way which promise to bring about substantial improvement.

Recruit Training

The fresh recruit often knows little or nothing of his potential authority, the laws or the customs of the community whose welfare he is to ensure, or the myriad mechanical aspects of policing a city. Moreover, his attitude towards the job awaiting him may be uncertain, and perhaps misguided. He must be trained and conditioned to his important task. The Police Academy and Training Section of the Metropolitan Police Department attempts to fulfill this difficult assignment through an indoctrination course of 2 weeks and a basic recruit training course of 13 weeks.

Indoctrination

New appointees to the Department are given two weeks' indoctrination preceding their assignment to recruit school. The time period between indoctrination and recruit training may extend for many weeks; for a recent recruit class, waiting time averaged 12.6 weeks per man.[88] The indoctrination course includes tours, issuance of equipment and other preliminary administrative matters; it also includes instruction

in the use of firearms, laws of arrest, city geography, traffic enforcement, and report writing.

An appointee who has received indoctrination training may be assigned to a precinct prior to receiving recruit training. The precinct captain may assign the recruit to patrol by himself when satisfied that the recruit is ready to exercise this responsibility. The Department itself is implicitly disturbed by this policy; ticket books are not issued to new recruits at the time they are assigned to precincts. The rationale for this procedure is that these men have not sufficiently developed their judgment faculties to be issued these books. They are, on the other hand, issued weapons and ammunition.[89]

The Commission recommends that the delay between indoctrination and recruit training be eliminated, and that these two aspects of training be combined as suggested by the IACP.[90] This may be accomplished by the creation of two training classes, rather than one, which could operate on a staggered curriculum. It is our firm judgment that no officer, prior to the conclusion of recruit training, should patrol alone.

Facilities and Curriculum

Since June 1965 recruits have received their classroom training in a building on the south side of the Anacostia River loaned to the Metropolitan Police Department by the U.S. Navy. The basic course is 13 weeks in length, under the supervision of the recruit school staff consisting of one lieutenant, one sergeant, three acting sergeants, a private, and a cadet.

The Department is in great need of a modern, fully-equipped training facility. The present temporary facilities provided by the Navy are clearly inadequate. The IACP concluded:

> The classroom is unsatisfactory. It is not air-conditioned, and the lighting and ventilation are poor. The building is not being maintained properly, and in general the environment detracts from the Department's effort to develop a proper police "image" in the minds of recruit officers.[91]

The Department currently has plans for the construction of a training facility at Blue Plains, a site several miles distant from police headquarters. The Department's appropriation for fiscal year 1967 includes funds for a preliminary survey and for initial plans and specifications. The facility will cost an estimated $2 million for construction, with an earliest anticipated occupancy date of June 1969. The Commission strongly endorses a new training facility, but we believe that, if at all possible, plans should be developed for a single new headquarters and training facility at a central location in the District. The need for both is urgent, and plans for a single facility will ensure

that the new training facility, including library, gymnasium, and other resources, will be easily accessible to all the officers on the force.[92]

Of the 456 hours in the 13-week course, recruits spend approximately 400 in the Navy Annex facility, generally attending classroom lectures. The IACP Survey states that "there are no established standards for the selection of training personnel," but concludes that the quality of instruction provided by the police instructors was generally good.[93] The number of guest lectures is excessive and can result in disorganized or ineffective presentations.[94] The IACP recommended that much of this material should be taught by full-time staff instructors, although the use of guest lecturers should be continued on a more selective basis.[95] The Commission endorses this recommendation and suggests also that the current training staff be enlarged by enlisting the assistance of civilian specialists. In St. Louis, for example, the director of the Training Academy is a professional civilian educator.

The subjects taught recruits during their basic training cover many of the matters with which they should be familiar when they assume their duties as police officers. The exceptions, however, are most significant. As noted by the IACP:

> The curriculum is deficient in material on the conduct of preliminary investigations by patrol officers, and there are no course titles dealing with the collection and preservation of physical evidence. There is no course on patrol methods, including preventive patrol, inspectional service, and field interrogations. Little is presented on the handling of miscellaneous police cases and common misdemeanors, particularly the incidents most likely to be encountered by patrol officers—abandoned cars, assaults, casualty cases, drunkenness, family fights, juvenile disturbances, runaway juveniles, noise complaints, suspicious circumstance investigations and prowler calls.[96]

In contrast, recruits are given 74 hours instruction in the Police Manual and General Orders, 46 hours of field trips to various facilities in the District of Columbia, 18 hours instruction in public speaking and self-expression, 4 hours instruction in the manual alphabet used by deaf mutes, and a 4-hour course during which "Class Members Donate Blood on a Voluntary Basis."[97]

The Commission regards these incongruities in the recruit training course as very serious. Immediate changes in curriculum and emphasis are essential. We recommend the inclusion of additional training courses on juvenile procedures, patrol methods, and the collection and presentation of evidence. Throughout the training program there must be a frank recognition of the fact that policemen exercise broad discretionary powers in enforcing the law. The maxim that policemen exercise no discretion but only "enforce the law" must give way before the blunt realities of the law enforcement process. One impor-

tant test of a good recruit training program, therefore, is the extent to which it equips the recruit to exercise his discretion wisely when confronted with actual enforcement problems. In the past the Department has neglected this important ingredient of recruit training; we urge that the curriculum be extensively reshaped to reflect more fully the actual dimensions and difficulties of police work in the District of Columbia.

Field Training

The shortcomings in the curriculum are also reflected by the absence of any formalized "field training." Recruits are sent to training school as soon as possible, remain there for 13 weeks, and then assume police duties in the community. This method of educating recruits, many of whom are strangers to the laws, customs and people of the District of Columbia, should be corrected by combining field and classroom training as soon as possible. As the IACP stated:

> The influence of field training is even more profound than recruit school. The early working experience with another police officer will have a lasting influence on an officer's remaining service to the Department. If there is no formal field training program, or if the selection of field training officers is left to chance, the recruit will be simply exposed to a variety of experiences without gaining any significant understanding of them. If the older officer himself is incompetent, his incompetence will rub off on the younger man and mediocrity will be perpetuated. If the older man's attitude or philosophy is at variance with that of the profession, a disaffected, disloyal or disinterested recruit may be produced. If the older man's integrity is not absolute, and if the new recruit sees evidence of it, the new man can conceivably be a continuing problem to the Department as long as he is on the rolls.[98]

To cure this deficiency, the Commission endorses the IACP recommendation for a formalized field training program, along with the development of a field training officer program. Under such a program, the recruit, after an appropriate number of weeks of academy training, would spend several weeks on actual duty in the community under the supervision of a specially trained officer. According to the IACP, the selection of the field training officers "is at the heart of the proposal." [99] These must be experienced officers who volunteer for the assignment and have the ability and maturity to carry out their training responsibilities.

Standard of Achievement

The Department should couple improvements in recruit training with a more intensive process of recruit evaluation. Invariably, with the exception of obvious disciplinary cases and voluntary withdrawals,

all those who start recruit training finish it. If examinations are failed, they are readministered until passed.[100] This is in contrast to the Los Angeles Police Department, for example, where, although selection criteria are strict, up to 20 percent of the recruits are screened out during the recruit training course. We think that the Metropolitan Police Department should raise its standards for ultimate admission to the force. In this way, the number of policemen who leave the force within their first three years might be reduced. The smaller classes, enlarged training staff and revised curriculum recommended by this Commission provide the tools which will enable the Department to improve and intensify its training program; whether or not the opportunity is seized depends on the leadership of the Department.

In-Service Training

As the techniques and demands of police work change, it is important for a police force to provide a wide range of training programs for its officers. Over the years the personnel of the Metropolitan Police Department have profited from numerous training courses in specialized fields, including driver education and training, the prevention and control of juvenile delinquency, and human relations.[101]

The principal in-service training provided regularly for Department personnel is a one-month course organized under the auspices of the "Washington Police Academy." Approximately 50 students are in a class, which is restricted to officers no higher than lieutenant who have five years or more service. In 1965 approximately 100 students attended the Academy. Many of the courses deal with the functions of specialized units within the Department; about 90 percent of the Academy program is presented by personnel or guests outside of the training staff. According to the IACP, this "almost total dependence on guest lecturers" means that "the present program cannot be increased substantially because of demands on the speakers' time." [102]

Unfortunately, the Academy reaches far too few officers far too late in their careers. Moreover, it appears that generally the training is more "refresher" than advanced. The Commission recommends that the Department strive for more formal and relevant in-service training. The Chicago Police Department has instituted a program whereby each police officer in the 10,000-man department will receive in-service training each year for a period of three days. For many years in St. Louis, each police officer below the rank of sergeant has received three days of in-service training each year, and officers of the rank of sergeant and above have received one week of such training yearly.

The IACP Survey recommends a reorganization of in-service training into several 40-hour courses, including courses in patrol methods and procedures, investigations, and delinquency prevention and control.[103] The IACP also urges that the programming be made flexible, particularly until the necessary staff and facilities are developed to permit training in all courses for all personnel. We endorse these recommendations, as well as the IACP's call for in-service training for all officers every five years. At the earliest opportunity, the Department should provide for even more frequent in-service training.

Precinct-Level Training

Since December 1962 the Department has made an effort to conduct some unit-level training, consisting principally of a brief period of instruction at precinct roll call. Precinct commanders have broad discretion in developing these programs, which are not under the supervision of the Police Academy and Training Section. In a few precincts men have been called in prior to the end of their tour of duty for this training, thus vacating their beats for short periods of time. The quality and amount of this training has varied greatly from precinct to precinct. Although the IACP Survey found "imaginative programs" conducted in some precincts, it concludes that "in a majority of instances rollcall training consisted of the lieutenant or someone else reading Department orders." [104] Upon the enactment of overtime pay legislation in late 1965, training at rollcall was discontinued.

It seems clear that rollcall training must be formalized and conducted regularly under the supervision of the Training Division, which should produce or acquire professional training materials for this purpose. We endorse the IACP's recommendation that rollcall training should be scheduled during working hours, in order to "avoid the overtime pay question in the minds of the members and place emphasis on the importance of this phase of training." [105]

Advanced Training and Education

The Department encourages its officers to participate in police training programs now being offered in cooperation with two local universities, American University and the University of Maryland. The Department pays $30 of the $40 total cost per course, and the students pay the remaining $10 plus the cost of books. Any student who wishes to take additional courses must pay the full tuition himself. Other sources of advanced training include the Northwestern University Traffic Institute, the Federal Bureau of Investigation National Academy, and the Southern Police Institute. Unfortunately, the number

and subsequent assignment of officers who have attended these courses has not been recorded.[106] Accordingly, the Department cannot ascertain the extent to which it has made proper use of the individuals who took the courses.

The Department must increase its use of training opportunities in schools and academies, and provide for the subsequent full utilization of those who attend such programs. In 1965 over 150 police officers were at one time enrolled in the police science courses at the two local universities. As noted, no promotional credit is given officers who take this advanced training. We think that at an early date the Department should adopt a *de facto* policy that higher education as represented by a college degree is essential to the assumption of command positions of captain and above. College-level education, whether or not related to police service, broadens the perspective with which the individual approaches his job, and adds dignity to the Department as a whole.

Certain improvements in police training are in the developmental stages. For example, the Department recently sponsored a series of lectures on management techniques, conducted by American University and attended by 20 high-ranking officers. Some of the Department's most pressing training needs are the subject of a recent grant to the Department from the Office of Law Enforcement Assistance of the U.S. Department of Justice. The grant makes funds available until June 30, 1967 for an executive development program for 40 command-level officials, a supervisory-training program for 341 lieutenants and sergeants, and a program for officers based on IACP materials which have been used successfully in other departments.

BUILDINGS, EQUIPMENT, AND SUPPORTING SERVICES

The adequacy of the facilities, buildings and equipment of the Metropolitan Police Department has a vital relationship to the quality of police service in the District. The prestige and public image of a community's police are shaped in part by a department's physical surroundings and technological advances. The quality of vehicles and communications contributes to the ability of the police to prevent crime and apprehend suspects. Crowded and poorly-designed quarters limit efficiency and contribute to serious security problems in the handling of prisoners. Police morale is also adversely affected by inadequate equipment and facilities; there is perhaps no better way to demoralize a police organization than to equip it poorly.

BUILDINGS AND EQUIPMENT

The Metropolitan Police Department occupies inadequate facilities and supplies its men with inferior equipment. The Department exercises poor supervisory control over its equipment and practices dubious economies for a police force with a budget of over $42 million. As a result, the morale and effectiveness of many officers on the street is intolerably low and police service in the District of Columbia is seriously handicapped.

Organization

The IACP noted that "no single agency of the Department is charged with the responsibility for managing its buildings, property, supplies, and vehicle resources." [107] As part of the proposed reorganization, the IACP recommends the consolidation of the functions now scattered around the Department into a single Property Division. The Commission endorses this proposal and the accompanying IACP recommendations for more careful selection and training of property custodians, the use of civilians instead of police officers in most cases, and the organization of property services for the convenience of the Department's line officers. These appear to be appropriate first steps towards more efficient handling by the Department of its property management responsibilities.

Buildings

The Department occupies 19 buildings, including 13 precinct stations and a headquarters facility in the Municipal Center building which is also occupied by one of the precincts.

Many precinct stations are small, outmoded, poorly organized, and filthy. The IACP called present conditions "deplorable." The Survey provides a pointed description of the precinct buildings:

> With few exceptions, they are functionally obsolete, poorly lighted, dirty, unattractive and offer little or no parking for official and private vehicles. Age alone justifies the replacement of several of the buildings—two were built in the 1880's, six others were built before 1927, one in 1940, one in 1950, one in 1960 and two in 1964.
>
> The areas assigned for interviewing witnesses, interrogating suspects, conducting roll calls and the public service area are all cramped, cluttered and generally inadequate. In some buildings the captain's office is so small that it is impossible to conduct conferences with more than two persons.
>
> Prisoners are processed in public areas and security provisions, from the point of entry to confinement in the cell, are inadequate. Poor functional layouts require the department to maintain two separate records systems in the same building in order to accommodate the uniform and investigative units. Offices are crowded with file cabinets and desks; telephone, foot radio and personal conversations cause disorder and confusion in this crowded atmosphere.[108]

Significantly, one of the most unsatisfactory aspects of the precinct facilities is the inadequate space provided for locker rooms. Generally the cramped spaces assigned to this purpose are dirty, badly lighted and poorly ventilated.

Some of the defects in the precinct stations can be remedied only by the replacement of the buildings. An excellent opportunity to do precisely this is afforded by the recommended consolidation of the 14 precincts into 6 districts. The Commission suggests that representatives of the IACP and the Department confer at an early date to decide which structures should be eliminated and what new or expanded facilities are needed to conform to the reorganization plan. To ensure the best design for the new buildings, the Commission recommends that the U.S. Department of Justice be requested to grant funds for this purpose.[109] The importance of this project cannot be overstated. Police officers in the Department should not have to become accustomed to working in totally inadequate surroundings. Although deserved, a pay raise may well be an extravagance unless it is supplemented by improvements directed at those other conditions contributing to poor police morale.

The headquarters of the Department occupies part of seven floors of the Municipal Center building. The quarters assigned are noisy, overcrowded and inefficient. The Department today is compelled to crowd more than 900 persons into *less* space than was allocated in 1941 for 385 police personnel.[110] It is obvious that the Department cannot adequately perform its tasks in these surroundings. According to the IACP, "public counter areas are improperly located and extremely crowded," and officers are sometimes required to quiet the disorder which occurs in the public hallways.[111] Other serious deficiencies exist: space for private and official parking is limited, and the transfer of prisoners is "hazardous and escapes are possible" because of inadequate security facilities.[112]

In the matter of physical facilities, the Department once again suffers by comparison with other departments such as those in Los Angeles, St. Louis and Chicago, where buildings are far more appropriate for police needs. The present building program of the Metropolitan Police Department calls for the construction of a new police headquarters, beginning with the development of plans in 1972. This is too late. The Commission recommends the immediate development of plans for a new headquarters building, to include a training facility, gymnasium and library, or two adjacent buildings providing these facilities. In this connection, we urge the Department to press for the funds necessary to ensure that the design of the new headquarters building will reflect the finest in police facilities.

Equipment

As in the case of the Department's buildings, the equipment used by police officers in the District of Columbia provides a visible measure of the Department's status and efficiency. An examination of the Department's vehicles and other equipment reveals major deficiencies in quantity, quality and management.

Vehicles

The Department has a variety of vehicles—approximately 248 cars, trucks and buses and 96 motorcycles.[113] At this time, however, the Department does not have sufficient vehicles available for patrol operations. Because of the inadequate number of police vehicles, police officers have made extensive use of their own private cars. Private vehicles are used not only for normal precinct duties but also for important special assignments, such as tactical force operations. In many instances the vehicles are equipped with radios, able to pick up police broadcasts, which have been installed at the private expense of the officers. A recent grant of $36,500 from the U.S. Department of Justice will finance the purchase of additional radio equipment to be installed in the private cars of about 1000 policemen. Police officers who use their own private cars do so without compensation and without appropriate insurance coverage. The budget for fiscal year 1967 provides compensation for limited use of private vehicles on police business. The Commission recommends that legislation be enacted which would cover all instances in which officers use their private cars to perform police duties.

The extensive use of private vehicles, notwithstanding the cost, is another indication of the spirit and dedication of many of the police officers in the Metropolitan Police Department. Unfortunately, it also demonstrates the inadequacy of the Department's equipment and planning. The Department consistently has exhibited a misdirected sense of economy in the purchase of equipment. Most of the vehicles have six-cylinder engines, which may indeed be cheaper, but the IACP Survey concludes that "they are not suited for pursuit driving, and the economy is lost in trade-ins."[114] Moreover, the Department uses low octane gas for its few eight-cylinder-engine vehicles, causing them to wear out quickly and to break down frequently during the course of patrol. None of the vehicles is air-conditioned. The newest cars are often assigned to high-ranking Department officials, and the older ones are utilized for patrol purposes. Numerous police officers on the patrol force described their vehicles as "terrible," "unsafe," "heaps," and "road hazards."

The Commission recommends a substantial increase in the number and quality of police vehicles, especially for the Patrol Division. Although the Department has been gradually adding to its fleet, it has been only in the last year that the Department's leadership has made major efforts to obtain the necessary funds to enlarge its vehicle strength. As part of the special program presented to Congress in May 1965, the Department obtained funds for the purchase of 36 additional cars for use by the Patrol and Detective Divisions. More recently, $217,900 was obtained from the U.S. Department of Justice to add another 53 vehicles and experiment with new car markings. Nevertheless, the IACP has concluded that "the fleet must expand more rapidly to effectively utilize available manpower." [115]

The Commission endorses the recommendations of the IACP aimed at producing an adequate motorized force. The Survey specifically recommends that at least 216 vehicles be made available for patrol, supervision and command functions at the precinct level, including at least 15 patrol wagons, 30 motorized scooters, 12 unmarked sedans, and 159 conspicuously marked sedans.[116] Particular attention should be given to the acquisition of more patrol wagons, to avoid holding an arrested person on the street for an extended period of time while awaiting the arrival of the wagon.

To facilitate allocation of vehicles to specialized units such as the Tactical Force and the Criminal Investigation Division, a Motor Pool Unit should be established, as recommended by the IACP.[117] The Commission urges the Department, through the prompt establishment of stricter controls, to eliminate the improper use of police vehicles for personal business. Marked vehicles should be easily identifiable; a citizen should be able to distinguish a police car from other cars at a distance. Vehicles for patrol purposes should be "heavy duty" and equipped with eight-cylinder engines and improved sirens and lights.[118] The Department should make every effort to provide its officers with first-class vehicles; any additional expenditure required will be more than offset by increased patrol effectiveness and improved morale.

Other Equipment

Miscellaneous equipment issued to police officers is in need of improvement. Uniforms vary in shade as the Department shifts its contracts from manufacturer to manufacturer. The Commission concurs with the IACP conclusion that the uniforms are unsatisfactory and easily confused with those worn by miscellaneous building guards and employees of private agencies throughout the city.[119] Several officers have complained, in addition, that the uniforms restrict their

freedom of movement and detract from their efficiency. This dissatisfaction with a drab uniform perhaps contributes to the practice observed by the IACP of officers wearing a "sloppy" partial uniform, which "leaves an unfavorable impression with citizens who see officers in public places while so attired." [120] The Commission therefore recommends the redesign of the police uniform, "to present a more attractive and distinctive appearance and to improve employee morale." [121]

In general, a complete review of policies relating to the purchase and maintenance of equipment is required. The Department does not even issue handcuffs to its police officers, who must purchase them at their own expense. Suppliers of equipment have advised that the Department on occasion purchases unsuitable equipment which is useless and does not serve the purpose for which it is needed. Equipment is too often purchased because it is the cheapest, not the best. Not one officer below the rank of inspector interviewed by the Commission or its staff commented other than critically about the equipment issued the men.

SUPPORTING SERVICES

The efficiency of police service depends also upon certain vital supporting services, particularly communications and record-keeping systems. The Department must have the capability to respond promptly to calls for police assistance and to collect, organize and use information which can help it to prevent and control crime. During the course of its survey, the IACP reviewed these technical areas and made extensive recommendations with which this Commission is in agreement.

Communications

An effective communications system enables the public to contact the police rapidly and permits prompt dispatch of police units. The communications system in the Department involves citizen calls to headquarters and to the precincts, headquarters calls to and from the precincts, precinct calls to and from foot patrolmen, teletype, and point-to-point radio communications with other law enforcement agencies.[122] The heart of the system is the Communications Center in police headquarters, which receives most police calls and dispatches field units via one of two radio channels. Portable two-way radios are available in most precincts, and the Department is purchasing additional units. At present, officers in possession of these units can be contacted directly only by the precincts and not by the headquarters dispatchers.

The Department's radio communications equipment and facilities are insufficient. The IACP Survey notes that some of the data maintained by the Department on its communications workload "is of questionable value," thus handicapping any final or precise determination of its needs.[123] The available data suggested that there was an imbalance of communications personnel in relation to workload by shift and by day; in particular, the Communications Center is understaffed on weekends, when crime is heaviest. Moreover, the elapsed time between incoming calls to the Center and the Center's response is excessive. Finally, the Center utilizes a "questionable assignment of priority in answering incoming calls." [124] In brief, the Department must expand its communications capacity in staff and facilities.

The basic problem of police response to calls for service is rapid communication with the limited number of units available for response. The Department currently has two radio channels, with a third frequency to be added for traffic and detective units.[125] A study of the communications system showed that some field units had only a 25 percent chance of establishing immediate communication with the Center because of the volume of air traffic.[126] The Commission regards this as a serious matter; a police officer in trouble and in need of immediate assistance should not be subject to communications delays.

Plans have been developed for a more detailed review of the Department's communications needs. This study will enlist communications specialists to serve as consultants to the Department. The result of this effort, which looks toward a redesigned and expanded Communications Center, should be a completely modern communications system which can serve the District of Columbia for years to come. Funds for this project were approved by the Office of Law Enforcement Assistance of the U.S. Department of Justice on July 1, 1966. The Commission stresses the importance of this effort and urges that the consultants be hired promptly.

Pending a restructuring of the entire system, the IACP has proposed an interim communications system design which involves the installation of additional telephone-answering devices, the utilization of added personnel, and a rearrangement of frequencies.[127] With further expansion, this could lead to the identification of incoming citizen telephone calls by the exchange they originated from, a system employed successfully by the Chicago Police Department.

In addition to these interim efforts, the Commission believes that steps should be taken to encourage emergency calls by citizens to the police. We recommend that the Department explore the feasibility of calls to the Department's emergency number from phone booths which would not require the deposit of a coin. We have been advised

by a high-ranking police officer that his efforts to publicize the new police emergency number were thwarted by a lack of sufficient materials for distribution. The Commission urges the Department, in collaboration with area newspapers and other media, to publicize the emergency number as widely as possible.

The problems of police radio communications may lack the dramatic appeal of more visible aspects of police operations. Nevertheless, this area is extremely important, and the Department deserves full public support for its current efforts to expand its radio communications capacity. Many members of the public do, in fact, get a measure of the Department from its promptness of response to calls for service. Too often has the Commission heard of instances where police response was unreasonably delayed. A modern communications system coupled with an expanded and efficient patrol force will enable police to respond immediately to calls for assistance, regardless of variations in workload. Deployment of manpower will be swift and sure, and community protection will be greatly enhanced.

Records and Files

The IACP describes a police records system as "a mechanical memory bank, an intelligence system, and an administrative tool." [128] Personnel may be more effectively distributed, budgets more realistically prepared, and crime prevention and traffic programs better organized when a police records system rapidly provides accurate data to police administrators.

Organization

Within the Department several offices participate in records management. The Communications and Records Bureau assembles information for a central file of personal arrest data and an index of complainants' names on slips prepared by precinct personnel. The Statistical Bureau collects and files reports of crimes and certain complaints, but maintains no index to these records. The Identification Bureau of the Detective Division photographs and fingerprints persons arrested for certain offenses. Each precinct maintains its own "logbooks" and files copies of offense and complaint reports. The plainclothes units assigned to the precincts duplicate the precinct records by keeping their own copies of these reports. Traffic warrants and related indices are filed within the Traffic Division offices as well as the precinct where they occurred; out-of-State warrants are filed in the Fugitive Squad; local misdemeanor warrants are filed in the precinct stations; and Federal and out-of-State "wanted" flyers are filed in the Identification Bureau.[129]

The IACP Survey concludes that the present records system "has a number of serious defects." [130] In particular, the Survey reports that:

> The four separate "wanted" indices represent the best example of disadvantages of a decentralized records system. Information is not readily available to all members of the Department. For instance, when an officer in the field finds it necessary to determine whether a particular individual is wanted, he must make separate inquiries by telephone to each of four offices within the Department—Traffic, Fugitive, Identification and Records, and Communications. As a result, officers rarely make such inquiries.[131]

Because the information currently retained by the Department is so inaccessible, various units retain separate records for their own use. According to the Survey, "these efforts have failed to solve the problem and are extremely time-consuming and expensive in terms of man-hours." [132] In addition, there are an excessive number of police personnel performing clerical jobs in the Department, inadequate facilities for "information activities," too little security for the important records, and no positive system of purging unused or outdated records.[133]

To remedy these shortcomings, the IACP recommends a Central Records Division, which "will provide 24-hour-a-day availability of all data and will serve as a data source for a computer program." [134] The structure proposed by the IACP impresses this Commission as well conceived. We concur with the Survey recommendation that civilian employees be hired to fill positions as police records specialists. As pointed out by the IACP, "policemen and policewomen are not hired as clerks, typists, or records specialists and consequently they do not bring into the organization the skills that are needed in the records and information center." [135] This is a particular area where the Department must begin to experiment with a more positive use of civilian personnel to improve records management and free police personnel for other duties.

Reporting of Crimes and Clearances

One of the most troublesome deficiencies in the Department's records management system is its method of recording criminal complaints. The present practice of the Department does not ensure accurate reporting of the nature and amount of crime in the city. In the absence of such accuracy, the public cannot be assured that police crime statistics truly reflect the number of criminal offenses committed. Similar problems exist with procedures for recording the rate at which the Department "clears" crimes.

Under present policies it is possible for precinct personnel to determine whether a complaint of a criminal offense by a citizen will in

fact be recorded as an offense. Precinct control of crime recording is accomplished by: (1) The use of a Miscellaneous Complaint form to report what are in fact criminal offenses; and (2) deciding in the first instance whether a reported offense, even if investigated by precinct personnel, should be assigned an offense number. If an offense is not given a number, it is not included in the Offenses Reported statistics; it may instead be recorded as a complaint or not recorded at all.

These procedures inevitably permit the "burying" or "downgrading" of offenses in the Department, which the IACP concluded is "sometimes practiced now." [136] Indeed, police officers (not in command positions) in one precinct advised that burying of criminal offenses was a common practice. Further corroboration is provided by the preliminary report of the Bureau of Social Science Research, which interviewed about 300 citizens in its study of the extent of crime in three District precincts.[137] The report shows that: (1) A great deal of crime in the city is not reported to the police by the victim; and (2) a great deal of crime that is reported to the police is *not* reflected in official Department crime statistics.[138]

The Chief of Police advised the Commission that he shares our concern with this matter. In 1965 a reduction in the improper use of the Miscellaneous Complaint form was "reflected in the sharp upsurge of petit larceny offenses reported during the latter months of 1965." [139] Further, a resurvey in May 1966 of one precinct's use of the Miscellaneous Complaint form reflected "a reduction of approximately two-thirds in the number of cases handled as miscellaneous complaints in which some question could be raised as to correct classification." [140]

The Commission recommends that the Department adopt the program of centralized control recommended by the IACP. The basic principle of the system is this:

> The proper recording of complaints and incidents requires that a notation and complaint number be assigned to *every incident* of a police nature; ideally, the recording is done at the time the citizen first contacts the police. This initial notation or recording should be formalized and consolidated at one point for control purposes.
>
> To a limited extent, a control point presently functions in the Metropolitan Police Department and needs only an expansion of procedures to achieve the desired result. Each complaint or request for police service should be referred to the communications center in the headquarters building and formalized by the preparation of a complaint form and the issuance of a central complaint number at the time the telephone call is first received.[141]

The Commission also endorses the Survey's specific recommendations for adoption of new forms and improved supervision which will give the Department a more accurate measure of its workload. In the

interim, the Commission emphasizes the great bearing police crime reporting procedures have on crime rates and trends, and the ease with which the public can be misled about the amount of crime in the District of Columbia.

Another set of reporting problems is created by the Department's method of clearing reported offenses. A criminal offense may properly be recorded by the police as cleared in either of two ways: by arrest or by "exceptional" means. A crime is cleared by arrest when at least one person is arrested for the offense, charged with that offense, and turned over to the court for prosecution.[142] A crime is exceptionally cleared when: (1) The offender's identity has been clearly established; (2) there is enough evidence to support an arrest, charge and prosecution; (3) the offender's whereabouts are known; and (4) there is some reason beyond police control interfering with the arrest, charge and prosecution of the offender.[143]

Many factors may influence the success of a police force in clearing crimes. To the extent that a number of crimes are cleared through a process of investigation (interrogation, search of premises, etc.), the number of investigators, the quality of their training, and governing legal limitations will all affect the clearance rate. The mechanics of the police operation, such as patrol methods and communications capability, may bear directly on the solution rate, since such factors may increase the number of arrests made while crimes are being committed. The types of crime prevalent in a community are also relevant. Clearance rates for property crimes such as housebreaking, petit larceny and auto theft "are generally low because of the volume of these offenses, the lack of witnesses and the relatively thin police protection in terms of numbers." [144]

Of central importance here, however, is the fact that clearance rates may also be affected by the extent to which the police conform to established criteria for determining when an offense may be considered cleared. If a department is not scrupulous in determining that evidence on which an arrest is based is also sufficient to justify prosecution, its records will reflect a large number of cleared cases in which the arrested person was subsequently released for lack of evidence. Further, exceptional clearances are susceptible to gross misuse by a department. Offenses may be cleared on the basis of an individual officer's "belief" that an offender already in custody committed one or more other crimes, even though there is insufficient evidence to justify prosecution. Moreover, a police officer may attribute an unsolved offense to a person in custody who, although in fact not involved, confesses to it in order to satisfy his interrogators. These abuses are all the more likely to occur in departments which do not adequately review

the authenticity of clearances submitted for recording by individual officers and units.

The procedures followed by the Metropolitan Police Department in clearing crimes are subject to many of these deficiencies. The system allows individual officers to clear offenses without any assurance that the identity of the offender is reliably known. Officers are able to use the modus operandi method of clearance even where charges based on the cleared offenses are not filed, where the offender denies his involvement, and where no other evidence exists to connect him with the crimes. In one instance three thefts were cleared by a police officer because he "felt sure" a suspect arrested for a different theft was responsible, even though the suspect had not confessed to the thefts, there was no other evidence linking him to the thefts, and the modus operandi was different from the crime for which he was arrested.[145] The IACP has pointed out that:

> Many members of the department are only vaguely familiar with the provisions of the Uniform Crime Reporting System. For example, a number of supervisory officers and investigators were unfamiliar with the information manual, *Uniform Crime Reporting Handbook*, published by the FBI as a guide and aid in the use of the Uniform Crime Reporting System.
>
> This lack of knowledge is likely to contribute to reporting deficiencies.[146]

The Commission recommends the immediate implementation of the procedures outlined by the IACP and the education of officers in the requirements of the Uniform Crime Reporting System. The Department must make clear in every way possible that it demands complete integrity by all officers in the reporting and clearance of crime.

Release of Information

The Department is often urged by the press and public to furnish information about the background of an arrested person prior to his trial, and specific details of the offense with which he is charged. We think that the Department should obtain guidance in these matters from the U.S. Attorney for the District of Columbia and ensure that each officer adhere strictly to the standards provided. In this connection, we think the policy of the IACP that "detailed information concerning arrest records, suspects, confessions, facts of the crime, etc., should not ordinarily be provided to the public during an investigation and before trial" may not go far enough to ensure fairness of trials.[147] The Commission trusts that the U.S. Attorney's policy on this matter, guided by the recent opinion of the Supreme Court in *Sheppard* v. *Maxwell*, will adequately protect the integrity of prosecutions and the rights of accused persons.[148]

Data Processing

The rapid collection, evaluation and dissemination of accurate, current information about crime patterns and police workloads is best accomplished through the use of a computer-based information system. The IACP maintains that "police adaptation of electronic data processing is one of the most important innovations in the history of law enforcement."[149]

The Department currently receives the benefits of data processing from several sources, including the Central Violations Bureau of the Court of General Sessions, the Department of Highways and Traffic, and the Share program of the District of Columbia Government.[150] In the last year the Department has taken important steps toward increasing its data processing capabilities. A grant of $257,000 has been received from the U.S. Department of Justice for the design of a system which will serve the Department and law enforcement agencies in the Metropolitan Area. An additional $159,000 was appropriated by Congress for the computer program in fiscal year 1967.

The Commission endorses these efforts by the Metropolitan Police Department. If full congressional support is provided, the District of Columbia can look forward to a system which will be operational by 1968, and will enable the police force to respond more precisely to the city's law enforcement problems. With this new capability, patrolmen would have immediate access to the latest information on such matters as wanted persons and stolen vehicles. We urge that the Department promptly initiate the organization of a prestigious Data Processing and Information Division as recommended by the IACP. Vigorous efforts must be made to obtain the qualified technical personnel necessary to make this program work as effectively as has been done in other communities. The economies and benefits which will eventually result to the community will easily justify the expenditures which are required.

POLICE OPERATIONS

Major problems in those police operations involving the Patrol, Youth Aid and Detective Divisions of the Department bear directly on the quality of the city's police service.

PATROL DIVISION

Patrol is the core of police operations. For this reason the Commission attaches great importance to those recommendations calling for the consolidation of the 14 existing precincts into 6 districts, improved supervision and equipment, and more precise and responsive

allocation of manpower. As presently organized, the Patrol Division also includes various specialized units, including the Canine Corps and the newly established Tactical Force.

General Operations

One essential need in the Patrol Division is improved crime data so that officers can be deployed more effectively. Lacking the assistance of the crime analysis unit proposed by the IACP, precincts have adopted rudimentary substitutes in an effort to inform themselves as to the location and frequency of crime in their areas. Various "hot sheet" systems are in effect in the precincts, containing information about wanted persons, stolen cars, stolen property, and other items of interest. These information sheets vary in form, substance and accuracy; the IACP concluded that their reliability is "questionable." [151] This was confirmed in a random check by the Commission, which determined that on any given day the various precincts may supply different information as to the number and identity of stolen cars.

The experience of other police departments proves that the professionally-prepared information sheet is potentially a very useful police tool. Other major departments prepare their information bulletins centrally; most often they are the product of a crime analysis unit. The Commission supports the IACP recommendation that the Department devote considerable care and effort to the preparation of a daily bulletin.[152] As proposed by the IACP, the bulletin should be distributed three times daily and cover "more important crimes and matters suggesting close patrol or continuing attention," as well as descriptions of wanted persons and stolen vehicles.[153]

Once the demands for police service in the precincts are more accurately determined, it will be possible to restructure the work shifts efficiently. Currently about 28 percent of Patrol Division field personnel are assigned to the 12 midnight to 8 a.m. shift, with 36 percent on each of the other two shifts. Available data persuaded the IACP that there is an "inefficient and unnecessary" disparity in the relationship between the number of men assigned to any of the three watches and the workload during the watches.[154] Too few men are on duty during the 4 p.m. to 12 midnight watch, and too many are on duty during the daytime 8 a.m. to 4 p.m. watch. To improve the Department's allocation of patrol personnel, the IACP recommends a fourth shift between the hours of 7 p.m. and 3 a.m. which will be filled by officers of the Tactical Section of the proposed Special Operations Division.[155] It is projected that this will result in making a total of approximately 499 officers available for duty during the 4 p.m. to 12 midnight shift—a significant increase over the present force.[156]

Those patrolmen available for patrol duties are assigned to motor or foot "beats." The Department maintains 62 motor beats (39 two-man cars and 23 one-man cars) and 185 foot beats. The number of foot beats is unrealistic, since the Department currently averages only 133 men on foot patrol on each shift.[157] Accordingly, some men are assigned to more than one beat, thus substantially reducing their effectiveness.[158] The IACP suggested that the effectiveness of foot patrol in the Department can be much improved:

> Officers on the evening watches conduct extensive "door tries." An evaluation of this practice is in order. Seldom, if ever, does the *routine* inspection of all business premises result in the apprehension of a burglar. The chance that an officer will find an intruder in a business house which he inspects night after night at about the same time or times is almost nil. Random, but thorough, inspection of high-hazard locations, plus improved security of commercial property, have demonstrated better results. Adequate inspection should include side windows and doors, entrances from fire escapes and those which permit entrance from the roof where it is possible to gain access to such areas.[159]

The Department's continued reliance on foot patrol is an inefficient and outdated utilization of manpower resources. The Commission supports the IACP recommendation that the Department motorize the patrol force "to the maximum extent possible." [160] Leading police authorities are in general agreement that, with few exceptions, foot patrol is not the most efficient method of patrol.[161] Conspicuous patrol, conveying a sense of police omnipresence, is best effected by a highly mobilized force, with considerable emphasis on one-man cars. The Commission endorses the Department's recent experimental efforts in this direction and recommends an accelerated program to increase the number of one-man patrol cars. Of course, officers should be assigned walking beats in particular commercial and high-crime areas where the need can be demonstrated. As long as the Department uses foot patrol as the primary method of patrol, however, available economies will not be realized and the city will not be provided the best possible police service.

The operations of the Patrol Division should be designed to increase the deterrent effect of actual and potential police presence. Patrol units should concentrate "on a combination of aggressive, conspicuous patrol and quiet unobtrusive surveillance of high-crime hazards." [162] Responsibility for individual beats should be clearly fixed. The Commission expects that all law-abiding citizens will welcome the frequent sight of clearly marked police vehicles patrolling their neighborhoods. The resultant sense of security would be heightened by knowledge that increased use is being made of plainclothesmen patrolling on foot or in unmarked cars.

Canine Corps

The Canine Corps of the Metropolitan Police Department was established in 1960. It now has 92 man-dog teams patrolling the city, three vehicles, and a total personnel complement of 111. The Corps is commanded by a captain who is directly responsible to a deputy chief, and occupies facilities on the site of the National Training School. Corps officers are paid $580 extra per year and food rations for the dogs.

Under current assignment practice, a total of five teams operate in the 12 midnight to 8 a.m. shift. Two teams operate in the 8 a.m. to 4 p.m. shift, and between 40 and 50 teams (with the majority on foot, and 20 percent using private vehicles) patrol during the 4 p.m. to 12 midnight shift. The teams are deployed primarily in four precincts—numbers 3, 9, 10 and 13. The IACP concluded:

> Dogs have proved effective in police service, especially when used to search buildings and other areas for suspects; when assigned to areas where there is a high incidence of muggings, purse snatchings and other street crimes; as a protection to an officer in potentially hazardous situations; and when used in connection with the control of unruly, riotous or potentially riotous crowds.[163]

The Canine Corps is considered by the Department to be a deterrent factor in police patrol because of the "psychological effect of the dogs on the criminal element." [164]

There is no accurate way to measure the Corps' current effectiveness. The deployment of the dogs is based primarily on requests from precinct captains who keep pinmaps reflecting the crimes which occur in their areas. The IACP concluded that this method of deployment

> is unreliable because many of the maps are not kept current, the method does not consist of sufficient detail to properly allocate manpower, the time of occurrence is not noted on the maps, and finally because there is no assurance that the crimes that are pinned are susceptible to canine preventive patrol techniques.[165]

Some of the special problems raised by the Canine Corps are more easily identified. During the summer months the dogs are frequently discomforted by the heat, which makes their handling more difficult; the few vehicles available to transport them are not air-conditioned. The dogs are often assigned to patrol areas frequented by intoxicated persons, and arrest of such individuals has precipitated many otherwise avoidable incidents. Dog bitings have occasionally resulted when a drunk is arrested, and animosity has developed between observers and the police. Indiscriminate use of the Canine Corps for crowd control may produce more serious conflict between citizens and the police. Although the Commission has been advised by the Chief of Police that

it is his policy that man-dog teams are not to be used in crowd control, no specific directives to that effect have been promulgated.

The use of police dogs in the District of Columbia raises serious questions which involve considerations beyond those of effective police patrol. Because of their misuse in other areas of the country, the use of dogs may be suspect to many Negro citizens of this community. The hostility that may result from unnecessary bitings must be more realistically evaluated by the Department. In light of the present haphazard deployment of the dogs, which may result in the assignment of several teams to a single busy intersection, there is a risk that people may see themselves as controlled, rather than protected, by the dogs.

The Canine Corps is now in a period of transition. There is currently a shortage of qualified applicants. The Department will soon have to vacate the space occupied by the Corps at the National Training School, and a replacement site has not yet been selected. There is a high rate of injury and absenteeism in the Canine Corps. This data prompted the IACP to suggest a study of the matter; either there has been a misuse of sick leave or the Corps is characterized by a genuinely poor state of health.[166]

Under the circumstances, the Commission disagrees with the Department's present plans for an expansion of the Corps, particularly in the light of a study which found it to be the largest in the United States.[167] Without proof documenting the effectiveness of the Corps, we concur in the IACP's conclusion that it "is advisable to carefully study the need, the costs, and the details of the present program before an outlay of additional funds is authorized for this purpose." [168]

The Commission is not opposed to the judicious utilization of man-dog teams in areas where it has clearly been determined that a need for their special patrol talents exists. We urge, however, that their deployment be carefully directed and controlled, that precinct commanders clearly justify requests for team assignment to their areas, and that the Department exercise great caution in the deployment of dogs in populated areas. The Commission recommends that precise directives along these lines should be issued immediately concerning the use of the Corps, particularly in crowd-control situations. Canine Corps utilization is too important and sensitive a matter to be left to oral communications or general understandings.

Special Operations Division

The Department is frequently requested to perform "extraordinary" patrol services, often involving gatherings of large numbers of people,

parades, and the presence of distinguished visitors. In addition, outbreaks of crime in certain sections of the city require occasional supplementation of the existing patrol force. To provide efficiency in the performance of these services, to facilitate planning for them, and to avoid depleting other essential police resources, the IACP Survey has recommended that a Special Operations Division be created, to be commanded by a division chief. As proposed by the IACP, the Special Operations Division would be divided into four major sections: Administrative, Canine, Special Details (including the Harbor Unit, Civil Defense and Police Reserve Unit, Court Liaison Unit, and a Special Events Unit), and a Tactical Section.[169] The Commission strongly endorses the reorganization as another specific measure which, if adopted, will greatly increase the Department's responsiveness and effectiveness.

The proposed Tactical Section of the Special Operations Division would be the permanent successor to the experimental Tactical Force (or Saturation Patrol), which was created by the Department as part of its special program in July 1965.[170] In essence, the Tactical Force is a group of approximately 200 uniformed police officers who work overtime for extra compensation to supplement normal patrol operations in high-crime areas in order to reduce the number of robberies, auto thefts and housebreakings. Twenty additional men have been detailed to the Tactical Force from the Detective Division, but do not in fact participate in Tactical Force operations. Supplementing the uniformed element of the Tactical Force is a special 20-man unit under the command of an experienced lieutenant. These men wear street clothes and utilize their private vehicles at their own expense. The Department has engaged in some experimentation with the Tactical Force, shifting the number of men in any single precinct and varying the emphasis on uniformed, rather than plainclothes, patrol. The Department has attributed considerable success in the reduction of street crime to Tactical Force operations.

The Tactical Force has had no permanent base of operations, with the exception of a desk for a records clerk at police headquarters. A precinct station has been utilized for rollcall purposes. According to the IACP, this impermanence has diminished the effectiveness of this patrol technique. Thus,

> The daily turnover of working personnel prevents individual officers from realizing the objective and techniques involved in the tactical operation. No special training is provided and relatively little zeal is generated for the assignment beyond that offered by the financial remuneration. Officers working on their first day off who make arrests are required to appear in court on their second day off; as a result, some officers are reluctant to arrest except for serious offenses.[171]

In addition, "the potential of the present Tactical Force is substantially reduced by the lack of automotive equipment." [172] Vehicles have been available only for detectives and a few superiors; none have been assigned to the patrol officers.

Another defect in the present tactical operations of the Department "is the lack of a scientific approach to the deployment of personnel." [173] Those officers from the Traffic Division detailed to the Tactical Force appear to have concentrated primarily on traffic law enforcement. Similarly, detectives assigned to the Tactical Force have contributed relatively little to the preventive patrol mission of the Force; the IACP therefore concluded that the assignment of detectives to the Force is undesirable.

The Department's use of the supersaturation technique may well be effective, since the physical presence of police in an area will reduce the opportunity for the commission of crimes. The Tactical Force operation is nevertheless very expensive, and the Commission is concerned that, despite its potential salutary effects, the funds required to support the operation are not being wisely spent. In this regard, the Commission is impressed by the IACP conclusion that "when officers are allocated in numbers well above the amount required to handle routine police duties, their presence is unnecessary and extremely expensive when conducted on the basis of overtime pay." [174]

Although its experimental efforts with the Tactical Force during the past year are supported by this Commission, we recommend that the Department promptly implement the IACP's recommendations for a permanent, more effective Tactical Section. We also support substantially increased motorization and flexibility. As reorganized, the Tactical Section should not perform routine patrols but, rather, respond to specific police needs in particular sections of the city. The Tactical Section will contribute most of its manpower to the 7 p.m. to 3 a.m. shift proposed by the IACP. The permanent unit should not hesitate to employ large numbers of its men in plain clothes to assist in the apprehension of offenders while crimes are in progress.

The Commission recommends that special precautions be taken not to dilute the Tactical Section's emphasis on serious street crime. Efficient deployment of precinct patrol personnel should provide sufficient resources to apprehend and arrest drunk and disorderly persons; only aggravated cases should require Tactical Section intervention. It has been suggested to the Commission that a number of the many drunk-and-disorderly arrests being made by police officers assigned to the Tactical Force emanate in part from the boredom inherent in its current operations; simply stated, the officers have been eager to find something to break the monotony.

Race and Patrol Assignments

An examination of the race of officers assigned by the Department to various precincts reveals a considerable racial disparity. Approximately 20 percent of the force is Negro. Yet Negro officers make up only 4.8 percent of the number of men assigned to Precinct No. 8; 7.7 percent in Precinct No. 1; 9.5 percent in Precinct No. 3; and 12.5 percent in Precinct No. 7.[175] In areas more heavily populated by Negroes, there are considerably more Negro officers—31.6 percent of the officers in Precinct No. 2 and 36.1 percent in Precinct No. 13. We are advised that these disparities are primarily due to the Department's policy of honoring requests of officers for assignment to specific precincts and, further, that Negro officers do not often request assignment to such precincts as No. 7 or No. 8.[176]

The Commission believes that policies which facilitate the distribution of personnel to areas of the city whose residents are of the same race in the long run perpetuate, rather than ease, tensions between police and community. In the District of Columbia, where more than 60 percent of the citizens are Negro, concentration of Negro officers in Negro areas and white officers in white areas contributes to the fragmentation of a city which demands unity. Satisfying individual assignment preferences, on the other hand, is important to police morale. Recognizing the difficulty of balancing these considerations, the Commission is of the view that the Department should alter its assignment policies so as to accomplish a gradual reduction in the racial disparity which currently exists. We urge the Department to emphasize to all officers, new and experienced, that the Department considers a variety of assignments throughout the city to be in the best interests both of the Department and the individual officer.

The Commission disapproves of the Department's lack of a firm policy on the integration of patrol. The decision on this matter currently varies from precinct to precinct and lies within the discretion of each precinct commander, who may defer to the prejudices of individual officers. As a result, in several precincts Negro and white officers are never seen together on motor patrol,[177] perhaps because one or the other chose not to serve with an officer of another race. Representatives of other major police departments have expressed surprise and dismay at voluntary integration of patrol dependent upon the prejudices and preferences of the individual patrolman.[178] The Commission agrees that the race of an officer should not be of any concern to his fellow officers. We therefore recommend the immediate statement and enforcement of a policy prohibiting an individual

officer's or commander's racial preferences from influencing assignment of patrol teams.

YOUTH AID DIVISION

In 1955 the Metropolitan Police Department established the Youth Aid Division to devote specialized attention to the problem of youthful crime. This Division's role in the handling of juvenile offenders is discussed in chapter 8. We generally endorse the substantial reorganization of the Youth Aid Division proposed by the IACP Survey.

One particular recommendation made by the IACP on this subject deserves close attention. The Boys' Clubs programs are conducted by the Boys' Activities Bureau of the Youth Aid Division and supported through private donations solicited annually by officers of the Department. Plans were recently announced to extend recreational services now coordinated by the Department. The IACP strongly recommended that Department stop soliciting funds for these activities. The Survey states:

> *Neither the police department nor individual officers should become involved in fund raising, regardless of the apparent worthiness of the program.* Such conduct is unprofessional, degrading and may prevent officers from impartially performing their official duties. Police solicitations are interpreted by some as an intimidation that forces unwilling persons to donate, and by others as the purchase of special consideration.[179]

The Commission approves of the goals underlying the programs of the Boys' Activities Bureau, but shares the conclusions of the IACP relating to police solicitation of funds. The Commission has observed that officers solicit funds during working hours; in one precinct eight officers were detailed specifically to that assignment for extended periods. As a consequence, other assignments are neglected and beats go unpatrolled. For reasons of propriety and efficiency, the Commission has concluded that police officers should no longer solicit funds for these activities.

While in the past coordination of the D.C. Recreation Department and the Metropolitan Police Department recreation programs has been sought, some duplication of effort has unfortunately resulted. The Commission concurs in the IACP's judgment that the Boys' Clubs and related activities, while contributing to a neutralization of conditions which may develop delinquent behavior, could best be performed by the Recreation Department rather than the police. The Metropolitan Police Department should actively support community groups concerned with activities aimed at preventing crime and delinquency. It should encourage community agencies to direct and manage these activities, as well as encourage police officers to partici-

pate in such programs in their off-duty hours. But the Commission does not believe that the Department should operate these activities, and we recommend the transfer of responsibility for recreational services to the D.C. Recreation Department.

DETECTIVE DIVISION

The Detective Division is commanded by a deputy chief and has a total complement of 220 men assigned to 8 investigative squads, the 14 precincts, and several miscellaneous units. The Division suffers from many of the same ills which beset the Department generally: excessive spans of control, improper supervisor-subordinate ratios, duplication of effort, and inadequate space. The IACP has recommended substantial reorganization of the Division (to be renamed the Criminal Investigation Division), and the Commission concurs generally in its proposals. We note, specifically, the recommendation that investigative personnel no longer be assigned to operate under precinct direction.[180] The Commission has been advised, however, that some precinct detectives of superior ability have contributed materially to the instruction of patrolmen and improvement of the quality of on-the-scene investigations. We assume that such benefits resulting from the assignment of investigators to the precincts can be preserved after the reorganization, even though all detectives will be under the direction of the Criminal Investigation Division.

The entire process of selecting and training men as investigators is in need of substantial revision. Written examinations should be required, with questions on investigative techniques, law and criminalistics.[181] Formalizing qualifications will allay present complaints of some privates and plainclothesmen that selections are made on the basis of friendship rather than ability. The IACP concluded that "the strongest single criticism we have of the investigative operations of the Metropolitan Police Department is the lack of an adequate formal training program."[182] We recommend that the Department utilize the programs available in several police institutes and universities. In addition to pre-service training for investigators, Department personnel should be annually retrained in formal programs, which should be supplemented by such devices as home study courses and professional reading programs.

The IACP has found that the Department has an inadequate number of detectives, improperly deployed. There is an extravagant and costly ratio of superior to subordinate ranks; roughly $237,000 annually is unnecessarily expended due to higher-rank personnel performing the same functions as lower ranks.[183] Investigative personnel should investigate, and we therefore recommend that Detective Divi-

sion personnel no longer be assigned patrol functions. We further recommend that investigators not normally be assigned in pairs; the great proportion of investigative assignments are not hazardous and can be effectively performed by one man.[184]

Detectives as well as patrolmen are plagued by inadequate vehicles, equipment and working space. Precinct detectives must often use their private cars; here again, these vehicles are not properly equipped for police duty, and their use requires the officer to pay extra insurance premiums or risk lack of coverage in the event of an accident. Squad rooms are crowded, thereby hampering the conduct of interrogations. Investigative equipment is distributed in locations unknown to personnel.[185]

The Commission endorses the recommendations of the IACP addressed to these deficiencies. In particular, we stress the importance of improving the Department's capabilities to obtain and preserve physical evidence which may assist in the identification of a criminal offender. Less than ten percent of the homicides, rapes, serious assaults, burglaries, larcencies, and auto thefts "are presently processed for fingerprints and photographic evidence by technicians under the present system, and untrained and unequipped officers search the remaining scenes and for the remaining items of evidence." [186]

LIAISON WITH OTHER POLICE AGENCIES

Several police agencies render important law enforcement service in the District of Columbia. The Federal Bureau of Investigation, the Federal Bureau of Narcotics, the U.S. Secret Service, and other agencies of the U.S. Government investigate violations of those laws within their statutory jurisdictions. The United States Park Police patrols approximately 22 percent of the total land area of the District of Columbia and performs important traffic control functions as well. Other specialized police forces in the District include the White House Police (a subdivision of the U.S. Secret Service), the U.S. Capitol Police (headed by a deputy chief of the Metropolitan Police Department), the Supreme Court Building Police, the National Zoological Gardens Police, the Aqueduct Police, the General Services Administration Police, and others which operate primarily as security forces.[187] Working relationships between the Metropolitan Police Department and these police agencies are apparently satisfactory.

As offenders become more mobile, the need for rapid exchange of information between area police agencies becomes greater. One step in the direction of improved liaison is the development of a regional law enforcement information system, as proposed by the Metropolitan Washington Council of Governments. The proposed system

will link area police agencies to computer facilities housing data concerning offenders, offenses, wanted persons, stolen property and crime patterns, and lead to greater agency liaison and reduced duplication of police effort. The Department is aware of the importance of the system and has received a grant from the U.S. Department of Justice to finance certain steps in its implementation. The Commission recommends that the Metropolitan Police Department's efforts in this field, and those of the Council of Governments, be encouraged and supported by the Congress and the community.

POLICE-COMMUNITY RELATIONS

The Commission regards the state of police-community relations in the District of Columbia as a highly important aspect of law enforcement and directly relevant to problems of crime control. In this section the Commission assesses the state of these relations, the quality of the Department's response, and the current operations of the Complaint Review Board.

EVALUATION OF POLICE-COMMUNITY RELATIONS

General Assessment

Simply stated, the problem of police-community relations is one of developing mutual respect and confidence. Where these conditions exist, great benefits flow to both the police and the community. Police service becomes increasingly more effective when the community offers its full cooperation and support. By the same token, the police exercise greater diligence in preventive patrol and the apprehension of offenders, and exhibit greater concern for and sensitivity to the welfare of the community and individuals.

As a way of exploring the condition of police-community relations, the Commission has spoken with community leaders, representatives of various civic associations, spokesmen for civil rights organizations, and representatives of the Metropolitan Police Department. Many private citizens have spoken on this subject at three public meetings called by the Commission and in interviews with individual Commissioners and members of the Commission staff. In addition, the Commission has reviewed the preliminary report of the Bureau of Social Science Research, based on interviews with 296 residents of Precincts No. 6, No. 10, and No. 14, most of whom were Negroes of moderate income.

In the District of Columbia the relationship between police and citizens varies significantly from community to community within the

city. The separate areas of the city display great variations in race, income, educational level, housing, and rates of crime. Some communities have a high degree of social integration; their values and attitudes are accurately reflected in the laws the police enforce. With the powerful assistance of underlying social controls, the police task is made far easier. In these parts of the city the adversary contacts between police and citizen are fewer, the community appears to be law abiding, and the officers respect the inhabitants for their conformity to the norms and rules the police are sworn to uphold.

On the other hand, some communities are characterized by social disorganization, attitudes often inconsistent with the applicable law, and a limited sense of participation in or responsibility for the law's enactment and application. It is in these latter communities that the major problems of police-community relations exist. It is in these parts of the city where police complain of interference with arrests, uncooperative attitudes and assaults, at the same time that the residents complain of verbal and physical abuse from the police and inefficient police service. In general, these communities are predominantly Negro, with higher crime rates than in other parts of the District. They are characterized by low incomes, poor education, inferior housing, high population density, and a variety of other conditions contributing to the social and economic frustrations of the inhabitants.

No one in the District of Columbia should underestimate the gulf of experience and misunderstanding which separates the police from poorer Negro citizens. Impoverished citizens, trying to comprehend and cope with a political and economic system which has benefited so many other citizens, view the police as the system's omnipresent symbol. Many see police operations as characterized by large numbers of arrests for offenses against public decency (intoxication and disorderly conduct), utilization of police dogs and saturation patrols, and occasional crackdowns with respect to certain crimes. In short, the police too often are viewed as outsiders and adversaries, restricting the freedom of less prosperous citizens.

In such an environment, tension inevitably arises between the police and the policed. With little respect for the law and its representatives, some people aggravate situations involving the police by arousing hostile crowds at the scene of arrests. On the other hand, some police officers associate the characteristics—age, race, dress—of a few troublemakers in the neighborhood with other persons of similar appearance, and come to treat an even larger class of citizens with hostility, suspicion and sometimes with contempt. Of course, there are numerous lawbreakers in these communities, most often young men who prey upon their contemporaries and their elders with an

arrogance which frightens the people and angers the police. Control of their activities within the limits of the law is a difficult problem, involving substantial expenditures of police resources and a tremendous amount of police self-control. To some police officers this lawless element unfortunately comes to represent the community, and the officers' general interaction with the community reflects this sentiment.

The consequences of this alienation between police and citizen are extremely serious to law enforcement, the particular area and the city as a whole. First, police service is adversely affected as crimes go unnoticed, unreported and unsolved. Second, police contacts with citizens are marked by hostility and abuse becomes more common. Third, the intrinsic fabric of life in the community is harmed as tension, anger and fear intrude upon the daily activity of police and citizen alike. Fourth, the situation encourages more open retaliation by dissident elements against constituted authority generally and the police in particular. The Commission is well aware that the seeds of major disturbances thrive in an atmosphere of police-community hostility.[188]

Community Attitudes

The difficulties of accurately describing community attitudes regarding the police are underscored by the study of the Bureau of Social Science Research (BSSR). The study is not completed as of this writing, but certain tentative observations can be made from the limited sampling, primarily of middle income Negroes who live in the 6th, 10th and 14th precincts.

The study found that the persons sampled did not hold attitudes clearly for or against the police:

> A high degree of ambivalence characterizes attitudes toward the police and agencies of justice. On the one hand, the citizenry of these precincts is extremely upset by the crime problem, they are inconvenienced in their daily lives by it, a large proportion of them suffer materially from crime, and they feel the situation is getting worse. To the extent that any remedy is seen at all, most of them look for it in more, better and stricter enforcement of the law. Among the majority, there is high respect for the police function, sympathy and gratitude for the job the police do, strong support for better pay for police, and widespread willingness to give the police "leeway to act tough when they have to." [189]

The study indicated that although the police enjoy the community's respect on the one hand, it is nevertheless believed that they too often abuse their authority.

> While most believe that the police enjoy respect in their community, that they deserve more thanks for taking on the tough job they do, and that just a few

policemen are responsible for the bad publicity the police department receives, most also believe that policemen spend their time going after "little things" while ignoring "the really bad ones going on," and that there are too many police who seem to enjoy "pushing people around." Indeed, more than one-third endorsed the extremely stated proposition that at least half the personnel would have to be replaced in order to get "a really good police force." [190]

The ambivalence of community attitudes is most clearly indicated by the disinclination of most of the respondents to take a stereotyped stand for or against the police.[191]

Even in this limited sample, more than half of the persons believed that being a Negro made a difference in how one is treated by the police, primarily because the Negro is "treated rudely and picked on more." [192] Although one-fourth believed that the police physically mistreat Negroes, the 296 respondents reported only 3 incidents of "physical brutality" that they had witnessed. Ten percent of the respondents reported a specific incident of misconduct that they themselves had observed; these included three instances of "abusing innocent people" and two of "using abusive language." [193] Notwithstanding their suspicions about police treatment of Negroes, most respondents found their own official contacts with the police characterized by politeness and courtesy.[194]

The study cautioned against premature comparisons of the responses of persons in one precinct as opposed to another, but tentatively suggested that a person's social and economic position and his perception of the degree of respect for law and the police among his neighbors significantly contribute to his attitudes about the police.

The respondents whom we rated as poor (about one-fifth) more frequently held negative views regarding the police—particularly, they feel that the police pick on little things and there are too many police who "enjoy pushing people around." But these poorer respondents appear to be less frequently influenced by those tenets of civil rights ideology of which items in our questionnaire sought to be measured. Thus, poor respondents more frequently than others agreed that too much attention was given to protecting the civil rights of persons who get in trouble with the law. Poor respondents also were more prone to advocate more pay for policemen—possibly because they would like to see more pay themselves. The difference in attitudes among the lowest in socioeconomic position is also influenced by the fact that their last official contact with the police was in the role of an offender or suspect. This was the case about three times as frequently as with other respondents.[195]

On the other hand, the study found markedly different attitudes held by more affluent members of the community.

The 6th Precinct interviews thus far completed manifest a consistently high level of satisfaction with the police on every score, including the way in which the police get along with the citizens of the neighborhood. These results appear largely a function of the considerably higher socioeconomic levels of the majority of the residents interviewed in that precinct.[196]

The BSSR study indicates the complexity and depth of the problems of police-community interaction, and their variation in intensity from one population group and geographical area to another.

Specific Contributing Factors

The general tension and misunderstanding between police and Negro citizens in certain parts of the District of Columbia are aggravated by allegations of police misconduct, complaints regarding particular police practices, and poor police morale.

Police Misconduct

The Commission has received reports from a variety of sources that police in some instances have used undue force in making arrests and that persons have been physically abused while in police custody. Approximately 55 citizen complaints of physical abuse by Metropolitan Police Department officers were registered with the NAACP from 1965 through April 1966.[197] Since August 1965, 19 such complaints have been filed with the Complaint Review Board.[198] Police records in 1964 and 1965 reflect 23 citizen complaints (of unspecified nature) filed directly with the Metropolitan Police Department. It has been stated to the Commission in public hearings and in private meetings that there are a substantial number of unreported instances of improper use of force by the police. Few of these allegations of misconduct come to be conclusively tested; complainants often do not pursue their charges and frequently the underlying facts are known only to the accused and the accuser.

It would be exceedingly difficult, even under the most favorable circumstances, to ascertain the truth concerning these complaints. There are usually no witnesses, the complainants are frequently indigent and uneducated, their veracity may be suspect because of pending criminal charges or past criminal records, and they may fear retaliation or harassment. On the other hand, a report of mistreatment might be spurred by an arrested person's desire to obscure the issue of his guilt or innocence on the charge for which he was arrested. Without subpoena power and adequate investigative resources, the Commission could not examine specific charges to determine their validity or falsity.

There is no doubt, however, that a substantial segment of the community believes that Negroes in the custody of the police are physically mistreated. Twenty-five percent of the Negroes interviewed as part of the BSSR study expressed this opinion. We recognize that slum-area residents hold these views with even greater frequency and intensity. The present belief by many Negro citizens that physical

abuse by police is widespread, founded or unfounded, serves to heighten tension between police and community and contributes to the poor state of police-community relations in some parts of the District.

Numerous complaints have been made to the Commission regarding verbal abuse by police officers, which is included by some people in their definition of "physical brutality." It is clear that a substantial number of citizens believe that the police do not treat Negroes with appropriate dignity and courtesy. The Commission believes that some of these allegations have foundation in fact, and that offensive terms such as "boy" or "nigger" are too often used by officers of the Department. A term like "boy" may be used inadvertently, without any intent to insult the Negro citizen; but in most cases, the language is chosen deliberately to demean the citizen and demonstrate the superiority of the officer. For whatever reason, resort to such language only serves to reflect and exacerbate the strained relations which exist between police and Negro citizens.

Responsible police officials do not seriously question the fact that in any large police agency arrests are sometimes too forceful or that verbal and physical abuse occasionally does occur. Lapses of this kind are often the product of deficiencies in selection, training, supervision, or discipline. To the extent that the Metropolitan Police Department is significantly deficient in these respects, police abuses are more likely to occur. It is imperative, however, that neither the public nor the Department base their views as to police misconduct on surmise. We believe that the Complaint Review Board, if strengthened in accordance with our recommendations and fully supported by the community and the Metropolitan Police Department, will do much to reduce speculation as to the extent of police misconduct and ensure discipline in appropriate cases.

Police Practices

There are some specific police practices which have contributed unnecessarily to the deterioration of police-community relations in the District of Columbia.

Frequent instances of arrests, many unjustified, under the "failure to move on" provision of the disorderly conduct statute have resulted from a lack of understanding on the part of both citizens and officers as to when this provision may properly be invoked.[199] The statute forbids anyone to congregate on the public street and refuse to move on when ordered by the police,[200] and is aimed at preventing disturbances of the peace. The patrolman is entrusted with broad discretion under this statute to decide whether an assembled group constitutes a potential threat to the peace of the area. Until recently,

there were no criteria issued by the police to assist the officer in exercising this discretion wisely. As a result, frequent complaints have been registered that Negroes who are doing nothing illegal or disturbing no one are peremptorily ordered to "move on" and are arrested if they refuse.

Other practices of the Metropolitan Police Department have caused similar problems. The deployment of police dogs is one example. The manner in which officers question citizens on the street is another source of controversy; use of this crime detection technique can easily lead to provocative situations of doubtful legality. Complaints have also been heard regarding police conduct when an arrest has been made. Friends of the arrested person or bystanders who inquired of the police have been told to leave the scene, sometimes under the threat of arrest themselves. The arrested person, we are advised, was not allowed to talk to friends or anyone present.

Many Negro citizens believe that practices such as these and police performance of duty generally are pursued in a discriminatory manner. It is suggested, for example, that white citizens are not subjected to the indignities of unjustified orders to move on, that sections of the city populated largely by white citizens are not patrolled by man-dog teams, and that intoxicated white persons are advised to "go home and sleep it off" while intoxicated Negroes are arrested. These beliefs further aggravate police-community relations.

Police Morale

The state of the police officer's morale bears heavily on the nature of his contacts with citizens, the vigor of his efforts to apprehend criminals, and the integrity with which he approaches his job.

The Commission concludes that morale in the Metropolitan Police Department is poor, as reflected in the repeated, far-ranging grievances expressed by the rank and file. Some members of the force blame the courts and the community; dissatisfaction is registered with citizen apathy, community toleration of vice activities, failure to raise children properly, and judicial decisions freeing known and dangerous criminals. Greater dissatisfaction, however, is expressed with the Department itself. Complaints about the poor caliber of leadership, the quality of equipment and facilities, and unrealistic training and promotion practices are heard over and over again.

The men of the Metropolitan Police Department enter into police service with a desire to serve the community as efficiently and fairly as they can.[201] However, their quality and potential are gradually eroded as their period of service lengthens. The impact of low police morale, poor supervision, poor equipment, lack of leadership, and in-

adequate training will affect police-community interaction and lead to a general estrangement of the community from the police. Such a state of affairs can produce nothing other than mutual distrust and lack of confidence.

RESPONSE OF THE DEPARTMENT

The Metropolitan Police Department approaches the problem of police-community relations in a variety of ways, utilizing several standard police-community relations techniques employed by other police departments in large cities. The efforts extend from training in human relations to the use of a specialized Police-Community Relations Unit. Improvements in these and other areas are necessary if the Department is to enlist greater community support and cooperation.

Training

Recently the recruit training program in community relations was expanded to a total of 40 hours (1 week) of the 13 weeks of training. These hours involve lectures and films on prejudice, community characteristics, and race relations. Some officials of the Department have received special training at institutes such as those held annually by Michigan State University. In addition, the Department sponsored courses in human relations in 1964 and 1965 for approximately 500 men; the courses consisted of several hours of lectures.

A series of lectures and films is of limited value when the subjects of instruction are attitudes and prejudices.[202] It is difficult to talk of tolerance and fairness in the context of police training. The trainees are concentrating on other subjects which appear to them to be of primary importance, such as self-protection and the laws of arrest. Also, the training does not appear to be sufficiently related to the actual performance of police duty in the community, particularly in those situations which may be conducive to tension and hostility. Many officers have commented that there has been an "overemphasis" on community relations training; the training seems to have created antagonism to the principles taught rather than adherence.

The Commission recommends that the Department's human relations training program should be revised to include intensive instruction in the proper police response in tension situations.[203] As a guide the Department can use the In-Service Training Program in Community Relations conducted by the Detroit Police Department in 1965. This program was built around eight discussions of "real life" episodes, including stopping a car in a routine investigation, fights and riots,

street lounging, and control of crowds. The episodes were presented either in a printed narrative to each participating officer or were acted out with the officers playing parts in the episodes. Each episode emphasized racial, social, economic, and cultural differences that were known to have been factors in past instances of community strife and police-community relations problems.

The Department has received funds from the Office of Law Enforcement Assistance to implement a special community relations project during fiscal year 1967. During the year a short 3-day course will be given to about 1000 members of the force in classes of about 25 officers. The project will aim at furthering the policeman's knowledge and understanding of his role in the community and methods for coping with individuals who come into contact or conflict with the police. As the project is developed, the Commission recommends that the Department draw upon these materials for a revision of its recruit training course and development of a formal in-service course to be given in future years.

Communication With the Community

The Department supplements its community relations training efforts with periodic discussion and exchanges of views with the community and its representatives. Most police-citizen contact is informal, but the Department also has more structured forms of communication, particularly the Chief's Committee on Police-Community Relations and the 14 Citizen Advisory Councils in the precincts.

The Chief of Police periodically meets with the Chief's Committee on Police-Community Relations, composed of police officers of the Police-Community Relations Unit, the 14 chairmen of the Precinct Citizen Advisory Councils, and 25 other citizens.[204] The Committee has established subcommittees to report periodically to the full Committee on a variety of police-related subjects. Its objectives and procedures have not been reduced to writing since its formation in April 1964.

Each precinct in the District has a Precinct Citizen Advisory Council. The members meet periodically for discussions with the commander of the precinct, providing a forum for complaints, suggestions, and the creation of joint police-citizen projects. Membership in these Councils is intended to be representative of the community. Since 1964 there has been an expansion of these precinct Councils, but the extent of Council activity and meaningful communication between police and citizens through this means has varied widely.

Some precinct commanders have also established effective working relationships with particular community organizations within the pre-

cinct. Some precincts conduct active programs for the benefit of juveniles. Generally the Department in recent years has been receptive to meeting with community groups to discuss the problems of police-community relations. Various civil rights organizations and other groups have had access to the Chief of Police and other high Department officials in order to register their complaints or make recommendations. We regard open channels of communication between police and citizens as essential to improved police-community relations.

To enhance the operations of the Chief's Committee on Police-Community Relations and to eliminate the existing "confusion as to the actual objectives and purposes" of the Committee, the IACP recommended that a written statement of objectives should be prepared.[205] Moreover, the IACP suggested a major reorangization of the Committee in order to improve and coordinate citizen participation in community relations. In substance, the Survey recommends the formation of an Executive Committee which would guide the efforts of the Chief's Committee and a reorientation of the Committee towards the development of more effective programs in support of law enforcement.[206] The Commission supports these recommendations.

The IACP pointed out several reasons for the failure of some of the Precinct Citizen Advisory Councils:

> One reason is that the activity of the councils can in great part be determined by the leadership exerted by the council chairmen. The chairmen are appointed by the precinct commanders and there are no provisions for removal or rotation of the chairmen. In some precincts a lack of leadership has deterred the effectiveness of the councils.
>
> Other reasons crucial to the success or failure of a council have been the attitudes, leadership, sincere interest, and personal participation of the precinct commanders. The police commander must take a strong personal interest in community relations if he expects to gain public support. The attitude that "community relations is the job for the unit downtown" should not exist. Furthermore, the attitude of the commander will be reflected in the day-to-day contacts of his subordinates.[207]

To formalize the operations of these organizations, the IACP suggested written bylaws, regular elections, and committees in the areas of public relations, crime, youth, auto theft, traffic, and human relations.[208] The Commission supports these recommendations and stresses that command officer participation in these activities should be required by the Department. The most elaborate organization structure will mean little, however, if care is not taken to ensure that all citizens of the community are fairly represented. In the low-income, high-crime areas where the problems of police-community relations are most serious, the Commission recommends that neighbor-

hood workers of the United Planning Organization or other local leaders be represented on the Council.

The precinct, rather than police headquarters, remains the focal point of police-community relations. The Commission recommends that precinct commanders experiment with various means of communicating with the people in the precinct. Specifically, we recommend that the Department hold a series of formal public meetings in high-crime areas to solicit the views of the public, inform residents of their law enforcement responsibilities, and increase their understanding of the police officer's assignment. The police should be prepared to discuss controversial police procedures at these meetings honestly and fully. The exchange of views between citizens and police is clearly no panacea, but it can reduce misunderstanding and help to bridge the gulf which exists between the police and the public in many areas of the city.

Police-Community Relations Unit

Created in September 1964, the Police-Community Relations Unit has carried the major burden of the Department's responsibilities in the field of police-community relations. According to General Order 64–10, the Unit was to perform a wide range of important duties: to maintain a tension alert system in the community, to alert the community to crime in its midst and seek its support in crime prevention, and to create good will with the community and the schools. The Unit, now staffed by a biracial group of five police officers headed by a deputy chief, was set up in space in the 4th Precinct and was advised by the Chief of Police to cooperate with the precincts. During its first year, the members of the Unit contacted community leaders, attended meetings, visited schools, and aided in recruitment efforts.[209] It has sent representatives to conferences where the problems of police-community relations were analyzed and discussed.

Few would maintain that the Unit has measured up to the high expectations which accompanied its creation. In part, this has resulted from the lack of clarity as to the Unit's relationship with the precincts. As pointed out by the IACP, the various directives relating to the Unit

> are insufficient to properly direct, guide, and encourage community relations activities. The language of the order, for example, merely states that "the Police-Community Relations Unit shall cooperate with all precincts and units in their problems pertaining to police-community relations" but it does not establish any real relationships between the operating units and the Police-Community Relations Unit. The role of the operational units is not defined at all. Line operations are without direction in community relations activities because formal policy has not been established in directives.[210]

Moreover, the Chief of Police has not issued a firm policy announcement in written form to the Department on the subject of police-community relations.

Lacking such support and direction, the Unit has not developed a community relations program for the Department or a community relations training program for the precincts. Nor has it sought, until recently, information from the precincts which would enable it to determine the policies and practices of the precincts on some matters which affect police-community relations. The unsatisfactory liaison between police headquarters and the Unit has adversely affected its functioning and the attitude of the precinct personnel both to the Unit and to the importance of police-community relations in general.

The Commission recommends that the Police-Community Relations Unit should be strengthened. Liaison between the Unit and the precincts should be clarified and formalized. Precinct commanders should be charged with the responsibility of filing with the Unit periodic reports concerning community relations activities, community tensions, and incidents involving the use of force. The Unit should prepare guidelines for the precincts for community relations activities, and a training program for use at rollcall. The Unit should have direct lines of communication with the Chief of Police; its directives to the precincts should issue over his signature. The Unit should establish liaison with the Citizen Advisory Councils. It should participate in all important policy decisions of the Department by evaluating the effect of proposed policies on community relations and advising the Chief of Police.

To perform these and other functions the Unit will require adequate administrative and support services. We recommend that the staff of the Unit include one or more civilians who have sociological and psychological training. The Commission urges also that the Unit be given the highest priority for an early relocation to Headquarters.

The IACP has recommended that the Police-Community Relations Unit be structured as a division within the proposed Administrative Services Bureau and consist of three sections: Community Liaison, Public Information and Program Development. This proposed organization would facilitate the accomplishment of many of our recommendations, and we strongly endorse it. The Public Information Section, to be supervised by a civilian qualified and experienced in public information activities, would advise the Chief of Police on public relations problems and coordinate activities with the news media. The Program Development Section will develop a wide range of programs for the Community Relations Division and will aid specialized Department units in developing crime prevention programs

involving public participation. The few endeavors which the Department has made along this line have been characterized by incomplete planning, inadequate resources, and a failure to reach all segments of the community.

As an immediate step towards the implementation of these recommendations, the Commission urges that the Chief of Police issue a specific written directive on the subject of police-community relations and the Unit. The IACP concluded:

> To some extent, policies are being generated by the individual precinct commanders; but there is no doubt that the department needs *a detailed policy statement* by the chief based on the objectives listed earlier and the aims of the Police-Community Relations Unit given above. It would then have the guidelines necessary to develop a sound community relations program. The directives would clarify the department's role and inform all personnel of the department's objectives.[211]

Statements by the Chief of Police on this subject have been unsatisfactorily general and imprecise; one recent statement referred to an earlier press release which in turn endorsed the general principles of a predecessor.[212] The Police-Community Relations Unit can play a critical role in the reduction of community tensions. If it is to function effectively, however, it requires the wholehearted and public support of the Chief of Police. We recommend that he express this support immediately.

Police Practices

The Commission believes strongly that implementation of the recommendations set forth in this Report concerning the organization, leadership, personnel, training, equipment, facilities, and operations of the Department will contribute immeasurably to the improvement of relations between the police and citizens in the District of Columbia.

Pending the total reorganization and revitalization of the Department, however, the Commission recommends that the following steps be taken immediately to improve police-community relations. The Chief of Police should issue a directive concerning verbal abuse of citizens by police officers, which identifies and prohibits the use of trigger words such as "boy" or "nigger."[213] The Metropolitan Police Department should make it clear that violation of its order will be cause for disciplinary procedures. Current Department statements on the subject, which urge that "undue familiarity with the use of such terms as 'bud,' 'Junior,' 'Mac,'" be avoided, are neither sufficiently forceful nor directly related to the problems of the community. The Commission deplores the use of abusive language by citizens or police, but believes that officers must be held to a higher standard of conduct in performing their official duties.

The Commission recommends also that the directive incorporate and expand on the principles of the law of arrest and, specifically, the physical force to be used when making an arrest, which are presently discussed in the outdated Police Manual and training materials.[214] Violations of these standards should not be condoned by supervisors. The strengthened Internal Affairs Division proposed by the IACP should ferret out police mistreatment of civilians with as much vigor as is assigned to investigations of police corruption.

The Department should attach first priority to an evaluation of those current police practices which appear most sensitive and controversial. For example, detailed directives and training for officers concerning the proper method of conducting field interrogations should result in more effective police use of this law enforcement tool and increased public cooperation. The treatment of arrested persons at the time of arrest, in the patrol wagon and in the precinct station is another matter requiring close supervision and clear guidance. A standardized format for informing both the accused and innocent inquirers about the incident could be formulated without hindering legitimate law enforcement objectives.

Similarly, we have emphasized the necessity for training policemen in the handling of volatile group situations in high-crime areas. The manner in which the patrolman approaches such groups and asks them to break up or adjourn to other places, or the basis for deciding which groups are potentially troublesome, should be discussed in basic training and, so far as possible, committed to written directives or guidelines for his use on patrol. Recently the Corporation Counsel furnished the District Commissioners with a formal opinion which set forth criteria for police guidance in employing the "move on" statute.[215] We commend the Counsel's inclusion in his opinion of a short summary of the law for distribution to police officers. Such materials, supplemented by realistic training, will help officers to exercise their discretion in a manner consonant with freedom of assembly. Citizens in turn deserve to know the legal limitations on their conduct when they gather on the streets.

The areas outlined for specific consideration and articulation of standards by the Department are at the core of police-community relations. Standards for police conduct in tense situations cannot always be minutely detailed, but we do think the Department should have explicit policies on these subjects which are known both to its officers and to the community. Both the officer and citizen will profit by knowing more precisely what he can and cannot do, and there will be fewer allegations of abuse of police power.

The Commission concludes that a drastic improvement in police-community relations in the District of Columbia is essential. We agree with the IACP:

> The Chief has expressed a deep concern for the development of improved community relations, but it is doubtful if the entire command structure of the organization shares his concern. Members of the command staff, including precinct commanders, vary considerably in their views on community relations. A community relations program must have vigorous support from the command staff, regardless of personal opinions. The commanders of certain units (for example, the 14th Precinct) have demonstrated enthusiasm and can point to some results. But enthusiasm must be generated in all units of the department if a sound community relations program is going to grow.[216]

The Commission urges the Chief of Police to exercise firm control over the Department's police-community relations program and to display by prompt directive and deed his determination to insist on fair, courteous and equal treatment of citizens by all police officers at all times.

COMPLAINT REVIEW BOARD

For many years the District of Columbia has had a Complaint Review Board composed of civilians who review certain complaints of police misconduct. The Commission has examined the operations of the Board in the context of the Department's disciplinary system, and offers recommendations designed to increase its contributions to improved police-community relations.

Police Discipline

Discipline in the Metropolitan Police Department is effected at several levels.[217] Minor transgressions by officers are generally handled by sergeants, with more serious cases coming to the attention of lieutenants. Repeaters or serious offenders are formally charged, and their cases are disposed of by either a Trial Board or a summary hearing. Summary punishment, which may be imposed by supervisory officers of the rank of captain or above, usually results in several hours of additional duty.[218] More severe punishment is invariably imposed by a Trial Board.

The Department has two Trial Boards—a regular police Trial Board consisting of three police officers of the rank of captain or above, and a special police Trial Board composed of two officers of the rank of captain or above and one civilian member of the local Bar. The regular Trial Board hears serious disciplinary cases not arising from civilian complaints, such as drinking on duty, neglect and dereliction of duty. Most punishments imposed are fines, usually between $25 and

$50. The Department averages approximately 30 regular Trial Board actions a year.[219]

The special Trial Board reviews citizen complaints of police misconduct, either referred to it by the Complaint Review Board or by the Chief of Police directly. The special Trial Board has been relatively inactive in recent years. In the period 1963 through 1965, 41 citizen complaints were filed with the Department directly. Of these the special Trial Board heard 7, while 25 were heard by the regular Trial Board.[220] This sharing of consideration of citizen complaints between the two Trial Boards appears to be in violation of the applicable regulations.[221] In the majority of cases the Boards found a transgression and imposed discipline.

The District Board of Commissioners reviews all dispositions of summary hearings and Trial Board cases. With rare exceptions, the Board approves the Department's disciplinary actions. Of 92 Trial Board cases in the period 1962 through 1965, the Commissioners affirmed 86 dispositions, modified 3, and reversed 3.[222]

History

The District of Columbia's civilian Complaint Review Board, with changing composition and authority, has functioned quietly and infrequently for over 18 years, receiving neither the spirited opposition of the police nor the full recognition of the community. The District's first Complaint Review Board was established in October 1948.[223] Composed of three civilians, it was to review sworn citizen complaints of police misconduct referred to it by the Chief of Police. The Board could recommend that a complaint be ignored, or that charges be preferred by the Department against the accused officer before a special Trial Board.

The Board was relatively inactive prior to 1965.[224] From 1948 through 1964 it was referred 54 cases; of the 45 whose dispositions are known, 23 were ignored, 8 were referred for police action, and in 14 cases there was "no disposition." The Board did not explain or report the reasons for its decisions to the public, the police, or the District Commissioners. Nor did it apparently see fit to question the small number of cases referred to it by the Chief of Police.

Eventually, the Board came under critical scrutiny. One commentator saw it as providing no more than "a mere illusion of civilian control over police proceedings" and of questionable utility.[225] Another found the Board procedures unfair and ineffectual, criticizing the Department's control over the investigation of complaints, the routine warning by police to complainants that they might be prosecuted for a false report, and the lack of procedures to ensure fairness

and thoroughness in the consideration of complaints.[226] The high percentage of "complaint withdrawals" prior to Board disposition was also viewed with suspicion. Responding to these and other criticisms, the District Commissioners in 1965 altered the Board's size, procedures and jurisdiction.[227]

Present Operations

The Complaint Review Board is now composed of five civilian residents of the District of Columbia, two of whom must be members of the local Bar. Like its predecessor, it reviews sworn citizen complaints of police misconduct referred to it after investigation by the Department. Complaints may be filed, in person or by mail, with the Secretary to the District Commissioners by a person who has observed improper police conduct as well as by the victim of the misconduct.

The executed complaint form is forwarded to the Chief of Police for investigation. Authority to investigate complaints is vested exclusively in the Chief, who in the past has delegated the task to a senior police official in a command relationship to the accused officer. After reviewing the results of the investigation the Chief may, with the consent of the accused, initiate summary disciplinary action if he considers the complaint well-founded. He also has the option of referring the case to the special Trial Board, whose disposition of it is reviewable by the Chief and the District Commissioners. If the Chief does not choose one of these alternatives, he must forward the investigative report to the Commissioners' Secretary, who schedules the case for an informal "prehearing" by the Complaint Review Board. The complainant is invited to attend the prehearing conference to discuss his complaint informally; the prehearing is a device to supplement the investigative report and to assist the Board in determining whether the case can be decided without a full hearing.[228]

If the Board decides to hold a regular hearing, notice and copies of the investigative report are sent to the accused officer and the complainant (or their counsel if they are represented). Hearings are not public, but counsel may attend and represent the parties. The testimony of witnesses is taken. Following its hearing, the Board may recommend to the Commissioners that the complaint be dismissed, that the Chief of Police take disciplinary action, or that charges be preferred before a special police Trial Board.

The Board's jurisdiction ceases at this point; it does not review the subsequent disposition of any case in which it has recommended further review or disciplinary action. Nor does it possess power to impose any penalty. The Board does, however, maintain jurisdic-

tion and pursue its examination of cases where a citizen withdraws his complaint prior to Board disposition, in order to guard against the possibility that pressure will be applied by the accused or the Department to encourage withdrawals.[229] Moreover, in no case can the police file a charge of "false report" against a complainant without the prior approval of the District Commissioners.[230]

Between August 1965 and July 1, 1966, the Board assumed jurisdiction of 39 sworn complaints.[231] Recently it disposed of 10: in 2 cases recommendations were made for special Trial Board consideration, 5 complaints were withdrawn, and 3 cases were dismissed.[232] Of the 10 cases, 2 involved the interpretation of the "move on" statute, one of these also raising the problem of how police should handle third-party inquiries at an arrest, and a third case involved the assertion of authority by an off-duty policeman in civilian clothes. In its recent report to the District Commissioners accompanying these dispositions, the Board recommended that specific police directives regarding these and similar situations be prepared.

Notwithstanding the Board's limited number of dispositions, there are aspects of its operations which warrant comment by the Commission. We support the Board's practice of issuing reports which explain to the community, the Police Department and the parties involved the considerations underlying its dispositions. The Board's determination not merely to rule but to reason with the Department and the community on these difficult issues can contribute greatly to an improvement of police-community relations in the city. The Commission does, however, suggest that the reports of the Board be issued as promptly as possible, for they must be timely if they are to be most effective.

One of the major obstacles to more efficient disposition of cases by the Board is its lack of staff and secretarial assistance. Although the Commissioners' Secretary has been very helpful, Board members have been compelled to use their private resources for the work of the Complaint Review Board. The Commission recommends that the Board be granted the authority and funds to obtain one Administrative Assistant and secretarial help.

In order to expedite the handling of these cases, it will also be necessary to limit the delay attributable to the investigation of the allegation by the police. Presently the Department takes two to three months to complete and return an investigation report to the Review Board.[233] We see no reason why most investigations could not be completed within three weeks, or why the Review Board could not hear the matter informally within three weeks thereafter, especially if staff assistance were available. The Commission recommends that

the Board and the Metropolitan Police Department collaborate in developing a revised timetable along these lines.

The Board has impressed the Commission with its desire to be fair and thorough. It welcomes the assistance of counsel for the accused officer and the complainant. Invariably the accused appears before the Board with counsel; an adverse determination by the Board, and ultimately by the Trial Board, might seriously affect his police career. Regardless of the merit of the complaint or its ultimate disposition, the parties are obliged to pay for counsel. This works an injustice on the complainant, and particularly on the accused officer. As the subject of a complaint, no matter how ill-founded, an officer may suffer the expense of several hundred dollars in attorney's fees. We believe that the Department should consider maintaining a fund to reimburse legal expenses of accused officers whose cases are dismissed or involve withdrawn complaints not thereafter referred to the Trial Board. Complainants who desire counsel, but cannot afford one, should be provided legal assistance.[234]

One salutary change effected in 1965 was the shift of the locus of filing complaints from the police station to the District Building. We do not consider the accessibility of complaint forms to be a major problem, since a complainant may obtain a form simply by writing or telephoning the office of the Commissioners' Secretary. However, we see no objection, and certain benefits, to placing complaint forms in the precinct stations and the neighborhood legal offices of the United Planning Organization, where they will be readily available. The forms still should be filed with the Commissioners' Secretary. It is important that the accessibility of the forms be publicized. Citizens should feel free to register legitimate complaints against officers, either informally with the Department or formally with the Complaint Review Board.

Perhaps the most controversial area in the Complaint Review Board controversy is the assignment of the responsibility for investigation of complaints. Some police departments rely exclusively on an independent unit within the organization for the investigation of civilian complaints, so as to eliminate the possibility that a commanding officer entrusted with the investigative responsibility might slant the report in favor of the accused officer. The IACP Survey has recommended that the investigation of all civilian complaints in the Department follow this pattern and be assigned to the Department's restructured Internal Affairs Division.[235] Very recently, the Department revised its civilian complaint investigation procedures to conform partially to this recommendation. Investigations will now be supervised by a

select unit, whose guiding interest will be the uniform adherence by all police officers to principles of fairness and courtesy.

The Commission is aware of the arguments in favor of Review Board, rather than police, supervision of investigations. Under such a system the investigative unit (which could include police officers) would be attached to the Complaint Review Board and responsible to it. It is argued that such Board supervision ensures an impartiality that could be lacking in investigations supervised by the police department. It is suggested also that witnesses are less likely to be intimidated by Board investigations, and that this type of investigation would more likely inspire public confidence in the fairness of the proceedings. A minority of the Commission believes these arguments are persuasive, and they would recommend that the investigative unit be attached to the District's Complaint Review Board.

The majority of the Commission, however, concludes that Review Board supervision of the investigation of citizen complaints is not a necessary or appropriate recommendation. The Commission strongly endorses the recent changes made by the Department in the investigation of citizen complaints. We recommend that investigative authority to interview civilians should not be delegated to police personnel other than those attached to the Internal Affairs Division. We also suggest that interviews of citizens by members of this Division be conducted, wherever possible, by officers in civilian attire. The Commission believes that this unit, by conducting its investigations impartially and carefully guarding against the possibility or appearance of intimidation, can present objective and comprehensive reports to the Chief of Police and the Complaint Review Board.

The Commission bases this conclusion, in part, on the assumption that the Board will employ an Administrative Assistant who will be permitted to supplement police investigations in cases where the Board deems it appropriate. The Board itself is well situated to determine whether police investigative reports are thorough and impartial. It may hear the testimony of witnesses, including those named by the complainant, and compare that testimony with the summary statements in the investigative file. It may benefit from the complainant's and his counsel's review of the file. Most importantly, if the Board concludes, after a period of experience with the new procedures adopted by the Department, that the quality of the police investigations is inadequate, it can report this fact to the District Commissioners and recommend any necessary change in investigative procedures.

Although the Complaint Review Board learns the facts of cases referred to it after investigation, it remains unaware of the type and

disposition of cases *not* referred back to it. After receiving the investigative report, the Chief of Police has the authority to impose summary discipline or refer the matter directly to a police Trial Board. In theory, aggravated cases of police mistreatment of citizens could result in very minor disciplinary action or none at all, and the Complaint Review Board would not even be informed. Moreover, even the dispositions of those cases which are referred by the Board back to the Department for appropriate action are not subsequently reviewed by the Board. The Commission recommends that the Board be regularly advised of the Department's disposition of all sworn citizen complaints, so that in appropriate cases the Board may express its views to the District Commissioners regarding these dispositions. In addition, the Commission recommends that dispositions be fully publicized in the Annual Report of the District Commissioners, who are required to advise the public yearly of the outcome of all formal complaints, whether or not the complaints have been the subject of Complaint Review Board scrutiny. This report will provide the public with a broad and useful perspective on the nature and extent of citizen complaints against the police, as well as the adequacy of the procedures established to respond to such complaints.

No complaint review board can in the long run serve as a substitute for effective self-discipline by a police department. Indeed, a review board can be harmful to police-community relations if it is used as an excuse by the Department for failing to exercise proper control over its officers. Responsibility for discipline remains with the Chief of Police, and no recommendations of this Commission are designed to alter that fundamental fact. The Commission concludes that the Complaint Review Board in the District of Columbia is a legitimate expression of public concern over the affairs of our police force, and can be an increasingly effective instrument for fostering public confidence in the Metropolitan Police Department.

CONCLUSION

The Commission believes that the police department of the Nation's Capital should be a model of excellence. We have concluded, however, that our department trails behind the country's leading police departments in major phases of its operations. Fundamental changes must be made if the Metropolitan Police Department is to attain the desired standard.

The Department is by no means unaware of the enormity of its problems and has begun to move toward improvement in several areas. It has requested the replacement of several precinct stations, a new

headquarters building and a training facility. It seeks additional vehicles, two-way radios, a new communications center, and the introduction of more sophisticated data-processing techniques. Civilians are being recruited for clerical and administrative jobs and the Cadet Corps is being expanded. Modernization efforts have been expedited by grants from the U.S. Department of Justice which were secured with the active support of this Commission.

It is imperative, however, that the reorganization and revitalization of the Department recommended in this Report proceed at an accelerated pace. The major overhaul necessary to create a top-flight department will involve drastic restructuring and policy changes. Resistance can be expected from some quarters within and without the Department. The Department must demonstrate a single-minded, dedicated resolve to accomplish change without delay. As it seeks to meet these demands for excellence, the Department must also have the unfaltering support of the Board of Commissioners, Congress and the people of the District of Columbia.

The Commission has refrained from recommending an increase in the size of the force, for increased manpower will flow naturally from the elimination of substantial duplication of effort, the reduction in the number of administrative personnel, the increased utilization of civilian help, and the greater mobility of the force. Furthermore, the Department is over 200 men short of its present authorized strength; it would serve no purpose to increase that deficit by adding to its paper size. In not recommending an increase in Department size, we note that per citizen it is presently one of the largest and most costly police forces in the Nation.

The Commission has criticized the Department in a constructive spirit, conscious of the fact that the vast majority of our police officers are dedicated and self-disciplined men. The community is profoundly indebted to them. The immense and complex burdens which have been cast upon the police during a period of great social change cannot be underestimated. As the experience of other cities has tragically demonstrated, no police department, however modern or efficient, can carry out its responsibility for law enforcement where there is a widespread breakdown in community respect for the law. Although the Commission has focused its attention in this chapter on the police, we underscore in the strongest possible terms the obligation of each individual citizen in the community to give his full support to the law enforcement efforts of the police. Public apathy or a defiant refusal to cooperate with the police will serve only to nullify the recommendations of the Commission and the best efforts of the Department.

SUMMARY OF RECOMMENDATIONS

ORGANIZATION AND LEADERSHIP

1. To improve management, supervision and leadership, the major reorganization of the Department recommended by the IACP should be instituted: The post of executive officer should be abolished and the functions of the Department assigned to four major bureaus—Field Operations, Administrative Services, Technical Services, and Inspectional Services.

2. To achieve more economical use of equipment and facilities and to free more policemen for patrol operations, the present 14 precincts should be consolidated into 6 districts. The consolidation should be considered an opportunity to replace outmoded and inadequate precinct buildings.

3. The Department's Planning and Development Division should be rapidly expanded, to facilitate the reorganization and to assist the Chief of Police in evaluating the effectiveness of the Department's operations and administration.

4. To improve supervision, the Department should increase the number of supervisory personnel, extend probationary periods, provide more transportation and equipment for supervisors, and improve procedures for inspections and investigations.

5. By means of the proposed Crime and Traffic Analysis Unit, the Department should develop precise information regarding the needs for police service in the community in order to deploy its officers more effectively.

PERSONNEL AND TRAINING

6. Because of an insufficient number of qualified applicants, the Department should consider weighting entrance requirements, so that an applicant's failure to meet certain criteria could be counterbalanced by other qualifications.

7. To help raise the standards of the Department, a rank of master patrolman, with a substantially higher starting salary, should be established for those with a degree in law enforcement or police administration.

8. In the future police salaries should be considered separately from those of firemen and should be linked with measures to upgrade entrance standards.

9. Efforts to recruit candidates from the Metropolitan Area should be intensified; more effective liaison with area universities and military bases should be established by the Department.

10. To increase the number of District residents on the police force, the Department should develop a project under the Manpower Development and Training Act which would provide specialized training and remedial services for suitable local applicants who have failed to meet the entrance requirements.

11. The recruit training program should recognize that policemen exercise broad discretionary powers in enforcing the law, and the curriculum should be revised to equip officers to exercise this discretion wisely. More instruction should be included in procedures for handling juveniles, patrol and arrest methods, citizen contacts, the collection and presentation of evidence, self-defense, and the use of firearms. The size of recruit training classes should be reduced, the training staff enlarged, and the recruits subjected to more intensive evaluation.

12. Indoctrination should be linked with field and formal recruit training in a comprehensive recruit training program. No officer should patrol alone before completing recruit training.

13. In-service training should be regularly conducted at rollcall; all personnel should receive formal in-service training not less than once every 5 years; and officers should be encouraged to continue their education. The Department should increase its use of formal schools and academies as training resources and effectively utilize the special skills of the graduates of such programs.

14. To inject needed vitality into the leadership of the force and encourage junior officers to compete vigorously for positions of responsibility, the IACP recommendations for improved promotion procedures should be instituted. The Chief of Police should have the authority to appoint qualified persons to key positions from within or without the Department without the prior approval of the Board of Commissioners.

15. The operations of the Cadet Corps should be improved, with a high school degree for admission and college-level courses made official requirements. Salaries should be increased to a level competitive with those offered by other police departments in the area, and fewer clerical duties should be assigned to Cadets.

16. To bring technical and special skills into the Department and to release officers for patrol duties, more civilians should be employed. Lateral entry should be permitted for skilled civilians as well as for talented officers from other departments.

17. The number of policewomen should be increased, and they should be assigned to a greater variety of duties within the Department.

18. The Department should employ a permanent General Counsel to assist in the preparation of training materials and the formulation of operational procedures, in collaboration with the U.S. Attorney and the Corporation Counsel.

BUILDINGS, EQUIPMENT, AND SUPPORTING SERVICES

19. To replace the totally inadequate facilities now in use, a combined headquarters-training facility, or two buildings in close proximity, should be constructed at an early date in a central location in the District.

20. The Department should substantially increase the number of its vehicles, with particular emphasis on one-man patrol cars and patrol wagons. Police vehicles should be more clearly and conspicuously marked.

21. The police uniform should be redesigned to help officers present a more attractive and distinctive appearance.

22. To enable citizens to receive police service more rapidly, the Department's communications system should be redesigned and expanded. The Department should actively promote and facilitate citizen calls for service or to report suspicious circumstances.

23. The Department's methods of recording and clearing criminal offenses should be revised to provide for greater accuracy and to guard against under-reporting and questionable clearances of crimes.

24. The Department's program to computerize its records system, including the design of a computer installation and the purchase of necessary equipment, should be supported and expedited.

POLICE OPERATIONS

25. The patrol force of the Department should be motorized to the maximum extent possible to deploy manpower more effectively and provide more responsive service.

26. The deployment of the Canine Corps should be carefully controlled and supervised under the terms of precise directives. The Corps should not be expanded, as presently contemplated by the Department, until a thorough study of its effectiveness has been made.

27. The Tactical Force should be made a permanent part of the proposed Special Operations Division, and the Department should

240-175 O—67——17

promptly take the steps recommended by the IACP to make this operation more flexible and effective.

28. The Department should reduce the current racial imbalance in the precincts and should adopt and enforce a policy prohibiting an officer's or commander's racial preferences from influencing assignment to patrol teams.

29. The responsibility for the recreational services of the Boys' Activities Bureau should be transferred to the District of Columbia Recreation Department and officers should no longer solicit funds for these activities.

30. The Detective Division of the Department should be reorganized to improve supervision and administration. The process of selecting and training investigative personnel should be improved, with provision made for written examinations, formal qualifications, and regular, professional training.

POLICE-COMMUNITY RELATIONS

31. The Department should issue an immediate directive prohibiting the use by officers of abusive language or derogatory terms.

32. The Department should issue directives guiding and regulating the conduct of police officers concerning: (*a*) field interrogation of citizens when there is no probable cause for arrest; (*b*) enforcement of the disorderly conduct statute; and (*c*) arrest procedures, including the handling of arrested persons on the scene, in the patrol wagon and at the precinct.

33. The Department's human relations training should be revised to include intensive instruction in the proper police response in situations most susceptible to police-citizen conflict.

34. The Police-Community Relations Unit should be reorganized, relocated in police headquarters as soon as possible, and expanded to include sections on Community Liaison, Public Information and Program Development.

35. The precincts should substantially improve and increase their community relations activities, with guidance and direction from an expanded Police-Community Relations Unit.

36. The Department should hold a series of public meetings in high-crime districts for the purpose of discussing police policies and practices, educating residents as to their responsibilities in law enforcement, encouraging them to accept those responsibilities, and increasing their understanding of a police officer's job and its problems. The Commission urges the public to recognize that effective law enforcement requires the full support of each citizen.

37. Investigation of citizen complaints of police misconduct should be conducted by the Internal Affairs Division of the Department.

38. The Complaint Review Board should be provided an Administrative Assistant and appropriate clerical support. The Board should order supplemental investigation of complaints by its staff where this is deemed appropriate.

39. Complaint forms should be readily available to citizens in precinct stations and other appropriate locations.

40. The Metropolitan Police Department and the Complaint Review Board should collaborate to provide for more expeditious processing and disposition of civilian complaints.

41. Wide publicity should be given to the decisions and opinions of the Board, and the Annual Report of the District Commissioners should detail the disposition of all formal citizen complaints of police misconduct. The Board should be regularly notified of dispositions of all cases originating from sworn citizen complaints.

Administration of Criminal Justice

Effective law enforcement depends upon a fair and efficient system for the administration of criminal justice. The community relies on its courts, prosecutors and defense counsel to determine the guilt or innocence of persons accused of crime through legal procedures designed to protect the innocent, identify the guilty, and encourage public respect for law and order. In this chapter the Commission examines the administration of criminal justice in the District of Columbia.

INTRODUCTION

In 1965 the Metropolitan Police Department reported the arrest of over 182,000 adults for law violations ranging from traffic matters to murder.[1] Very few of these criminal violations resulted in prosecutions; fewer still required the traditional adversary trial before judge and jury which popularly symbolizes criminal justice. The disposition of each violation, however, was part of our system for the administration of criminal justice. The prosecutor's decision not to prosecute, for example, was as dispositive as a jury verdict, and the manner in which minor offenses were processed affected the availability of resources for deliberation in more serious cases.

The agencies through which criminal justice is administered in the District are four courts, two prosecutor's offices, public and private defense counsel, and various supporting services. The courts are: (1) The District of Columbia Court of General Sessions which tries misdemeanor cases where the statutory penalty is a fine only or less than 1 year imprisonment;[2] (2) the District of Columbia Court of Appeals which reviews decisions of the Court of General Sessions;[3] (3) the United States District Court for the District of Columbia* which tries felony cases where the penalty may exceed 1 year imprisonment and also has concurrent jurisdiction over misdemeanors;[4] and (4) the United States Court of Appeals for the District of Columbia Circuit which reviews decisions of the United States District Court and the District of Columbia Court of Appeals.[5] Ultimate review in the Supreme Court of the United States is also available.

*Judge Pine has recused himself from consideration or participation in this portion of the Report because of his membership in the U.S. District Court for the District of Columbia.

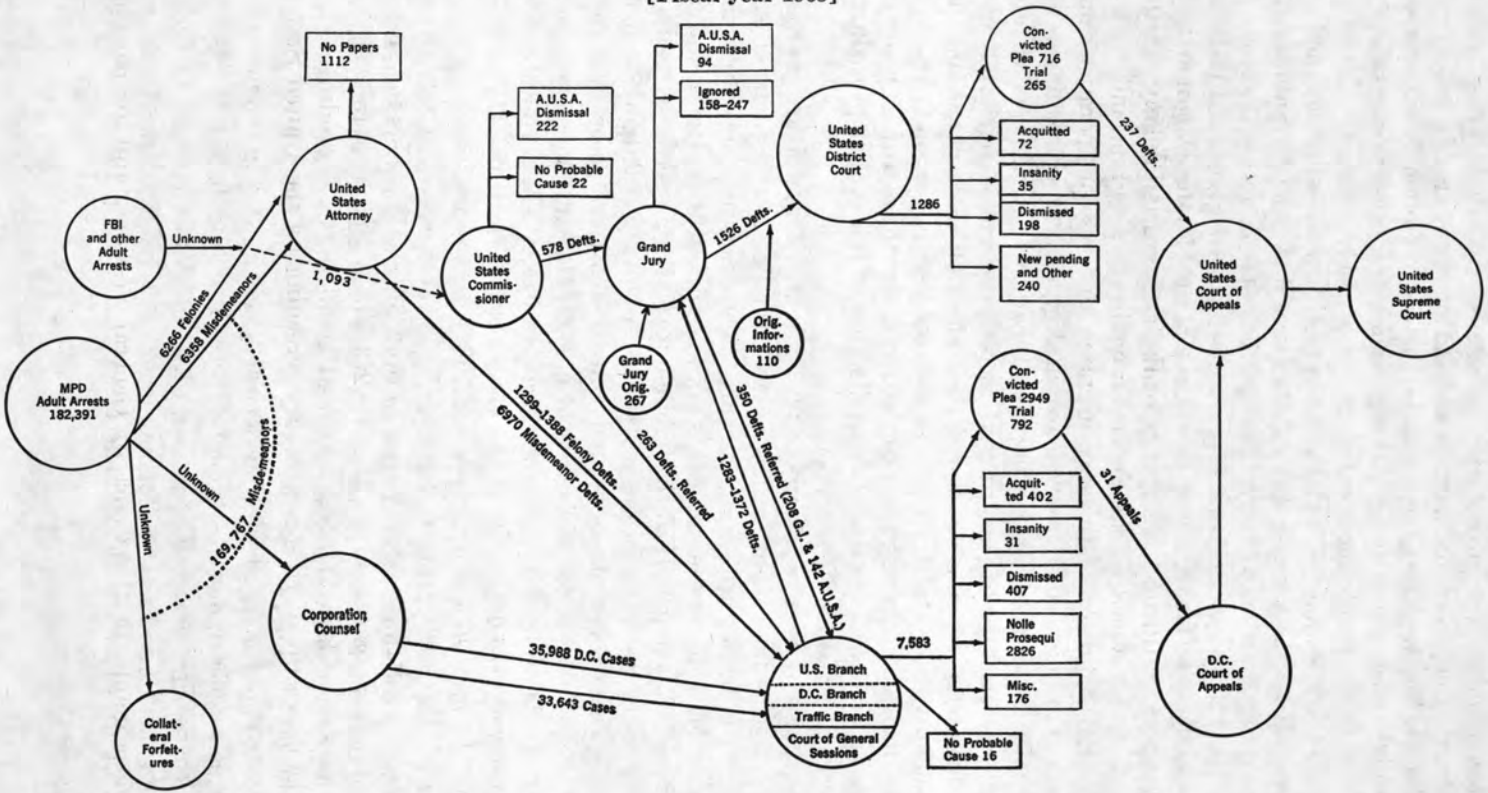
Responsibility for prosecution is entrusted to the United States Attorney who prosecutes felonies and the more serious misdemeanors, and to the Corporation Counsel of the District of Columbia who prosecutes all violations of municipal regulations and other minor offenses such as traffic, public intoxication and disorderly conduct.[6] Defendants are represented by: (1) Private practitioners, either retained or appointed by the courts; (2) the Legal Aid Agency, a publicly financed organization of lawyers assigned to defend accused persons;[7] (3) the Prettyman Fellows, a privately financed group of graduate law students at Georgetown Law Center; or (4) the Neighborhood Legal Services Project, an agency of the United Planning Organization financed as part of the Federal antipoverty program.

A brief summary of the way in which this system operates from arrest to ultimate conviction or acquittal gives perspective to the issues. It shows the relative importance of the decisions which are made at each stage of the criminal process—by whom they are made, the factors influencing them, and their effect on the accused and the community. Figure 1 diagrams the process for adult offenders. (The diagram excludes juvenile offenders under the age of 18, who are screened out by the police and handled under the special procedures described in chapter 8.)

As shown by Figure 1, many of the adult offenders who are charged with minor offenses post collateral with the police and forfeit these amounts in lieu of appearing in court. The exact number of persons who forfeit collateral each year is not known, but it is estimated that in fiscal 1965 about half of the public intoxication, disorderly conduct and moving traffic violations were disposed of by collateral forfeitures.[8] These forfeitures are undoubtedly a major factor in reducing 170,000 arrests for violations of municipal regulations and other minor misdemeanors to about 70,000 court cases.[9] The forfeiture procedure, authorized by statute and order of the Court of General Sessions, is applicable to nearly 300 offenses and constitutes neither a conviction nor acquittal.[10] Forfeiture, however, need not follow the posting of collateral; a court test of guilt or innocence may result if either the prosecutor or the accused elects to proceed.

Offenders who are charged with more serious offenses and those who cannot post collateral must be brought before a judicial officer by the police. Those charged with misdemeanors committed in the presence of a police officer must be brought "without delay" before the Court of General Sessions.[11] Those charged with felonies must be brought before the United States Commissioner or a judge of the Court of General Sessions "without unnecessary delay" for the purpose of

FIGURE 1.—The criminal process in the District of Columbia.
[Fiscal year 1965]



*Constructed from staff computations based on public records and estimates, where necessary, as identified in text and footnotes.

determining whether there is sufficient evidence to hold the accused for action of the grand jury.[12]

These statutory duties do not preclude a preliminary screening of police arrests by the prosecutors and most arrests which involve serious offenses are reviewed by a prosecutor before presentation to the court. During the screening process the prosecutor discusses the facts of the arrest with the police and decides whether the case merits prosecution or whether no further action should be taken and the defendant released. This form of dismissal before any court processing is often called "no papering;" in fiscal 1965 the United States Attorney "no papered" an estimated 1,428 of the misdemeanor and felony arrests within his jurisdiction,[13] 1,112 of them by direct no papers and 316 by a dismissal by an Assistant United States Attorney before any action by grand jury or Commissioner. There is no data on the number of "no papers" issued by the Corporation Counsel.

In screening felony arrests an Assistant United States Attorney has an alternative to "no papering" the arrest and releasing the accused; he may elect to reduce the felony charge to a misdemeanor, thereby holding the accused for trial in the Court of General Sessions. In fiscal 1965 the United States Attorney reviewed 10,822 misdemeanor and felony arrests,[14] a number which, because of an apparent overcount by police, is less than the total 12,624 arrests reported by the police for offenses within his jurisdiction.[15] As a result of screening these 10,822 arrests, he initially elected to proceed against 2,400 persons on felony charges[16] and on almost 7,000 misdemeanor charges.[17] Some of the felony charges, however, did not become felony indictments. In fiscal 1965, 38 of the felony charges were rejected by the court or the Commissioner at preliminary hearings where there was a finding of no probable cause to hold the defendant,[18] meaning that the evidence was not sufficient to bind the defendant over to the grand jury. In addition, the grand jury voted to ignore felony charges against between 158 and 247 persons[19] and 350 persons were referred from the grand jury back to the Court of General Sessions for prosecution as misdemeanors.[20] Another 263 alleged felons were referred back to the misdemeanor court during Commissioner proceedings.[21]

The net result of this preliminary screening by the United States Attorney, committing magistrates and grand jury is that about 14 percent (1,526 of 10,822) of the adults arrested for offenses within the United States Attorney's jurisdiction are prosecuted as felons in the District Court, 70 percent (7,583 of 10,822) are prosecuted as misdemeanants in the Court of General Sessions, and 16 percent (1,713 of 10,822) are released. This high rate of misdemeanor

prosecutions contrasts with the fact that almost half of the adult arrests within his jurisdiction are felonies.[22]

The courts also receive a small number of cases which do not originate with police arrests. Both the United States Attorney and the Corporation Counsel screen citizen complaints, approximately 14,000 and 23,000 of which came to their respective offices in fiscal 1965.[23] In each of these cases the prosecutor must decide, often after an informal hearing with the citizen, whether to initiate a criminal case. There are also some cases which originate in the grand jury. These cases are included in the total numbers of 35,988 D.C. Branch cases, 33,643 Traffic Branch cases, 7,583 U.S. Branch misdemeanor defendants (6,970 initial informations plus 613 referrals) and 1,526 felony defendants.[24]

After an accused is charged before the appropriate court his case may be disposed of in several alternative ways. He may obtain a dismissal, enter a plea of guilty or elect trial. Dismissals, which may originate with prosecutor, defense counsel or the court, result in the release of the accused with no adjudication of guilt or innocence. They occur for many reasons, often for want of prosecution where the complaining witness is not available, or because the indictment or information was legally insufficient or based on illegally obtained evidence. Fifteen percent of the defendants whose cases were terminated in the District Court and 43 percent of those who came before the U.S. Branch of the Court of General Sessions were terminated by such dismissals.[25] A substantial number of the defendants prosecuted by the United States Attorney, however, terminate their cases by pleas of guilty, 39 percent in the Court of General Sessions and 56 percent in the District Court.[26] Guilty pleas most often emerge as a result of negotiations between the prosecutor and the defense counsel; the time-consuming ordeal and uncertainties of a criminal trial are waived in return for dismissal of some charges against the accused, reduction of a felony to a misdemeanor, or the possibility of leniency in sentencing. Few cases go to trial—only 29 percent of the felony defendants in the District Court and 16 percent of the serious misdemeanor defendants in the Court of General Sessions.[27]

The result of these various dispositions in fiscal 1965 was the conviction by plea or trial of 76 percent of the felons in the District Court and 49 percent of the serious misdemeanants in the Court of General Sessions. In sum, ignoring the time-lag for prosecution, about 44 percent of the persons arrested in the District for felonies and serious misdemeanors were convicted in the trial courts in fiscal 1965.[28]

Finally, the system of criminal justice provides an appeal for those who are convicted. Misdemeanants, except those who are fined less

than $50, may appeal to the D.C. Court of Appeals, and those convicted in the District Court may appeal to the U.S. Court of Appeals. Four of 31 appeals from cases originating in the U.S. Branch of the Court of General Sessions were reversed in the D.C. Court of Appeals in fiscal 1965,[29] and 36 of 179 cases heard on the merits were reversed by the U.S. Court of Appeals.[30]

The foregoing outline of the manner in which criminal cases are processed in the District of Columbia raises important questions of policy and practice. The pivotal role of the prosecutor in no papering or dismissing substantial numbers of cases indicates need for close scrutiny of the many considerations—legitimate and expedient—which influence his decisions. The time and resources at his disposal may greatly influence his decisions. Increasing time lags caused by outmoded scheduling systems or insufficient judge or prosecutor manpower lead to decisions made not on the merits of individual cases but prompted by a desire to clear the calendar. Such decisions do not protect the community nor do they in the long run benefit the accused who comes before the criminal courts.

FELONY CASES

Felony cases involve the most serious offenders arrested by the police, and the disposition of such cases therefore is of vital concern to the community. Courts and prosecutors can have little effect on crime if they are unable to deal fairly and promptly with persons arrested by the police. A decline in felony prosecutions, dispositions influenced by extraneous factors, and mounting caseloads and delays are some of the principal problems which currently characterize the prosecution of felony offenders in the District.

COURT AND PROSECUTOR

The United States District Court for the District of Columbia has exclusive jurisdiction over all felonies and indictable misdemeanors committed by adults in the District of Columbia.[31] It also has concurrent jurisdiction with the Court of General Sessions over all other misdemeanors,[32] but as a matter of practice these misdemeanors are tried in the Court of General Sessions.[33] The civil jurisdiction on the court extends to all matters where the sum involved exceeds $10,000, to all proceedings in admiralty, bankruptcy, condemnation, and probate, and to a variety of other matters.[34] The court also performs several other governmental functions, including the appointment of the Board of Education for the District of Columbia.[35]

The court has 15 judges appointed for life by the President with the advice and consent of the Senate.[36] The judge most senior in

commission who is under 70 years old sits as chief judge and receives an annual salary of $30,500; the other judges receive $30,000 a year.[37] There are currently two judicial vacancies, and six retired judges who have retained senior status assist the court.[38] Judges are assigned in rotation for periods of three to four months in civil motions, civil jury trials, civil non-jury trials, condemnation, and pretrial or criminal trials. During nine months of the year, five or six of the judges have generally been assigned to criminal trials. During July, August and September, the number assigned to criminal matters varies by the week and usually ranges from one to three judges until late September.[39]

Cases are prosecuted in this court by the United States Attorney for the District of Columbia, who has jurisdiction over the prosecution not only of violations of the Federal criminal laws (such as income tax evasion, mail fraud, narcotics offenses) but also of crimes which in other cities are entrusted to local or state prosecutors, such as homicide and robbery. The only matters not within the United States Attorney's jurisdiction are offenses of a municipal nature, such as traffic and disorderly conduct violations, which are prosecuted by the Corporation Counsel.[40]

The United States Attorney is appointed by the President with the advice and consent of the Senate for a term of 4 years.[41] He has an authorized staff of 57 assistant United States Attorneys, 48 of whom are primarily engaged in handling criminal matters.[42] The staff of authorized Assistants has increased from 34 in 1950. The attorneys are employees of the U.S. Department of Justice who serve at the pleasure of the Attorney General. Most are recent law school graduates who stay with the office between 4 and 5 years; the annual turnover frequently exceeds 25 percent of the staff. A small number of assistants have served for as long as 15 years or more.[43]

The United States Attorney's office manages its prosecutive responsibilities through five divisions. The Court of General Sessions Division is the basic intake point, where assistant prosecutors review the facts in most cases of alleged criminal conduct, including about 14,000 citizen complaints and about 9,500 police arrests annually, and determine who shall be prosecuted and the nature of the charges. Assistants in this Division also try all serious misdemeanor cases in the Court of General Sessions. The Grand Jury Unit presents over 2,000 cases each year to the grand jury, which decides whether to indict persons charged with felonies, ignore the case or refer it for prosecution as a misdemeanor. This unit also shares responsibility with the Special Proceedings Unit for screening over 1,000 felony

cases brought to its attention by the police, the Federal Bureau of Investigation or other investigative agencies. The Criminal Trial Division of the office handles all cases in which the grand jury returns an indictment and tries or otherwise terminates about 1,300 cases each year before the District Court. The Appellate Division briefs and argues all appeals from criminal convictions.[44]

PROSECUTIONS INITIATED

After screening the criminal charges or complaints brought to its atention, the United States Attorney's office in fiscal 1965 filed 1,295 cases against an estimated 1,526 persons in the United States District Court[45] and filed misdemeanor informations against 7,583 persons in the Court of General Sessions (Table 1).[46] As shown by Table 1, the United States Attorney decided not to proceed against about 13 percent (1,428 of 10,822) of the persons arrested by the police. Of the defendants in cases actually filed after grand jury screening and referrals, 17 percent (1,526 of 9,109) were charged with felonies

TABLE 1.—*Comparison of adults arrested and prosecuted*

[Fiscal year 1965]

Nature of offense	Adult arrests reported*	Estimated actual arrests†	Decisions not to prosecute‡	Prosecutions initiated§	Defendants in cases filed‖
Felony	6, 266	10, 822	1, 428	2, 424	1, 526
Serious misdemeanor	6, 358			6, 970	7, 583
Total	12, 624			9, 394	9, 109

*Calculated from MPD Ann. Rep., 46-47 (1965), with assistance of Statistical Division, MPD. Arrests reported do not mean number of individuals actually arrested because of defects in MPD reporting procedures. See footnote 15.

†Grand jury original indictments (267) plus arrested persons brought before the U.S. Commissioner (1,093) plus 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 computations based upon monthly reports of the U.S. Commissioner; and staff count of the U.S. Marshal's List for the Court of General Sessions.

‡1,112 no papers by Court of General Sessions Assistant U.S. Attorneys (see footnote 13) plus 222 outright discharges by the U.S. Commissioner on motion of the U.S. Attorney (estimate based upon staff count of U.S. Commissioner discharges multiplied by estimated proportion which are outright dismissals) plus 94 dismissals by the Grand Jury Assistant U.S. Attorneys (estimate based upon sample of Grand Jury Dockets, U.S. District Court).

§Number of complaints filed by U.S. Attorney prior to referrals of some felony charges to the Court of General Sessions, prior to findings of no probable cause, and prior to grand jury ignoramuses.

‖See footnote 24.

and 83 percent (7,583 of 9,109) were charged with serious misdemeanors. These prosecutions were the end result of adult arrests which according to the police reports were about half felonies and half serious misdemeanors.

The 1,295 criminal cases filed in the District Court in fiscal 1965 were about 20 percent of the court's total workload (Table 2). Serious crimes were involved in these cases: 261 robbery cases, 181 burglary cases, 153 narcotics cases, 141 cases of auto theft, 115 aggravated assault cases, 87 homicide cases, and 60 cases of rape and other sex offenses.[47] Preliminary figures for 1966 indicate that 1,453 cases were filed—an increase of 390 over the low point in 1960 and more than have been filed in any year since 1954 (Table 2).

TABLE 2.—*Cases filed in the United States District Court for the District of Columbia*

[Fiscal years 1950-1966]

Fiscal year	Criminal cases filed		Civil cases filed		Total cases filed
	Number	Percent	Number	Percent	
1950	2,116	20.8	8,047	79.2	10,163
1951	1,836	18.6	8,009	81.4	9,845
1952	1,727	17.5	8,165	82.5	9,892
1953	1,964	18.7	8,539	81.3	10,503
1954	1,724	17.1	8,358	82.9	10,082
1955	1,205	12.9	8,155	87.1	9,360
1956	1,277	13.7	8,032	86.3	9,309
1957	1,263	17.2	*6,101	82.8	7,364
1958	1,258	18.0	5,732	82.0	6,990
1959	1,234	16.9	6,065	83.1	7,299
1960	1,063	13.2	6,990	86.8	8,053
1961	1,077	12.8	7,352	87.2	8,429
1962	1,120	13.0	7,498	87.0	8,618
1963	1,112	14.0	†6,824	86.0	7,936
1964	1,255	17.4	5,958	82.6	7,213
1965	1,295	19.9	5,197	80.1	6,492
1966	1,453	22.4	5,035	77.6	6,488
Percent change:					
1950–1965		−39		−36	−36
1955–1965		+7		−36	−31
1960–1965		+22		−26	−19

Source: Annual Reports of the Director of the Administrative Office of the United States Courts (1950–1966).

*Jurisdiction over domestic relations cases transferred to the Municipal Court on Sept. 17, 1956. Id. (1957) at 109.

†Jurisdictional amount raised from $3,000 to $10,000 in Jan. 1963. 11 D.C. Code § 961 (Supp. V, 1966).

A survey of the files of the United States Attorney indicates that there are numerous reasons for no papering or for downgrading felonies to misdemeanors.[48] The most frequently recorded reason for no papering was the failure of the complaining witness to press charges, as often happens in disputes between friends or married couples which initially involve criminal violence but are later compromised. Many intra-family assaults which begin as felonies are reduced to simple assault, a misdemeanor. In other cases the complaining witness does not want to be exposed to public interrogation, as in the case of a rape victim, and the matter is therefore dropped. Many cases are not prosecuted because of "mitigating circumstances," as in some instances involving first offenders or persons receiving professional treatment outside the criminal process. Cases are also no papered for reasons of evidentiary insufficiency, such as the inability of witnesses to identify the accused, illegal arrests or searches which destroy the admissibility of essential evidence, or inadmissibility of confessions under prevailing statutes and judicial interpretations.

DISPOSITION OF FELONY PROSECUTIONS

Dismissals

After initiating prosecution, the United States Attorney may still exercise his discretion to terminate the case. Unlike his decision not to prosecute, however, these decisions are supervised by the court, since the prosecutor must file a motion to dismiss or request leave to enter a nolle prosequi.[49] As a practical matter, few of these requests are denied.

In fiscal 1965, cases involving 15 percent of the felony defendants were terminated prior to trial (Table 3). Most of these dismissals occur on motion of the U.S. Attorney and are an exercise of his prosecutive discretion. Reasons for the dismissal or nolle prosequi of cases are recorded by the prosecutor either in his own files or in the public records of the court and are substantially the same as the stated reasons for no papering cases. Such dismissals are counted as acquittals in Figure 2, which summarizes the manner in which felony arrests were reduced to convictions in the District Court in fiscal 1965.

Adjudication

Although the number of criminal cases has decreased over the years, the proportion of pleas, trials and convictions has not changed substantially. Nearly 55 percent of the defendants who are before the

TABLE 3.—*Disposition of defendants prosecuted by the United States Attorney*

[Fiscal year 1965]

Disposition	Felony*		Misdemeanor†		Total	
	Number	Percent	Number	Percent	Number	Percent
Dismissals	198	15.4	3,233	42.6	3,431	38.7
Nolle prosequi by government	-------	-------	2,826	37.3	-------	-------
Dismissed for want of prosecution	-------	-------	407	5.4	-------	-------
Convicted	981	76.3	3,741	49.3	4,722	53.2
Plea to original charge	365	28.4	1,957	25.8	2,322	26.2
Plea to lesser or fewer	351	27.3	992	13.1	1,343	15.1
Trial	265	20.6	792	10.4	1,057	11.9
Acquitted	107	8.3	433	5.7	540	6.1
Other	-------	-------	176	2.3	176	2.0
Total court terminations	1,286	100.0	7,583	99.9	8,869	100.0

Source: Felony data obtained from Administrative Office of the U.S. Courts, Ann. Rep. (1965); misdemeanor data from staff sample of every fourth case recorded in U.S. Dockets for fiscal 1965, District of Columbia Court of General Sessions.

* This column reports defendants terminated as of June 30, 1965,

† This column reports terminations of all cases commenced in fiscal 1965.

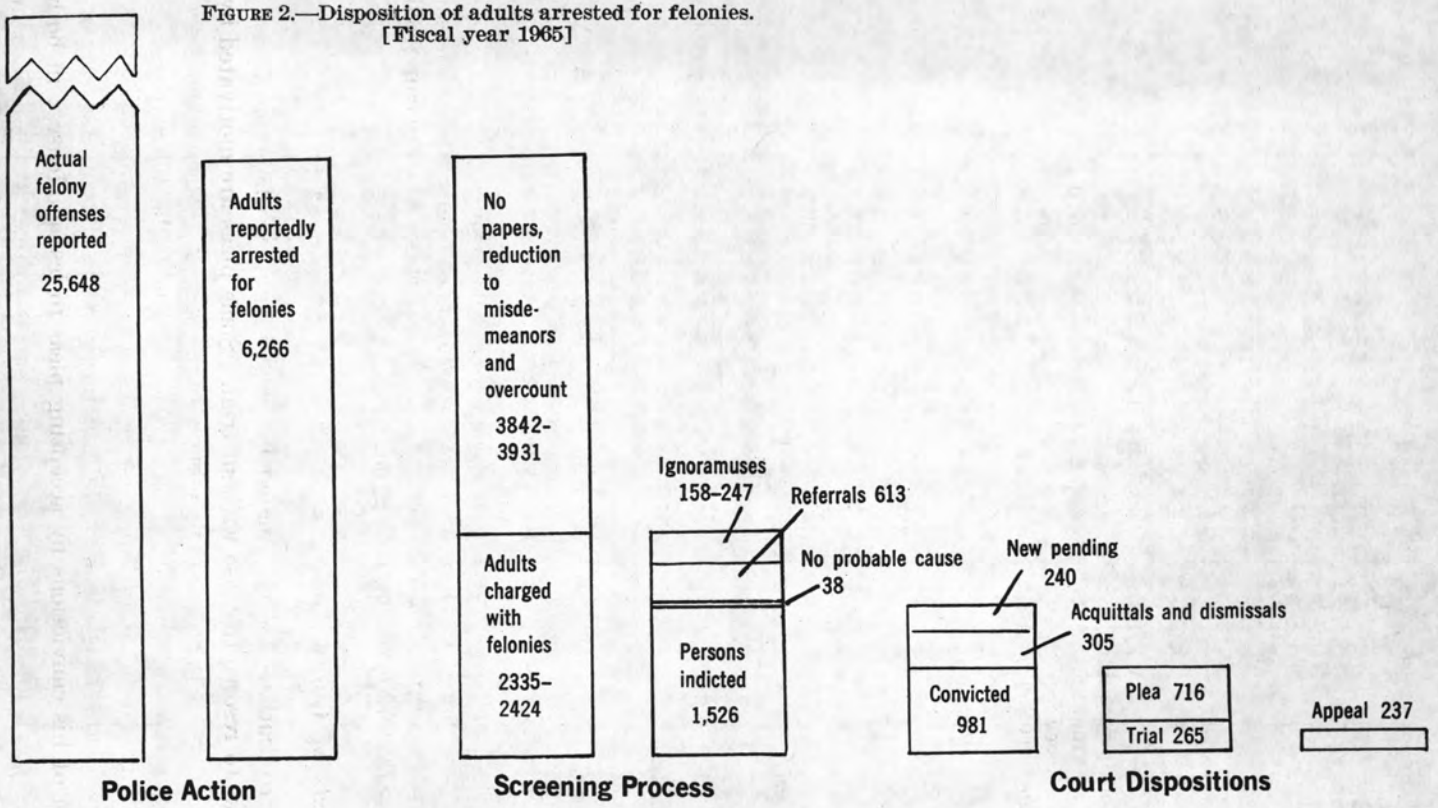
court enter pleas of guilty, less than about 30 percent go to trial, and about 15 percent obtain dismissals (Table 4). There is a consistent conviction rate of over 75 percent, and among those who are convicted more than 70 percent go to prison.

Pleas of Guilty

Prosecutions are terminated by pleas of guilty when the accused seeks to resolve the case without trial. Some pleas are motivated by the desire of the accused to acknowledge his guilt. More often, however, pleas are a matter of negotiation in which the accused seeks a lighter sentence, and the prosecutor sees merit in not trying his case.[50]

In fiscal 1965 the United States Attorney obtained a substantial portion of his convictions by accepting pleas to lesser offenses; in both felony and misdemeanor cases more than one-third of all pleas were

FIGURE 2.—Disposition of adults arrested for felonies.
[Fiscal year 1965]



Sources: Constructed from staff computations based on public records and estimates, where necessary, as identified in text and footnotes.

TABLE 4.—*Defendants in cases terminated—U.S. District Court*

[Fiscal years 1950–1966]

Fiscal year	Total defendants	Not convicted						Convicted						Sentence									
		Dismissed		Acquitted		Total		Plea		After Trial		Total		Imprisoned		YCA*		Probation		Fine		Other	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1950	2,148	406	18.9	213	9.9	619	28.8	1,092	50.8	437	20.3	1,529	71.2	1,112	51.8	------	------	403	18.8	14	.7	------	------
1951	1,890	337	17.8	178	9.4	515	27.2	992	52.5	383	20.3	1,375	72.8	1,034	54.7	------	------	327	17.3	14	.7	------	------
1952	1,667	235	14.1	171	10.3	406	24.4	896	53.7	365	21.9	1,261	75.7	978	58.7	------	------	275	16.5	7	.4	------	------
1953	2,045	302	14.8	204	10.0	506	24.7	1,075	52.6	464	22.7	1,539	75.3	1,208	59.1	------	------	325	15.9	6	.3	------	------
1954	1,870	246	13.2	197	10.5	443	23.7	951	50.9	476	25.5	1,427	76.3	1,127	60.3	------	------	291	15.6	9	.5	------	------
1955	1,384	169	12.2	100	7.2	269	19.4	762	55.1	353	25.5	1,115	80.6	883	63.8	------	------	237	17.1	12	.9	------	------
1956	1,595	279	17.5	97	6.1	376	23.6	860	53.9	359	22.5	1,219	76.4	906	56.8	60	3.8	298	18.7	15	.9	------	------
1957	1,454	151	10.4	104	7.2	255	17.5	847	58.3	352	24.2	1,199	82.5	812	55.8	41	2.8	365	25.1	22	1.5	------	------
1958	1,666	271	16.3	130	7.8	401	24.1	873	52.4	392	23.5	1,265	75.9	896	53.8	70	4.2	364	21.8	5	.3	------	------
1959	1,642	163	9.9	155	9.4	318	19.4	951	57.9	373	22.7	1,324	80.6	905	55.1	97	5.9	368	22.4	51	3.1	------	------
1960	1,367	153	11.2	125	9.1	278	20.3	814	59.5	275	20.1	1,089	79.7	733	53.6	110	8.0	349	25.5	7	.5	------	------
1961	1,337	118	8.8	140	10.5	258	19.3	762	57.0	317	23.7	1,079	80.7	774	57.9	156	11.7	287	21.5	15	1.1	3	.2
1962	1,282	151	11.8	143	11.2	294	22.9	651	50.8	337	26.3	988	77.1	718	56.0	136	10.6	250	19.5	19	1.5	1	.1
1963	1,183	157	13.3	110	9.3	267	22.6	628	53.1	288	24.3	916	77.4	681	57.6	114	9.6	210	17.8	23	1.9	2	.2
1964	1,442	232	16.1	95	6.6	327	22.7	817	56.7	298	20.7	1,115	77.3	805	55.8	123	8.5	273	18.9	34	2.4	3	.2
1965	1,286	198	15.4	107	8.3	305	23.7	716	55.7	265	20.6	981	76.3	681	53.0	114	8.9	273	21.2	24	1.9	3	.2
1966	1,230	210	17.1	108	8.8	318	25.9	640	52.0	272	22.1	912	74.1	------	------	------	------	------	------	------	------	------	------

Source: Staff computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. All percentages are based upon total number of defendants.

*Youth Corrections Act sentences, 18 U.S.C. ch. 402, are included in "Imprisoned" column.

pleas to lesser offenses (Table 3). Over the past 15 years the rate of pleas of guilty in felony cases has remained fairly constant—always exceeding 50 percent of the total dispositions (Table 4). There has been, however, an increasing percentage of pleas to lesser offenses, which generally mean a decrease in the sentencing authority of the court. Table 5 (based on calendar, not fiscal, years) shows that in 1950 pleas to lesser offenses or fewer counts were accepted from only 21 percent of the defendants. By 1960 this percentage had risen to 38 percent and in 1965, with nearly one-fifth of the cases still pending, the defendants pleading to lesser offenses were already 38 percent of all defendants. Conversely, the percentage of pleas to the original indictment has decreased from 29 percent in 1950 to 14 percent in 1965. By contrast, the number of verdicts of guilty of either the indicated of-

TABLE 5.—*Disposition in cases commenced—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Disposition	1950		1955		1960		1965	
	Number of defendants	Percent of defendants	Number of defendants	Percent of defendants	Number of defendants	Percent of defendants	Number of defendants	Percent of defendants*
Nontrial dispositions	1,609	70.2	1,046	67.4	929	64.5	964	73.9
Pleas	1,148	50.1	871	56.1	757	52.6	681	52.2
To indictment	666	29.1	320	20.6	211	14.7	187	14.3
To lesser/fewer	482	21.0	551	35.5	546	37.9	494	37.9
Dismissals	461	20.1	175	11.3	172	11.9	283	21.7
By government	392	17.1	126	8.1	127	8.8	232	17.8
By court	27	1.2	14	.9	16	1.1	28	2.1
Death or transfer	42	1.8	35	2.3	29	2.0	23	1.8
Trial dispositions	608	26.5	442	28.5	464	32.2	340	26.1
Verdict guilty	417	18.2	310	20.0	320	22.2	237	18.2
As indicted	322	14.0	237	15.3	233	16.2	164	12.6
Lesser/fewer	95	4.1	73	4.7	87	6.0	73	5.6
Verdict not guilty	154	6.7	110	7.1	85	5.9	75	5.8
Verdict not guilty, insanity	21	.9	14	.9	38	2.6	14	1.1
Judgment of acquittal	7	.3	3	.2	13	.9	8	.6
Plea during trial	4	.2	2	.1	6	.4	1	.1
Mistrial	5	.2	2	.1	2	.1	5	.4
Hung jury	-------	-------	1	.1	-------	-------	-------	-------
Unknown disposition or pending	75	3.3	64	4.1	47	3.3	299	-------
Total defendants	2,292	100.0	1,552	100.0	1,440	100.0	1,603	-------

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

*Adjusted to eliminate unknown dispositions.

fense, or lesser or fewer offenses, has varied by no more than 2 percent over the years.

Cases Tried

Most prosecutions are terminated without trial. In fiscal 1966 only 380 (31 percent) of the felony terminations were by trial. Since 1950 the number of felony defendants tried by the United States Attorney in the District Court has shown a gradual but significant decline, ranging from a high of 673 in fiscal 1954 to a low of 372 in fiscal 1965 (Table 6). The percent of trial dispositions to all dispositions has ranged between 37 percent in 1962 and 27 percent in 1964; the trial dispositions in the last two years have shown a slight increase over the 1964 low.

TABLE 6.—*Felony defendants tried and convicted—U.S. District Court*

[Fiscal years 1950–1966]

Fiscal year	Defendants terminated	Defendants tried					
		Total		Convicted		Not convicted	
		Number	Percent of defts terminated	Number	Percent of defts tried	Number	Percent of defts tried
1950	2,148	650	30.3	437	67.2	213	32.8
1951	1,890	561	29.7	383	68.3	178	31.7
1952	1,667	536	32.2	365	68.1	171	31.9
1953	2,045	668	32.7	464	69.5	204	30.5
1954	1,870	673	36.0	476	70.7	197	29.3
1955	1,384	453	32.7	353	77.9	100	22.1
1956	1,595	456	28.6	359	78.7	97	21.3
1957	1,454	456	31.4	352	77.2	104	22.8
1958	1,666	522	31.3	392	75.1	130	24.9
1959	1,642	528	32.2	373	70.6	155	29.4
1960	1,367	400	29.3	275	68.8	125	31.3
1961	1,337	457	34.2	317	69.4	140	30.6
1962	1,282	480	37.4	337	70.2	143	29.8
1963	1,183	398	33.6	288	72.4	110	27.6
1964	1,442	393	27.3	298	75.8	95	24.2
1965	1,286	372	28.9	265	71.2	107	28.8
1966	1,230	380	30.9	272	71.6	108	28.4

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

The conviction rate among the felony cases tried by the United States Attorney during the past 17 years has ranged between 67 percent in 1950 and 79 percent in 1956 with no general trend evident; in 1966 the conviction rate was 72 percent of the defendants tried (Table 6). The overall conviction rate by plea or trial ranged from 71 percent in 1950 to 82 percent in 1957. In fiscal 1966 it was 74 percent (Table 4).

It also appears that juries now convict a greater percentage of the defendants who come before them and that there has been some change to non-jury trials where the conviction rate is lower.[51]

Sentencing

Sentencing cannot be separated from the manner in which the court handles its cases, since each affects the other. Where pleas to lesser offenses are utilized to dispose of workloads and avoid delays, the sentencing discretion of the court is limited. The court, moreover, can reduce its workload by inducing pleas with lenient sentences.[52] Over the years there has been some change in the manner in which the District Court sentences. For example, in fiscal 1954 and 1955 over 60 percent of the defendants received prison sentences, whereas the percentage is now down to about 53 percent (Table 4). Sentencing practices in the District Court are discussed in the next chapter of this Report.

DELAYS AND BACKLOGS

In fiscal 1966 the median time between indictment and disposition in the District Court was at an all time high. The time for all cases was 4.8 months, an increase of one month over fiscal 1964, and more than a 2 week increase over fiscal 1965 (Table 7). Time varied considerably, however, by type of disposition, growing longer as accused persons exercised their rights to jury trial. Persons acquitted by the jury waited 5.6 months for verdict, and it required 6.3 months to convict those found guilty by the jury. For those District Court cases which were appealed nearly 1½ years were required to determine guilt or innocence. About one half of the time in these cases (251 days) was spent before the District Court and the other half (257 days) was spent before the U.S. Court of Appeals. These figures do not include the extreme cases, since they were computed to show the time generally involved in the process for those persons who exercised all of their rights for trial and appeal.

TABLE 7.—*Disposition and median time interval from filing to termination—U.S. District Court*

[Fiscal years 1964-1966]

Disposition	1964		1965		1966	
	Number of defendants	Median time in months	Number of defendants	Median time in months	Number of defendants	Median time in months
Not convicted	232	4.2	305	4.3	318	4.8
Dismissed	(*)	(*)	198	4.2	210	4.4
Acquitted by court	(*)	(*)	43	5.9	29	5.3
Acquitted by jury	(*)	(*)	64	3.6	79	5.6
Convicted	1,210	3.9	981	4.1	912	5.0
Plea of guilty	817	3.5	716	3.7	640	4.5
Convicted by court	54	5.9	18	6.5	4	(*)
Convicted by jury	339	4.5	247	4.9	268	6.3
Total	1,442	3.8	1,286	4.2	1,230	4.8

Source: Research and Evaluation Branch, Administrative Office of the U.S. Courts.
*Not computed.

At the end of fiscal year 1966, 913 criminal cases were pending in the District Court. The triable cases (excluding cases such as those where the defendant is incompetent or a fugitive) had increased by 68 percent over fiscal 1965 (Table 8) and at least one-third of them had been pending more than 6 months.[53] The backlog of felony cases pending at the present time in the District Court is higher than at any time in the past 15 years. It increased by 50 percent in the last fiscal year, when the court disposed of only 56 percent of its workload in contrast to dispositions of 65–72 percent in the immediately preceding years. While this particular year may be explained in part by a shift of backlog from the grand jury to the court due to the United States Attorney's effort to speed indictment,[54] the preceding 15 years showed a decline in felony cases terminated. Cases terminated have not kept up with cases filed. In 1966, for example, there was a 12 percent increase in cases filed and a 3 percent decrease in cases terminated (Table 8).

TABLE 8.—*Backlog of criminal cases pending and time interval between indictment and termination—U.S. District Court*

[Fiscal years 1950–1966]

Fiscal year	Cases filed	Cases terminated	Cases pending	Percent terminated*	Triable† cases pending	Median time from indictment to termination
1950	2,116	2,071	‡680	75.3	296	§1.2 mo.
1951	1,836	1,828	688	72.7	347	(**)
1952	1,727	1,630	785	67.5	456	(**)
1953	1,964	1,881	868	68.4	482	(**)
1954	1,724	1,807	785	69.7	341	(**)
1955	1,205	1,255	735	63.1	273	(**)
1956	1,277	1,441	571	71.6	280	2.4 mo.
1957	1,263	1,206	628	65.8	363	(**)
1958	1,258	1,325	561	70.3	327	(**)
1959	1,234	1,313	482	73.1	272	(**)
1960	1,063	1,085	460	70.2	258	(**)
1961	1,077	1,098	439	71.4	273	(**)
1962	1,120	1,103	456	70.8	334	3.0 mo.
1963	1,112	1,023	545	65.2	(**)	3.6 mo.
1964	1,255	1,301	499	72.3	250	3.8 mo.
1965	1,295	1,184	610	66.0	370	4.2 mo.
1966	1,453	1,150	913	55.7	623	4.8 mo.
Percent change:						
1950–1965	−39	−43	−10	.....	+25	+250
1955–1965	+7	−6	−17	.....	+35	(**)
1960–1965	+22	+9	+32	.....	+43	(**)
Percent change:						
1965–1966	+12	−3	+50	.....	+68	+14%

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966) and staff computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.

*Calculated by dividing appeals terminated by the sum of appeals commenced and appeals pending at the end of the previous fiscal year.

†Excludes cases where defendant is fugitive, incompetent to stand trial, serving sentence in another jurisdiction or awaiting sentence after conviction.

‡There were 635 cases pending at the start of fiscal 1950.

§Computation based on 1950 Annual Report of the Washington Criminal Justice Association p. 11, which includes only 1,816 cases terminated.

**Data not available.

EVALUATION

The statistical data on felony prosecutions reveal two facts of particular importance to effective law enforcement in the District of Columbia. The number of felony prosecutions has decreased and the amount of time between indictment and conviction has increased. Inquiry into these developments suggests that they are caused in part by congestion and delay in the courts—factors which should not affect justice or law enforcement and which can be minimized with concerted effort.

Decline in Felony Prosecutions

The decline in felony prosecutions in the District of Columbia is not attributable to a decline in the number of felonies. Comparing 1950 and 1965, reported felonies have nearly doubled and the number of felony charges made by the police has increased by 9 percent. In 1965, however, felony cases decreased by 39 percent from 1950 (Table 9).

The general trend is reflected in a comparison of felony prosecutions in the early 1950's and recent years (Tables 8, 9). In fiscal years 1950 through 1954 the number of new cases filed ranged between 1,724 and 2,116, and the number of cases terminated ranged between 1,630 and 2,071. In 1960 through 1964 the number of felony cases ranged between 1,063 and 1,255 and the number terminated was between 1,023 and 1,301. The figures for fiscal 1966 show a significant increase with 1,453 cases filed, more than in any year since 1954, but the number terminated remained low at 1,150.

Between 1950 and 1965 both felony and serious misdemeanor charges filed by the police increased, felony charges by 9 percent and misdemeanor charges by 38 percent (Table 10). While felony cases actually decreased, the number of misdemeanor cases in court inceased, although at a lesser rate of increase than misdemeanor charges. Accordingly, the ratio of cases to charges for both felonies and misdemeanors decreased, with the drop more substantial with respect to felonies. These figures suggest the inability of the court system to accommodate the increasing number of criminal charges, even to the degree that it did in 1950. This inability is particularly evident with respect to felonies.

This decline in felony prosecutions has also been accompanied by increasing pleas to lesser offenses (Table 5). In addition, the more serious felony offenses now constitute a greater proportion of the criminal workload; the crimes of homicide, robbery and assault were

TABLE 9.—*Felonies reported to the police, felony charges by the police and criminal cases and defendants before the U.S. District Court*

[Fiscal years 1950–66]

Fiscal year	Felonies reported	Adult felony charges*	Persons arrested for felonies†	Defendants in cases filed				Criminal cases filed		
				Number of defendants	Percent of—			Number of cases	Percent of felonies—	
					Felonies reported	Felonies charged	Persons arrested		Reported	Charged
1950	13,879	7,699	(‡)	2,213	15.9	28.7	(‡)	2,116	15.2	27.5
1951	13,850	8,034	(‡)	1,946	14.5	24.2	(‡)	1,836	13.2	22.8
1952	16,342	9,385	(‡)	1,842	11.3	19.6	(‡)	1,727	10.6	18.4
1953	17,849	9,187	(‡)	2,140	11.9	23.3	(‡)	1,964	11.0	21.4
1954	15,188	9,695	(‡)	1,892	12.4	19.5	(‡)	1,724	11.4	17.8
1955	13,995	9,076	(‡)	1,320	9.4	14.5	(‡)	1,205	8.6	13.3
1956	13,415	8,922	(‡)	1,574	11.7	17.6	(‡)	1,277	9.5	14.3
1957	12,006	7,916	(‡)	1,593	13.3	20.1	(‡)	1,263	10.5	16.0
1958	12,735	8,304	(‡)	1,621	12.7	19.5	(‡)	1,258	9.9	15.2
1959	13,934	7,948	(‡)	1,632	11.7	20.5	(‡)	1,234	8.8	15.5
1960	15,064	7,659	(‡)	1,383	9.2	18.0	(‡)	1,063	7.0	13.9
1961	15,183	7,862	(‡)	1,356	8.9	17.2	(‡)	1,077	7.1	13.7
1962	15,551	7,364	(‡)	1,318	8.5	17.9	(‡)	1,120	7.2	15.2
1963	17,992	8,096	(‡)	1,313	7.3	16.2	(‡)	1,112	6.2	13.7
1964	22,318	(‡)	6,667	§1,482	6.6	(‡)	22.2	1,255	5.6	(‡)
1965	25,648	8,400	6,266	§1,526	5.9	18.2	24.3	1,295	5.0	15.4
1966	(‡)	9,004	--------	§1,713	(‡)	19.0	--------	1,453	(‡)	16.1
Percent change:										
1950–65	+85	+9	--------	−31	--------	--------	--------	−39	--------	--------
1955–65	+83	−8	--------	+16	--------	--------	--------	+7	--------	--------
1960–65	+70	+10	--------	+10	--------	--------	--------	+22	--------	--------

Sources: Metropolitan Police Department, Ann. Reps. (1950–65); Administrative Office of the U.S. Courts, Ann. Reps. (1950–66).

* "Charges" means crimes. One arrest may result in several charges.

† "Persons arrested" means individuals without regard to number of crimes or charges growing out of the incident, but see footnote 15 on apparent overcount.

‡Not reported and/or cannot be computed.

§The Administrative Office kept no adjusted records on defendants in cases after 1963. The figures given for these years are staff estimates which are based upon the ratios by which the number of defendants exceeded the number of cases in 1962 and 1963.

a larger proportion of the total crimes before the court in calendar 1965 compared with calendar 1950, while larceny, embezzlement and fraud have become a smaller proportion (Table 11). Auto theft and gambling, however, have remained fairly constant. Although there are no comparative data available, the Stanford Research Institute (SRI) study of offenders convicted in 1965 suggests that the decline in felony prosecutions has resulted in screening out of the District Court all but those defendants with very extensive prior criminal records. Of the group analyzed by SRI, 92 percent had at least 1 prior

TABLE 10.—*Comparison of police charges and cases prosecuted*

[Fiscal years 1950 and 1965]

	1950		1965		Percent change, 1950–1965
	Number	Percent of total	Number	Percent of total	
Total Police Charges	14, 519		17, 830		+23
Felony charges	7, 699	53	8, 400	47	+9
Misdemeanor charges*	6, 820	47	9, 430	53	+38
Total Cases in Court	10, 156		11, 159		+10
Felony cases	2, 116	21	1, 295	12	−39
Misdemeanor cases*	8, 040	79	9, 864	88	+23
Percent cases/charges					
Total	69. 9		62. 6		
Felony	27. 5		15. 4		
Misdemeanor	117. 9		104. 6		

Source: MPD Ann. Reps.; Administrative Office of the U.S. Courts, Ann. Reps. (1950, 1965); U.S. Dockets of Court of General Sessions.

*These figures refer to serious misdemeanors within the jurisdiction of the U.S. Attorney. U.S. Docket numbers in Court of General Sessions adjusted to eliminate felony complaints.

arrest for offenses other than minor violations, 52 percent had 6 or more prior arrests, 26 percent had 11 or more prior arrests, and 65 percent had previously been institutionalized for their criminal conduct.[55]

There is no easy explanation for this decrease in felony prosecutions. The number of felony cases initiated and the resultant dispositions stem from the interplay of many factors affecting the prosecutor and the court, some within their control and some not. In attempting to analyze the decline in felony prosecutions during a period of rising crime, the Commission found none of the corrupting influences which have sometimes caused shifts in prosecutive policy in other jurisdictions.[56] Both courts and prosecutors are concerned with the problem and engaged in remedial action.

The range of possible explanations logically begins with police arrest practices. The proportion of prosecutions to arrests could fall materially if the police were making a number of improper felony arrests. We found, however, that the number of felony charges has not changed substantially and that there is no evidence of police "over-arresting" in felony matters. Although the police sometimes

TABLE 11.—*Types of crime involved in cases commenced—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Most serious crime charged	Defendants 1950		Defendants 1955		Defendants 1960		Defendants 1965	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Murder, 1st and 2d degree	46	2.0	41	2.6	63	4.4	95	5.9
Manslaughter	18	.8	16	1.0	12	.8	11	.7
Robbery	311	13.6	202	13.0	220	15.3	302	18.8
Assault	264	11.5	92	5.9	120	8.3	209	13.0
Burglary	395	17.2	274	17.7	200	13.9	253	15.8
Larceny and theft	280	12.2	136	8.8	91	6.3	75	4.7
Embezzlement	49	2.1	24	1.5	23	1.6	12	.7
Fraud	69	3.0	83	5.3	26	1.8	44	2.7
Auto theft	176	7.7	92	5.9	142	9.9	138	8.6
Forgery	194	8.5	149	9.6	128	8.9	92	5.7
Rape	27	1.2	45	2.9	55	3.8	47	2.9
Vice	6	.3	2	.1	5	.3	2	.1
Sex	72	3.1	31	2.0	20	1.4	17	1.1
Narcotics	57	2.5	164	10.6	155	10.8	107	6.7
Gambling	153	6.7	44	2.8	124	8.6	113	7.0
Weapons	------	-----	4	.3	5	.3	42	2.6
Miscellaneous	175	7.6	153	9.9	51	3.5	44	2.7
Total	2,292	100.0	1,552	100.0	1,440	100.0	1,603	100.0

Source: Staff computations based on data collected by C–E–I–R, Inc., from criminal jackets of the U.S. District Court.

use a broad interpretation of what constitutes assault with a dangerous weapon, most of these felony arrests are technically within the statute. Generally, we believe that the quality of police arrests has probably increased since 1950, due to the combined impact of improved police practices and closer judicial scrutiny.

Another possible explanation centers around changes in policy and practice in the United States Attorney's office. The decline in number of felony indictments might be attributable to a change in prosecutive policy which now combines several offenses in one indictment, thus reducing the total numbers. While this practice could account for some change, it does not account for differences exceeding 800 cases. Moreover, the same decline in felony prosecutions appears when defendants rather than cases are counted. The Administrative Office

between 1950 and 1963 reported defendants in a manner which excluded multiple counting of the same persons appearing in several indictments.[58]

In the course of our inquiry it became clear that some prosecutors considered recent developments in the criminal law as a cause for the decline in prosecutions.[59] Others were of the view that their own excessive caseload and court congestion and delay were causative factors.[60] These factors are, for the most part, unmeasurable. The prosecutor must, of course, make his decisions in accord with the law either as passed by Congress or interpreted by the courts, whether or not he agrees with it. In deciding which cases to file, the prosecutor may also be influenced by the greater expertise of defense counsel or the likelihood of appellate review. He may also make his decisions, however, in recognition of the fact that not all cases can be accommodated in the court system and that filing too many cases will defeat the public interest by increasing delays. To the extent that the prosecutor is influenced by congestion and delay, we believe that these are factors whose impact on felony prosecutions should be reduced, if not eliminated.

The effect of congestion and delay can be seen throughout the process. When courts are congested, the prosecutor must decide which cases most merit prosecution. Presentation of every case will only cause more congestion and jeopardize the serious cases. If the courts can handle only a fixed number of felony cases, the prosecutor understandably exercises his discretion accordingly. Similarly, if the trial calendar in the felony court is congested and delays are great, he may elect to proceed with a misdemeanor prosecution in the Court of General Sessions where a jury trial can be scheduled within 30 days,[61] even though the penalty is less severe. Such a decision may be the only alternative to losing the case in the event that witnesses are not available in 4 or 6 months when the case may eventually come to trial in the District Court.

Although many decisions not to prosecute are made for entirely unrelated reasons, there is evidence that some arrests are no papered because the courts are congested. The former Chief of the Court of General Sessions Division of the United States Attorney's office estimates that 25 percent of his cases were not prosecuted because of the crowded conditions of the court calendars.[62] Former Assistant United States Attorneys advised the Commission that they not infrequently exercised their discretion in the light of the number of cases which the judicial system could accommodate. Some asserted that only the more aggravated cases were being prosecuted in the District of Columbia because of shortages of personnel in the courts and in the United

States Attorney's office, resulting in burdensome and often unmanageable caseloads. Similar considerations have prompted decisions to prosecute cases as misdemeanors rather than felonies or to dismiss felony prosecutions even after they were initiated. Moreover, the prosecutors are keenly aware of the views of some judges on the number and type of cases which the court can handle as well as their views on "cheap" cases or "police court matters." [63]

Court congestion and similar factors also influence the prosecutor's decision to accept guilty pleas. When the calendar is crowded, pleas to lesser offenses increase, since the prosecutor negotiates on terms more favorable to the defendant in an effort to clear the calendar or make his own caseload more manageable. In cases commenced in calendar 1965 in the District Court, about 38 percent of all defendants in cases terminated were convicted by pleas to lesser or fewer offenses. This contrasts with 21 percent pleas to lesser offenses in calendar 1950 when cases were moving through the system more quickly (Tables 5, 8).

In fiscal 1965 the incidence of conviction for lesser offenses, whether by plea or verdict, was higher in the District of Columbia than in other Federal District Courts. Data from the Administrative Office show that 65.9 percent of defendants convicted in the District Court in the District of Columbia were convicted of the offense with which they were charged, whereas 99.6 percent were so convicted in the other Federal jurisdictions (Table 12). It is true that the mix of crimes in our court is not the same as in other Federal courts. However, by way of comparison with state courts, the State of California reports that 77.8 percent of the felony defendants in calendar 1965 were convicted of the most serious charge, 12.3 percent were convicted of lesser felonies, and 9.9 percent convicted of lesser misdemeanors.[64] In fiscal 1965 in the District of Columbia, 22.1 percent were convicted of lesser felonies and 11.8 percent of lesser misdemeanors.[65]

The Commission does not challenge the propriety of accepting guilty pleas to lesser offenses. We do believe, however, that decisions to accept such pleas should be made independently of considerations of acute court congestion and manpower shortages. Such guilty pleas have a direct impact on the sentencing decision of the judge, since they may lessen the range of judicial discretion as well as appear to be cause for lenient treatment. Sentences given in such a context may have an adverse effect on the rehabilitation of the offender. An official of the Lorton Youth Center has stated:

> A majority of our cases "cop a plea." That is, plead guilty to a lesser offense than the one for which they are charged. They naturally deny any wrong-doing, arguing that they pled guilty fearing conviction of a more serious charge. This widely used procedure has a demoralizing effect on our treatment efforts. As a general rule, we feel the inmate is guilty, usually of a more serious

offense than shows on the record, yet it would be prejudicial to proceed on that basis. The "copping out" procedure therefore casts confusion over the situation. The inmate begins the process of learning to get favorable action through untruthfulness.[66]

Congestion in the District Court also affects the disposition of cases which go to trial. Although the cases on the trial calendar were often complex, an Assistant United States Attorney frequently found that the Assignment Office had set three or four of his cases for the same day. In some instances one or more of these cases had to be tried by another prosecutor who substituted at the last moment. The assistant who, due to court scheduling conflicts, must try someone else's case often disposes of cases on an apparent weakness which further investigation might remedy.[67] Prosecutors are often faced with witness difficulties in the District Court because of congestion and workload.

TABLE 12.—*Defendants convicted of most serious offense charged in the U.S. District Court for the District of Columbia and in other U.S. District Courts*

[Fiscal year 1965]

	D.C. District Court			All other districts		
	Total defendants convicted	Convicted as charged		Total defendants convicted	Convicted as charged	
		Number	Percent		Number	Percent
Murder, 1st degree	22	9	40.9	11	2	18.2
Murder, 2d degree	24	2	8.3	1	0	------
Manslaughter	5	2	40.0	8	7	87.5
Robbery	198	120	60.6	607	606	99.8
Assault	75	38	50.7	159	156	98.1
Burglary	156	63	40.4	13	12	92.3
Larceny and theft	31	22	71.0	1,946	1,932	99.3
Embezzlement and fraud	------	------	------	1,412	1,400	99.2
Auto theft	111	68	61.3	5,018	5,015	99.9
Forgery and counterfeiting	40	33	82.5	3,214	3,167	98.5
Rape	18	2	11.1	------	------	------
Other sex	6	5	83.3	------	------	------
Narcotics	96	95	99.0	1,590	1,580	99.4
Gambling	82	75	91.5	92	86	93.5
Weapons	------	------	------	181	178	98.3
Other	117	112	95.7	14,505	14,499	99.9
Total	981	646	65.9	28,757	28,640	99.6

Source: Research and Evaluation Branch, Administrative Office of the U.S. Courts.

During one 2-week period, a prosecutor had one case with 8 prior continuances, two cases with 12 continuances, and one with 13 continuances.[68] Witnesses obviously become reluctant to cooperate in these circumstances and leave either the government or the defense without proof. The civic responsibility of appearing for trial often entails a financial sacrifice which cannot be absorbed repeatedly.[69]

The Commission is concerned by the decline in felony prosecutions and the effects of congestion on the disposition of cases in the District Court. Notwithstanding the increase in cases filed in fiscal 1966, the number of prosecutions is substantially less than it was from 1950 through 1954. Whether the comparison is made by cases, defendants, crimes charged, or arrests, the results are basically the same. Felony cases filed in the District Court in 1965 were 15 percent of the adult felony charges by the police (1,295 of 8,400), and felony defendants were 24 percent of the persons arrested for felonies reported by the police (1,526 of 6,266) (Table 9).

It is not possible, of course, to fix an arbitrary number of felony prosecutions as the optimum consistent with the demands of the judicial process and the protection of the community, nor is it possible to say precisely what proportion of the felony arrests should be prosecuted as felonies in the District Court. Prosecution of all persons arrested as felons is out of the question; the policeman making his arrest must decide on the basis of the facts immediately at hand, whereas the prosecutor, after consideration of all the facts and circumstances, may subsequently have good cause to dismiss the case or reduce it to a misdemeanor. The Commission believes, however, that some felons are not being prosecuted as such in the District for reasons unrelated to the merits of the case. We urge the United States Attorney and the judges of the District Court to collaborate in an effort to develop the most effective techniques for increasing the capacity of the District Court to process felony cases. Such an effort will enhance the deterrent effect of our criminal law, encourage vigorous police work, expedite the rehabilitative process for many young criminals who otherwise are slipping through the system, and contribute generally to an increased sense of public security.

Delay

Swift and certain justice is a virtually unchallenged goal. Witnesses should be heard promptly while their recollections are clear. Innocent persons should not remain in jail for substantial periods of time pending trial. Guilty persons should not profit from tardy court processes, which postpone final adjudication and provide an oppor-

tunity for committing additional offenses while awaiting trial. Notwithstanding the agreement on the goal of speedy justice, there is considerable professional debate on what constitutes "delay." [70] There must be a reasonable time interval for preparation by counsel between commencement and termination of a case, and some backlog of cases is thus inevitable.

Increase in Delay

The Commission has found excessive delay throughout the processing of criminal cases in the District of Columbia—in the handling of felony cases and misdemeanor cases at both trial and appellate levels. Delay in the handling of felony cases is a particular problem of concern to both the District Court and the U.S. Court of Appeals. Based on 1965 information, it appears that the time between indictment and appellate decision in felony cases which are appealed is about 1½ years.

Delay and backlog problems are an integral part of the court congestion which affects the input and disposition of felony cases in the District Court. A backlog of 913 cases and a 50 percent increase in triable cases have a pervasive impact on prosecutive and judicial decisions; the backlog affects the filing of new cases and the disposition of old ones. It is particularly significant when cases are basically scheduled in chronological order with preference assigned only to defendants in jail. When the backlog is large, the defendant on bail is assured of considerable time before there is a realistic trial date, at which time he may plead guilty exactly as he might have done months earlier, or he may seek a continuance which is often granted by a court cognizant of other defendants who are ready to proceed to trial. This serves to further congest the calendar with pending cases which might have been terminated but for the opportunity for delay due to the existing backlog.

Notwithstanding the priority given their cases, defendants who are not on bond spend substantial periods of time in detention awaiting action of the grand jury or court. In November 1966 the median time in jail awaiting court action after indictment by the grand jury was 3.2 months and the median time awaiting grand jury action was 1.3 months (Table 13). These medians, of course, do not fully reflect the extreme cases which demonstrate most dramatically the need for change. For example, on August 22, 1966 there were 9 persons awaiting District Court action who had been waiting a year or more and 56 others who had been waiting between 6 months and a year.[71]

TABLE 13.—*Time spent in the D.C. Jail awaiting indictment and action by the U.S. District Court*

Date of Computation	Action to be taken	Number of defendants	Time awaiting action		
			Average	Middle 80%	Median
Mar. 21, 1966	Grand Jury	161	1.1	.9	.9
	District Court	323	3.7	3.2	3.1
	Total	484			
Apr. 18, 1966	Grand Jury	152	1.7	1.6	1.6
	District Court	295	4.8	4.3	4.1
	Total	447			
May 2, 1966	Grand Jury	131	1.2	1.1	1.1
	District Court	332	4.3	4.0	3.8
	Total	463			
June 14, 1966	Grand Jury	105	1.0	.9	.8
	District Court	300	4.2	3.8	3.7
	Total	405			
July 11, 1966	Grand Jury	71	.8	.7	.7
	District Court	274	4.3	8.9	3.3
	Total	345			
Aug. 22, 1966	Grand Jury	99	.8	.7	.7
	District Court	219	4.5	8.8	3.5
	Total	318			
Sept. 19, 1966	Grand Jury	109	.7	.6	.6
	District Court	236	4.2	3.7	3.3
	Total	345			
Oct. 17, 1966	Grand Jury	98	1.2	1.1	1.2
	District Court	215	4.1	3.5	3.2
	Total	313			
Nov. 14, 1966	Grand Jury	75	1.3	1.3	1.3
	District Court	183	4.3	3.7	3.2
	Total	258			

Source: Staff computations based on data furnished by D.C. Department of Corrections.

The current time lapse of 4.8 months between indictment and termination in the District Court compares unfavorably with prior years in the District and with other jurisdictions. During many years in the late 1930's and as recently as fiscal 1950, the majority of the felony cases in the District were disposed of in about 6 weeks.[72] In the State of Ohio the median time between indictment and disposition for Part I offenses (felonies) in its trial court of general felony jurisdiction is slightly over 2 months.[73] In California the median time for felony cases in 1964 was 55 days (1.8 months); in Los Angeles County, which had the highest median in the state, the time lapse was 72 days (2.4 months).[74] California's experience reflects the impact of a statutory requirement of trial within 60 days after the filing of an indictment or information, unless the defendant consents to delay; failure to meet the time limitation results in dismissal of the case.[75]

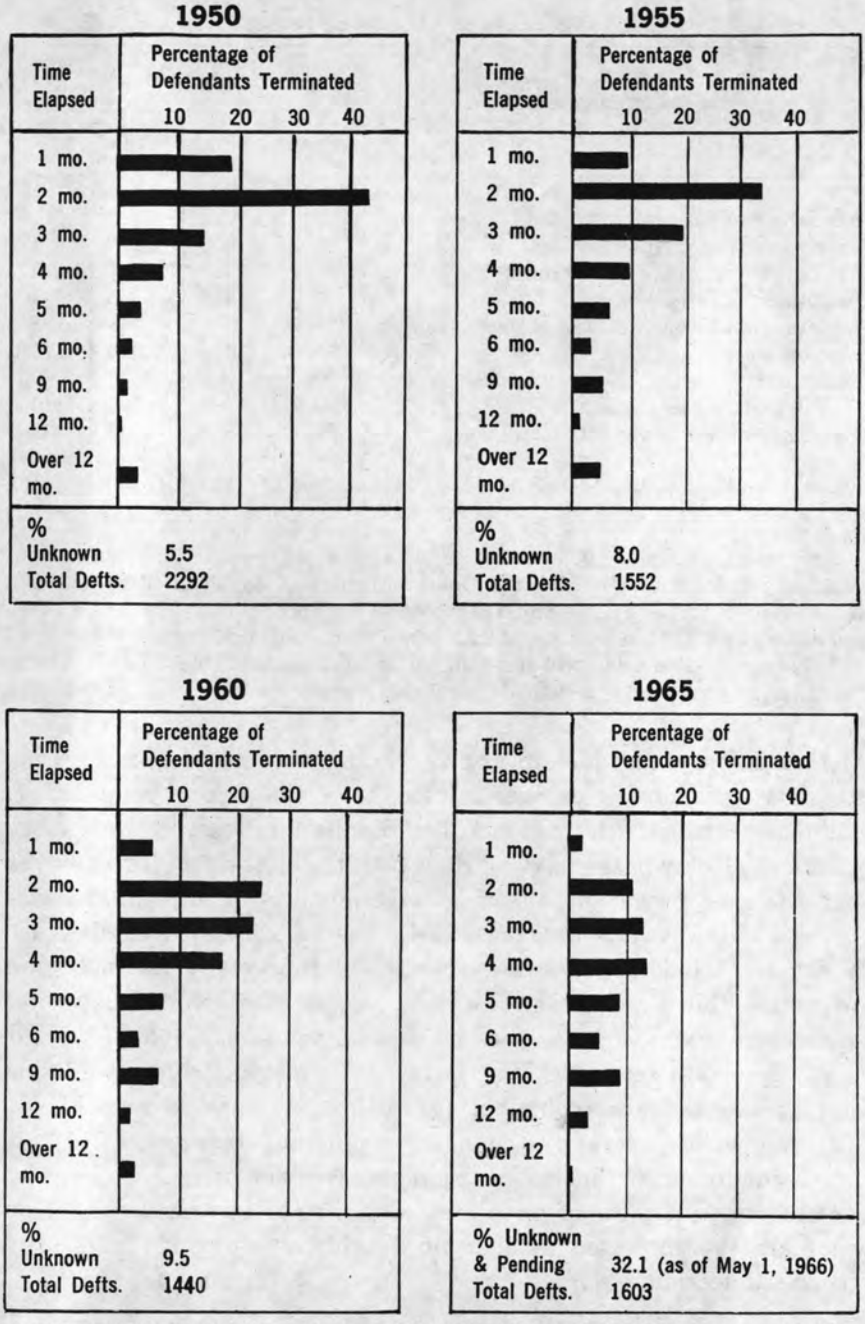
As shown in Figure 3, cases commenced in calendar year 1950 were tried promptly. Sixty percent were terminated within 2 months, and less than 6 percent were over a year old when terminated. Among cases commenced in calendar year 1965, however, only 12 percent were terminated in the trial court within 2 months and many of the cases are still pending. In September 1966 the United States Attorney reported 260 triable cases which were more than 6 months old.[76] In contrast, only 19 triable cases were more than 6 months old in July 1953.[77]

The greatest increases in delay in felony cases appear to have occurred between indictment and trial where the court has particular responsibility. Specifically, median time between indictment and trial court disposition exclusive of sentence nearly doubled between calendar years 1960 and 1965 (Table 14). The median between indictment and non-trial dispositions for cases commenced in 1960 was 39 days and the median between indictment and trial disposition was 60 days. For cases commenced in calendar 1965, these median figures increased to 74 and 116 days, respectively. There were also significant increases in the time before indictment, for which the United States Attorney is principally responsible, and the time between conviction and sentence, for which the Probation Department is principally responsible (Table 14).

Causes of Delay

No single factor or single institution is responsible for the serious delay which exists in the processing of criminal cases in the District of Columbia. Delay spreads throughout the system and its causes are

FIGURE 3.—Time elapsed from indictment to termination—U.S. District Court



Source: 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.

TABLE 14.—*Median time elapsed during the criminal process in cases commenced—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Stage of criminal process	Median days*			
	1950	1955	1960	1965
Arrest to presentment				
Presentment to preliminary hearing	2.0	0.0	1.9	4.1
Preliminary hearing to indictment	28.4	30.5	17.7	30.7
Indictment to arraignment	3.9	3.9	3.8	3.7
Indictment to non-trial disposition exclusive of sentence	25.0	39.0	39.0	74.0
Indictment to trial disposition exclusive of sentence	39.0	67.0	60.0	116.0
Conviction (plea or verdict) to sentence	21.7	23.0	36.6	38.0
Total defendants before trial court	2,292	1,552	1,440	1,603

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court and analyzed by the Institute of Defense Analysis for the Science and Technology Task Force of the President's Commission on Law Enforcement and Administration of Justice.

*Medians in this table will not add up to medians in Table 8 because these medians are computed on calendar, not fiscal, years.

not amenable to easy identification or documentation. In some courts, the increased number of cases appears to be the predominant factor, but in other courts delay has increased despite a decrease in the number of cases. Delay in the trial courts is both the most difficult to analyze and the most important, affecting large numbers of defendants, witnesses and law enforcement personnel. Increased delay in the District Court since 1950 appears to have resulted from many factors, some of which this Commission has been able to identify and measure. Based on our study of cases filed in calendar years 1950, 1955, 1960 and 1965, Table 15 sets forth the facts on 10 factors which might be hypothesized as causes contributing to delay: (1) Increased workload; (2) number of judges; (3) change in method of disposition; (4) increased motions; (5) increased trial time; (6) increased continuances; (7) increased number of appointed counsel; (8) increased change of counsel; (9) increased number of defendants on bond; and (10) increased retrials.

TABLE 15.—*Possible causes of delay in criminal cases—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Possible cause of delay	1950	1955	1960	1965*
1. Increased workload?				
Number of criminal cases filed	1, 866	1, 218	1, 105	1, 335
Number of civil cases filed	5, 614	5, 678	4, 203	3, 249
2. Number of judges?				
Number of authorized judges	15	15	15	15
Average number assigned to criminal cases	‡	‡	5. 2	5. 6
3. Change in dispositions?				
Percent of pleas	50. 1	56. 1	52. 6	52. 2
Percent of trials	26. 5	28. 5	32. 2	26. 1
Percent of jury trials	24. 8	26. 8	28. 9	18. 4
4. Increased motions?†				
Total motions	1, 799	2, 318	2, 641	2, 972
Percent of defendants making motions	47	63	63	69
Number of mental examinations granted	68	86	148	224
5. Increased trial time?				
Total defendants tried	625	437	479	335
Average trial days per defendants tried	1. 9	2. 1	2. 9	2. 8
Total trial days	1, 188	917	1, 389	938
6. Increased continuances?†				
Number of defendants in cases with continuances	397	306	492	568
Average days allowed per case with continuances	29	75	53	94
7. Increased number of appointed counsel?				
Percent appointed	32. 6	38. 4	52. 6	57. 3
Average days, indictment to sentence or discharge:				
Appointed	83	105	104	127
Retained	127	137	111	132
8. Increased change of counsel?				
Number of motions granted	2	9	24	46
9. Increased number of defendants on bond?				
Percent on bond	40. 2	32. 1	36. 8	48. 0
Average days, indictment to sentence or discharge:				
On bond	104. 2	153	111. 3	141. 9
In custody	62. 5	98. 1	101. 5	115. 8
10. Increased retrials?				
Number of new trials/mistrials	13	24	25	23

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

*All figures shown for calendar 1965 are probably understatements because 32.1 percent of the cases were still pending at the time of the study.

†Data probably do not record all motions or all continuances because motions handled orally in assignment court frequently do not appear on the criminal file jacket.

‡Information not available.

Some of these factors can be readily excluded from further consideration as causes of delay in the District Court. Delay is not attributable to an increase in the number of cases being brought before the court, since there has been a substantial decrease in both the number of criminal and civil cases filed in the court.[78] The number of judges has remained constant at 15, and there has been a slight increase in the amount of judge time assigned to criminal cases. Neither is delay attributable to any change in the basic method of disposing of the workload; the number of pleas of guilty has remained constant and the actual number of jury trials has decreased (Tables 4, 6).

TABLE 16.—*Average time, indictment to sentence or discharge—U.S. District Court*

[Calendar years 1950, 1955, 1960, and 1965]

Type of counsel at disposition	Average time in trial court							
	1950		1955		1960		1965	
	Days	Percent of defts.	Days	Percent of defts.	Days	Percent of defts.	Days	Percent of defts.
Retained	127	59. 5	137	54. 1	111	43. 2	132	35. 1
Appointed	83	32. 6	105	38. 4	104	52. 6	127	57. 3
None	-----	-------	-----	-------	45	. 1	298	. 1
Unknown	-----	7. 8	-----	7. 5	-----	4. 2	-----	7. 5
Time elapsed in District Court	100	2, 292	123	1, 552	109	1, 440	129	1, 603

Source: Staff computations based on data collected by C-E-I-R, Inc. from criminal jackets of the U.S. District Court.

The increased number of appointed lawyers in recent years appears to have had no discernible impact on delay. Cases handled by appointed counsel are disposed of slightly more expeditiously than those in which retained counsel appear (Table 16). There has, however, been a slight increase in cases which have to be retried.[79]

The increased number of defendants released prior to trial and the priority accorded to detained defendants is reflected in the different rate at which their cases are processed. In 1950 defendants who made bond were sentenced or discharged 104 days after indictment, compared with 62 days for those who did not make bond; the figures for 1965 were 142 and 116 days, respectively (Table 17). Between 1960 and 1965, however, the increase in delay for those who made bond is about twice the increase for those who were detained.

TABLE 17.—*Average time elapsed and bond status of defendant—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Bond status	1950		1955		1960		1965	
	Number of defendants	Days	Number of defendants	Days	Number of defendants	Days	Number of defendants	Days
Made bond	868	104.2	462	153.0	479	111.3	511	141.9
Bond set, not made	853	62.5	749	98.1	614	101.5	408	115.8
Unknown status or none set					35	29.5	53	6.5
Other unknown*	571		341		312		631	
All defendants	2,292	100	1,552	123	1,440	109	1,603	129

Source: Staff computations based on data collected by C-E-I-R, Inc. from criminal jackets of the U.S. District Court.

*One or both dates unknown.

Since 1950 the number of days required to try cases in the District Court has increased from 1.9 days to 2.8 days in 1965 (Table 18).

TABLE 18.—*Average number of trial days required in criminal cases—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Most serious crime charged	1950		1955		1960		1965	
	Defendants	Days	Defendants	Days	Defendants	Days	Defendants	Days
Murder, 1st and 2d degree	26	5.0	29	3.9	39	4.5	24	3.9
Manslaughter	10	2.0	11	4.0	5	4.2	4	3.0
Robbery	118	1.9	83	2.0	107	2.9	88	2.9
Assault	128	1.9	45	2.0	68	2.9	74	2.9
Burglary	92	1.0	66	2.0	61	2.0	49	1.9
Larceny and theft	68	1.9	31	2.0	24	3.0	13	1.5
Embezzlement	9	2.0	6	3.0	2	1.0	1	2.0
Fraud	10	1.9	20	7.2	3	5.0		
Auto theft	37	1.9	25	1.0	38	2.0	18	3.2
Forgery	10	1.9	8	2.0	23	2.7	6	4.3
Rape	10	1.9	19	4.0	21	2.6	14	7.7
Vice	4	1.9	1	1.0	3	5.0	2	3.0
Sex	26	1.9	13	2.0	13	2.0	4	1.3
Narcotics	15	1.9	49	2.0	53	4.2	15	2.6
Gambling	17	1.0			1	2.0	6	2.0
Weapons			1	2.0	2	4.0	10	3.1
Other	45	2.4	30	2.8	16	10.3	7	1.9
Total defendants	625	1.9	437	2.1	479	2.9	335	2.8
Total trial days required to terminate cases	1,188		917		1,389		938	

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

The increase in individual case time, however, has been accompanied by a decrease in the number of cases tried and in the overall number of days spent trying cases. Cases commenced in 1950 required 1,188 trial days, while cases commenced in 1965 have thus far required only 938 trial days. Even if all uncompleted 1965 cases were terminated by trial, the actual number of trial days would not exceed the 1950 figure (Table 5). Increased trial time, therefore, does not appear to be a primary factory in delay.

A comparison of motions filed in felony cases in these 4 years shows that 2,972 motions were filed in 1965 criminal cases compared with 1,799 motions in 1950 cases—an increase of 65 percent (Table 19). Recently, these motions have occurred slightly more frequently in the most serious cases (Table 19), and there appears to be a direct correlation between frequency of motions and total time between indictment and trial court disposition (Table 20). In 1965 when two or more motions were filed, time to disposition doubled. Thus, with no motions, time between indictment and trial was 74 days; with two or more motions, the time was 153 days. The type of motion also influences time. When a motion for mental examination is granted, the proceedings are effectively suspended for 60 days while the defendant is examined at Saint Elizabeths Hospital. Thus, among cases commenced in calendar 1965, 224 (14 percent) of 1,603 defendants had at least 60 days added to the time required to determine their guilt or innocence in the trial court (Table 21).

Increased continuances appear to be both a cause and an effect of delay in the District Court. The number of continuances granted has increased from 254 in 1950 to 1,093 in 1965—an increase of 330 percent (Table 22). In cases where continuances were granted, the average time allowed increased from 29 days in 1950 to 94 days in 1965. Two-thirds of the continuances were sought by the litigants, and the other third were attributable to the court and assignment commissioners. This suggests both dilatory lawyers and problems in the method of calendaring and assigning cases, including such matters as overloading the calendar and underestimating the actual time needed to terminate cases.

Court decisions and legislation regulating the conduct of trials and securing the rights of defendants have undoubtedly increased the amount of time required to process a criminal case in the District

TABLE 19.—*Frequency of motions and type of crime—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Most serious offense charged	1950				1955				1960				1965			
	Number of motions	Defendants making motions		Total defendants	Number of motions	Defendants making motions		Total defendants	Number of motions	Defendants making motions		Total defendants	Number of motions	Defendants making motions		Total defendants
		Number	Percent			Number	Percent			Number	Percent			Number	Percent	
Murder, 1st and 2d degree	71	22	47.8	46	112	34	82.9	41	203	45	71.4	63	247	73	76.8	95
Manslaughter	11	8	44.4	18	21	12	75.0	16	41	9	75.0	12	27	9	81.8	11
Robbery	247	139	44.7	311	304	114	56.4	202	394	142	64.5	220	626	223	73.8	302
Assault	193	118	44.7	264	107	46	50.0	92	209	78	65.0	120	388	142	67.9	209
Burglary	252	158	40.0	395	429	195	71.2	274	330	122	61.0	200	515	198	78.3	253
Larceny and theft	193	127	45.4	280	149	85	62.5	136	155	60	65.9	91	119	52	69.3	75
Embezzlement	26	20	40.8	49	23	14	58.3	24	14	10	43.5	23	6	4	33.3	12
Fraud	67	36	52.2	69	261	65	78.3	83	23	11	42.3	26	36	19	43.2	44
Auto theft	103	66	37.5	176	63	43	46.7	92	199	90	63.4	142	195	91	65.9	138
Forgery	132	109	56.2	194	150	98	65.8	149	157	66	51.6	128	106	58	63.0	92
Rape	25	15	55.6	27	76	24	53.3	45	135	40	72.7	55	129	33	70.2	47
Vice	4	3	50.0	6	6	2	100.0	2	8	3	60.0	5	6	2	100.0	2
Sex	96	47	65.3	72	42	22	71.0	31	45	16	80.0	20	32	14	82.4	17
Narcotics	49	33	57.9	57	269	122	74.4	164	439	107	69.0	155	218	74	69.2	107
Gambling	109	72	47.1	153	101	37	84.1	44	165	86	69.4	124	184	61	54.0	113
Weapons					6	4	100.0	4	11	3	60.0	5	70	29	69.0	42
Other	221	108	61.7	175	199	98	64.2	153	113	32	62.7	51	68	25	56.8	44
Total	1,799	1,081	47.2	2,292	2,318	1,015	65.4	1,552	2,641	920	63.9	1,440	2,972	1,107	69.1	1,603

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

TABLE 20.—*Median time from arraignment to disposition, exclusive of sentence, by number of pretrial motions filed—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

	1950		1955		1960		1965	
	Median time in days	Number of defendants	Median time in days	Number of defendants	Median time in days	Number of defendants	Median time in days	Number of defendants
Non-trial disposition	22	1,552	25	1,032	32	898	67	910
No motions	18	913	18	420	25	571	53	481
1 motion	25	571	32	530	60	228	81	266
2 or more motions	60	68	130	82	95	99	109	163
Trial disposition	36	607	53	329	53	338	102	255
No motions	32	429	39	173	39	182	74	108
1 motion	32	145	60	116	60	97	88	76
2 or more motions	109	33	123	46	123	77	153	81

Source: Data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court and analyzed by the Institute of Defense Analysis for the Science and Technology Task Force, President's Commission on Law Enforcement and Administration of Justice.

Court. Illustrative of such changes is the *Durham* decision in 1954,[80] which resulted in a substantial increase in mental examinations. Further illustration is found in Rule 42(e) of the Federal Rules of Criminal Procedure, which requires a pretrial hearing on motions to suppress evidence and permits renewal of the motion at trial. Similarly, appellate rulings relating to competency hearings appear to have affected the frequency with which this procedure is used.[81] Increased trial time has been used in implementing the *Mallory* rule[82] and Jencks Act.[83] When a confession is challenged under the *Mallory* rule, the court must hold a hearing out of the presence of the jury to determine the confession's admissibility.[84] Under the 1957 Jencks Act, trial time is frequently consumed while the court determines what prior statements of government witnesses must be produced for examination by defendant's counsel.[85]

This Commission is unable to measure the extent to which these legal changes have increased the time necessary for the disposition of criminal cases. These developments, among others, have contributed to the substantial increases in motions and continuances as well as to the less significant increase in trial time. The desirability of these developments, of course, cannot be assessed solely, or even principally, in terms of their contributions to increased delays in the prosecution of felony cases. Their impact on delay, however, suggests that greater priority should attach to efforts aimed at accommodating these judi-

TABLE 21.—*Frequency and disposition of selected motions—U.S. District Court*

[Calendar years 1950, 1955, 1960, and 1965]

Type of motion	Total		Known dispositions	Granted		Denied		Total		Known dispositions	Granted		Denied	
	Number	Percent		Number	Percent	Number	Percent	Number	Percent		Number	Percent	Number	Percent
	1950							1955						
Discovery	69	4.9	55	26	47.3	29	52.7	101	5.2	75	32	42.7	43	57.3
Mental examination	73	5.2	70	68	97.1	2	2.9	103	5.3	96	86	89.6	10	10.4
Suppress	61	4.3	50	17	34.0	33	66.0	108	5.6	92	20	21.7	72	78.3
Change counsel	3	.2	3	2	66.7	1	33.3	11	.6	12	9	75.0	3	25.0
Severance	9	.6	9	3	33.3	6	66.6	33	1.7	30	2	6.7	28	93.3
Post conviction remedies	304	21.5	239	101	42.3	138	57.7	599	31.1	541	105	19.4	436	80.6
Revoke probation	86	6.1	84	73	86.9	11	13.1	76	3.9	70	60	85.7	10	14.3
All others	807	57.2	792	704	88.9	88	11.1	795	41.3	897	713	79.5	184	20.5
Totals*	1,412	100.0	1,302	994	76.3	308	23.7	1,926	100.0	1,813	1,027	56.7	786	43.3
	1960							1965						
Discovery	208	10.7	42	25	59.5	17	40.5	332	16.6	65	29	44.6	36	55.4
Mental examination	189	9.8	159	148	93.1	11	6.9	274	13.8	250	224	89.6	26	10.4
Suppress	129	6.6	112	15	13.4	97	86.6	175	8.8	152	19	12.5	133	87.5
Change counsel	40	2.1	33	24	72.7	9	27.3	87	4.4	81	46	56.8	35	43.2
Severance	56	2.9	43	18	41.9	25	58.1	68	3.4	52	21	40.4	31	59.6
Post conviction remedies	588	30.3	465	121	26.0	344	74.0	346	17.7	298	162	54.4	136	45.6
Revoke probation	49	2.5	46	37	80.4	9	19.6	2	.1	1	1	10.0	0	0
All others	679	35.0	529	366	69.2	163	30.8	708	35.5	850	679	79.9	171	20.1
Totals*	1,938	100.0	1,429	754	52.8	675	47.2	1,992	100.0	1,749	1,181	67.5	568	32.5

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

*Excluding motions for bail and continuance.

TABLE 22.—*Analysis of continuance information—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Continuances	1950		1955		1960		1965	
	Number of defendants	Percent of continuances	Number of defendants	Percent of continuances	Number of defendants	Percent of continuances	Number of defendants	Percent of continuances
Granted to Government	26	10.2	39	14.3	239	29.2	270	24.7
Granted to defendant	62	24.4	133	48.9	385	45.4	484	44.3
Due to action of court or assignment commissioner without application of parties	166	65.4	100	36.8	224	26.4	339	31.0
Total continuances granted	254		272		848		1,093	
Average continuance time (days)	29		75		53		94	
Number of defendants affected by continuances	397		306		498		568	

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

cial and legislative requirements with the goal of expeditious handling of criminal cases. At the present time several eminent groups are engaged in studies of pretrial discovery,[86] and at least one United States Attorney is experimenting with the use of pretrial procedures (conferences and advance disclosure of evidence) in criminal cases as a device for eliminating delay.[87] The Commission endorses such efforts to make our criminal procedures more flexible so as to minimize delay.

This Commission has also concluded that lack of management expertise has contributed to delay in the District Court. Increased motions, increased trial time and other developments have not been handled with the most effective utilization of resources. Inefficiency manifests itself in several ways. It occurs when a judge is available to try a case but no case is ready due to calendar failure, late-filed motions or other exigencies which could be avoided. Similarly, it occurs when an unprepared prosecutor hastily substitutes for a colleague due to a scheduling conflict. Efficiency is not a matter of speed alone; it is a device for assuring that there is no denial of justice because of inordinate delays. It means developing ways to control continuances, utilizing the available trial days preceding holidays and during the summer, and creating a system which brings properly prepared litigants before the court.

Remedial Action

The District Court is already taking steps toward more efficient and effective calendar management. Under Rule 87, which was promulgated in June 1966 and became effective in October 1966, there is a ready calendar to which the United States Attorney must certify those cases which are ready for trial, and a reserve calendar which is automatically created on the 10th day after disposition of motions.[88] The rule also creates an accelerated schedule for processing criminal cases by setting a time for arraignment, requiring the filing of all motions within 10 days after arraignment, and specifying a hearing on motions within 2 weeks. Provision is also made for pretrial hearings. The District Court has also reduced the amount of official recess and summer vacation time [89] and called for assistance from the six retired senior judges in order to reduce the backlog.[90] We strongly support these steps and urge that District lawyers cooperate fully in adjusting to new schedules.

Although Rule 87 is an important advancement in the prompt processing of cases, it does not confront one basic aspect of scheduling—the method by which the daily trial calendar is scheduled. Despite provisions which eliminate many of the assignment court functions, the rule leaves the perennial problem of how to propose a trial calendar which makes maximum use of the available judges and other resources, avoids scheduling conflicts for prosecutors and defense counsel, and minimizes witness inconvenience. We recommend that the court undertake detailed and careful examination of the operations of the new rule and the scheduling under that system.

As an emergency matter the court should give its criminal calendar priority over the civil calendar to the extent of assigning at least several additional judges to criminal trials. We also recommend that more judges be assigned to criminal trials in all of the summer months except August. More generally, the Commission recommends that the District Court and the United States Attorney's office work closely together in resolving problems arising from the prosecution of felony cases in the court. Evaluation of Rule 87 should be a collaborative venture, since these matters vitally affect both agencies.

We recommend that the court and prosecutor cooperate in devising an experimental project which will select certain cases of high public risk for an expedited schedule. Such an expedited schedule might include presentment to the grand jury on the day of arrest or immediately following presentment or preliminary hearing in the Court of General Sessions. The action by the grand jury should be filed with the court

within 3 days. The United States Attorney should add any additional personnel necessary for the administrative duty of preparing the court papers immediately. Arraignment should occur no less than 3 days after indictment. For the expedited cases, motions should be filed within 10 days after indictment and disposition of the motions should occur within 3 weeks after indictment. Trial might then occur within 2 weeks after disposition of motions. The goal of this experimental project would be the processing of felony cases within an 8-week period.

Our concern with the prompt processing of felony cases should not be interpreted as a lack of concern for those time lapses within the process which are necessary for fair and adequate preparation. It should not obscure our equally great concern for the manner in which cases are being terminated. While non-trial disposition of cases may facilitate calendar management, we believe that pleas should not be encouraged for the purpose of clearing the calendar. The Commission recommends that the District Court and the United States Attorney be fully supported in their efforts to reduce congestion and provided with whatever additional assistance or resources prove to be necessary.

MISDEMEANOR CASES

Each year thousands of criminal cases are prosecuted in the District of Columbia Court of General Sessions by the United States Attorney and the Corporation Counsel. It is in this court that the judicial process has its greatest personal impact on the residents of the District. It is here that maintaining the quality of justice is most imperative, despite increasing numbers of cases, the speed with which they must be processed and the severely limited resources of the court.

COURT AND PROSECUTOR

The criminal jurisdiction of the Court of General Sessions extends to crimes for which the punishment does not exceed one year in jail and to all violations of municipal ordinances and regulations. This includes offenses ranging from unleashed dogs to rape charges which have been reduced to simple assaults. The court also has authority to determine probable cause for holding offenders who are charged with felonies for action of the grand jury.[91] Its civil jurisdiction includes controversies involving amounts up to $10,000 as well as domestic relations and small claims matters.[92]

The judges of the court are appointed by the President with the advice and consent of the Senate, for terms of 10 years. They receive annual salaries of $23,500 with the exception of the chief judge who receives $24,000.[93] During the last session of Congress, the authorized number of judges was increased from 16 to 21, but at the present time three posts are still vacant.[94] The court also has the services of a retired judge.[95] All except the three judges assigned to the Domestic Relations Branch hear criminal matters as designated by the chief judge.[96] Generally they serve in rotation in the various branches of the court and conduct criminal cases in these four branches: (1) The United States Branch, which processes most persons arrested on felony charges and disposes of most of the serious misdemeanor cases; (2) the District of Columbia Branch, which handles all violations of city ordinances exclusive of traffic violations; (3) the Traffic Branch; and (4) the Jury Branch, where any offense punishable by a fine of more than $300 or 90 days in jail may be brought for trial.[97] Judges assigned to the criminal branches work five days a week with Saturday and holiday sessions in effect in the U.S. Branch and the D.C. Branch. Vacations are limited to 30 days[98] and the judges average 212 days each year in the courtroom. The working day is slightly over 7 hours with about 4½ hours spent on the bench and 2¾ hours in chambers.[99] Since 1956, however, the annual number of working days has decreased by 13 days per judge.[100]

Prosecutions of the more serious criminal matters are the responsibility of the United States Attorney. His jurisdiction extends to all offenses except those of a municipal nature[101] and he annually proceeds before the court in over 7,500 misdemeanor cases and conducts the presentments and preliminary hearings in over 1,300 felony cases. He also brings before the court for its approval a number of arrest and search warrants and cases arising out of the 14,000 citizen complaints which he reviews.[102] He has 15 prosecutors assigned to these duties.[103]

The Corporation Counsel has 10 prosecutors assigned to the court and proceeds in all violations which are of a less serious nature.[104] A large portion of these are traffic, disorderly conduct or public intoxication matters. Many, however, relate to city regulations on housing, sanitation and employment. Over 70,000 cases are presented to the court by his office each year.[105]

The prosecutors assigned to this court are for the most part inexperienced. They are supervised by more experienced lawyers who serve as division chiefs in the Law Enforcement Division of the Corporation Counsel's office and the General Sessions Division of the United States Attorney's office.

PROSECUTIONS INITIATED

In fiscal 1966, 88,965 new criminal matters were filed in the Court of General Sessions. This represented a 9.4 percent increase over criminal cases in the preceding years and constituted 36 percent of the court's overall case filings of 250,112 (Table 23). Over the past decade the increase in criminal cases has exceeded that in civil cases. As shown in Table 23, the criminal calendar in fiscal 1965 increased 51 percent over 1955 while the number of civil cases increased by only 28 percent. The largest increase occurred in the U.S. Branch

TABLE 23.—*Criminal and civil cases filed in the District of Columbia Court of General Sessions*

[Fiscal years 1945–1966]

Fiscal year	Criminal Division				Total Civil Division	Total cases
	U.S. Branch	D.C. Branch	Traffic Branch	Total		
1945	5,762	15,428	15,656	36,846	62,296	99,142
1946	6,274	18,974	15,187	40,435	67,636	108,071
1947	7,979	21,085	17,635	46,699	78,871	125,570
1948	9,040	21,720	14,198	44,958	94,355	139,313
1949	8,559	24,940	14,582	48,081	101,098	149,179
1950	9,506	27,501	16,327	53,334	100,812	154,146
1951	8,241	27,701	17,253	53,195	102,407	155,602
1952	7,635	26,451	17,357	51,443	103,568	155,011
1953	9,168	29,318	18,897	57,383	111,103	168,486
1954	7,987	29,827	26,193	64,007	120,455	184,462
1955	6,529	30,613	16,608	53,750	120,616	174,366
1956	6,903	28,879	15,457	51,239	128,479	179,718
1957	8,045	31,595	17,130	56,770	141,360	198,130
1958	8,591	31,627	15,892	56,110	163,677	219,787
1959	8,742	32,534	16,947	58,223	147,710	205,933
1960	8,827	30,891	22,257	61,975	141,684	203,659
1961	8,694	31,720	23,009	63,423	142,975	206,398
1962	8,501	36,059	26,058	70,618	143,897	214,515
1963	9,533	38,367	28,797	76,697	148,046	224,743
1964	11,049	34,904	32,972	78,925	147,207	226,132
1965	11,676	35,988	33,643	81,307	154,228	235,535
1966	11,453	38,417	39,095	88,965	161,147	250,112
Percentage change:						
1945–1965	+103	+133	+115	+121	+148	+138
1955–1965	+79	+18	+103	+51	+28	+35

Source: Annual Reports for the District of Columbia Court of General Sessions and its predecessor, the Municipal Court for the District of Columbia (1945–1966.)

where cases involving more serious misdemeanors and felony hearings increased by 79 percent. There are, however, fewer accused persons before the court than the number of cases indicates, since many defendants are charged in three or four separate criminal complaints although they arise out of one incident.[106] Thus, the 11,676 cases filed in the U.S. Branch in 1965 actually involved only 9,462 defendants—an increase of 44 percent over the 6,576 persons before that branch of the court in 1955.[107] This increase is substantially less than the increase of 79 percent in papers filed in the U.S. Branch during the same period.

TABLE 24.—*Workload, Criminal Division—D.C. Court of General Sessions*

[Fiscal year 1965]

Criminal Branch	Adults arrested	Forfeitures	Cases filed
U.S. Branch:			
Felonies	6,266	----------	11,676
Misdemeanors	†6,358	----------	
D.C. Branch	66,619	----------	35,988
Traffic Branch*	103,148	‡94,854	33,643
Total	182,391	94,854	81,307

Sources: MPD Ann. Rep., 68 (1965) and Court Dockets, D.C. Court of General Sessions.

*Less parking violations, totaling 33,642 "arrestees," not reported as to age.
†Estimate based on information furnished by MPD Statistical Bureau.
‡Estimated from MPD records.

These prosecutions arise out of police arrests for matters which can be prosecuted to completion in this court as well as some felony matters which after initial presentment and preliminary hearing must proceed before the District Court. Although data deficiencies prevent a detailed reconstruction, Table 24 sets forth the known facts on the processing of police arrests and criminal prosecutions in the Court of General Sessions in fiscal 1965.

DISPOSITION OF MISDEMEANOR PROSECUTIONS

The Court of General Sessions does not publish statistics on the manner in which it deals with defendants coming before it. There are no accessible data which permit overall evaluation of plea rates, conviction rates and sentencing practices. Conclusion on these mat-

ters must therefore be based on observation and limited studies conducted by the Commission. It is obvious, however, that the court has a high rate of case mortality.[108] Many of its cases are disposed of by forfeitures of collateral and a large number are dismissed by the prosecutor.

Because of the serious nature of many of the offenses which are now prosecuted by the United States Attorney as misdemeanors, this Commission undertook a special study of dispositions of misdemeanors in the U.S. Branch of the Court of General Sessions. Figure 4, constructed from a sample of court dockets and police records, shows the manner in which misdemeanors prosecuted by the United States Attorney are reduced to conviction.

Available information does not reveal how many persons arrested on misdemeanor charges have their cases rejected or no papered at the initial screening by the prosecutor. Data indicate, however, that about 37 percent (2,826 of 7,583) of the persons who were initially charged with misdemeanors have their cases dismissed at a later stage of the proceedings by entry of a nolle prosequi (Table 25). Another 5 percent (407 of 7,583) of the misdemeanor defendants obtain dis-

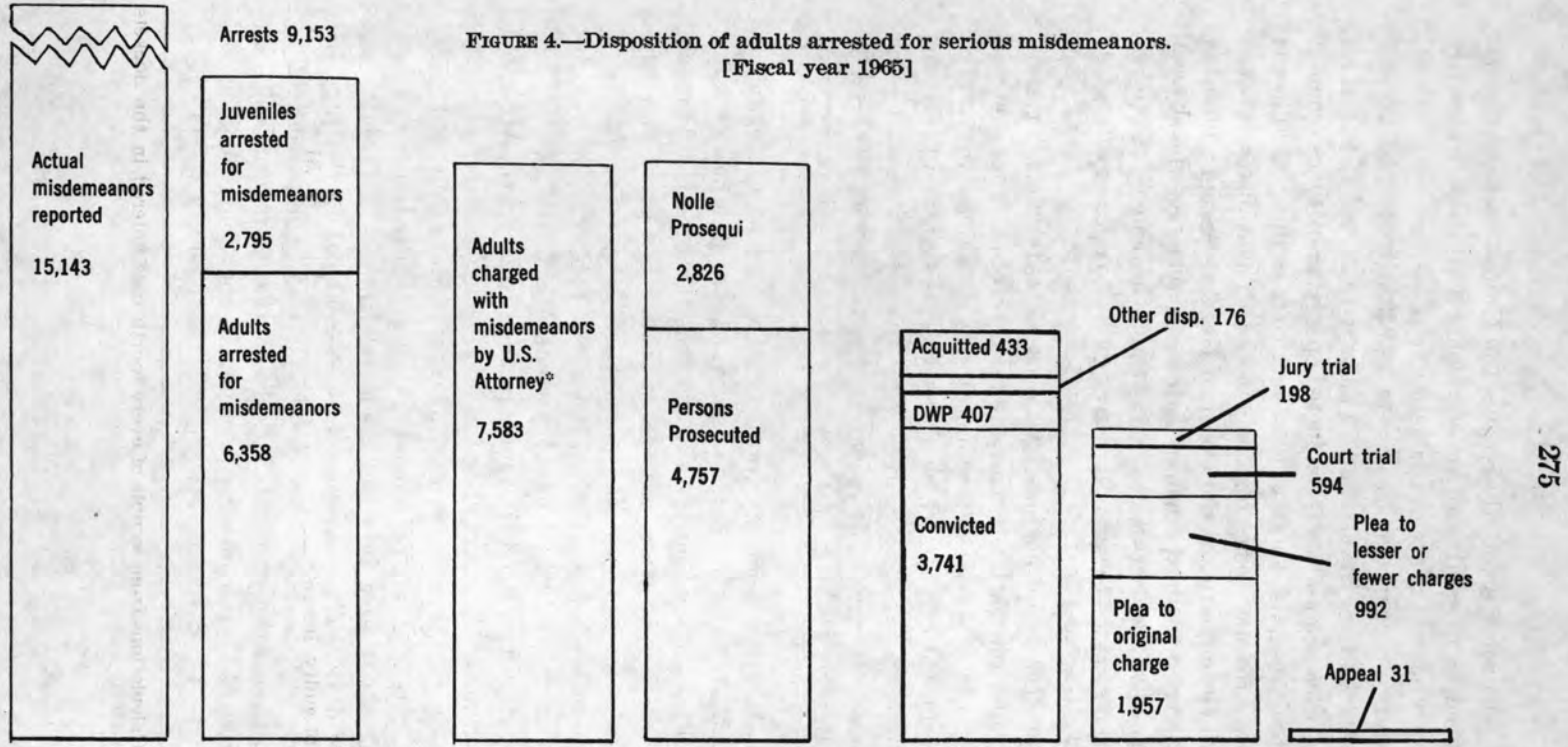
TABLE 25.—*Disposition of defendants charged with offenses prosecuted by the U.S Attorney—D.C. Court of General Sessions*

[Fiscal 1965]

Disposition	Number	Percent
Total defendants against whom informations were filed in U.S. Branch	7,583	100.0
Nolle prosequi	2,826	37.3
Dismissed by court for want of prosecution	407	5.4
Trial	1,225	16.1
Not guilty by court	307	4.0
Not guilty by jury	95	1.3
Guilty by court	594	7.8
Guilty by jury	198	2.6
Not guilty, insanity	31	0.4
Plea to original charge	1,957	25.8
Plea to lesser or fewer charges	992	13.1
Miscellaneous	176	2.3

Source: Calculations from sample of every fourth case entered in the dockets for the U.S. Branch of the Court of General Sessions in fiscal 1965.

FIGURE 4.—Disposition of adults arrested for serious misdemeanors.
[Fiscal year 1965]



*The number of adults against whom misdemeanor cases were filed is larger than the number of adults arrested for misdemeanors because of (1) 263 felony arrests referred from the U.S. Commissioner to the Court of General Sessions for prosecution as misdemeanors, (2) 350 such referrals from the grand jury, either by the grand jury or the U.S. Attorneys, and (3) an undetermined number of felony arrests which, upon screening by the Assistant U.S. Attorneys were reduced to misdemeanors.

Source: Constructed from staff computations based on public records and estimates, where necessary, as identified in text and footnotes.

missals from the court primarily because the United States Attorney is not prepared to proceed with prosecution. This most frequently occurs when witnesses are not available for trial.

Pleas of guilty account for 39 percent (2,949 of 7,583) of all case dispositions in the U.S. Branch and 79 percent (2,949 of 3,741) of all convictions. Plea negotiation is conducted openly, and defense counsel regularly obtain permission from the court to take their cases to the United States Attorney's office for this purpose. The Assistant United States Attorney in charge of the Court of General Sessions Division has offered advice to inexperienced defense lawyers on the process and advantages of negotiation.[109] After these "hearings", the prosecutor may be persuaded to accept a plea of guilty to a lesser offense, or even to enter a dismissal.

If a plea or dismissal is not entered, the case goes to trial. Trials in the D.C., Traffic and U.S. Branches are tried before a judge; only in the Jury Branch may the defendant receive a trial by jury. The number of criminal cases in which a jury trial is demanded has continued to increase, rising 255 percent over the past 20 years (Table 26); in contrast, all criminal cases increased by 121 percent (Table 23). The Jury Branch backlog has grown by even larger proportions (Table 26).

Jury demands now occur in approximately half of the criminal cases cognizable in the U.S. Branch (an average of 16 a day or 320 a month),[110] although how many of the demands from the U.S. Branch actually result in jury trials is undetermined. The great majority appear to be made only for the purpose of delay or to facilitate eventual appearance before a desired judge.[111] Table 25, however, indicates that in fiscal 1965 about 16 percent (1,225 of 7,583) of all defendants charged with misdemeanors by the United States Attorney were tried either to the court or to the jury. The United States Attorney tries roughly three times as many cases before a court as before a jury.[112] Court trials are perfunctory; they generally last only a few minutes. Trials by jury, however, are more elaborate and sometimes take several days. The conviction rate at trial before the jury in matters prosecuted by the United States Attorney is 68 percent (198 of 293) and the conviction rate before the court is 66 percent (594 of 901). Of the 7,583 defendants prosecuted in the Court of General Sessions by the United States Attorney in fiscal 1965, 3,741 (49 percent) entered pleas or were convicted after trial.

TABLE 26.—*Jury demands and backlogs—D.C. Court of General Sessions*

[Fiscal years 1945–1966]

Fiscal year	Criminal Division			Civil Division		
	Jury trials demanded	Cases disposed of in Jury Court	Cases pending at end of year	Jury trials demanded	Cases disposed of in Jury Court	Cases pending at end of year
1945	2,073	2,134	129	761	688	247
1946	2,196	2,142	183	*1,453	979	721
1947	2,515	2,441	257	1,642	1,532	831
1948	2,308	2,448	117	1,287	1,618	500
1949	2,165	2,128	154	1,250	849	901
1950	3,016	2,662	508	1,199	931	1,169
1951	1,792	2,146	154	906	1,364	711
1952	1,870	1,829	195	1,113	1,080	744
1953	1,845	1,766	274	†917	847	814
1954	2,370	2,342	302	920	1,150	584
1955	2,268	2,217	353	1,178	1,139	623
1956	2,402	2,517	238	1,229	1,288	564
1957	2,727	2,547	418	1,482	1,212	834
1958	3,533	3,612	339	1,921	1,635	1,120
1959	4,052	3,862	529	1,880	1,777	1,223
1960	4,082	4,224	387	1,805	1,920	1,108
1961	3,749	3,799	337	1,808	1,970	946
1962	4,670	4,296	711	1,761	1,733	974
1963	5,092	5,220	583	2,191	1,731	1,434
1964	6,049	6,043	589	2,620	1,624	2,430
1965	7,349	7,173	765	2,825	1,922	3,333
1966	8,242	8,173	834	2,763	2,194	3,902
Percent change:						
1945–1965	+255	+236	+493	+271	+179	+1.249
1955–1965	+224	+224	+117	+140	+69	+435

Source: Annual Reports for the D.C. Court of General Sessions and its predecessor, the Municipal Court for the District of Columbia (1945–1966.)

*During some year or years in the period 1943–1946, 50 cases were reinstated and do not appear in the "cases filed" columns of the annual reports. These 50 cases were added to the 1946 "cases filed" column.

†In 1953, 26 cases were "reinstated". These 26 cases were not carried with "total jury demands" for that year, but are added to the "cases filed" column.

CONGESTION AND DELAY

There is little alternative to processing criminal cases with assembly line speed in the Court of General Sessions. In fiscal 1966 the 4 judges regularly assigned to the criminal branches of the court pro-

cessed over 88,000 new cases. Many defendants spent only a minute or two before the court. Despite this speed, the court is also plagued with deleterious delays. Serious analysis of the problems, however, cannot be made without the aid of professional statistical assistance and the utilization of data processing techniques. Published records reflect almost exclusively cases in, cases out, and money collected.[113] Although the court plans improvement, detailed statistics are not now maintained, and outmoded docketing and filing systems make the limited records almost inaccessible.[114]

Over the past 16 years, it appears that the Court of General Sessions has been absorbing most of the increase in the adult crime rate in the District of Columbia. While prosecutions in the District Court declined, the prosecutions in the Court of General Sessions increased by nearly 100 percent (Tables 4, 23). The point has been reached, however, where the court's criminal caseload is unmanageable and is in fact impeding justice. As the Senate District Committee noted, "The volume of incoming cases . . . prohibits proper disposition of the cases in the normal way . . ." [115]

In part, the court's caseload reflects an increase of 29 percent over the past 10 years in the number of non-parking offenses resulting in police charges,[116] and the referral of cases from the District Court. In fiscal 1965 over 600 defendants were "returned" to the Court of General Sessions although it had been initially determined that they should be tried as felons.[117] These referrals result from action by the United States Attorney who, even before submitting a case to the grand jury, exercises his discretion to prosecute as a misdemeanor. On occasion the grand jury itself makes referrals. Other referrals occur upon action of the United States Attorney in matters before the U.S. Commissioner. In addition, there has been a significant increase in prosecutions of D.C. Branch violations (Table 23).

Excessive case volume, combined with insufficient numbers of judges, has contributed to inordinate delays in case disposition. Although the number of cases filed in the Criminal Division steadily increased in the period 1945–1965, there were no new judgeships until October 1966. Delay and congestion increased. Although neither the court nor the prosecutor's office maintains records which would reflect the average time between the filing of an information and final disposition, delay is particularly apparent before the U.S. and Jury Branches of the court. One survey showed that within a 2-week period, 338 criminal cases had been pending for longer than 4 weeks;

over 40 percent of those which were then pending before the Jury Branch subsequently received yet another continuance.[118]

Delay appears to commence with the jury demand, which until recent weeks assured at least a 30-day postponement.[119] Since the backlog of jury cases ranges as high as 1,500, the likelihood of further delay is substantial.[120] Accordingly, the trial calendar can be "played" for delay by defense attorneys. Although the oldest cases are given priority after jail cases, there is substantial manipulation possible when the daily calendar includes about 50 percent more cases than can be reached.[121] In addition, delay is compounded by poor scheduling techniques and by some continuances which are requested for the sole purpose of giving the lawyer time to collect his fee—"Rule 1" in the Court of General Sessions.

The effects of this congestion and delay are reflected throughout the prosecution of misdemeanor cases. Often they are most keenly felt by the forgotten man of the judicial process—the witness. Authorized a rarely collected fee of 75 cents a day,[122] witnesses frequently find involvement in criminal prosecutions in the Court of General Sessions a costly, time-consuming and frustrating experience. Illustrations of hardships inflicted are legion. One example is the day laborer who witnessed a theft and assisted the police in locating the thief. He appeared in court for the defendant's presentment, and thereafter appeared three different times for the trial, which was continued each time due to calendar congestion. On his fourth appearance the trial took place, and he testified for 10 minutes. The experience cost the witness 5 days' pay, and threatened him with the loss of his job.[123] Not unnaturally, many witnesses "see nothing" [124] or cannot be located again after one or two continuances of a case.

EVALUATION

The Court of General Sessions faces problems similar to those found in nearly every misdemeanor court in an urban center.[125] Like these courts it is absorbing many of the social ills of the community and finds that facilities and legal procedures designed for past decades are inadequate.[126] During the past several months attention has been focused on the Court of General Sessions by the public press and by studies of the U.S. Department of Justice, which have produced a number of excellent recommendations for improvement in the court. The recent addition of five new judicial positions to the court provides a new opportunity for reevaluation of its problems and the remedial action essential for their solution.

Instant Dispositions

Defendants who plead guilty or elect a trial by the court may on occasion be acquitted or begin to serve their sentences within a few hours after arrest. Justice is swift for those who do not seek trial by jury or receive presentence screening. In the D.C. Branch, for example, cases have been processed at a rate of 36,000 per year. The one judge assigned to this Branch must dispose of an average of 126 cases per day—at a rate of less than 2 minutes per case. On Mondays the drunkenness offenders alone numbered nearly 200; 9 of 10 pleaded guilty and were sentenced in less than a minute, and trials took only slightly longer.[127] The long range effect of the decision by the U.S. Court of Appeals in *Easter* v. *District of Columbia* [128] on the handling of public intoxication cases has yet to be felt, although the short-term impact has been to increase the number of offenders coming before the court. Cases in the Traffic Branch also proceed quickly; a large volume of cases are processed, trials are brief, and little time is spent in the disposition of each case.

In the U.S. Branch, where a lawyer represents each defendant, the process slows to some extent but cases can still be disposed of within a day after arrest. Most defendants are without retained attorneys, and the court assigns counsel at the first call of the calendar. The subsequent conference between counsel and client in the cell block behind the courtroom takes anywhere from 3 or 4 minutes to half an hour; a portion of it may be spent haggling over fees. A recent survey of the operations of the court indicates that on the basis of this conference 33 percent of the new cases were disposed of on the day they were initiated—10 percent with pleas of guilty on the first day they appeared in court.[129]

In all these proceedings justice is, at best, informal. All too often, they are conducted in a manner which makes the courtroom clerk appear to be the judge as he hastily calls cases and announces dispositions. The noise level is high and only those near the judge can hear the proceedings. The traffic of parties and witnesses moving in and out of the courtroom is constant and heavy; when a judge occasionally leaves the courtroom, his clerk may carry on in his stead.[130] In short, there is little opportunity both to do justice and to make the participants "feel and see that they are getting it." [131]

The court, in fact, operates in a manner not dissimilar from the misdemeanor courts criticized in the crime studies of the 1920's and 1930's.[132] The adverse effect has been noted:

The impression that prevails in society concerning the justice or injustice of our legal institutions depends almost entirely on the propriety, efficiency, and humaneness of observed trial court functioning.

* * * * * * *

When the young or petty offender's first encounter with the legal order takes the form of a mass shape-up, with each subject for adjudication taking his place in a long queue for split-second disposition of his case by a tired, bored, or irascible magistrate, the social effects can be disastrous.[133]

As one judge has pointedly observed:

We cannot continue to mete out thin, albeit speedy, justice without eventually weakening, perhaps destroying public confidence in the courts.

In all courts high and low, civil and criminal, respect for the administration of justice suffers a setback whenever a member of the public witnesses a display of instant justice, attended as it must too often be by haste, the harshness of manner and hardness of hearing for the voice of reason. In a democracy where the caliber of our courts should give us a distinct advantage in cold competition with dictatorship, conditions evoking disrespect cannot be countenanced.[134]

Dispositions Not Related to Case Merits

Throughout its inquiry into the administration of criminal justice, the Commission has been concerned with the factors which impede successful prosecution of criminal cases. In misdemeanor prosecutions, as in felony prosecutions, we find that many dispositions do not relate to the merits of the case, but are caused by delays, poor scheduling and excessive workloads in the prosecutor's office.

Specifically, in the Court of General Sessions as of June 30, 1966 there were 834 cases awaiting disposition by jury (Table 25) and the backlog of jury cases has been as high as 1,500 during fiscal 1966.[135] This state of the criminal calendar, coupled with general scheduling deficiencies, creates daily trial calendars far in excess of actual court capacity. Establishment of two jury calendars, each with a separate daily trial list, did not materially improve the situation. The average jury court assignment ranges between 15 to 20 cases except in the second jury court, where only 1 or 2 may be set because of a calendaring system which fills one calendar before assigning cases to the second calendar.[136]

Faced with more cases than can be tried, the prosecutor who is assigned to the court must make hasty decisions on which cases will be tried, where pleas can be accepted, and what continuances can be obtained. Often these decisions inure to the advantage of the defendant, as government witnesses tire of repeated, futile trips to court. None

of the cases can be well prepared. Some defendants must be released in order to make room on the court calendar for more pressing matters.[137] Not surprisingly, there is a correlation between delays caused by calendar congestion and a high rate of dismissals. Delays of 6 weeks were accompanied by a 31 percent dismissal rate; whereas delays of only 4 weeks had a lower 15 percent dismissal rate (Table 27). In all, congestion caused the no papering or dismissal of 25 percent of the office's cases which otherwise would have been prosecuted.[138]

TABLE 27.—*Disposition of continued cases, U.S. Branch and Jury Branch—Court of General Sessions*

[August 11 through August 24, 1965]

Criminal Division	Total continued cases	Nolle or DWP*	Disposed on merits	Continued again
U.S. Branch (ave. age: 4 weeks)--	211	32 (15%)	90 (43%)	89 (42%)
Jury Branch (ave. age: 6 weeks)--	178	55 (31%)	33 (9%)	90 (50%)

Source: Data furnished by U.S. Dept. of Justice and referred to in H.I. Subin, Criminal Justice in a Metropolitan Court, 76 (U.S. Dept. of Justice, 1966).
* Dismissed, want of prosecution.

The effects of excessive volume and poor calendar management also extend to plea negotiations. Nearly one-half of all pleas are pleas to lesser or fewer offenses (Table 25), even though an increasing number of serious cases which were initially charged as felonies now come before the court. Pleas to lesser offenses in turn reduce the sentencing discretion of the court and may suggest to the judge that the prosecutor found circumstances warranting lenient treatment. While the median sentence for all offenders is between 51–70 days, it is between 71–90 days for those who went to trial.[139] In this court as well as the District Court, the Commission believes that pleas and sentences should not be influenced by judicial or prosecutive desires to expedite the processing of a heavy volume of cases. Factors which are unrelated to the merits of a case should not induce a prosecutor to accept a plea of guilty to a lesser offense. Neither should the court be forced to control its calendar by pleas induced by prospects of light sentences.

Substantial efforts have been made recently to minimize the factors which cause dispositions unrelated to the merits. In October 1966 Congress authorized the appointment of 5 additional judges. The court has assigned an additional judge to sit on jury trials, initiated a

special Friday session for criminal motions, and amended its Rule 14 to limit continuances and to create an assignment branch to control the calendar.[140] The United States Attorney has developed new procedures to avoid some of the delays incident to presentation of cases referred back from the grand jury.[141]

These new procedures by no means exhaust possible adjustments in the processing of criminal cases which might aid elimination of congestion and delay. For example, recent proposals for the creation of a night magistrate would alleviate the morning congestion which promotes continuances in the U.S. Branch.[142] Similarly, the use of summons procedures by the Metropolitan Police Department and the United States Attorney would permit defendants to be scheduled into the court at selected times rather than being required to appear with all other defendants at one time.[143]

Additional judges and ad hoc measures, however, do not always solve the problems of congestion and delay. The more effective response appears to lie in improved court management and administrative techniques.[144] For example, if properly designed, the court's new electronic records system will permit analysis of the precise extent of delays in the court.[145] Such analysis has particular significance now that the court has additional manpower to be allocated to areas where delay and congestion can be cured. In addition, alternative methods of handling the more minor matters which crowd the criminal branches should be explored. For example, matters involving the minor traffic offender might be removed from the judicial process and transferred to an administrative setting. In addition, as we have suggested in chapter 7, serious consideration should be given to alternative methods of handling drunkenness offenders.

Resources

Misdemeanor cases and the Court of General Sessions have not received the attention which is urgently required. This neglect is wholly inconsistent with the importance of misdemeanor prosecutions in the lives of thousands of District residents. It is typified, however, by the annual appropriation of the court. This court—which handles 97 percent of all litigation, civil and criminal, in the District of Columbia—received an appropriation of about $2.2 million in fiscal 1966, about 25 percent of total expenditures for all city courts.[146] This appropriation was considerably less than the $4.7 million actually collected by the court in fines and fees in the preceding fiscal year.[147]

Judges

Justice ultimately rests on the availability of judges who are fair, diligent and competent. Until recent months, the Court of General Sessions had only four judges available to hear and decide criminal matters. The four judges assigned to criminal branches worked 5½ days a week with 30 days vacation time. Their average working day of slightly over 7 hours compared favorably with that of 37 Federal court judges from various parts of the United States who, on a special survey, reported an average working day of 7.27 hours in 1960.[148] However, there is plain need for additional judges in the Criminal Division and it is the view of this Commission that at least two of the five newly authorized judges should be assigned there.

It has at times been difficult to obtain outstanding men and women to serve on the court. The judges are not appointed for life. New judges are often obliged to relinquish established law practices, frequently far more lucrative than the position on the bench. The $23,500 salary is less than the $25,897 paid to government employees at the GS–18 level and less than the $30,000 paid to the United States District Court judges,[149] much of whose former jurisdiction now lies in the Court of General Sessions.[150]

The judicial resources of the court have often been limited by delays incident to judicial selection. In some instances, vacancies have gone unfilled for many months and on occasion for periods in excess of a year.[151] Whatever the cause for delay—be it lack of qualified candidates, lack of prompt advice to the President from the Department of Justice, or political disagreements—it should be overcome. At the present time, there are three vacancies on the court because all of the new judgeships created in October 1966 have not yet been filled.

Supporting Services

The Court of General Sessions has consistently not received the kind of supporting services it needs from prosecutors, defense counsel and probation officers. Despite the fact that it processes more cases than any other Washington court and vitally affects young adult offenders, it is regularly served by the least experienced or, in some cases, the least qualified persons.

The prosecutors appearing before the court are exceptionally able young men, but they are inexperienced in court practice. Although the division chiefs bear responsibility for training, much of the actual training for these prosecutors comes from the court itself, which must prevent error in the proceedings and guide the case to a fair result.

The business of the court moves with difficulty as new prosecutors learn trial techniques. After a few months training, these prosecutors are frequently rotated to other divisions and there is a new group waiting to be trained.[152]

Similarly, the younger lawyers among defense counsel often try their first cases in the lower court and they, too, require training and guidance from the court. There is also a group of General Sessions "regulars," some of whom serve the court and their clients very well. Others, however, require constant scrutiny and occasional discipline by the court. With some degree of frequency, the court is forced to hold defense counsel in contempt, thus detracting from the court's own image as a forum where defendants receive a fair trial and adequate representation.[153]

Probation services in the court, discussed in the next chapter, are also grossly deficient. In this vital area, where the court might serve as an agent of rehabilitation in preventing future crime, it is hampered by an understaffed office which prepares few presentence reports and operates on less than acceptable correctional theories.[154]

The court has also been without the services of an adequate number of court reporters.[155] Appropriations have not been sufficient to supply reporters to prepare records and otherwise facilitate the court's work.[156] At its last session, however, the Congress appropriated funds for 11 court reporters who will serve the five additional judges and replace the reporters temporarily financed during the past year by a grant from the Department of Health, Education, and Welfare.[157]

Even in the matter of witnesses, the court has less than adequate support. The authorized witness fee for this court is 75 cents a day,[158] compared with $4 in the District Court.[159]

Physical Facilities

The Court of General Sessions occupies two buildings constructed in 1938. A prediction that the court's facilities "would take care of Washington's expanding needs for at least a century" [160] has not proved accurate, to say the least. Less than 30 years later, the buildings are badly overcrowded. One judge has his chambers in a converted cell block, and two are quartered in offices in another building; court reporters have their desks in washrooms; probation officers are housed in the Civil Division building and records are stored in open corridors.[161]

The overcrowding generates an atmosphere of noise, confusion and frenzy, detracting from the dignity of the court and endangering the judicial process. Jurors mingle in the hall with lawyers, policemen,

bondsmen, and witnesses despite efforts of the court to keep them separated. Witnesses for whom there are no facilities lean against the wall discussing testimony, and are subject to importuning or harassment from litigants. Lawyers must confer with their clients in the halls or cell blocks.

In recognition of the urgent need to improve and expand the Court of General Sessions' physical plant, three essentially alternative proposals were put before the Board of Commissioners in May 1965: (1) The construction of a new building between the Civil and Criminal Division buildings to achieve 135,000 additional square feet of space at a cost of $2.5 million; (2) the construction of an addition to the Criminal Division building achieving 30,000 additional feet at a cost of $900,000; or (3) the acquisition of nearby land to construct an entirely new building at an estimated total cost of $10 million with a 1974 completion date.[162] None of these proposals has been approved.

Expanded court facilities must accommodate the needs of many participants in the judicial process in addition to judges. Witnesses and jurors should be provided with separate comfortable lounges. Conference rooms should be available to counsel and clients. Sufficient space should be afforded the offices of the Corporation Counsel and the United States Attorney. A room should be provided for police officers to prepare reports or, in the case of those who were on the midnight shift, to rest. Office space for the D.C. Bail Agency and the Legal Aid Agency will be necessary. The facility must accommodate new record-keeping machinery, including computers which require temperature-controlled conditions. An information center and a law library are essential.

The location and number of the new facilities have been debated. Advocates of decentralization suggest the dispersal of small court units throughout the city. It is argued that the court should be close to the people, and easily accessible at hours which accommodate working persons. Decentralization, however, runs counter to the recommendations of the bench and bar over the last 30 years [163] and to our recommendation in the next chapter for a central detention facility. It would also impede coordination between the police and courts. A centralized court facilitates night-time arraignment, and a proximity of buildings permits initial presentment and grand jury appearance on the same day that Court of General Sessions judges act as committing magistrate.

Remedial Action

During recent months community attention has been focused on the Court of General Sessions. Congress responded to the needs of the court and created five additional judicial posts. The U.S. Department

of Justice made a special study of the court. Grants from other agencies provided additional court reporting and probation services, and the court itself initiated many changes in the methods of handling misdemeanor cases.

Excellence, however, requires more than a few additional judges and money for patchwork programs. First and foremost, it requires consistent expenditure of more public funds for the benefit of the court. The court should not again experience years of inadequate services. Additional probation services and physical facilities are imperative. Funds are also needed to expand the services of the Legal Aid Agency in representing indigents before the court. Witnesses should be paid at least as much as the $4 received by District Court witnesses. Judges' salaries should keep pace with salaries paid other high government officials, and should be significantly increased. Money should also be available for social service units which, in cooperation with the court, can reach beyond apparent criminal behavior to basic causes.

Improvement, of course, does not depend on money alone. The court must have the benefit of exceptionally well qualified men and women as its judges. We urge that the three remaining vacancies on the court be filled promptly. Adding more judges beyond the 21 now authorized seems premature until we have assessed the effects of the present enlargement of the court and until the court has adequate management advice on processing its caseload. Further, the judicial needs of the court should not be assessed until this community considers judicial reorganization of all of its courts, civil and criminal, and until it carefully considers alternative methods of dealing with the traffic cases and other petty offenses which now crowd the Court of General Sessions.

More directly related to the court's current processing of its cases, the Commission recommends the following remedial action:

(1) A study of the court's calendaring problems should be undertaken by a team of judges, lawyers and professional management consultants for the purpose of devising a schedule of cases which provides both expeditious processing and opportunity for due consideration of each case.

(2) The trial of criminal cases should take precedence over civil cases, and such judges as may be necessary, including at least two of the five additional appointees, should be assigned to the criminal calendar until the backlog is reduced to a point where cases are actually terminated within 30 days, barring exceptional circumstances.

(3) Continuances in all cases which have been pending more than 20 days should be denied in the absence of a showing of extraordinary cause.

(4) The effectiveness of the new assignment court system should be evaluated on a continuing basis by collecting detailed data concerning time lapses between information and termination, number of continuances, rate of pleas of guilty, incidence of jury trial demands, and utilization of judicial time.

(5) Court rules should be amended to authorize the use of summons in lieu of an arrest warrant, and the return times on the summons should be used to spread the court workload over less busy hours of the day.

(6) A night court should be established to act as a committing magistrate on felony matters and to dispose of any criminal matters which do not require the presence of a jury.

(7) A sufficient number of the 11 new court reporters should be assigned to provide transcription of every criminal proceeding whether requested by the parties or not.

(8) The United States Attorney, the Corporation Counsel and the Legal Aid Agency should aid the court by assigning some *experienced* personnel to cases in the Court of General Sessions. The need for additional prosecutors and defense counsel should be appraised in light of the new calendar system and the applicability of the Criminal Justice Act.

(9) The discipline of lawyers before the court under Rule 76 should be undertaken with vigor.

(10) The court should encourage and facilitate disposition of cases by proper negotiation between defense counsel and prosecutors but should not participate in such negotiation by offers of leniency. Further, the court should require a statement of reasons when the prosecutor dismisses a case.

These recommendations by no means encompass all of the possibilities for improvement in the court and its supportive services. Rather, they are directed to the immediate question of prosecuting misdemeanor cases promptly and fairly in a court of justice which reflects credit on the District of Columbia.

APPELLATE REVIEW

Persons convicted of a crime after trial in the District of Columbia generally have the right to review of that conviction by a higher court. This right to appeal is a fundamental ingredient of our system of justice, aimed at ensuring that defendants have been

treated justly in the trial court. A growing percentage of defendants convicted in the District of Columbia are exercising their right of appeal to the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit. Decisions of these courts often have a pervasive impact on law enforcement and the administration of justice in Washington.

DISTRICT OF COLUMBIA COURT OF APPEALS

Jurisdiction and Organization

The District of Columbia Court of Appeals is an intermediate appellate court with both civil and criminal jurisdiction. Most of the court's criminal appeals occur in cases involving convictions for the more serious misdemeanors tried in the Court of General Sessions. Its judgments may be reviewed by the United States Court of Appeals on petition for allowance of an appeal.[164]

The court's predecessor, the Municipal Court of Appeals, was created in 1942 to provide "a simple, expeditious and inexpensive means of judicial review" in lieu of the procedures for writ of error to the U.S. Court of Appeals.[165] All criminal defendants sentenced by the Court of General Sessions to a penalty of $50 or more, or to any confinement, may appeal their convictions as a matter of right; those sentenced to less than $50 must apply for the allowance of an appeal.[166] In addition, any "party aggrieved by an order or judgment" of the Juvenile Court of the District of Columbia may appeal as of right,[167] and civil litigants may appeal most final judgments of the Court of General Sessions [168] as well as some orders and decisions of District of Columbia administrative agencies.[169]

The court is served by three judges appointed for 10-year terms by the President with the advice and consent of the Senate; the chief judge receives a salary of $25,000 and each associate judge receives $24,500.[170] One judge who has retired from active service also assists the court. In the event of vacancies or sickness, a judge of the Court of General Sessions may be designated to act temporarily as a judge of the D.C. Court of Appeals.[171] For the last 10 years the services of a retired judge of the court have obviated the necessity for such substitution.[172]

The rules of the court applicable to the appeal of criminal cases provide for: (1) Notice of appeal within 10 days after sentence; (2) designation of record and statement of errors; (3) preparation of the record, which may be a reporter's transcript, or an agreed statement of proceedings and evidence requiring concurrence of prosecution, defense counsel and trial judge, or counterstatements submitted to the

TABLE 28.—*Civil and criminal appeals—D.C. Court of Appeals*

[Fiscal years 1943-1966]

Fiscal year	Criminal appeals filed*					Civil appeals filed		Total
	U.S. Branch	D.C. Branch	Traffic Branch	Total				
				Number	Percent	Number	Percent	
1943	10	5	4	19	13.7	120	86.3	139
1944	9	9	2	20	14.2	121	85.8	141
1945	8	7	1	16	12.5	112	87.5	128
1946	3	6	4	13	9.2	129	90.8	142
1947	5	6	3	14	9.2	139	90.8	153
1948	9	5	3	17	11.4	132	88.6	149
1949	7	6	4	17	10.7	142	89.3	159
1950	4	7	3	14	13.9	87	86.1	101
1951	10	7	5	22	13.4	142	86.6	164
1952	15	2	4	21	14.9	120	85.1	141
1953	8	4	1	13	11.0	105	89.0	118
1954	7	20	2	29	17.4	138	82.6	167
1955	11	6	1	18	13.0	120	87.0	138
1956	20	5	3	28	15.8	149	84.2	177
1957	10	6	11	27	13.9	167	86.1	194
1958	26	2	5	33	17.2	159	82.8	192
1959	19	8	3	30	13.8	187	86.2	217
1960	32	14	5	51	24.5	157	75.5	208
1961	25	28	6	59	25.0	177	75.0	236
1962	23	27	10	60	27.0	162	73.0	222
1963	36	8	0	44	20.4	172	79.6	216
1964	29	20	7	56	26.5	155	73.5	211
1965	31	27	12	70	29.0	171	71.0	241
1966	40	55	17	112	38.0	183	62.0	295

Source: Staff computations based on Statistical Reports, D.C. Court of Appeals (1943–1966).

*The D.C. Court of Appeals counts appeals in terms of case numbers from the court below. Sometimes an appeal may involve one charge against several defendants or there may be several appeals representing multiple charges against one defendant. Interview with Newell Atkinson, Clerk of the Court, D.C. Court of Appeals, Sept. 19, 1966.

trial judge for signature; (4) exchange of briefs; (5) oral argument before the full court of three judges; and (6) decision of the court by either written opinion or order. The rules of court establish 10 days for preparation of record and 40 days for briefing.[173] There is no time specified from brief to argument or from argument to decision. Not all appeals proceed through the entire process; some are dismissed or abandoned, while others are submitted on briefs.

Workload

In fiscal 1966 the D.C. Court of Appeals entertained appeals from convictions on 112 charges (Table 28).[174] This number was a substantial increase in its workload and reflected the growing importance of its criminal work. Over the years its total workload has doubled, but its criminal appeals have increased fivefold. As a result, criminal matters now comprise more than one-third of its workload (Table 28).

Despite this increase, the workload of the court reflects only a small percentage of those eligible to appeal. A study of cases initiated in the U.S. Branch in fiscal 1965 revealed that only 4 percent (31 of 792) of the persons convicted by trial took appeals,[175] compared with about 90 percent of the persons convicted after trial in the District Court who appeal to the U.S. Court of Appeals. No data are available on appeal rates from the other branches of the Court of General Sessions.

The appeals tend to involve the most serious offenses cognizable in each criminal branch of the Court of General Sessions. As shown in Table 29, the charges of assault, larceny, carrying a dangerous

TABLE 29.—*Charges involved in criminal appeals—D.C. Court of Appeals*

[Fiscal years 1943–1965]

Charge	Number filed*	Percent of branch	Percent of total
United States Branch:			
Assault	48	18.4	7.9
Larceny	42	16.1	7.0
Carrying dangerous weapon	28	10.7	4.6
Unlawful entry	27	10.3	4.5
False pretenses	19	7.3	3.1
Uniform narcotics law	18	6.9	3.0
Prostitution	14	5.4	2.3
Destroying private property	10	3.8	1.7
Sex assault	9	3.4	1.5
Possession of number slips	9	3.4	1.5
Soliciting, lewd purposes	8	3.1	1.3
Negligent homicide	6	2.3	1.0
Possession of weapon	6	2.3	1.0
Threats	4	1.5	.7
Indecent publications	3	1.1	.5
Cruelty to children	3	1.1	.5
Receiving stolen property	2	.8	.3
Others	5	1.9	.8
Total	261	99.8	43.2

(Table continued on next page)

TABLE 29.—*Charges involved in criminal appeals—D.C. Court of Appeals*—Cont.

Charge	Number filed*	Percent of branch	Percent of total
District of Columbia Branch:			
Vagrancy	50	19.7	8.3
Disorderly conduct	47	18.5	7.8
Alcoholic Beverage Control Act	22	8.7	3.6
Indecent exposure	15	5.9	2.5
Indecent proposals or acts	12	4.7	2.0
Unlicensed rooming house	11	4.3	1.8
Disorderly house	9	3.5	1.5
Drunk	8	3.1	1.3
Tax violations	5	2.0	.8
Zoning regulation	4	1.6	.7
False report	2	.8	.3
Others	69	27.2	11.4
Total	254	100.0	42.0
Traffic Branch:			
Driving without valid permit	14	15.7	2.3
Drunk driving	13	14.6	2.2
Speed	9	10.1	1.5
Leaving scene of accident	8	9.0	1.3
Right of way	7	7.9	1.2
Stop sign	4	4.5	.7
Colliding	4	4.5	.7
Backing	2	2.2	.3
Safety zones	2	2.2	.3
Others	26	29.2	4.3
Total	89	99.9	14.8
Grand total	604	----------	100.0

Source: Staff research and computations based on records maintained by the Clerk of D.C. Court of Appeals.

*There is a discrepancy of 87 appeals between Tables 28 and 29 due to the difference between docket count and statistical report.

weapon, and unlawful entry constituted 56 percent (145 of 261) of the appeals from the U.S. Branch; these charges often represent reduced felonies and may receive maximum sentences. Similarly, most of the appeals taken from the Traffic Court involved the offenses with maximum penalties. Driving without a permit, driving while intoxicated, speeding, and leave the scene of an accident comprise 49 percent (44 of 89) of the cases. The high proportion (38 percent) of the disorderly conduct and vagrancy appeals from the D.C. Branch may be partially

accounted for by the high percentage of such charges filed in the lower court.

Delays and Backlogs

The number of criminal cases pending in the D.C. Court of Appeals has resulted from a general increase in new cases over the years and a sharp increase in the last year. In fiscal 1966 there were 112 appeals commenced compared with 70 appeals in fiscal 1965; the number of cases pending at the end of the year increased from 24 to 62 (Table 30). The percentage of cases terminated in 1966 fell to 54 percent of

TABLE 30.—*Criminal appeals pending—D.C. Court of Appeals*

[Fiscal years 1943–1966]

Fiscal year	Appeals commenced	Appeals terminated	Appeals pending at end of fiscal year	Percent appeals terminated*
1943	19	16	3	----------
1944	20	20	3	87. 0
1945	16	19	0	100. 0
1946	13	3	10	23. 1
1947	14	17	7	70. 8
1948	17	18	6	75. 0
1949	17	19	4	82. 6
1950	14	16	2	88. 9
1951	22	20	4	83. 3
1952	21	18	7	72. 0
1953	13	16	4	80. 0
1954	29	26	7	78. 8
1955	18	22	3	88. 0
1956	28	25	6	80. 6
1957	27	22	11	66. 7
1958	33	29	15	65. 9
1959	30	29	16	64. 4
1960	51	47	20	70. 1
1961	59	55	24	69. 6
1962	60	51	33	60. 7
1963	44	56	21	72. 7
1964	56	61	16	79. 2
1965	70	62	24	72. 1
1966	112	74	62	54. 4

Source: Staff computations based on Statistical Reports, D.C. Court of Appeals (1943–1966).

*Calculated by dividing appeals terminated by the sum of appeals commenced and appeals pending at the end of the previous fiscal year.

the cases before the court, significantly lower than the percentage which the court had maintained for the three prior years.

The increase in the number of criminal appeals has also been accompanied by an increase in the time required to process an appeal. For cases commenced in calendar 1943, the time in process was 132 days; it increased to a high of 261 days for cases commenced in calendar 1960 (Table 31). By calendar 1964, however, the time was reduced to 180 days. More recent data for 1965 and 1966 are not reliable, because of the large number of pending cases. It appears, however,

TABLE 31.—*Time elapsed in criminal appeals terminated by decision—D.C. Court of Appeals*

[Calendar years 1943–1964]

Calendar year commenced	Criminal appeals terminated by decision	Average time elapsed in days				
		From notice of appeal to filing of record	From filing of record to filing of last brief	From filing of last brief to hearing	From hearing to decision	Total time
1943	16	31	44	23	34	132
1944	6	54	51	22	40	168
1945	5	30	48	21	29	128
1946	9	25	49	19	28	121
1947	9	47	43	13	28	132
1948	15	58	62	24	26	164
1949	14	48	50	11	34	147
1950	12	41	64	10	28	143
1951	18	47	66	17	24	148
1952	10	45	51	18	29	142
1953	15	43	53	10	30	134
1954	10	51	56	6	29	142
1955	14	38	48	7	28	123
1956	20	40	69	17	48	175
1957	26	43	53	9	69	177
1958	20	40	46	20	90	192
1959	30	44	55	58	78	236
1960	33	44	66	94	54	261
1961	27	45	57	106	47	249
1962	22	34	61	90	44	228
1963	18	38	68	47	53	212
1964	37	47	52	25	54	180

Source: Staff computations based on records maintained by the D.C. Court of Appeals (1943–1964).

that an appeal to the D.C. Court of Appeals still adds at least 6 months to the criminal process.

Rates of Reversal

Since 1943 the D.C. Court of Appeals has reversed 20 percent (125 of 618) of the appeals disposed of after hearing or submission (Table 32). In no year were more than 14 criminal convictions reversed. The small number of criminal appeals in some years makes the rate of reversal deceptive; a 67 percent reversal rate in 1946, for example, resulted from two reversals. The 20 percent cumulative rate of reversal is identical to the rate of reversal in the U.S. Court of Appeals (Table 33).

Evaluation

The D.C. Court of Appeals has established a good record for decreasing the amount of time required to process criminal appeals, although 6 months is still a substantial addition of time to the entire process.

TABLE 32.—*Disposition of criminal appeals—D.C. Court of Appeals*

[Fiscal years 1943–1966]

Fiscal year	Appeals commenced	Appeals terminated	Appeals disposed without hearing or submission	Appeals disposed of after hearing or submission					
				Total	Affirmed	Reversed	Dismissed	Other	Percent reversed
1943	19	16	3	13	8	4	1	0	30.8
1944	20	20	2	18	11	5	2	0	27.8
1945	16	19	5	14	7	7	0	0	50.0
1946	13	3	0	3	0	2	1	0	66.7
1947	14	17	3	14	6	4	1	3	28.6
1948	17	18	7	11	11	0	0	0	----
1949	17	19	0	19	13	6	0	0	31.6
1950	14	16	4	12	6	5	0	1	41.7
1951	22	20	3	17	10	1	4	2	5.9
1952	21	18	3	15	10	4	0	1	26.7
1953	13	16	1	15	10	4	1	0	26.7
1954	29	26	6	19	15	4	0	0	21.1
1955	18	22	10	12	12	0	0	0	----
1956	28	25	9	16	13	1	1	1	6.3
1957	27	22	2	20	15	3	0	2	15.0
1958	33	29	0	29	22	7	0	0	24.1
1959	30	29	1	28	20	7	0	1	25.0
1960	51	47	4	43	36	6	0	1	14.0
1961	59	55	5	50	34	14	0	2	28.0
1962	60	51	12	39	25	14	0	0	35.9
1963	44	56	8	48	37	10	0	1	20.8
1964	56	61	9	52	44	5	2	1	9.6
1965	70	62	8	54	45	7	0	2	13.0
1966	112	74	17	57	45	5	1	6	8.8
Total	803	741	122	618	455	125	14	24	20.2

Source: Staff computations based on Statistical Reports, D.C. Court of Appeals (1943–1966).

TABLE 33.—*Rates of reversal, civil and criminal cases in the D.C. Court of Appeals and in the U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1943–1966]

Fiscal years	D.C. Court of Appeals				U.S. Court of Appeals			
	Criminal appeals reversed		Civil appeals reversed		Criminal appeals reversed		Civil appeals reversed	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1943	4	30.8	18	29.0	--	----	--	----
1944	5	27.8	23	28.4	--	----	--	----
1945	7	50.0	17	26.6	--	----	--	----
1946	2	66.7	26	31.3	--	----	--	----
1947	4	28.6	28	30.8	--	----	--	----
1948	0	----	25	30.1	--	----	--	----
1949	6	31.6	62	40.3	--	----	--	----
1950	5	41.7	35	38.5	1	5.9	54	24.2
1951	1	5.9	36	31.3	10	23.3	57	28.5
1952	4	26.7	39	36.4	9	17.3	56	22.3
1953	4	26.7	42	40.4	9	17.0	61	27.8
1954	4	21.1	33	28.9	18	24.7	85	36.3
1955	0	----	30	28.4	22	29.3	71	29.7
1956	1	6.3	31	25.4	18	28.6	76	27.6
1957	3	15.0	36	27.3	17	27.0	70	25.3
1958	7	24.1	51	34.5	13	15.9	96	30.3
1959	7	25.0	28	19.3	19	20.7	67	25.7
1960	6	14.0	37	26.6	22	24.4	71	26.9
1961	14	28.0	30	25.9	10	14.1	71	26.6
1962	14	35.9	41	28.3	15	19.5	70	28.1
1963	10	20.8	42	27.4	28	23.3	76	31.3
1964	5	9.6	35	16.0	24	17.7	55	20.8
1965	7	13.0	30	23.4	36	20.1	36	14.6
1966	5	8.8	(*)	(*)	23	14.9	71	24.1
Totals	125	------	†775	------	294	------	1, 143	------
Cumulative reversal rate–percent	------	20.2	------	†28.7	------	20.4	------	26.4

Source: Staff computations based on Statistical Reports, D.C. Court of Appeals (1943–1966) and Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

*Data not available.

†For 1943–1965 only.

With an increasing number of appeals in the last 2 years and a mounting backlog, it will be difficult to prevent even further delays. We are confident that these matters will receive prompt attention by the court, especially in light of recent developments which promise to result in more criminal appeals.

Analysis of the manner in which time was being expended in the disposition of appeals before the court revealed that the time specified in the court's rules was regularly exceeded (Table 34). Instead of the 8–10 days allowed by rule for preparation of record, the actual time has ranged from 1 to 2 months. In 1964 the 47 days elapsing in this period constituted more than one quarter of the overall time of 180 days. There has also been general failure in complying with the rules governing time for briefs. The other key factor is the time between hearing and decision, which in 1964 accounted for 30 percent of the total time lapse. We urge the court to require strict compliance with its rules and to consider the more frequent use of order decisions in affirmed cases.

One recent development affecting appeals by indigent defendants to this court is the decision of the U.S. Court of Appeals in *Tate* v. *United States*,[176] holding that Supreme Court rulings on indigent appeals from convictions in the District Court[177] are applicable to appeals from convictions in the U.S. Branch of the Court of General Sessions. Under the *Tate* ruling, indigent defendants are entitled

TABLE 34.—*Time elapsed at various steps of appellate process—D.C. Court of Appeals*

[Calendar year 1964]

Steps in process	Actual time	Time specified in rules
From order or judgment to notice of appeal.	Unknown	10 days.
From notice of appeal to filing of record in Court of Appeals.	47 days	8 to 10 days, depending on form of record.
From filing of record in Court of Appeals to filing of last brief.	52 days	40 days.
From filing of last brief to argument or submission.	25 days	None specified.
From oral argument or submission to opinion or order of the Court of Appeals.	54 days	None specified.

Source: Staff computations based on records maintained by the D.C. Court of Appeals and court rules.

to transcripts at government expense "in all cases in which the trial court proceedings in the United States Branch have been recorded by a court reporter," and it was implied that a court reporter must be available for all such proceedings.[178] The *Tate* opinion also criticized the practice of the D.C. Court of Appeals of appointing counsel to report whether an appeal sought by an indigent was meritorious or frivolous and then granting or denying leave to proceed in forma pauperis on the basis of the report:

> Indigent appellants in the D.C. Court of Appeals are entitled to representation by counsel acting . . . not as a passive friend of the court, but as a diligent, conscientious advocate in an adversary process. The D.C. Court of Appeals is required to enforce these standards by taking greater care than is evidenced in the two cases before us to assure that no appointed counsel is permitted to withdraw from an appeal unless he has satisfied the court that after thorough investigation of the facts of the case and research of all legal issues involved he has discovered no nonfrivolous issue on which an appeal might be argued. . . .[179]

The second recent development which influences the filing of appeals in the court is the ruling that the Criminal Justice Act applies to the U.S. and Jury Branches of the Court of General Sessions.[180] The act provides that "a defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance . . . through appeal."[181] It therefore appears that attorneys representing indigents in appeals to the D.C. Court of Appeals from convictions in the U.S. and Jury Branches will now be compensated under the Criminal Justice Act.

Our system of criminal justice must be prepared to handle increasing appeals with both due deliberation and due speed. As recent developments have an accelerating effect on the cases filed, we suggest that the D.C. Court of Appeals document its increasing workload and begin planning for whatever additional judges or supporting staff may be needed.

UNITED STATES COURT OF APPEALS*

The issues which come before the United States Court of Appeals are varied and frequently complex. They range over the whole gamut of problems which can arise in a criminal prosecution—problems relating to confessions, issues connected with the insanity defense, search

*The views of individual members of the Commission on issues discussed in this section are set forth at pp. 867–92, 924–29.

and seizure questions, the correctness of jury instructions, and prejudicial conduct by the trial court or prosecutor.

Inevitably, some appeals result in reversals of felony convictions, sometimes in cases where the crimes are vicious and the criminals incorrigible. The community is understandably disturbed when this happens. It is difficult for laymen to comprehend why a guilty man should go free or the government be compelled to retry him because of "legal technicalities." Reversals, particularly in flagrant cases, attract far greater attention from the press, police and public than the more frequent and less dramatic decisions affirming a conviction. Retrials take place long after the appellate decisions have left the impression that some criminals in the District of Columbia go free for reasons unrelated to guilt or innocence.

In the past several years, the U.S. Court of Appeals has been a target for criticism on the alleged ground that it reverses convictions too readily for insufficient cause, thereby contributing to a climate of permissiveness which encourages criminals to commit crimes. Much of the criticism in the newspapers and Congress is no harsher than that of some judges of the Court of Appeals who express themselves in dissenting opinions. Illustrative is the view of one dissenting judge that the "court's tendency [is] unduly to emphasize technicalities which protect criminals and hamper law enforcement. . . . In our concern for criminals, we should not forget that nice people have some rights too." [182] Similarly, the court's reversals have prompted recurrent criticism of its "tendency to require not merely a fair trial but a perfect trial." [183] On the other hand, the court has been championed in many quarters as a forceful agency of reform in the criminal law and for vigilantly implementing constitutional rights.

This Commission was not established to act as a special tribunal to review and evaluate the decisions of the Court of Appeals or any other court in the District of Columbia. A conscientious effort to examine the court's decisions would require far more than analysis of its written opinions; it could not be done without detailed examination of the records and briefs before the court in many cases, consideration of the relevant decisions of the Supreme Court, and appraisal of the court's responsibilities for supervising the administration of criminal justice in the District of Columbia. Moreover, the end product of such an inquiry would serve no useful purpose. The members of this Commission would probably be no more unanimous in their assessment of individual cases than are the several judges of the Court of Appeals. Just as we respect the right of dissent on this Commission, so also do we respect the integrity and sincerity of those judges of the Court of Appeals whose views may not coincide with those of some mem-

bers of this Commission, some members of the legal profession, or some citizens of this community. In view of the complexity, controversial nature and importance of the issues before the court, it is to be expected that judges on the court will disagree.

We have chosen instead to consider the court's performance in terms of certain other standards. We have attempted to ascertain if the number of reversals are excessive compared to other Federal circuits or, because this court's appellate jurisdiction differs markedly from others, excessive in themselves. We have examined the reasons for reversals and the subsequent dispositions of those reversed cases. Further, we have considered the time spent in processing an appeal, and we have attempted to determine whether decisions depend on the makeup of the panel of judges which hears the appeal. Justice should be prompt and certain because delay and divergent opinions produce disenchantment in the community and confusion among law enforcement authorities. By developing the facts pertinent to these issues, the Commission has attempted to make an objective and informed assessment of some of the operations of the Court of Appeals.

Jurisdiction and Organization

Persons convicted of crimes in the District Court may appeal to the U.S. Court of Appeals for the District of Columbia Circuit, whose criminal jurisdiction extends also to those criminal matters which it consents to hear from the D.C. Court of Appeals.[184] The court's civil jurisdiction includes appeals in all civil cases decided in the District Court, numerous cases of direct appeal from the rulings of Federal agencies, and civil matters which it consents to hear from the D.C. Court of Appeals.[185]

The court at full strength has nine judges in active status who are appointed for life by the President with the consent of the Senate.[186] There are also five senior circuit judges retired from active service who perform such judicial duties as they are willing and able to undertake.[187] The court normally sits in three-judge panels drawn by lot by the Clerk of the Court, but by a majority vote of the active judges the court may elect to hear a case en banc with all active judges and qualified senior circuit judges sitting.[188]

The Federal rules require that criminal appeals proceed on an accelerated schedule and receive priority over civil cases.[189] The procedures on appeal contemplate (1) a notice of appeal, which must be filed in the District Court "within 10 days after the entry of the judgment or order appealed from";[190] (2) preparation of a record of proceedings before the trial court; (3) an exchange of written briefs by the parties;

(4) an oral argument before a three-judge panel of the court; (5) a decision of the court by written opinion or order; and (6) a petition for rehearing or rehearing en banc.[191] Forty days are allowed for preparation of the record and 65 days for briefing;[192] there are no limits on the length of time from final brief to argument, or from argument to decision.[193] All appeals do not proceed through the entire process; some are dismissed or abandoned prior to decision, and others are submitted on briefs without oral argument. All persons taking appeals are represented by counsel.[194]

Workload

Number of Cases

In fiscal 1966, 252 criminal appeals were filed in the U.S. Court of Appeals, an increase over the prior year and a continuation of the trend toward more criminal cases (Table 35). Criminal appeals now constitute 32 percent of the court's workload and in recent years have increased substantially in comparison with civil appeals. Criminal appeals increased by 196 percent from 1950 to 1965 while civil appeals increased by 27 percent (Table 35). By contrast, in other Federal courts of appeals there has been a 429 percent increase in criminal appeals and a 139 percent increase in civil appeals since 1950.[195]

At the present time about 90 percent of eligible persons appeal their convictions to the court. The 252 appeals filed in fiscal 1966 represented 93 percent of all defendants convicted by trial in the District Court in that year. As shown by Table 36, the percentage of those appealing increased gradually from 20 percent in 1955 to 36 percent in 1960, and more than doubled between 1962 and 1965. The rapid increase in recent years is probably attributable in part to recent judicial decisions which have made appeals by indigent persons more widely possible.[196]

The increase in the number of criminal appeals has been accompanied by an increase in the cases which require oral argument or submission of briefs.[197] Although the percentage of cases requiring hearing or submission of briefs or memoranda for decision has not changed substantially, the total number has increased 953 percent over 1950 (Table 37). There has also been a substantial change in court workload due to an increase in the number of hearings en banc. In 1950 civil and criminal cases resulted in only three petitions for hearings by the entire court and two such hearings were held; in 1965 there were 166 petitions and 8 en banc hearings were held.[198] Among the

TABLE 35.—*Appeals in civil and criminal cases—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1950–1966]

Fiscal year	Criminal cases filed		Civil cases filed		Total cases filed
	Number	Percent	Number	Percent	
1950	80	18.4	354	81.6	434
1951	52	13.2	342	86.8	394
1952	91	21.0	343	79.0	434
1953	101	24.0	320	76.0	421
1954	97	20.6	375	79.4	472
1955	71	16.2	366	83.8	437
1956	94	17.5	443	82.5	537
1957	97	19.5	401	80.5	498
1958	107	22.5	369	77.5	476
1959	135	25.0	405	75.0	540
1960	100	19.8	405	80.2	505
1961	91	17.3	436	82.7	527
1962	136	20.8	517	79.2	653
1963	200	25.3	591	74.7	791
1964	251	34.1	484	65.9	735
1965	237	34.6	448	65.4	685
1966	252	31.6	545	68.4	797
Percent change:					
1950–1965	+196		+27		+58
1955–1965	+234		+22		+57
1960–1965	+137		+11		+36

Source: Administrative Office of U.S. Courts, Ann. Reps. (1950–1966).

four en banc criminal cases which were decided in fiscal 1965, there were two affirmances, one reversal and one remand.[199]

The crimes involved in these appeals are for the most part serious ones. In 1965 crimes against the person, such as homicide, rape, robbery, and assault, comprised 51 percent of the cases in the Court of Appeals for the District of Columbia, compared to only 8 percent in the other Federal appellate courts (Table 38). The "white collar crimes" of embezzlement, fraud, forged securities, and counterfeiting accounted for 27 percent of the criminal appeals in other circuits but only 8 percent in the District of Columbia. This mix of crimes in the U.S. Court of Appeals for the District of Columbia Circuit parallels the mix in the District Court and reflects the unique status of the District of Columbia.[200]

TABLE 36.—*Defendants filing criminal appeals—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1950–1966]

Fiscal year	Defendants convicted after trial in the U.S. District Court	Criminal appeals filed in the Court of Appeals	Percent commencing appeals
1950	437	80	18.3
1951	383	52	13.6
1952	365	91	24.9
1953	464	101	21.8
1954	476	97	20.4
1955	353	71	20.1
1956	359	94	26.2
1957	352	97	27.6
1958	392	107	27.3
1959	373	135	36.2
1960	275	100	36.4
1961	317	91	28.7
1962	337	136	40.4
1963	288	200	69.4
1964	298	251	84.2
1965	265	237	89.4
1966	272	252	92.6
Percent change:			
1950–1965	−39	+196	----------
1955–1965	−25	+234	----------
1960–1965	−4	+137	----------

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

Backlog and Delay

The number of criminal cases pending in the U.S. Court of Appeals at the end of the fiscal year has increased at a faster rate than the number of new criminal appeals. As shown in Table 39, the backlog remained fairly constant from 1950 until 1962, but increased rapidly in the last several years. At the end of fiscal 1966 there were 170 pending cases, and the court had terminated only 58 percent of its criminal cases. In fiscal 1965 in the District of Columbia, the average time for disposition of a criminal appeal after filing of notice of appeal was 257 days (Table 40); some appeals had been pending for more than a year. Specifically, there were 52 appellants whose cases

TABLE 37.—*Method of terminating criminal appeals—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1950–1966]

Fiscal year	Criminal appeals terminated	Terminated without hearing or submission*		Terminated after hearing or submission	
		Number	Percent	Number	Percent
1950	50	33	66.0	17	34.0
1951	68	25	36.8	43	63.2
1952	84	32	38.1	52	61.9
1953	91	38	41.8	53	58.2
1954	98	25	25.5	73	74.5
1955	98	23	23.5	75	76.5
1956	88	25	28.4	63	71.6
1957	90	27	30.0	63	70.0
1958	104	22	21.2	82	78.8
1959	132	40	30.3	92	69.7
1960	120	30	25.0	90	75.0
1961	91	20	22.0	71	78.0
1962	108	31	28.7	77	71.3
1963	162	42	25.9	120	74.1
1964	190	56	29.5	134	70.5
1965	257	78	30.4	179	69.6
1966	235	81	34.5	154	65.5
Percent change:					
1950–1965	+414	+136	----------	+953	----------
1955–1965	+162	+239	----------	+139	----------
1960–1965	+114	+160	----------	+99	----------

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

*Cases terminated without hearing or submission include those dismissed by the parties, by order of court, or by consolidation with other cases.

took over 1 year to terminate; 12 had been pending in the Court of Appeals for over 18 months, and 6 had been pending for 2 years.[201]

Between 1959 and 1965, as the number of criminal cases before the Court of Appeals increased by 95 percent, the average time required to dispose of cases after the filing of the notice of appeal increased by 36 percent (68 days). As a result, the total average time to dispose of a criminal case from indictment in the District Court to disposition by the appellate court was 508 days (Table 40). The increased time for appellate procedures is attributable largely to increased time for briefing and decision. The average time from notice of appeal to docketing of appeal has decreased from 32 to 17 days (47 percent),

while the briefing time between docketing of appeal and argument or submission has increased by 48 days (38 percent) and the time awaiting judicial decision has increased 27 days (66 percent).

It is unclear whether the increase in time from docketing to argument was due to delays in the preparation of court reporters' transcripts or in the preparation of briefs by counsel. Table 41 presents data on the submission of briefs, available only for fiscal year 1965, which suggest that the 65-day limit for filing briefs was being exceeded. However, a 10 percent sample of the cases terminated during the year showed that the average time from docketing an appeal to completing the record by filing a transcript was 48 days. The time for filing of briefs does not begin to run until the record on appeal, including the transcript, is filed.[202] It may be, therefore, that Table

TABLE 38.—*Offenses involved in criminal appeals—United States Courts of Appeals*

[Fiscal year 1965]

Nature of offense	District of Columbia		Other Federal circuits	
	Number	Percent	Number	Percent
Homicide	15	6.3	5	0.5
Robbery	83	35.0	65	6.6
Assault	12	5.1	9	.9
Burglary	33	13.9	12	1.2
Larceny and theft	6	2.5	69	7.0
Embezzlement	----	----	18	1.8
Fraud	14	5.9	176	17.8
Auto theft	7	3.0	69	7.0
Transportation of forged securities	----	----	26	2.6
Forgery	6	2.5	23	2.3
Counterfeiting	----	----	21	2.1
Rape	12	5.1	2	.2
Other sex offenses	3	1.3	23	2.3
Narcotics	33	13.9	202	20.5
Miscellaneous general offenses	11	4.6	69	7.0
Immigration laws	----	----	3	.3
Liquor, Internal Revenue	----	----	71	7.2
Federal statutes	2	.8	123	12.5
Total	237	99.9	986	99.8

Source: Administrative Office of the U.S. Courts, Ann. Rep., 172–73 (1965).

TABLE 39.—*Criminal appeals pending—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1950–1966]

Fiscal year	Cases commenced	Cases terminated	Cases pending at end of fiscal year	Percent of cases terminated*
1950	80	50	†74	40.3
1951	52	68	58	54.0
1952	91	‡91	58	61.0
1953	101	84	75	52.8
1954	97	98	74	57.0
1955	71	98	47	67.6
1956	94	88	53	62.4
1957	97	90	60	60.0
1958	107	104	63	62.3
1959	135	132	66	66.7
1960	100	120	46	72.3
1961	91	91	46	66.4
1962	136	108	74	59.3
1963	200	162	112	59.1
1964	251	190	173	52.3
1965	237	257	153	62.7
1966	252	235	170	58.0
Percent change:				
1950-1965	+196	+414	+107	----------
1955–1965	+234	+162	+226	----------
1960–1965	+137	+114	+233	----------

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

*Calculated by dividing appeals terminated by the sum of appeals commenced and appeals pending at the end of the previous fiscal year.

†There were 44 cases pending at the start of fiscal 1950.

‡In 1953, the Administrative Office started counting cases in which judgment was rendered as terminated. As a result, 7 cases more than the number reported in the 1952 Annual Report were terminated in that year.

41 overstates the time delay which can be attributed to the filing of briefs.

The Commission urges that the U.S. Court of Appeals make every possible effort to expedite the handling of appellate cases. Administrative procedures should be established by the Court of Appeals and the District Court to assure appointment of counsel for the indigent defendant no more than 5 days after notice of appeal. The parties to criminal appeals should be required to adhere strictly to the limitations on time for filing notices of appeal, records on appeal and briefs; extensions should be granted only for substantial cause.

TABLE 40.—*Average number of days elapsed in criminal appeals—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1959–1965]

Fiscal year	Number of cases terminated in Court of Appeals			Time elapsed (days)								
				Notice of appeal to termination of appeal			Notice of appeal to docket of appeal			Docket of appeal to submission or argument	Argument or submission to decision	Indictment to termination
	Total	Hearing or submission	No hearing or submission	Total	Hearing or submission	No hearing or submission	Total	Hearing or submission	No hearing or submission			
1959	132	92	40	189	212	158	32	29	54	128	41	471
1960	120	90	30	218	245	135	33	35	27	139	64	576
1961	91	71	20	187	196	145	29	29	29	96	50	480
1962	108	77	31	207	215	176	35	36	32	125	48	409
1963	162	120	42	215	227	183	29	29	30	149	47	493
1964	190	134	56	212	231	185	22	20	27	156	43	492
1965	257	179	78	257	269	223	17	17	19	176	68	508
Change since 1959	--------	--------	--------	+68	+57	+65	−15	−12	−35	+48	+27	+37
Percent change	+95	+95	+95	+36	+27	+41	−47	−41	−65	+38	+66	+8

Source: Staff computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. In time computation only the middle 80% of the cases was utilized in order to eliminate the bias caused by unusual cases. Because of the procedures used to compute averages, the sum of the times for parts of the process does not equal the time for the whole process.

In order to eliminate delay in preparation of transcript as a cause for extension of briefing time, we recommend that the chief judge of the U.S. Court of Appeals establish a joint committee with judges of the District Court to investigate and ensure the adequacy of the court reporting staff.

We recommend also that serious consideration be given to amendment of the local rules to achieve an expedited timetable for appellate proceedings in criminal cases. Among other measures, the clerk of the Court of Appeals might devise a method for bringing to the attention of the court every appeal which has been pending for more than 6 months and every case which has involved more than a single appeal or trial. These cases might be placed on a special calendar with priority over other cases. In order to minimize the amount of time between oral argument and final decision, we suggest that the order form of decision be used to the fullest extent possible in cases which are affirmed.

The Reversed Cases

The cases reversed in the U.S. Court of Appeals can be appraised in terms of the number of defendants released, the crimes which they allegedly committed, the reasons for reversal, and the subsequent disposition of the cases. These facts may give perspective to the role of

TABLE 41.—*Time elapsed at various steps of appellate process—U.S. Court of Appeals for D.C. Circuit*

[Fiscal year 1965]

Steps in process	Actual time	Time specified in rules*
Notice of appeal	Not known	10 days
Preparation of record (notice of appeal to docketing in Court of Appeals)	17 days	40 days
Preparation of briefs (docketing to filing of last brief)	134 days	65 days
Oral argument or submission (last brief to argument or submission	21 days	none specified
Decision (oral argument to opinion or order of the court)	68 days	none specified

Source: Staff computations based upon data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. This table utilizes only the middle 80% of the cases in order to eliminate the bias caused by unusual cases.

*Fed. R. Crim. P. 37(a)(2); 39(c); D.C. Cir. R. 18(a).
†Does not include time from last brief to decision by the court.

the appellate court in the administration of criminal justice—a role sometimes obscured by a few highly publicized reversals.

Rate of Reversal

In fiscal 1965, 36 cases involving 54 defendants were reversed.[203] These 54 defendants were about 3.5 percent of the 1,526 defendants before the District Court in 1965, 4 percent of the 1,286 defendants whose cases were terminated, 5.5 percent of the 981 defendants convicted by plea or trial, and 20 percent of the 265 defendants convicted after trial (Figure 1). In terms of alleged criminal activity, the 54

TABLE 42.—*Most serious offense of appellants in criminal cases reversed—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1960–1965]

	1960	1961	1962	1963	1964	1965	Total	Percent
Robbery	------	2	4	6	10	17	39	24.2
Narcotics	5	1	2	3	8	6	25	15.5
Homicide	4	2	2	7	2	3	20	12.4
Murder, 1st degree	1	1	1	------	------	1	4	2.5
Murder, 2d degree	2	1	1	2	------	------	6	3.7
Manslaughter	1	------	------	5	2	2	10	6.2
Assault	3	1	1	2	3	7	17	10.6
Housebreaking	3	1	1	4	------	4	13	8.1
Rape	2	------	------	1	2	4	9	5.6
Forgery, counterfeiting, embezzlement, and fraud	------	1	1	1	3	2	8	5.0
Contempt	2	------	1	1	1	3	8	5.0
Auto theft	------	------	------	2	2	3	7	4.3
Gambling	------	5	------	------	------	------	5	3.1
Bribery	------	------	------	2	------	1	3	1.9
Influencing a trial witness	------	------	------	------	------	2	2	1.2
All other offenses	1	1	------	------	1	2	5	3.1
Total	20	14	12	29	32	54	161	100.0

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. See footnote 203.

defendants committed 3 homicides, 4 rapes, 17 robberies, 6 narcotics violations, and a variety of other offenses including contempt of Congress and gambling (Table 42).

The percentage of criminal cases reversed by the U.S. Court of Appeals—21 percent for the period from fiscal 1950 through 1965—is lower than its rate of reversal in civil cases (27 percent) during this period (Table 43). Its cumulative rate of reversal is about 1 percent higher than the reversal rate in criminal cases in other Federal circuits. Federal appellate courts in the District of Columbia and elsewhere quite consistently reverse 15 to 25 percent of the civil and criminal cases which come before them. However, since 1961 there

TABLE 43.—*Rates of reversal in civil and criminal cases in the United States Courts of Appeals*

[Fiscal years 1950–1966]

Fiscal year	Percent of cases reversed—			
	District of Columbia		All other circuits	
	Criminal appeals	Civil appeals	Criminal appeals	Civil appeals
1950	5.9	24.2	16.7	23.4
1951	23.3	28.5	15.3	27.7
1952	17.3	22.3	12.9	27.7
1953	17.0	27.8	26.1	26.4
1954	24.7	36.3	23.2	27.1
1955	29.3	29.7	25.4	27.8
1956	28.6	27.6	24.0	24.7
1957	27.0	25.3	18.6	23.2
1958	15.9	30.3	21.8	24.2
1959	20.7	25.7	19.3	24.6
1960	24.4	26.9	15.9	25.6
1961	14.1	26.6	22.8	25.1
1962	19.5	28.1	21.2	23.5
1963	23.3	31.3	19.5	25.4
1964	17.9	20.8	18.2	22.4
1965	20.1	14.6	15.7	23.8
1966	14.9	24.1	13.2	23.1
Cumulative reversal rate:				
1950–1965	21.1	26.6	19.9	25.0
1950–1966	20.4	26.4	(*)	(*)

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

*Cumulation through 1966 could not be calculated because data became available too late.

has been a constant decline in criminal reversals in other circuits, whereas there was no marked decline in criminal reversals in the District of Columbia until fiscal 1966 (Table 43).

In the District of Columbia the rate of reversal has fluctuated significantly. Since 1950 the reversed cases have ranged from a low of 1 in fiscal 1950 to a high of 36 in fiscal 1965 (Table 44). The rate was highest in fiscal years 1955, 1956 and 1957 when it ranged between 27 and 29 percent; the lowest point was in fiscal 1950 when the reversal rate was 6 percent. In fiscal 1966, 23 cases were reversed—15 percent of the cases disposed of by the court.

Crimes Involved

The crimes involved in cases reversed in the Court of Appeals have not changed substantially during the period 1960 through 1965. Robbery was the crime involved most frequently, followed by narcotics and homicide cases (Table 42). The rate of reversal in each crime category also appears to be about proportional to the incidence of appeal. In 1965 robbery, narcotics and housebreaking cases accounted for 97 (54 percent) of the 179 criminal appeals which were terminated after hearing or submission in the Court of Appeals; these three crimes were involved in 19 (53 percent) of the 36 reversals. In contrast with the overall reversal rate of 20 percent in 1965, the rate of reversal was 26 percent in robbery cases, 15 percent in narcotics cases, 12 percent in housebreakings, 16 percent in homicides, and 26 percent in assaults (Table 45).

Reasons for Reversal

Most of the criminal cases reversed by the Court of Appeals have centered around a few basic issues. Improper admission of evidence has been the most common cause of reversal since 1960 (Table 46). During the 6-year period from 1960 to 1965 evidentiary issues, including such highly controversial matters as the *Mallory* rule and interpretations of the Fourth Amendment's prohibition of unreasonable search and seizure, were involved in 39 percent (63 of 161) of the reversals. Other frequent reasons for reversal were faulty instructions to the jury (17 defendants, 11 percent) and faulty indictments (15 defendants, 9 percent). During this period, the insanity defense declined as a ground for reversal; in fiscal 1960, it accounted for 5 of 20 defendants who obtained a reversal but in 1963 and 1964 only one appellant in each year received a reversal because of error in connection with the insanity issue.

TABLE 44.—*Disposition of criminal cases—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1950–1966]

Fiscal year	Cases commenced	Cases terminated	Cases disposed of without hearing or submission or by consolidation	Cases disposed of after hearing or submission					
				Total	Affirmed	Dismissed	Reversed	Other	Percent reversed
1950	80	50	33	17	14	2	1		5.9
1951	52	68	25	43	31		10	2	23.3
1952	91	84	32	52	38		9	5	17.3
1953	101	91	38	53	43	1	9		17.0
1954	97	98	25	73	50	3	18	2	24.7
1955	71	98	23	75	50	1	22	2	29.3
1956	94	88	25	63	44		18	1	28.6
1957	97	90	27	63	45		17	1	27.0
1958	107	104	22	82	66	2	13	1	15.9
1959	135	132	40	92	70	1	19	2	20.7
1960	100	120	30	90	63	4	22	1	24.4
1961	91	91	20	71	57	2	10	2	14.1
1962	136	108	31	77	58	2	15	2	19.5
1963	200	162	42	120	87	1	28	4	23.3
1964	251	190	56	134	105	1	24	4	17.9
1965	237	257	78	179	132	3	36	8	20.1
1966	252	235	81	154	118	1	23	12	14.9

Source: Administrative Office of the U.S. Courts, Ann. Reps. (1950–1966).

The reasons for reversal in terms of the type of crime involved are delineated in Table 47. The table reveals the predominance of the *Mallory* and insanity issues in reversals of verdicts in homicide cases and the relative importance of the *Mallory* rule in reversals of robbery cases.

Subsequent Dispositions

In some instances, reversal of criminal cases may involve the immediate release of the accused because of the constitutional prohibition against double jeopardy. More commonly, however, the reversal involves a remand of the case to the District Court for a new trial, in which event the accused may be reconvicted, acquitted or have his case dismissed by the prosecutor. The majority of the defendants whose convictions were reversed from fiscal 1960 through fiscal 1965 bettered their position as a result of their appeal.

Of the 150 defendants in cases reversed between 1960 and 1965 where the subsequent disposition is known, 53 percent (79 of 150) were not reconvicted (Table 48). The greatest number were benefited through the exercise of prosecutive discretion. Whether due to

TABLE 45.—*Crimes involved in cases terminated after hearing or submission—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal year 1965]

Crime	Total		Affirmed	Reversed	Dismissed	Remanded	Percent reversed
	Number	Percent					
Robbery	46	25.7	33	12		1	26.1
Narcotics	26	14.5	20	4	1	1	15.4
Housebreaking	25	14.0	20	3	1	1	12.0
Homicide	19	10.6	15	3	1		15.8
Murder, 1st degree	8	4.5	7	1			12.5
Murder, 2d degree	8	4.5	5	2	1		25.0
Manslaughter	3	1.6	3				0
Assault	19	10.6	13	5		1	26.3
Rape	10	5.6	6	2		2	20.0
Forgery, counterfeiting embezzlement, and fraud	7	3.9	5	1		1	14.3
Auto theft	6	3.4	4	1		1	16.7
Bribery	4	2.2	3	1			25.0
Larceny	3	1.7	3				0
Contempt	3	1.7	1	2			66.7
Gambling	2	1.1	2				0
Influencing a trial witness	2	1.1	1	1			50.0
Other sex offenses	2	1.1	2				0
All other offenses	5	2.8	4	1			20.0
Total	179	100.0	132	36	3	8	20.1

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.

the exclusion of evidence or for other reasons, prosecutors elected to dismiss the charges in 34 percent (51 of 150) of the reversals and elected to accept a plea of guilty to a lesser charge in 22 percent (33 of 150) of the reversals. Only 17 of 150 were acquitted after reversal, 12 by order of the Court of Appeals and 5 in the trial court; 8 were found not guilty by reason of insanity. Among the 150 defendants obtaining reversal, 71 (47 percent) were reconvicted; 33 of these were convicted of the same offense and 38 were convicted of lesser offenses.

Application of Rule 52(b)

In the course of the debate regarding reversals by the Court of Appeals, specific criticism has been directed at the court's application of Rule 52 of the Federal Rules of Criminal Procedure. Rule 52, which became effective in 1946, provides:

(a) *Harmless Error.* Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) *Plain Error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

The rule is intended to make clear the appellate court's responsibility to disregard "harmless error" occurring during proceedings in the trial court which does not affect "substantial rights," but to grant

TABLE 46.—*Principal reason for reversal of convictions—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1960–1965]

Reason for reversal	1960	1961	1962	1963	1964	1965	Cumulative total	
							Number	Percent
Admissibility of evidence	6	7	5	13	9	23	63	39.1
General	3	-----	3	4	5	7	22	13.7
Mallory rule	1	-----	2	6	4	9	22	13.7
Search and seizure	2	7	-----	2	-----	5	16	9.9
Voluntariness of confession	-----	-----	-----	1	-----	1	2	1.2
Evidence, Jencks Act	-----	-----	-----	-----	-----	1	1	.6
Instructions to jury	2	2	-----	5	4	4	17	10.6
Faulty indictment (7 Communist cases)	2	2	2	1	5	3	15	9.3
Insanity defense	5	2	3	1	1	-----	12	7.5
Sufficiency of evidence	3	-----	1	4	2	2	12	7.5
Prejudicial conduct, court	-----	1	-----	3	2	2	8	5.0
Prejudicial conduct, prosecutor	-----	-----	-----	2	1	3	6	3.7
Arrest/probable cause	1	-----	1	-----	2	-----	4	2.5
Competency to stand trial	-----	-----	-----	-----	-----	3	3	1.9
Speedy trial	-----	-----	-----	-----	1	2	3	1.9
Voir dire	1	-----	-----	-----	-----	2	3	1.9
Right to counsel	-----	-----	-----	-----	1	1	2	1.2
Sentencing	-----	-----	-----	-----	-----	2	2	1.2
Trial in absentia	-----	-----	-----	-----	1	-----	1	.6
Statutory immunity	-----	-----	-----	-----	-----	1	1	.6
Order reversal, grounds unknown	-----	-----	-----	-----	3	6	9	5.6
Total defendants	20	14	12	29	32	54	161	100.1

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts, and study of opinions. See footnote 203.

TABLE 47.—*Principal ground for reversal and most serious offense of which convicted for appellants in cases reversed—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1960-1965]

Principal ground for reversal	Most serious offense																
	Robbery	Narcotics	Homicide*	Murder 1st degree	Murder 2d degree	Manslaughter	Assault	Housebreaking	Rape	Forgery, counterfeiting, embezzlement and fraud	Contempt	Auto theft	Gambling	Bribery	Influencing witness	All other offenses	Total
Admissibility of evidence:																	
General	3	4	3	1	1	1	2	1	3	4					2		22
Mallory rule	10	1	8	1	2	5	1	2									22
Search and seizure	5	2										2	5	2			16
Voluntariness of confession							1							1			2
Evidence, Jencks Act							1										1
Instructions to jury	5	4	2		1	1	2	1	1	1		1					17
Faulty indictment	4	1								1	7					2	15
Insanity defense	1	1	6	2	2	2	3	1									12
Sufficiency of evidence	4							1	2	1		3				1	12
Prejudicial conduct, court	1	3					3	1									8
Prejudicial conduct, prosecutor	1							3	1			1					6
Arrest/probable cause	2	1						1									4
Competency to stand trial							1			1	1						3
Speedy trial		2							1								3
Voir dire		2					1										3
Right to counsel		1						1									2
Sentencing	1															1	2
Trial in absentia							1										1
Statutory immunity																1	1
Order reversal, grounds unknown	2	3	1			1	1	1	1								9
Total	39	25	20	4	6	10	17	13	9	8	8	7	5	3	2	5	161

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts, and study of opinions. See footnote 203.

* Includes totals for murder, 1st and 2d degree, and manslaughter.

TABLE 48.—*Subsequent court history of defendants in cases reversed—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal years 1960–1965]

Fiscal year	Reconvicted								Not reconvicted						Total known dispositions	Pending and unknown	Percent reconvicted*	Percent reconvicted of same offense*
	Plea		Court		Jury		Total		Acquitted in lower court	Acquitted by order of Court of Appeals	Dismissed	Not guilty by reason of insanity	Other	Total				
	Same	Lesser	Same	Lesser	Same	Lesser	Same	Lesser										
1960	-------	3	-------	--------	3	--------	3	3	----------	3	7	3	-------	13	19	1	32	16
1961	1	2	-------	--------	-------	2	1	4	----------	----------	6	1	1	8	13	1	38	8
1962	-------	3	-------	--------	3	--------	3	3	----------	1	3	2	-------	6	12	----------	50	25
1963	2	9	-------	--------	5	2	7	11	----------	4	7	----------	-------	11	29	----------	62	24
1964	1	5	-------	--------	5	--------	6	5	2	2	11	2	1	18	29	3	38	21
1965	3	11	1	--------	9	1	13	12	3	2	17	----------	1	23	48	6	52	27
Total	7	33	1	--------	25	5	33	38	5	12	51	8	3	79	150	11	47	22

Source: Staff research and computation based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. See footnote 203.

*Based upon total known subsequent dispositions: pending and unknown cases are excluded.

redress where there is "plain error" which affects these rights even though the defendant did not bring these defects to the attention of the trial court. The substance of Rule 52(b) was recommended by the Wickersham Commission in 1931, when it called for "the grant of power to appellate courts to grant new trials if required by justice, whether any exception has been taken or not in the court below." [204] In *Kotteakos* v. *United States* (cited by the draftsmen of Rule 52), the Supreme Court stated that reviewing courts must not "tower above the trials of criminal cases as impregnable citadels of technicality," but, with or without objection below, they must "check upon arbitrary action and essential unfairness in trials." [205]

The application of Rule 52 in the District of Columbia has engendered some differences of opinion among the judges of the Court of Appeals. In a recent dissent, one judge disapproved of "this Court's tendency to require not merely a fair trial but a perfect trial." [206] Another judge has noted:

> Nowadays, astute counsel simply refrain from giving the trial judge a chance to supply some technical omission or to elaborate further in his instructions, despite Rule 30 . . . The "game" is then resumed in this court.[207]

In light of both judicial and public concern over alleged hypertechnicality in criminal trials, the Commission undertook an examination of the use of Rule 52(b) in the District of Columbia. Although Rule 52(b) cases are but one part of allegedly "technical" reversals, since reversals under Rule 30 and Rule 52(a) may also contribute to the "game" theory of justice, it is the focal point of the current controversy.

The best available data indicate that during the past 16 years about 33 criminal cases have been reversed by the U.S. Court of Appeals on Rule 52(b) grounds—12 percent of all criminal cases reversed since 1950.[208] In 20 of the 33 cases there were dissenting opinions, although in at least 1 of the 20 cases the dissent was on other grounds. In no year have more than four cases been reversed on Rule 52(b) grounds, and the average number of cases reversed on this basis is therefore slightly more than two cases per year (Table 49). A comparison of the frequency of Rule 52(b) cases in this jurisdiction with other courts of appeals shows that the District of Columbia accounts for about one-fourth of all 52(b) cases, slightly more than the court's proportion of all Federal criminal appeals.[209]

The reasons for reversal in these 33 cases most frequently involved error in trial court instructions to the jury. Fifteen of the 33 reversed cases turned on instructions; 4 of these dealt with the elements of the offenses; 3 cases were reversed for failure properly to instruct on the insanity issue; 3 cases turned on instructions with regard to credibility

of testimony; and 1 case was reversed for failure to charge on manslaughter. Nine of the 33 cases were reversed for "plain error" on questions of evidence, and the balance of the cases reversed or remanded involved a variety of other errors, including competence to stand trial and the remarks of prosecutor or judge (Table 50). Of the 33 reversed cases, 9 were robberies and 8 were homicides (Table 51).

The present controversy in the District of Columbia concerning Rule 52 appears to have its historical parallels. In 1919 the alleged "hyper-technicality" of the appellate courts caused enactment of the "harmless error" statute.[210] By 1931 the Wickersham Commission was calling for a rule which would allow appellate review of errors not raised in the trial court,[211] and in 1946 such a rule was written into the Federal Rules of Criminal Procedure. Now the pendulum swings again and it is feared that "a perfect trial" rather than "substantial justice" has become the goal of the criminal process.

TABLE 49.—*Disposition of cases involving Rule 52(b)—U.S. Court of Appeals for the D.C. Circuit*

[Calendar years 1950–1966*]

Calendar year	Number affirmed	Number reversed	Other
1950	1	0	----
1951	1	1	----
1952	3	1	----
1953	1	2	----
1954	0	1	1
1955	0	3	1
1956	1	1	----
1957	2	2	----
1958	5	2	1
1959	5	2	----
1960	7	2	----
1961	3	2	----
1962	12	3	----
1963	11	2	1
1964	7	4	2
1965	1	3	----
1966*	0	2	----
Total	60	33	6

Source: Staff compilation based on published opinions. See footnote 208.

*Through March 1966.

TABLE 50.—*Reasons for reversal in cases involving Rule 52(b)—U.S. Court of Appeals for the D.C. Circuit*

[Calendar years 1950-1966*]

Type of error	Number of cases	Type of error	Number of cases
Instructions to jury:		Admissibility of evidence:	
Elements of offense	4	Confessions	2
Insanity	3	Hearsay	2
Credibility of testimony	3	Other	5
Intent	2		
Other	3	Total	9
Total	15	Competence to stand trial	2
		Remarks made at trial	2
		Other	5
		Grand total	33

Source: Staff compilation based on published opinions. See footnote 208.

*Through March 1966.

TABLE 51.—*Crimes involved in cases reversed under Rule 52(b)—U.S. Court of Appeals for the D.C. Circuit*

[Calendar years 1950-1966*]

Type of crime	Number of cases	Type of crime	Number of cases
Homicide	8	Forgery	2
Rape or carnal knowledge	3	Narcotics	2
Robbery	9	Other	3
Housebreaking	4		
Indecent liberties with child	2	Total	33

Source: Staff compilation based on published opinions. See footnote 208.

*Through March 1966.

The Commission finds no inherent weakness in either the theory or the words of Rule 52(b), which is designed to do substantial justice. We find no basis for recommending any change in the rule itself. Nor do we believe that an examination of the opinions in the 33 cases reversed on Rule 52(b) grounds over the last 16 years would enable us

to conclude whether the Court of Appeals properly applied Rule 52(b) in particular cases. We are confident that the United States Attorney will continue to remind the court of the "harmless error" subsection in appropriate cases, and that the judges of the court will reverse cases under Rule 52(b) only when necessary to achieve a fair and just decision.

Division of Opinion and Conflicting Decisions

There are clearly deep differences of opinion among the members of the U.S. Court of Appeals concerning matters relating to law enforcement and criminal justice. Without attempting to decide which views are more correct, this Commission explored the extent of the difference and possible methods of minimizing the apparent conflict in decisions. We recognize, of course, that principles should not be compromised in the quest for unanimity, but it is in the public interest that the criminal law be clear and uniform without regard to the individuals who comprise the court.

Extent of Division

Because the nine members of the U.S. Court of Appeals usually sit in three-judge panels, the extent of division is most accurately measured by analysis of individual decisions rather than by numbers of cases.

In 257 criminal appellate cases decided in fiscal 1965, therefore, there were 701 decisions by individual judges. The "voting patterns" of the judges showed marked tendencies toward affirmance or reversal. Excluding the last three judges, who decided only a few cases, four judges voted for reversal more than 30 percent of the time, but three took such a position less than 20 percent of the time (Table 52). This suggests that there is a polarity of view among the judges, notwithstand the high frequency of agreement in the decisions of the court. The breadth of the difference is reflected in the fact that one judge favored reversal in 45 percent of his cases while another judge did so in only 6 percent of his cases.

Examination of the times judges sit on the same panel and of their agreement or disagreement produces results which contrast with the apparent unanimity shown in Table 52. For example, as shown in Table 53, Judge C sat with Judge B 23 times and disagreed with him in only 2 appearances; yet in 23 appearances with Judge H, Judge C disagreed in 9 instances. Disagreements among judges with a significant number of appearances together range from zero to 70 percent, reinforcing the suggestion of widely differing views in the court.

TABLE 52.—*Individual decisions of judges in cases terminated—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal year 1965]

Judge	Cases with result favoring Government		Cases with result favoring defendant		Total decisions	Percent with majority	Percent for defendant
	Concur	Dissent	Concur	Dissent			
A	48	7	33	0	88	92.0	45.5
B	56	5	26	0	87	94.3	35.6
C	46	11	14	0	71	84.5	35.2
D	47	4	19	0	70	94.3	32.9
E	21	1	8	0	30	96.7	30.0
F	66	0	20	2	88	97.7	22.7
G	48	0	14	3	65	95.4	21.5
H	66	0	14	3	83	96.4	16.9
I	31	0	5	4	40	90.0	12.5
J	42	0	3	8	53	84.9	5.7
K	17	0	0	1	18	94.4	0
L	4	0	0	0	4	100.0	0
M	4	0	0	0	4	100.0	0
Totals	496	28	156	21	701	93.0	26.2

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts. All cases other than those terminated by consolidation are in the survey.

Resolving Conflicts

The Judicial Code provides a statutory method for resolving a conflict among members of an appellate court; it authorizes hearings and rehearings en banc when ordered by a majority of the active judges of the court.[212] Through this procedure, the entire court rather than one panel decides a case.

The U.S. Court of Appeals has not adopted any local court rule governing en banc hearings, but the power of the court to sit en banc has been recognized by the Supreme Court[213] and by the Court of Appeals itself.[214] Federal courts of appeals sit en banc in order to resolve conflicts or to deal with issues of particular importance and sensitivity.[215] The Court of Appeals for the Sixth Circuit, which has an express rule governing en banc hearings, has provided that they shall occur "when consideration by the full court is necessary to secure or maintain uniformity of its decisions." [216]

TABLE 53.—*Correlation* of votes between judges—U.S. Court of Appeals for the D.C. Circuit*

[Fiscal year 1965]

Judge	A	B	C	D	E	F	G	H	I	J	K	L	M	Total votes	Percent with majority	Percent for defendant
	-------	37	17	20	5	33	19	30	13	17	5	1	1			
A	-------	4	3	4	0	5	7	8	7	8	2	0	0	88	92.0	45.5
	-------	11%	18%	20%	0%	15%	37%	27%	54%	47%	40%	0%	0%			
	37	-------	23	25	11	30	14	22	10	17	4	-------	2			
B	4	-------	2	3	0	5	5	7	7	8	1	-------	0	87	94.3	35.6
	11%	-------	9%	12%	0%	17%	36%	32%	70%	47%	25%	-------	0%			
	17	23	-------	16	7	27	20	23	12	17	6	3	-------			
C	3	2	-------	2	1	3	6	9	6	9	1	0	-------	71	84.5	35.2
	18%	9%	-------	13%	14%	11%	30%	39%	50%	53%	17%	0%	-------			
	20	25	16	-------	8	20	19	22	14	16	3	1	1			
D	4	3	2	-------	1	2	6	6	1	9	2	0	0	70	94.3	32.9
	20%	12%	13%	-------	13%	10%	32%	27%	7%	56%	67%	0%	0%			
	5	11	7	8	-------	3	8	9	7	3	2	-------	-------			
E	0	0	1	1	-------	1	1	2	2	1	1	-------	-------	30	96.7	30.0
	0%	0%	14%	13%	-------	33%	13%	22%	29%	33%	50%	-------	-------			
	33	30	27	20	3	-------	27	26	13	15	5	-------	1			
F	5	5	3	2	1	-------	4	3	2	3	1	-------	0	88	97.7	22.7
	15%	17%	11%	10%	33%	-------	15%	12%	15%	20%	20%	-------	0%			

G	19	14	20	19	8	27	-------	23	9	13	5	1	-------	65	95.4	21.5
	7	5	6	6	1	4	-------	0	1	0	0	0	-------			
	37%	36%	30%	32%	13%	15%	-------	0%	11%	0%	0%	0%	-------			
H	30	22	23	22	9	26	23	-------	15	15	6	-------	1	83	96.4	16.9
	8	7	9	6	2	3	0	-------	1	1	0	-------	0			
	27%	32%	39%	27%	22%	12%	0%	-------	7%	7%	0%	-------	0%			
I	13	10	12	14	7	13	9	15	-------	7	5	-------	1	40	90.0	12.5
	7	7	6	1	2	2	1	1	-------	0	0	-------	0			
	54%	70%	50%	7%	29%	15%	11%	7%	-------	0%	0%	-------	0%			
J	17	17	17	16	3	15	13	15	7	-------	3	1	1	53	84.9	5.7
	8	8	9	9	1	3	0	1	0	-------	0	0	0			
	47%	47%	53%	56%	33%	20%	0%	7%	0%	-------	0%	0%	0%			
K	5	4	6	3	2	5	5	6	5	3	-------	1	-------	18	94.4	0
	2	1	1	2	1	1	0	0	0	0	-------	0	-------			
	40%	25%	17%	67%	50%	20%	0%	0%	0%	0%	-------	0%	-------			
L	1	-------	3	1	-------	-------	1	-------	-------	1	1	-------	-------	4	100.0	0
	0	-------	0	0	-------	-------	0	-------	-------	0	0	-------	-------			
	0%	-------	0%	0%	-------	-------	0%	-------	-------	0%	0%	-------	-------			
M	1	2	-------	1	-------	1	-------	1	1	1	-------	-------	-------	4	100.0	0
	0	0	-------	0	-------	0	-------	0	0	0	-------	-------	-------			
	0%	0%	-------	0%	-------	0%	-------	0%	0%	0%	-------	-------	-------			

Source: Staff research and computations based on data furnished by the Research and Evaluation Branch, Administrative Office of the U.S. Courts.

*Reading vertically, the first figure indicates the number of times the two judges have appeared together, the second figure indicates the number of times they disagreed in these appearances, and the third figure is the percentage of disagreement.

In fiscal 1965 eight en banc hearings were held by the court, four of them involving criminal matters. The en banc hearing was used less frequently in the District than in two other federal appellate courts but more than in the eight other courts (Table 54). This District, however, had more petitions for rehearing en banc than any other circuit.

TABLE 54.—*En banc hearings in the United States Courts of Appeals*

[Fiscal year 1965]

United States Courts of Appeals	Number of of petitions for hearings en banc	Number of hearings en banc	Total cases terminated after hearing or submission	Percent of cases heard en banc
First Circuit*				
Second Circuit	50	1	427	.2
Third Circuit	55	10	243	4.1
Fourth Circuit	(‡)	†27	266	10.2
Fifth Circuit	(‡)	7	621	1.1
Sixth Circuit	(‡)	0	300	.0
Seventh Circuit§	21	1	283	.4
Eighth Circuit	7	0	198	.0
Ninth Circuit	(‡)	0	398	.0
Tenth Circuit	10	0	269	.0
District of Columbia	166	8	426	1.9
All other circuits	Incomplete	46	3,005	1.5

Sources: The chief judges and clerks of court of the United States Courts of Appeals; Administrative Office of the U.S. Courts, Ann. Rep. (1965).

*The First Circuit, with only three judges, always sits en banc, and hence is not counted for purposes of this table.

†Excludes an unknown portion of 17 en banc cases heard sua sponte during fiscal years 1962–1966.

‡Unknown.

§Data on en bancs for the Seventh Circuit are for fiscal year 1966; the total number of cases terminated is for fiscal year 1965.

While these facts alone do not necessarily indicate that a large number of cases deserve the exceptional procedure of an en banc hearing, the Commission believes that more petitions should be granted in the future. We recognize that the large volume of work before the court could not be handled if the court were to sit en banc on all cases, and that an en banc hearing will not eliminate dissenting views. On the other hand, the Commission is concerned by the widespread commu-

nity feeling that the outcome in a particular case too often depends on the choice of judges. We believe that the court should be sensitive to the effects of judicial dissension on the public, those convicted of crime, and attorneys who argue before the court. The nature of the court's peculiar jurisdiction in the District makes an appearance of uniformity more critical than in courts concerned exclusively with Federal crimes. Increased use of the en banc procedure may contribute to this salutary result.

Conclusions

Controversy concerning the Court of Appeals will surely persist so long as the issues considered by that court remain of vital concern to this community. Since we entrust to our courts the complex and sensitive assignment of balancing the needs of the community against the rights of accused criminals, controversy over the court and criticism of it are inevitable. The court should not be immune from criticism; its performance and contribution to this community will profit from informed, professional scrutiny of its decisions.

The decisions of this or any appellate court contribute to crime in the sense that some defendants whose convictions are reversed by the court may be free as a result of the court's action. The same can be said of the Fifth Amendment which forbids making a defendant testify against himself. From 1960 through 1965, 71 of 150 defendants in the District were released after rulings of the Court of Appeals. Based on what we know generally about the characteristics of defendants before the District Court, it is very possible that some of these 71 have committed or may in the future commit crimes. It is also true that appellate rulings have a vital impact on the total law enforcement process, both in terms of the substance of particular judicial restrictions and the certainty with which they can be relied upon by police, prosecutors and trial courts. In deciding particular cases, the court bears the heavy responsibility for weighing these considerations in an effort to reach a result fair to the community as well as to the defendant.

It is important to bear in mind, however, that the Court of Appeals is not just another agency to curb crime. It is the arbiter between the individual and the government in criminal cases where the power to imprison and even take the life of an individual is at issue. The court cannot, therefore, be assessed simply on the basis of how many criminals it sends to prison and how many it sets free or remands for a new trial. Nor can its decisions be assessed solely by the extent to which they make law enforcement more difficult. Rather, the court's per-

formance must be appraised by the quality of justice it dispenses under our laws as they are interpreted by the Supreme Court.

This Commission is well aware that the sanction of reversal for an error stemming not from purposeful misconduct of a judge or prosecutor but, rather, from inadvertence or overzealousness is often a harsh one in which the public suffers and the criminal gains. It is unrealistic to expect the public to accept this result calmly, particularly when it applies to the guilty as well as the innocent, the vicious predator as well as the petty offender. But at the same time we urge the citizens of the community to remember that there is no other way to enforce due process in the courts. The courts must utilize their power to overturn convictions obtained by violation of the rules governing the conduct of criminal proceedings or relinquish their reason for being.

PUBLIC PROSECUTORS

The prosecutor is "the pivot on which the administration of criminal justice . . . turns." [217] Through his power to "no paper" or dismiss cases he is the final arbiter in a wide range of criminal matters which never reach a judge or jury. Through his negotiation of pleas to lesser offenses he may limit the sentencing discretion of the court and ultimately determine the time within which correctional authorities can attempt to rehabilitate the accused. As a result he probably has more control over individual liberty and public safety than any other public official.[218]

UNITED STATES ATTORNEY'S OFFICE

Because the United States Attorney is charged with the prosecution of most serious crimes in the District of Columbia, the work of his office has been discussed in detail in this chapter. Beyond any enumeration of cases initiated and conviction ratios, however, the operations of his office deserve further consideration because of the United States Attorney's critical role in the administration of justice in the District of Columbia.

Experience and Training

The United States Attorney's office is staffed with younger attorneys, most of whom have had little or no prior trial experience. One year's legal experience is a prerequisite.[219] Most Assistant United States Attorneys remain with the office for only a short period of time. Their average length of service is less than 5 years and the annual rate of

turnover is high; in 1964, 14 of 52 assistants resigned and in 1965 another 20 resigned (Table 55). Although several of the Divisions of the office are directed by experienced attorneys, the net result is general lack of experience—a factor which has caused some members of the bench to observe that Assistant United States Attorneys are conscientious but are currently less skilled in the trial of criminal cases than during the past 10 years.[220]

Over the years, however, neither the inexperienced staff nor the growing complexity of court trials [221] has affected conviction rates in the trial court. The conviction rate of 76 percent (981 of 1,286) for alleged felons is not substantially different from prior years (Table 4) and, insofar as comparability can be established, it presents no striking contrasts with other jurisdictions.[222]

One key factor in the availability of experienced prosecutors appears to be salary. While other considerations are obviously important, every assistant who resigned from the United States Attorney's office between 1963 and 1965 left to accept a position at increased compensation.[223] For years the salaries of assistants have been lower than those paid to attorneys with comparable experience in the Department of Justice, in part because the assistants are not under the Classification Act of 1954 and do not receive scheduled grade and step increases.[224]

TABLE 55.—*Personnel data on Assistant United States Attorneys*

[1950–1965]

Year	Number of AUSA's on duty	Number of AUSA's resigning	Average experience as AUSA		Average length of service among resignations		Salary*	
			Years	Months	Years	Months	Minimum	Maximum
1950	34	5	5	7	3	8	$3,825	$9,600
1951	37	9	5	0	2	11	3,825	9,800
1952	39	7	5	8	8	3	4,205	10,600
1953	40	19	5	0	4	7	4,205	10,000
1954	39	4	3	9	2	1	5,000	10,000
1955	41	5	4	4	2	3	5,000	11,000
1956	46	8	4	8	3	7	6,000	12,000
1957	46	12	4	11	3	1	6,000	12,000
1958	49	4	5	0	5	9	6,000	12,000
1959	52	12	5	7	2	11	6,000	13,200
1960	48	10	5	8	4	8	6,000	13,200
1961	48	14	5	10	3	9	6,500	14,200
1962	46	13	5	5	3	5	6,500	14,200
1963	51	7	5	3	12	1	7,000	15,300
1964	52	14	4	5	4	2	7,000	15,300
1965	52	20	4	9	3	10	7,400	15,800

Source: Administrative Section, Office of the United States Attorney for the District of Columbia.

*Exclusive of United States Attorney and Principal Assistant.

In 1964 Congress enacted legislation designed to provide for comparability of salaries paid to assistants and attorneys in the Department of Justice, but comparability was not achieved until December 1966.[225]

The Commission recognizes that salary incentives will not cause all employees to remain with the prosecutor's office, but an appropriate salary is obviously important to the retention of experienced personnel. There is no assurance that the comparability which was just established will be maintained in the future. Assistants still are not eligible for grade and step increases as are other government attorneys. Disparities in salary can therefore reappear in a matter of months and the efforts of the United States Attorney to retain competent assistants will again be impeded. Regardless of the original rationale underlying the exemption of Assistant United States Attorneys from the Classification Act or the merit of this step in other jurisdictions, we do not believe that this exemption has benefited prosecution in the District.

Lack of experience and the rate of high turnover suggests the importance of superior training programs, but the United States Attorney's office has little opportunity to train. New assistants are usually assigned to the Court of General Sessions where they observe the performance of more experienced prosecutors and absorb criteria for papering, dismissing and reducing charges. There is also a period of courtroom observation, some instruction in drafting arrest and search warrants, and a weekly "school" in legal problems concerning such matters as search and seizure and confessions. The value of this training is questioned by several former assistants, who indicate that they profited more from independent study and from the personal advice of one or two experienced prosecutors. There is no training in appellate advocacy or writing briefs. Moot courts held in preparation for oral argument are often summary and fail to explore thoroughly legal issues presented by the appeal. No training is offered in the Criminal Trial Division.[226] In recent months staff meetings for the purpose of reviewing decisions and recent developments in the law have been initiated.[227]

Deficiencies in training and guidance have several adverse effects. They limit the quality of the assistant's overall performance, and contribute to lack of coordination between the various sections and lagging morale. For example, assistants in the Court of General Sessions often have different criteria for instituting felony prosecution than assistants in the Grand Jury Unit who later review the exercise of their discretion. Thus in fiscal 1965, 350 defendants were transferred from the grand jury back to the Court of General Sessions due to dif-

fering criteria. In the Appellate Division assistants without adequate training in the pressures and problems of criminal investigation and criminal trials are at a disadvantage in writing briefs and in oral argument.

The limited training program is undoubtedly caused by excessive caseloads and lack of time for anything except the immediate business of prosecuting cases. Nevertheless, "battlefield" training is an insufficient response to the increasing demands and complexity of the criminal law.[228] The improved training for defense counsel through criminal law seminars, law school programs, and coordinated planning by the Legal Aid Agency offers a challenge to prosecution in the District of Columbia which must be met.[229] A partial response is found in the new Department of Justice training programs for Assistant United States Attorneys,[230] and the recent staff meetings in the local office.

Excessive Caseloads

In the District of Columbia, as elsewhere throughout the nation,[231] there are an insufficient number of prosecutors. The United States Attorney has called for 17 additional attorneys for his staff, but has thus far received only 5.[232] It is the nearly unanimous view of persons recently associated with the office that caseloads are excessive.[233]

In the General Sessions Division, the caseloads are especially heavy. In fiscal 1965, its attorneys screened about 14,000 citizen complaints and processed more than 9,500 persons arrested by the police. In disposing of cases which grew out of these arrests, assistants participated in about 1,350 presentments or preliminary hearings, 932 court trials, 293 jury trials and 137 motions. They also issued about 500 search and arrest warrants and negotiated pleas of guilty in 2,949 cases.[234]

The Grand Jury Unit has often fallen behind in processing its caseload. During the week of March 7, 1966, the case backlog caused a delay of 76 days between preliminary hearing and indictment for persons who were in jail.[235] With the assignment of additional personnel to that unit,[236] the time was reduced to about 40 days.[237] Overload in this section also means delay in those cases which may be referred back to the Court of General Sessions for prosecution, and in at least one instance caused dismissal of charges due to delay.[238]

Overload is also seen in other divisions of the office. In the Criminal Trial Division assistants have been assigned 60 to 70 felony cases, rarely allowing them time out of court for case preparation;[239] 623 triable cases were awaiting disposition before the court at the end of fiscal 1966 (Table 8). The caseload in the Appellate Division has

dramatically increased since fiscal 1962 (Table 35), without a concomitant increase in the size of the division.[240]

Excessive caseloads result in prompt acceptance of pleas to reduced charges, questionable dismissals, and generally hamper effective preparation of those cases which are prosecuted. Former assistants report that the burdensome caseloads and poor calendaring may force dismissal in one case in order to permit prosecution of another more serious matter. Finally, case overload results in excessive shifting of prosecutive responsibility among assistants.[241] One case may have some pretrial motions handled by one assistant, later motions by an other, the trial by a third assistant, and post-trial matters by a fourth. As a consequence, often only the defense counsel knows precisely the history of the case, and the prosecution of the case may suffer because of the assistant's disadvantage.

Liaison With Courts and Police

Fair and effective prosecution is the mutual concern of the judiciary and the United States Attorney. Within the bounds of the adversary system, the court and prosecutor should approach the administration of criminal justice as a common endeavor. In past years, however, liaison between the bench and the United States Attorney, particularly in the District Court, has been inadequate. Although there have been daily conferences between representatives of the Criminal Division and the Assignment Office for the purpose of scheduling cases, there has not been a collaborative effort to develop urgently needed improvements for processing criminal cases. Moreover, the addition of more judges to the criminal trial calendar is of limited value unless the prosecutor has sufficient time to readjust the workloads of his trial assistants. Similarly, an increase in the number of criminal prosecutions only clogs the calendar and causes dismissals, unless the court, defense counsel and prosecutors find ways to improve their shared use of existing facilities.

Successful prosecution is also heavily dependent upon efficient police investigation and trial preparation. Nevertheless, liaison between the police and the United States Attorney's office has been inadequate. Few new assistants have more than a casual awareness of police procedures, and learn these only coincidentally as they examine individual cases. In turn, the police receive only occasional direction from the United States Attorney on matters of such prosecutive importance as confessions and search and seizure. Lectures given by assistants provide some instruction in the law, but on the whole are insufficient.[242]

Rapport is erratic; policemen attribute lost cases to excessive prosecutive fastidiousness, and prosecutors blame police carelessness.[243]

The police provide the prosecutor with little investigative or technical assistance, except in selected cases. Although individual police officers do undertake additional investigation at the request of an assistant, there is no formal arrangement by which a trial assistant can obtain appropriate charts, enlarged photographs, laboratory tests, and other trial aids. The functions of the Court Liaison Unit of the Metropolitan Police Department have been limited to assuring the presence of policemen who are witnesses and obtaining criminal records.[244]

Evaluation

Effectiveness of Prosecution

The number of felony prosecutions in the District of Columbia is primarily the responsibility of the United States Attorney. The Commission has found substantial evidence that there has been a decrease in the number of cases presented to the grand jury at a time when the incidence of crime was increasing.[245] Whatever the cause of the decline since the early 1950's or of last year's increase, we have emphasized our view that prosecutions should not be affected by matters other than those relating to the merits of the case.

The prosecutor also bears special responsibility for eliminating delays in the prosecution of cases. He has virtual control over the time between arrest and indictment, which has been unduly long. Under Rule 87 of the District Court, the United States Attorney now has somewhat greater latitude in scheduling cases for court disposition.[246] This control of scheduling should end the hasty shifts in prosecutive responsibility which occurred when one assistant substituted for another in order to meet court schedules. Revised scheduling procedures should also enable the assistants to prepare their cases more thoroughly.

Prosecutive Discretion

Equally as important as prompt prosecution is the prosecutor's exercise of discretion. It is in the area of no papers and dismissals that thousands of District residents find the quality of justice. It should, to the greatest extent possible, be even-handed and fair. While the Commission recognizes the desirability of prosecutive discretion as a means of individualizing justice, we believe that inexperienced prose-

cutors need more guidance. The lack of such supervision and more formalized criteria has contributed to "assistant shopping" and the unnecessary referral of cases between the grand jury and the Court of General Sessions.

Other Factors

The measure of a prosecutor's office is not entirely cases won, lost or not prosecuted. The office must conduct itself in a manner which enhances public confidence in the law and which plainly demonstrates a just system for moving against the offender and clearing the innocent. In this respect the United States Attorney's office in the District of Columbia has an exceptional record. Renovation of its offices in the Court of General Sessions Division is one example; witnesses and others coming in contact with the judicial process no longer obtain an impression of indifference and carelessness because of poor physical facilities and congestion. New procedures for screening and reviewing the 14,000 citizens' complaints, encouraged and supported by the United States Attorney, suggest the beginning of a long overdue effort to reserve the courts for important criminal matters and to channel to the proper agencies those essentially social problems associated with low-income urban life in the District of Columbia.[247]

Remedial Action

If the United States Attorney is to bring an adequate number of prosecutions and deal with them promptly, he must have adequate staff. In the same way that congestion and delay in the courts impede effective prosecution, the lack of staff and adequate salaries in the United States Attorney's office have an unmeasurable, but clearly adverse, effect on prosecution. The needs of prosecution in the District of Columbia require a substantial increase in the number of Assistant United States Attorneys. There must be a sufficient number in the Grand Jury Unit to keep the time between preliminary hearing and indictment to less than 2 weeks. The public safety should not be impaired because prosecutors have too little time to prepare their cases or are hastily called upon to substitute for colleagues engaged in other trials. The Court of General Sessions Division should have a sufficient number of experienced persons to provide younger lawyers with supervision and time to learn. To aid in obtaining and keeping assistants, the Commission recommends that Assistant United States Attorneys in the District of Columbia be made subject to the Classi-

fication Act and that in the interim the United States Attorney and the Department of Justice award step increases as provided in the Civil Service schedule.

In order to improve the exercise of prosecutive discretion, we recommend that each new assistant assigned to the General Sessions Division receive thorough instructions in the criminal statutes as well as intra-office practice in the presentation of cases. There should be formal guidance on the proper exercise of discretion. Complete uniformity is of course impossible, but the United States Attorney must provide some general policy guidelines to his staff to limit the influence of the personal predilections of individual assistants. Reasons for no papers, reductions of charges, dismissals, and pleas to lesser offenses should be recorded and regularly reviewed by division chiefs. It would also appear beneficial to rotate more experienced attorneys back to the General Sessions Division to bring their experience to the very important function of prosecuting misdemeanor cases.

The Commission believes that Assistant United States Attorneys should be fully acquainted with police procedures and practices as well as the variety of technical resources available to the police. Personnel from the Criminal Investigation Division might periodically lecture new assistants on investigative procedures. Tours by assistants of police precincts and headquarters should be mandatory. Generally, we believe that the United States Attorney and the Chief of Police should facilitate the mutual exchange of suggestions and recommendations designed to improve the quality of police investigation and the conduct of criminal prosecutions.

New prosecutive responsibility under Rule 87 should be utilized as an opportunity to minimize the time between indicment and disposition. More particularly, it should be used in an experimental effort to expedite certain felony cases to give the public added protection and to enhance the deterrent effect of the criminal law. The United States Attorney, the Chief Judge of the District Court and the Director of the Legal Aid Agency should plan together to develop this program and other more effective procedures for processing criminal litigation.

CORPORATION COUNSEL'S OFFICE

A major portion of the Corporation Counsel's law enforcement duties arise out of traffic offenses, but he also handles a wide range of violations including alcoholic beverage control, disorderly conduct, public intoxication, and health, housing and fair employment regula-

tions. The office also bears primary responsibility for the handling of many juvenile matters and serves as advisor to various agencies of the District of Columbia Government.[248]

Experience and Training

The staff of the Corporation Counsel includes 63 Assistant Corporation Counsel, 10 of whom are assigned to the Law Enforcement Division (Table 56). The staff is about evenly divided between career employees and younger men who serve for brief periods of time as Assistant Corporation Counsel. Assistants may be hired without any prior legal experience, but in fiscal 1965 all members of the office had at least 6 months prior experience and over one-half had more than 5 years of legal experience. Their salaries range from GS–7 ($6,451) for attorneys with no experience to GS–16 ($20,075), and 25 of the 63 attorneys receive salaries in excess of $15,000 per year.[249]

TABLE 56.—*Number of Assistant Corporation Counsel*

[1957–1966]

Division	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Civil Proceedings	13	10	11	11	12	12	12	12	13	13
Appellate	2	2	3	4	4	4	5	5	5	5
Domestic Relations and Collections	------	8	10	12	13	14	18	18	18	18
Taxation	4	4	4	4	4	4	4	4	4	4
Public Utilities	2	2	2	2	2	2	2	2	2	2
Legislation and Opinions	4	4	4	4	4	5	5	5	5	5
Law Enforcement	8	8	8	8	8	8	8	8	10	10
Special Assignments	5	5	5	5	5	5	5	5	5	5
Contract Appeals Board	------	------	------	------	1	1	1	1	1	1
Totals	38	43	47	50	53	55	60	60	63	63

Source: Letter from Milton D. Korman, Acting Corporation Counsel, July 11, 1966.

There is no formal training program for the new assistants; indoctrination consists of an hour of instruction by the Corporation Counsel and a reading of the Code of Trial Conduct,[250] and training is left to the informal procedures of each division. Assistants who are assigned to the Law Enforcement Division, where they prosecute criminal cases in the District of Columbia, Traffic and Jury Branches of the Court of General Sessions, receive some instruction by observation, but the general guide is one of "if in doubt, ask." [251] Supervision in the other divisions which have some law enforcement duties varies according to the work. The Legislation and Opinions Division

drafts legislation relating to criminal matters and prepares opinions for the guidance of District agencies; the Domestic Relations and Collections Division performs all duties of the Corporation Counsel in the Juvenile Court; and the Appellate Division prepares and argues cases in the District's courts of appeals. The divisions of Civil Proceedings, Contract Appeals, Public Utilities, and Taxation have primary duties in fields other than criminal law enforcement.[252]

Performance

Description of the manner in which the Corporation Counsel discharges his important duties is hampered by the lack of relevant data. Statistical deficiencies preclude even an accurate count of cases handled in the Law Enforcement Division; it reports cases based on court docket numbers which appear to be an overcount.[253] The Division maintains no record of cases won or lost and, except in traffic ticket adjustments, reasons for prosecutive actions are not regularly recorded. Smaller divisions keep somewhat better records but there has been a general inattention to the need to record and review statistics on which performance can be judged.

Prosecution of Law Violations

In fiscal 1965 the Law Enforcement Division filed about 69,700 informations, generally involving traffic violations and public intoxication charges (Table 57). Most of these were disposed of by forfeiture of collateral or by imposition of a fine; of $4,288,634 collected in 1965, $3,729,710 was attributable to traffic offenses. Only 1,968 cases required trial; convictions were obtained in an estimated 90 percent of the cases tried.[254]

In enforcing the public intoxication laws, this division handled approximately 24,200 public intoxication cases in fiscal 1965. Seven hundred of these persons were not prosecuted; 800 persons were placed on probation, 7,200 penalized with fines or suspended sentences, and 15,500 sentenced to jail.[255] (The special problems of handling drunkenness offenders are discussed in chapter 7.) During fiscal 1965 at least 3,500 disorderly conduct cases were presented to the Corporation Counsel by the police. These cases were the ones remaining after nearly 17,000 forfeitures of collateral. Of the 3,500 cases, 500 were not prosecuted; of those presented to the court, 284 were dismissed and 1,100 resulted in jail sentences, with the rest resulting in fines.[256]

TABLE 57.—*Workload changes in the Corporation Counsel's Office*

[Fiscal years 1960-1966]

Division	Workload items						
	1960	1961	1962	1963	1964	1965	1966*
Appellate	137	158	195	242	249	263	265
Civil Proceedings	2, 110	2, 862	3, 118	4, 131	5, 023	5, 489	6, 500
Taxation	284	199	226	341	424	114	150
Contract Appeals Board	53	71	120	165	135	99	93
Law Enforcement:							
Traffic	22, 300	23, 000	26, 100	28, 800	33, 000	33, 700	34, 700
D.C.†	30, 900	31, 700	36, 100	38, 400	35, 000	36, 000	37, 400
Complaints, Hearings, Other‡	-------	-------	-------	-------	-------	23, 000	------
Special Assignments	1, 500	1, 767	2, 144	2, 092	2, 228	2, 414	2, 450
Domestic Relations and Collections	5, 288	5, 404	8, 001	9, 502	10, 616	12, 252	12, 830
Legislation and Opinions	974	1, 327	1, 412	1, 368	§720	1, 090	656
Public Utilities	(**)	(**)	24	29	34	22	26

Source: Letter from Milton D. Korman, Acting Corporation Counsel, July 11, 1966.

*Estimated.

†Separate figures are not maintained on types of cases prosecuted in the D.C. Branch of the Court of General Sessions.

‡Separate figures are not maintained on the number and type of complaints and hearings handled for District agencies other than police. The figure for fiscal 1965 was reported by the Acting Corporation Counsel at the proceedings of the Judicial Conference of the District of Columbia Circuit, May 25, 1966.

§Decrease due to revised system of counting.

**Unknown.

The Corporation Counsel's office also has responsibility for a number of regulatory violations. For example, 7,440 matters involving housing code violations were referred to the Corporation Counsel in fiscal 1964; 115 of these reached the court. In enforcing fair housing regulations between January 1964 and June 1965, the Corporation Counsel considered 10 cases referred by the Council on Human Relations. Of the 10, 7 were not prosecuted, 1 resulted in a conviction, and 2 in acquittals.[257]

The physical facilities of the Law Enforcement Division require special comment. They are located in the Court of General Sessions and are identical to those facilities of the United States Attorney which,

prior to renovation, were described as resembling the "$2 window at a racetrack." [258] The setting contributes to an atmosphere of chaos as 50 to 100 witnesses, policemen and onlookers commingle and transact their business.

The office of the Corporation Counsel does not separately record civil and criminal appellate cases, but in fiscal 1965 it litigated 263 appeals, 179 of which were terminated. Decisions were favorable to the District of Columbia in 91 percent of the cases. The appellate workload has increased by 92 percent since 1960.[259]

Opinions and Guidance

One of the major duties of the Corporation Counsel is to provide legal guidance to other agencies of the District of Columbia, many of which are involved in law enforcement activities. All formal requests for legal advice are channeled to the Corporation Counsel's office through the Board of Commissioners.[260] In fiscal 1965 the Legislation and Opinions Division of the Corporation Counsel's office responded with written opinions to 382 formal requests. It also rendered many informal opinions for various District offices.[261]

The effect of this system of giving legal advice to enforcement agencies cannot be evaluated statistically. The Commission learned, however, that some agencies are reluctant to ask for formal opinions on matters which seem minor or transitory, and that they are sometimes hampered by delays in the promulgation of the formal opinions. In the course of its dealings with the Metropolitan Police Department and the Department of Public Health, the Commission observed the limitations of present procedures. Because of data deficiencies, this Commission can express no view on the general need for additional personnel in the Corporation Counsel's office.[262] We believe, however, that the Legislation and Opinions Division, which has a key role in law enforcement policy, has a high priority need for an additional attorney.

Evaluation

The office of the Corporation Counsel has the authority and opportunity to effect many salutary changes in law enforcement in the District of Columbia. In substantial measure he determines arrest and prosecutive policies which affect the tens of thousands of persons charged with drunkenness or disorderly conduct. Through his written opinions he influences enforcement policies of a variety of governmental agencies.

The Commission concludes that the Corporation Counsel has not capitalized on his opportunity to improve local law enforcement. The apparent use of prosecutive authority to retaliate against persons who file complaints against the police is intolerable.[263] His prosecutions have suffered from dispatch rather than delay. Thousands of citizens are routinely prosecuted for petty offenses in a manner which detracts from the fair administration of justice. In the past year these inadequacies were highlighted by the office's failure to propose solutions to the problems attending the prosecution of the drunkenness offender. Even before the *Easter*[264] decision's prompting, the office should have been aware of the law enforcement burdens presented by alcoholics and should have participated actively in devising alternative methods for handling these offenders. Similarly, while the office itself has made substantial use of summons procedures,[265] it has not assumed responsibility for formulating methods by which the Metropolitan Police Department might issue summons in lieu of arrest. The apparent disinclination of the office to assume any degree of responsibility for the evolution of enlightened legal procedures may be responsible for the reluctance of some District agencies to seek its guidance except where absolutely necessary.

While this Commission is primarily concerned with deficiencies in the Corporation Counsel's office relating to law enforcement, we cannot ignore the overall need for the office to assert itself more vigorously and affirmatively in the affairs of the District. It must continually reexamine its own policies and procedures as well as those of the wide range of District agencies, and act as a catalyst for improvement and innovation in the District's efforts to confront its myriad problems.

REPRESENTATION OF DEFENDANTS

The Sixth Amendment to the Constitution provides that in all criminal prosecutions the accused is entitled to the assistance of counsel in his defense.[266] In the District of Columbia this right is implemented through various court rules and local practices which provide counsel without cost to accused persons who are indigent.[267] In felony cases defense counsel are available from the point of arrest through appeal.[268] In serious misdemeanor cases counsel are available to defendants, and every defendant appearing before the U.S. Branch of the Court of General Sessions has counsel.[269] In cases which involve lesser misdemeanors the presiding judge in the D.C. Branch or Traffic Branch advises defendants of their rights, but appointment of counsel is not automatic.[270] Counsel for defendants in the District are cur-

rently supplied by private attorneys, who serve as retained counsel and who accept appointments as counsel in indigent cases, and by the Legal Aid Agency, the Prettyman Fellows, and the Neighborhood Legal Services Project, which provide legal representation for indigent defendants only.

RETAINED COUNSEL

Less than 40 percent of the defendants accused of the more serious crimes in the District of Columbia are represented in the trial court by retained counsel.[271] In felony cases in the District Court in fiscal 1965 retained lawyers appeared most frequently in murder, embezzlement, fraud, narcotics, and gambling cases. Although they represented 38 percent of all defendants, they handled only 21 percent of the robbery cases in 1965 and 16 percent of the auto theft cases.[272] Table 58 shows changes since 1950 in the number of retained counsel and the types of cases in which they appear. No data are available on the types of cases handled by retained counsel in the Court of General Sessions. Most of the attorneys who appear as retained counsel are not exclusively engaged in criminal law. However, most of the "regulars" who appear daily in the U.S. Branch of the Court of General Sessions to accept appointments have little practice outside the criminal courts.[273]

APPOINTED COUNSEL

Through the years the courts and lawyers in the District of Columbia have developed a commendable system for representing indigent people accused of crime.[274] Until recently, private attorneys appointed by the courts have served without compensation. The 1964 Criminal Justice Act, however, provides for modest compensation of attorneys who represent indigents, and these private efforts increasingly have been supplemented by professional organizations of salaried defense lawyers.

Methods of Appointment

Each court in the District has procedures for appointing lawyers to represent indigent defendants. These procedures are coordinated under a plan approved by the Judicial Council pursuant to the Criminal Justice Act.[275] The plan extends representation to all defendants who are financially unable to retain counsel.[276] It provides for a coordinator who supplies each court with a panel of attorneys, including

TABLE 58.—*Type of counsel in felony cases—U.S. District Court*

[Calendar years 1950, 1955, 1960 and 1965]

Crime charged	Retained		Appointed		Unknown		Retained		Appointed		Unknown	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	1950						1955					
Murder, 1st and 2nd degree	29	63.0	15	32.6	2	4.4	34	82.9	7	17.1	------	------
Manslaughter	16	88.9	2	11.1	------	------	13	81.3	3	18.8	------	------
Robbery	170	54.7	124	39.9	17	5.5	102	50.5	88	43.6	12	5.9
Assault	163	61.7	93	35.2	8	3.0	58	63.0	33	35.9	1	1.1
Burglary	178	45.1	178	45.1	39	9.9	127	46.4	129	47.1	18	6.6
Larceny and theft	161	57.5	102	36.4	17	6.1	74	54.4	52	38.2	10	7.4
Embezzlement	33	67.3	4	8.2	12	24.5	16	66.7	7	29.2	1	4.2
Fraud	33	55.1	18	26.1	13	18.8	59	71.1	10	12.0	14	16.9
Auto theft	91	51.7	72	40.9	13	7.4	22	23.9	69	75.0	1	1.1
Forgery and counterfeiting	121	62.4	47	24.2	26	13.4	63	42.3	63	42.3	23	15.4
Rape	17	63.0	9	33.3	1	3.7	30	66.7	15	33.3	------	------
Vice	3	50.0	2	33.3	1	16.7	1	50.0	1	50.0	------	------
Sex	41	56.9	28	38.9	3	4.2	15	48.4	16	51.6	------	------
Narcotics	31	54.4	22	38.6	4	7.0	89	54.3	65	39.6	10	6.1
Gambling	134	87.6	11	7.2	8	5.2	42	95.5	1	2.3	1	2.3
Weapons	------	------	------	------	------	------	2	50.0	1	25.0	1	25.0
Miscellaneous	137	78.3	22	12.6	16	9.1	93	60.8	36	23.5	24	15.7
Total	1,363	59.5	749	32.7	180	7.9	840	54.1	596	38.4	116	7.5
	1960						1965					
Murder, 1st and 2nd degree	30	47.6	31	49.2	2	3.2	44	46.3	48	50.5	3	3.2
Manslaughter	8	66.6	3	25.0	1	8.3	3	27.3	7	63.6	1	9.1
Robbery	74	33.6	143	65.0	3	1.4	62	20.5	220	72.9	20	6.6
Assault	51	42.5	66	55.0	3	2.5	80	38.3	117	56.0	12	5.7
Burglary	60	30.0	135	67.5	5	2.5	67	26.5	170	67.2	16	6.3
Larceny and theft	38	41.8	47	51.6	6	6.6	27	36.0	44	58.7	4	5.3
Embezzlement	16	69.6	4	17.4	3	13.0	9	75.0	2	16.7	1	8.3
Fraud	8	30.8	8	30.8	10	38.5	21	47.7	14	31.8	9	20.5
Auto theft	34	23.9	106	74.7	2	1.4	22	15.9	109	79.0	7	5.1
Forgery and counterfeiting	36	28.1	82	64.1	10	7.8	22	23.9	51	55.4	19	20.7
Rape	25	45.5	28	50.9	2	3.7	13	27.7	25	53.2	9	19.1
Vice	4	80.0	1	20.0	------	------	------	------	2	100.0	------	------
Sex	7	35.0	13	65.0	------	------	4	23.5	13	76.5	------	------
Narcotics	81	52.3	67	43.2	7	4.5	45	42.1	54	50.5	8	7.5
Gambling	112	90.3	9	7.3	3	2.4	103	91.2	8	7.1	2	1.8
Weapons	2	40.0	3	60.0	------	------	14	33.3	23	54.8	5	11.9
Miscellaneous	36	70.6	11	21.6	4	7.8	27	61.4	12	27.3	5	11.4
Total	622	43.2	757	52.6	61*	4.2	563	35.1	919	57.3	121*	7.5

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

*Includes one defendant with no counsel.

members of the private bar, the Prettyman Fellows and the Legal Aid Agency. Generally they are divided into three types of panels which reflect the experience of the attorneys. Under the statute, an attorney may submit a claim for compensation in an amount limited to $500 in felony cases and $300 in misdemeanor cases, unless extraordinary circumstances exist to justify a larger fee.

United States District Court

Prior to the Criminal Justice Act the appointments in the District Court were generally made from a roster of attorneys who either volunteered or were recruited for appointment. Now attorneys are appointed from the panels. They receive a notice of appointment from the court and a statement of duties and suggestions for fulfilling their responsibilities.[277] An appointed attorney is not permitted to withdraw from a case without making a formal motion to this effect or otherwise obtaining the approval of the chief judge.[278] In calendar 1965, 919 attorneys were appointed to represent nearly 60 percent of the defendants before the District Court.[279]

United States Court of Appeals

Appeals by indigent defendants are governed by statutory provisions which provide that a defendant who wishes to appeal in forma pauperis must obtain a certificate from the trial court that his appeal is not frivolous.[280] In the District of Columbia appeals are certified as non-frivolous "almost as a matter of course." [281]

The plan for the District under the Criminal Justice Act specifies a panel for the U.S. Court of Appeals with monthly lists for appointment in criminal appeals.[282] After determining that a lawyer is available, the Clerk of Court submits his name to the chief judge who generally agrees to the appointment. Lawyers on the list are informally rated for ability by the clerk, based on personal impressions or on judges' comments.[283] An attorney appointed to argue an appeal receives a statement informing him of his duties and advising him that withdrawals are allowed only in exceptional cases.[284] In the U.S. Court of Appeals almost all appeals in forma pauperis are handled by private practitioners—some 200 cases in fiscal 1965.[285]

Court of General Sessions

On December 1, 1966 this court commenced appointment of attorneys under the Criminal Justice Act.[286] The plan for this court amends

court Rule 24 governing appointment of counsel. The plan contemplates a panel composed of any member of the bar who registers with a deputy coordinator. Based on information received from the attorneys, the Coordinator will supply the presiding judge with a list of those attorneys who are to be in court to accept appointments. There is provision for suspension from the panel for unethical conduct, improper behavior in the courthouse, and lack of diligence in representation.[287]

Until the recent amendment of Rule 24, the Court of General Sessions maintained a register of attorneys desiring appointments to criminal cases under this rule. There were about 150 attorneys registered with the court as eligible for appointment, but only about 20 or 30 regularly appeared in the U.S. Branch of the court to accept appointments.[288] In order to receive an appointment a registered attorney had to be physically present in court.[289] As each defendant came before the court he was asked whether he had an attorney, whether he could afford an attorney, or whether he wished to have an attorney appointed to represent him. If the defendant desired the appointment of an attorney, the appointed lawyer was supposed to interview the defendant to ascertain whether he was able to pay a modest fee.[290] If he concluded that the defendant had this ability, the attorney was to notify the clerk and then proceed to represent the defendant as he would any private client. If the defendant had no funds, the attorney was supposed to ask him to complete an affidavit of indigency, present it to the clerk, and notify the clerk whether he would accept the assignment.[291] Because the reporting requirements of old Rule 24 were not followed,[292] the court did not have a record of the cases in which an appointed attorney received a fee and those in which he served without compensation.[293] Thus the number of lawyers who served indigents in the court is not known.

District of Columbia Court of Appeals

Until the decision in *Tate* v. *United States* in March 1966,[294] the D.C. Court of Appeals, upon receipt of an application for leave to appeal in forma pauperis, appointed an attorney to investigate the merits of the case and advise the court.[295] Only 1 or 2 defendants out of a total of 16 to 24 indigents were granted a full appeal each year.[296] As discussed earlier, the *Tate* opinion was very critical of this appointment system,[297] and indicated that indigent defendants appealing to the D.C. Court of Appeals should have a trial transcript at government expense.[298] Under the plan for implementation of the Criminal

Justice Act this court also receives a list of attorneys from the coordinator and makes appointments from among all members of the bar.

Sources of Representation

The District of Columbia has a mixed system for representing indigents, consisting in part of private lawyers and in part of lawyers from three professional organizations of defense counsel.

Private Bar

Throughout the years the private bar has shouldered the principal burden in the representation of indigents. Although their services are now being supplemented by other sources of defense counsel, private attorneys continue to represent the greatest proportion of indigent defendants in the District. This representation, despite payments under the Criminal Justice Act, remains a substantial public service. The statutory maximum of $500 in felony cases and $300 in misdemeanor cases is modest, as is the fee of $100 specified on an experimental basis under the plan for the Court of General Sessions.[299]

Legal Aid Agency

The Legal Aid Agency for the District of Columbia—the only Federal "public defender" office in the United States—was created by Congress in 1960 "to provide legal representation of indigents in judicial proceedings in the District of Columbia." [300] These include criminal proceedings in the United States District Court, preliminary hearings, cases in the Court of General Sessions involving offenses against the United States in which imprisonment may be for 1 year or more, as well as special proceedings before the Coroner, Mental Health Commission and Juvenile Court.

The legal staff of the Agency consists of a director, deputy director, 11 attorneys, and a 5-man investigative unit.[301] The Agency received a Federal appropriation of $214,000 for fiscal 1967,[302] which is supplemented by a 3-year grant of approximately $300,000, which expires October 31, 1967, from the National Defender Project of the National Legal Aid and Defender Association.[303]

In fiscal 1965 Agency lawyers represented all of the approximately 500 indigent defendants who appeared before the U.S. Commissioner, received 160 appointments in the United States District Court (representing about one-sixth of all indigent defendants in that court),

and received about 200 appointments in the Court of General Sessions (less than 5 percent of the indigent cases in the U.S. Branch).[304] Agency lawyers also consult with and offer investigative service to members of the private bar appointed to represent defendants.[305]

Prettyman Fellows

The Prettyman Fellows are recent law school graduates who participate in a 1-year legal internship program at the Georgetown University Law Center. Under the supervision of the faculty, they also provide representation for indigent defendants in the District of Columbia.[306] The Fellows are selected competitively—one from each Judicial Circuit in the United States.[307] After a few months of training, they receive court appointments, appearing in about 10 percent of the cases in the District Court in 1965–1966 and contributing some services in the Court of General Sessions.[308] On occasion they participate in appellate cases.[309]

Neighborhood Legal Services Project

The Neighborhood Legal Services Project (NLSP), a division of the United Planning Organization, began operations early in 1965. It is primarily designed for service in civil cases, but its staff of 20 to 30 lawyers provides some representation for indigent defendants.[310] The services of an NLSP lawyer on a criminal matter can be obtained by a specific request from the defendant or a relative or friend on his behalf. Services in criminal cases are generally limited to misdemeanors.[311] Recently NLSP has extended its activities to representation for defendants who wish counsel during police interrogation. Suspects who desire an attorney are provided one from a panel of approximately 100 attorneys who assist NLSP in providing this service on a 24-hour basis.[312]

EVALUATION

Due to a unique concentration of resources and an unusual interest in developments in the criminal law, the District of Columbia has been able to maintain generally high standards for representation of persons accused of crime. There is, however, cause for concern over the ability of the bar to meet the growing need for qualified counsel and over the implementation of the Criminal Justice Act.

Availability of Counsel

Persons charged with felonies in the District of Columbia are accorded counsel virtually from the moment of their apprehension. This means that lawyers are available during police interrogation, at appearances before a magistrate, at arraignment, at trial, on appeal,[313] and in connection with post-conviction collateral proceedings.[314] Misdemeanants are not as well represented, although they too may need the services of a lawyer at most stages of the criminal process.[315]

Fulfilling these obligations, whether by appointment or on a retained basis, requires a substantial number of lawyers. Rough estimates, based on the data in Figure 1, indicate that lawyers must be available to represent 1,300 defendants who appear annually before the Court of General Sessions for presentment on felony charges, and 1,000 persons appearing before the U.S. Commissioner require attorneys. Misdemeanants before the U.S. Branch of the Court of General Sessions require legal services in over 7,000 cases a year, and in fiscal 1965 felony cases in the District Court required counsel for over 1,500 defendants. Over 250 criminal appeals are taken to the U.S. Court of Appeals annually, and in light of the *Tate* decision the number of cases brought to the D.C. Court of Appeals will probably increase significantly. These estimates do not include the 70,000 misdemeanor cases in the D.C. Branch and Traffic Branch of the Court of General Sessions, nor do they take into account the need for requested counsel during police interrogration under the *Miranda* decision.

The present method of meeting the need for lawyers is a mixed system of retained counsel, appointed counsel from the private bar, and public defenders. It has worked well, avoiding the criticism directed at assignment systems for their tardy appointments of inexperienced counsel, and at public defenders for passive indifference to their clients.[316] While it is not without inequities, particularly in the frequency with which some attorneys are appointed, the present system brings outstanding private practitioners to the criminal bar. It also provides effective public defense counsel to assume part of the burden.

In view of increasing case volume and new requirements for legal assistance, the Commission recommends that services of private counsel be supplemented by an expanded public defender system in the District of Columbia. Public defenders can render better and more economical legal assistance in several respects. Dependence on counsel appointed from the private bar is unrealistic and impractical in

certain stages of a criminal proceeding.[317] The District has already experienced difficulty in utilizing private counsel at stationhouse interrogations.[318] Similarly, in the Court of General Sessions an attorney must be physically present to receive an assignment, a requirement difficult for many members of the bar to meet. A recent American Bar Foundation survey concluded that the costs of financing a defender system in large cities were generally less than the costs of an assigned counsel system.[319]

An expanded public defender program would also reduce the lack of continuity in representation of defendants. Presently, the lawyer appointed to represent an indigent offender for a preliminary hearing in the Court of General Sessions rarely continues his representation in the District Court. Similarly, appointed counsel in the District Court rarely continue representation on appeal.[320] Although the appointment of new counsel at several stages of a criminal proceeding minimizes the burden on individual attorneys and may bring fresh insights to the case, it also requires several lawyers to duplicate efforts in mastering the legal and factual issues of one case. We think the advantages of continuous representation are best obtained through increasing use of public defender counsel. Continuity of representation, however, need not always extend from trial to appeal; the advantages of the new perspective brought by the appellate advocate sometimes outweigh those of familiarity with the pretrial and trial proceedings.

Adequacy of Representation

Relatively few lawyers in the District of Columbia devote themselves exclusively to the practice of criminal law. Many defendants, therefore, are represented by attorneys more experienced in other fields. Nonetheless, the quality of representation in the District Court has generally been high. Opinions of the U.S. Court of Appeals have not infrequently noted the excellence of trial and appellate representation;[321] a survey of the judges by this Commission revealed a general consensus that defense counsel in felony cases were becoming increasingly skilled.[322]

Data collected by this Commission tend to corroborate these conclusions and suggest that defendants with appointed counsel are by no means disadvantaged in the District Court. There is little variation between retained and appointed counsel in the manner in which they disposed of cases, and the conviction rates of their clients were approximately the same. In cases commenced in 1965, 61 percent of de-

fendants with retained counsel and 62 percent of those with appointed counsel were convicted (Table 59). Retained counsel tried 27 percent of their cases and entered pleas in 49 percent, while appointed counsel tried 37 percent and entered pleas in 42 percent. Appointed counsel tend to dispose of their cases slightly more expeditiously (Table 16).

In contrast to the quality of representation in the District Court, the legal services rendered defendants in the Court of General Sessions are in need of substantial improvement. Neither the Legal Aid Agency staff nor the Prettyman Fellows devote an equal share of their time to representing misdemeanants,[323] and few private practitioners are familiar with the intricacies of criminal procedure in that court.[324] A substantial portion of the court's criminal business has been conducted by a small number of attorneys who specialize in the representation of misdemeanants. Incidents of misconduct by members of

TABLE 59.—*Method of disposition, by type of counsel—U.S. District Court*

[Calendar years 1950, 1955, 1960, and 1965]

Type of counsel	Number of defendants	Conviction ratio, percent	Plea ratio, percent	Defendants tried, percent	Number of defendants	Conviction ratio, percent	Plea ratio, percent	Defendants tried, percent
	1950				1955			
Retained	1,363	68.7	52.2	36.2	840	65.5	55.7	31.3
Appointed	749	70.1	52.1	37.7	596	66.8	60.1	29.4
No counsel	------	------	------	------	------	------	------	------
Unknown	180	83.9	51.7	57.8	116	86.2	69.8	45.7
Total	2,292	70.4	52.1	38.4	1,552	67.5	58.4	31.6
	1960				1965			
Retained	622	65.4	54.3	32.6	563	61.1	49.4	27.4
Appointed	757	62.9	54.0	34.7	919	62.1	41.8	37.2
No counsel	1	100.0	100.0	------	1	100.0	100.0	------
Unknown	60	78.3	61.7	60.0	120	45.0	33.3	26.7
Total	1,440	64.7	54.5	34.9	1,603	60.5	43.9	33.0

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

this group have been widely publicized in the newspaper.[325] A study by the U.S. Department of Justice reported:

> Several regulars have long drunk records and appear for assignment only between terms at the drunk farm (Occoquan) or the mental hospital, St. Elizabeths. Not all of these have attained sobriety at the time of their appearance in court. One judge, in fact, put an attorney in the "tank" to sober up but subsequently appointed him to a case that same day.[326]

The Court of General Sessions has taken note of these shortcomings. One judge refuses to give assignments to certain lawyers.[327] Another judge recently sentenced a lawyer to a 15-day term for representing a defendant while under the influence of alcohol.[328] Complaints range from solicitation in the lockup to referrals by bondsmen;[329] such practices are in violation of court rules[330] and may result in inflated legal fees, fee-splitting, or making release on bond contingent on the employment of a particular lawyer.[331] These practices are not unique to the District of Columbia, but they cast a shadow on the integrity of the entire legal profession and the administration of justice in this community.

The new system of appointment of counsel, coupled with recently tightened provisions in court rules governing the conduct of attorneys, should lead to an improvement in the quality of representation in the Court of General Sessions. In particular, it does away with the fee negotiations between defendants and appointed counsel which were prevalent until recently. If an attorney appointed under former Rule 24 was unsuccessful in obtaining a fee from the defendant, his performance in court was not infrequently perfunctory, often resulting in an immediate plea of guilty.[332] If the defendant could pay, however, he might obtain the benefit of a skillfully arranged plea or a jury trial.[333] Many continuances were sought only to give the defendant time to raise fee money.[334]

Implementation of the Criminal Justice Act

The problems of implementing the Criminal Justice Act in the District of Columbia have been substantial. Lack of money for the coordinator prevented use of many of the procedures for implementation outlined in the Judicial Council Plan. Although a public report on implementation has not been made, the net result of the Act appears to be only a minimal change in the appointments system, except in the Court of General Sessions, and an increased burden for the courts in authorizing appropriate fees and expenses for appointed counsel.

One of the unresolved matters under the plan is the selection of attorneys who are eligible for appointment and their compensation.

If the attorneys are selected after an evaluation of their competence and ethics, the Federal funds available under this act could serve an important function in maintaining and improving standards of excellence in the defense of accused persons.

Criteria for membership in all panels were not precisely spelled out in the plan. It did, however, provide for the grading of attorneys according to experience and set up experience requirements for attorneys appointed in District Court capital and noncapital felony cases. In accord with the plan, the District Court created a panel of attorneys subdivided into various categories of experience. The Judicial Conference Committee stated that selection of the panel involves judicial evaluation of competence and ethics, and the plan itself specifies that membership on the panel is not "a matter of right." [335] It is unclear, however, whether these general statements led to the formulation of more specific standards of eligibility beyond the experience of the attorney involved.

The same question of selection applies to the Court of General Sessions. Under the provisions of the plan for this court, attorneys may be suspended from the panel for misbehavior or inadequate performance on behalf of indigent defendants.[336] The chief judge of that court has recognized the importance of the act in contributing to higher standards of representation in the court:

> Application of the Criminal Justice Act to this Court will encourage attorneys to practice here who have refrained from doing so in the past because they did not feel able to make the financial sacrifice that this entailed; *it will provide an incentive to those now regularly practicing in this Court to render more effective service;* and *it will enable the Court to provide more systematic, more effective,* and *fairer means of supervision of appointed counsel* and the services they render than has been possible in the past by the other means available. [Emphasis supplied.] [337]

Full implementation of the Criminal Justice Act would be greatly aided by the appropriation of funds for a coordinator who could superintend the panels, equalize the burden of representation, and develop programs to aid defense counsel. The plans for implementation of the Act must also be reviewed in order to minimize the disparity of representation in the various courts. To the extent possible, the system of appointment must prevent the flight of competent attorneys from the Court of General Sessions to the more lucrative cases in the felony court.[338] There must also be inquiry into the potential influence of compensation on the decision not to negotiate misdemeanor disposition in the Court of General Sessions in favor of seeking disposition in the District Court where the fees are higher.

Remedial Action

Requirements for representation of defendants change in some measure with each alteration in prosecutive policies and court procedures. We believe that changing needs can continue to be best accommodated by a mixed system of public defenders and appointment of private attorneys.

The Legal Aid Agency must be adequately financed and expanded to act as the continuing organization which initially absorbs new demands for legal services. The Legal Aid Agency should play an increased role in the Court of General Sessions by assigning five full-time staff attorneys to that court. Pending receipt of additional funding, the necessary attorneys should be diverted by the Agency from other courts to the Court of General Sessions. The new rules governing representation of indigents in the Court of General Sessions plus the addition of attorneys from the Legal Aid Agency should materially improve the quality of representation in that court.

Funds for appropriate administrators under the Criminal Justice Act are imperative to achieve full realization of the benefits of the plan. Although progress has been made under an acting coordinator, a full-time coordinator could devise systems for spreading representation more evenly among members of the bar, give the courts more assistance, and encourage the development of programs and services to assist appointed attorneys. Most particularly, a full-time deputy coordinator in the Court of General Sessions could devise a scheme for broader participation by the private bar in representation of indigents before that court. We strongly recommend that Congress make funds available.

PROPOSALS FOR IMPROVEMENT

In reviewing the administration of criminal justice in the District of Columbia this Commission has concentrated on areas where improvements would enable the District to deal with its criminal offenders more expeditiously and fairly. This emphasis is a product of our mandate and should not overshadow our firm belief and conclusion that the citizens of the District have the benefit of a distinguished judiciary. Courts, prosecutors and defense counsel execute their duties free from outside influences, criminal or political. They conscientiously seek justice both for the defendant and the community.

We are convinced, however, that neither the defendant nor the community receives the full measure of justice in a system pressured by growing backlogs and delays. Through delays and congestion the

system presently accords the adult offender a wide margin of safety, postpones the vindication of the innocent and fails to protect the public. Vigorous police work is diluted unless followed by fair and expeditious dispositions by prosecutor and court. Young adult offenders become contemptuous of a system of justice which frees them, not because they are innocent, but because long delayed proceedings finally exhaust witnesses or cause the prosecutor to view other matters as more urgent.

In like fashion, the quality of justice suffers where criminal proceedings are mass produced. The lofty goals of our system of criminal justice cannot easily be accommodated to the demands of an urban court, but a reasoned attack on the problem must begin with a clear recognition of the existing inconsistencies and difficulties. Abbreviated trials, disregard for witnesses, inadequate and shabby physical facilities—all contribute to an appearance of injustice which weakens respect for law and order. Hasty processing of misdemeanor offenders wins time at great cost to society, since too often the petty offender turns to more serious crimes.

In earlier sections of this chapter we have made recommendations aimed at particular agency needs or problems. The supplemental proposals which follow are designed to improve the entire criminal justice system in the District of Columbia. Some involve far-reaching reforms calling for sustained effort over the long term; others can be implemented in the immediate future.

ADMINISTRATION AND COORDINATION

The delays and congestion which have developed in the criminal courts of the District of Columbia do not present inextricable problems. We believe that they can in large measure be solved by good administration. Successful attack on the problems, however, requires recognition that urban criminal courts are big business. The courts need the benefit of every modern management device,[339] including management surveys and data processing. In the words of Justice Clark, it also requires judges who are prepared to "do all sorts of pushing" in the interest of speeding the disposition of cases.[340]

The importance of management is best seen in the matters of scheduling and calendar control. Before justice can be done in the adversary system there must be a proper combination of prepared prosecutors, defense counsel and judges. To this combination must be added the witnesses, court reporters and such other supporting personnel as probation officers. Failure to achieve a proper combination results in continuances and delays; recollections grow dim, witnesses tire of re-

peated but useless appearances in the court, prosecutors view other cases as more pressing, and the interests of effective law enforcement are not fully served.

Acknowledging their responsibilties, both the District Court and the Court of General Sessions have recently tried to improve the management of their calendars. The District Court has just abandoned one calendaring system and promulgated its new Rule 87. The Court of General Sessions has tried various combinations of motions calendars, double jury calendars and now an assignment system.[341] Over the years judges and lawyers in the District have devoted substantial attention to eliminating delay and congestion through revised calendar systems and new combinations of judges, prosecutors and vacation schedules.[342] We believe that additional measures are necessary to reduce backlogs, rationalize the calendar and contribute to effective judicial administration.

Court Administrators

Years ago the late Chief Judge Bolitha J. Laws of the District Court concluded that "no sizeable court of today can possibly function to its full state of efficiency without a capable administrator with an adequate force under his direction." [343] The functions of a court administrator are suggested in the Model Act to Provide for an Administrator for State Courts,[344] which could apply in the District of Columbia with slight modifications. As reflected in the proposed statute, a professional court administrator should examine the state of the dockets of the court and determine the need for assistance in various departments, make recommendations to the Chief Judge relating to assignment of judges and carry out his directions as to assignment, collect statistical and other data which bear on the business of the courts, and make reports on cases and other judicial business in which action has been delayed. In some courts the administrator also acts as budget officer to prepare estimates and develop appropriation requests. Over 25 states have court administrators.[345]

In the District of Columbia there is no court administrator with such comprehensive duties. Administration of the District Court is generally entrusted to the chief judge, who is aided by an administrative assistant with no staff; administrative duties are divided among several units including the Assignment Office. In the Court of General Sessions administration depends on the efforts of the chief judge [346] and court clerks. He has no assistant.

We recommend that the administrative assistant to the chief judge of the District Court be given an adequate staff and full administrative

responsibility for the court. He should undertake the responsibilities outlined in the Model Act except insofar as they are already performed by the Administrative Office of the United States Courts. He should have responsibility for gathering detailed data not now collected by the Administrative Office, but which is essential to designing and maintaining a calendar system. He should be charged with reporting on time lapses at various stages of the criminal process, frequency of continuances, and other data relevant to calendar control.

In the Court of General Sessions a post of court administrator should be created. The administrator should work directly with the chief judge and have a staff sufficiently large for the management and data collection responsibilities outlined in the Model Act. The administrator should give first priority to assisting the chief judge in the development and support of budget requests adequate for the needs of the court; second priority should go to the development of a criminal case scheduling system.

Management Surveys and Systems Analysis

A basic tool for improvement in the administration of criminal justice is the management survey. It is useful for prosecutors, probation offices, courts and other agencies involved in the criminal process. There has recently been a growing consensus among persons concerned with judicial administration that we must look beyond the usual management time study to the broader methods of systems analysis.[347] The Chief Justice of the United States recently recognized "the need for a thorough systems analysis of the mechanical operations involved in our court system."[348] The case for a broad-based professional survey has been cogently stated:

> Much is now being done by the courts themselves through the establishment of administrative offices at both municipal and state levels. But the system of criminal justice should also be surveyed by administrative experts from outside the legal profession. Those with fresh viewpoints may be able to devise ways and means of expediting the handling of criminal cases without impairing the fundamental values expressed in our notions of due process of law. Basic administrative reforms may be needed before we can afford to conform our system to the due process ideals which now are often lost in the day-to-day processing of large volumes of cases. The challenge here is enormous—and the need for imaginative work is far too great to leave the process of reform entirely to lawyers and judges, encrusted as they are with the barnacles of legal tradition.[349]

Systems analysis offers a coordinated approach to improved case processing. To supplement the expertise of the legal profession, it

relies on the analytical tools and techniques of the systems specialists. For example, a proposed calendaring system can be pretested on a mathematical model.[350] The systems approach permits analysis of the interdependence of various units of the system—judges, prosecutors, defense counsel, and police. Once full information regarding this interdependence is developed, the proper balance of the units to achieve an orderly flow of cases can be designed. The analysis may disclose that more judges, prosecutors, defense counsel, or other personnel are needed. Alternatively, it may reveal that there are no new manpower requirements but that the principal need may be one of more appropriately scheduling the flow of cases in the system.

We believe that the administration of criminal justice in the District of Columbia would profit from professional assistance. A thorough survey of our system for processing criminal cases should not be postponed. Public safety and individual rights depend in part on rational, well-informed decisions concerning calendar management, assignment of judges and scheduling of cases. As Chief Justice Arthur Vanderbilt of the Supreme Court of New Jersey said in referring to court delay and congestion:

> The practical solution of these problems . . . is much simpler than most people suspect. It is not knowledge of ways and means we lack; it is the will to put them into effect.[351]

Court Reorganization

Like other jurisdictions with overlapping courts, the District of Columbia experiences some of the resultant inefficient use of judicial resources, confusion of litigants, and inequity in the administration of justice.[352] There is no centralized agency to administer criminal justice in the District of Columbia. There is no method, for example, whereby resources from one court can be allocated to relieve excessive congestion in another. The lack of administrative coordination between the courts has resulted in unfortunate shifts in court workloads, so that the overburdened Court of General Sessions is now handling cases previously treated as felonies, and the District Court, plagued with backlogs and delays, is not processing as many serious criminal cases as it did in prior years.

This Commission concludes that the District of Columbia needs a unified court system for the effective administration of criminal justice. Unification, entailing a complete reorganization of our court system, poses extremely difficult issues. It requires appraisal of the courts' civil jurisdiction, consideration of the Family Court which we propose in chapter 8, extensive inquiry into the value of keeping certain

offenses within the criminal jurisdiction of the courts, and judgments concerning the District's present and future government.

Our own review of criminal justice does not permit conclusions on the appropriate form of reorganization, although it has indicated some of the advantages which should flow from unification. We cannot conclude, for example, that the District's courts should be reorganized in the near future by transferring jurisdiction for selected felonies to the Court of General Sessions. While this may be an appropriate alternative over the long term, it has obvious shortcomings at a time when the Court of General Sessions is overworked and the community's interest requires the prosecution of a greater number of serious felony cases.

We defer on these issues to the Committee on the Administration of Criminal Justice of the Judicial Council, which is currently exploring all facets of this problem—civil and criminal. We urge, however, that their efforts be directed toward developing the necessary data so that these critical long-run decisions can be made rationally. In our view, major change in our court structure should not be advocated until there is substantial basis for predicting its effects. Only then can the alternative courses of action be debated with confidence that the end result will be improved administration of criminal justice in the District of Columbia.

NEED FOR INFORMATION

Improvement in the administration of criminal justice in the District of Columbia requires vastly improved data. Some information which is essential to appraisal of law enforcement is not currently available. Other information is in such poor form that it cannot be used as an aid in finding the causes for deficient performance. On many occasions this Commission was without facts essential to its own studies. We also found that many agencies involved in the administration of justice were making decisions without an adequate factual base. We have concluded that there is need for a Bureau of Criminal Statistics in the District of Columbia.

Data Deficiencies

Nearly every agency involved in law enforcement and the administration of justice is impaired by lack of facts pertinent to daily operations and long-range planning. Information is either nonexistent, incomplete, unassembled, or incompatible at every stage of the crimi-

240-175 O—67——25

nal process—from offense to arrest, trial, conviction, sentencing, incarceration, release, and aftercare.

Police Data

Data collected and disseminated by the Metropolitan Police Department have crucial significance. They must supply an accurate overview of the crime patterns in the city if we are to prevent crime. Information reported by the police also affects the manner in which all other law enforcement agencies—the prosecutors, courts and correctional institutions—organize their personnel and facilities.

In the last chapter we reviewed some of the deficiencies in police records as reported by the International Association of Chiefs of Police and made appropriate recommendations. We have also found that reports concerning the number of persons arrested by the police are probably inaccurate. The police reported in fiscal 1965 that they arrested 6,266 adults on felony charges [353] and an additional 6,358 adults on misdemeanor charges handled in the U.S. Branch of the Court of General Sessions' Criminal Division.[354] These 12,624 persons contrast with the 9,400 persons against whom criminal charges were filed in judicial proceedings, 2,400 as felons and 7,000 as misdemeanants [355]—a discrepany of 3,200 persons between court and police figures which is not explained by the 1,428 no papers issued by the United States Attorney.[356] The Metropolitan Police Department does not "arrest any person and release them without presenting the case to the prosecuting authority, except in those cases which permit the defendant to forfeit collateral",[357] and none of the offenses under consideration permited forfeiture.[358]

The most probable explanation is that the police are counting some arrested offenders twice. This multiple counting can occur whenever the United States Attorney's office determines that the original charges against a person should be reduced or changed. In these circumstances it is police practice to prepare a new arrest form. The form has space for indicating that the action is not a new arrest.[359] However, policemen "frequently" fail to check the proper box.[360]

Court Data

The current court practice of counting cases rather than defendants makes it difficult to analyze the way in which individuals are being handled by our system of law enforcement and criminal justice.

In the Court of General Sessions, reports filed with the Attorney General [361] reveal only total numbers of cases.[362] In reports for the

U.S. Branch, this means that one criminal defendant may be counted three or four times, and some are not counted at all. Each docket entry or case in this court usually stands for one criminal charge against all defendants involved in the incident; in the event that one or more crimes arise out of the same event, each charge is given a separate docket entry and one incident is counted several times. A similar multiple counting occurs on felony charges brought before the court for a finding of probable cause to hold the suspect for grand jury action.[363] If the prosecutor decides to reduce the charge, the old docket entry is closed out and a new docket entry is made. Similarly, a person who has been held for action by the grand jury but referred back to the court receives one or more new case numbers. Consequently, while we know that the court reported 11,676 cases filed in fiscal 1965 in the U.S. Branch,[364] we do not know the number of offenders who were involved.

The District Court for the District of Columbia, like all other Federal courts, collects and maintains data under the direction of the Administrative Office of the United States Courts.[365] The Administrative Office produces annual summaries of data and processes special statistical studies for these courts. However, the Administrative Office has neither the assignment [366] nor the capability of collecting and processing all of the information required by each individual court for its day-to-day operations. Furthermore, since its purpose is to serve the Federal courts, it must orient its data collection to the features common to those courts, whereas the District Court for the District of Columbia needs additional data on its criminal cases.

District Court data are deficient in several respects. When an individual is charged in two separate cases, he may be counted both as two cases and two persons. Similarly, when a person who has already been indicted and given a case number decides to plead guilty to an information, he receives a new case number. There is thus an obvious and substantial over-counting of cases and defendants. The net result of the court's docketing system is a count which does not measure the workload of the court and which is not completely accurate as to the number of defendants. Other necessary information about the District Court is currently inaccessible, such as detailed data on the time required for processing cases (although the Administrative Office arrives at an overall annual figure on median time from indictment to termination), and information with respect to bond, motions and continuances.

Appellate courts in the District of Columbia also have information deficiencies. The District of Columbia Court of Appeals, which

maintains its own records, collects some information [367] but counts cases in the same way as the Court of General Sessions, thus having no real estimate of its workload.[368] The data collected by the U.S. Court of Appeals exhibits the recurrent problem of counting cases and persons. Moreover, the dispositions of cases in this court, as reported by the Administrative Office, do not always accurately portray the outcome of the cases.[369]

Prosecution Data

Prosecutors in the District of Columbia maintain some data to show their workloads and to allow evaluation of their individual performances. In the Court of General Sessions, where the press of business is enormous, virtually no records are kept by the Corporation Counsel's office, and only recently did the United States Attorney's office start keeping useful records on the overall flow of business.

In the District Court the United States Attorney maintains more formal records. Internal records on the number of "matters" handled by each prosecutor are kept, as are records on the disposition of cases and defendants. The office compiles an annual statistical summary showing the number of cases going in and out of the office and the methods of disposition.[370] These summaries, however, differ significantly from the figures published by the Administrative Office. For example, in fiscal 1965 the United States Attorney reported 1,466 defendants in cases terminated, whereas the Administrative Office found only 1,286.[371] The differing figures may be explained in part by the fact that the Administrative Office makes an adjustment for defendants in multiple cases,[372] whereas the United States Attorney's office apparently does not. This could explain the discrepancy in number of dismissals; the Administrative Office's figures show 198 dismissals and the United States Attorney's records show 351. This, however, does not explain why the Administrative Office records should show more acquittals, fewer pleas and fewer convictions after trial. A third set of records published by the U.S. Department of Justice regarding the workload of the United States Attorney's office shows yet another figure for the number of defendants prosecuted in the District Court in fiscal 1965—1,779.[373]

Correctional Data

There is too wide a variance in the quantity and quality of statistics being maintained about the persons who are convicted in the courts of the District of Columbia. Those persons who are sentenced by the District Court are the subjects of extensive presentence investigations,

while few persons sentenced by the Court of General Sessions receive even minimal investigation. The Federal probation system maintains good data collection, on the basis of which the Administrative Office produces informative reports.[374]

The District of Columbia Department of Corrections lacks similar competence in the statistical field. While the Department does produce a number of studies in specialized areas,[375] at no point is enough information on the persons in its care collected and presented in an annual report.[376] One reason for the inadequacy of the Department's information is the lack of necessary equipment and personnel. A second reason may lie in inadequate knowledge about the persons under its supervision.

Recidivism statistics are notably incomplete. While it is known how many imprisoned persons had prior convictions,[377] it is not known how many persons with one term of imprisonment never again violate the law. A system which can only measure its failures cannot know the bases of its successes. Such information would, of course, require cooperation by several different agencies on a national level.

Bureau of Criminal Statistics

The need for accurate criminal statistics has been acknowledged for years. A series of special crime studies began with the Cleveland Crime Survey of 1922,[378] under the direction of Roscoe Pound and Felix Frankfurter, and concluded with the Wickersham Commission in 1931. All of these studies encountered problems with the available data, causing the Wickersham Commission to call for sweeping improvements and to set forth five principles to be embodied in any plan for collecting statistics:

> (1) Compilation and publication of criminal statistics should be centralized.
>
> (2) There should be a correlation of State statistics and of State and Federal statistics in one Federal bureau.
>
> (3) Local officials ought not to be expected to do more than turn in to the appropriate central office exactly what their records disclose.
>
> (4) For the purposes of a check upon the different agencies of criminal justice it is important that the compiling and publication of statistics should not be confided to any bureau or agency which is engaged in administering the criminal law.
>
> (5) There should be a comprehensive plan for an ultimate complete body of statistics, covering crime, criminals, criminal justice, and penal treatment.[379]

We have found that with only a few exceptions these highly relevant principles have gone unheeded in the District of Columbia.

The Commission recommends that a central Bureau of Criminal Statistics be established within the District of Columbia Government.

California, which currently has the most complete and sophisticated program for collecting and analyzing criminal data, locates its statistical office within its Department of Justice.[380] We believe, however, that the proposed bureau in the District should be independent of all existing law enforcement agencies: (1) The Bureau must collect data from a number of equal and independent agencies; (2) the Bureau will process data for, and assume some functions of, several agencies and correlate reports of all law enforcement agencies; and (3) since the envisioned Bureau will have some authority applicable to each of the reporting agencies, it seems preferable to create a new agency rather than to elevate any one to a predominant position over the others.

The Bureau of Criminal Statistics need not be a large nor a costly organization. It should be a collection agency and a designer of uniform data systems. The Bureau should receive, process, analyze, and publish all data necessary to a comprehensive annual report on crime and the manner in which it is handled in the District. This includes data on each offense reported or cleared, each arrest, each charge, the disposition of each charge and each suspect by the courts or the prosecutors, and the handling of each convicted defendant by the probation, correctional and parole authorities.

The Bureau must be empowered to adjust present reporting systems. Of particular importance is the use of one common counting unit by all agencies so that double counting of persons is eliminated. The principal unit should be the person dealt with by each agency. If the reporting agencies desire information on other units, such as charges or cases, they would obviously be permitted to count by these other measures, but people should remain the primary, unifying concern of the complete system. The Bureau would be provided with information on each offender with whom the reporting agency has contact. By means of such information, the Bureau will be in a position to give substantial aid to the reporting agencies. It can supply the prisons with information acquired by agencies which processed the prisoner at an earlier stage. It can greatly assist the prosecutor's offices in assigning workloads and in evaluating the performances of its prosecutors. And it can relieve the police, courts, prosecutors, and correctional institutions of substantial burdens in making separate reports to the Federal Bureau of Investigation, the Administrative Office, the U.S. Department of Justice, and the District of Columbia Government.

Only in this way can the District continually be alert to the manner in which it is dealing with offenders. Data collection by the proposed Bureau of Criminal Statistics should permit prompt detection and

analysis of deficiencies and permit a more coordinated approach to crime. As the first step toward full implementation of this proposal, the Commission recommends a comprehensive management study of current statistical procedures and development of new procedures to be used by a central Bureau of Criminal Statistics.

CONTINUING REVIEW AND ASSESSMENT

The administration of criminal justice in the District of Columbia requires informed support and constant evaluation. The problems reviewed in this chapter do not lend themselves to quick solutions. They must be pursued over the long term by the agencies directly involved and by citizens interested in law enforcement and criminal justice.

Between 1936 and 1959 the Washington Criminal Justice Association provided an annual review of criminal justice in the District of Columbia. Founded as a private organization for the purpose of promoting and obtaining efficient administration of criminal justice in the District of Columbia, the Association employed a professional staff and regularly gathered factual data for presentation to the public.[381] Its studies of criminal cases and their dispositions were useful supplements to the annual reports of law enforcement and other agencies. The Washington Criminal Justice Association also reported annually the amount of time required for felony prosecutions and undertook programs to secure expedited handling of criminal cases. Although the Association still has corporate existence, it no longer has the financial support of the United Givers Fund and is defunct.

In 1953 Congress created the Council on Law Enforcement of the District of Columbia.[382] The Council has a statutory composition of 15 persons: President of the D.C. Board of Commissioners, Chief of Police, United States Attorney, Corporation Counsel, representatives from the areas of corrections and parole, designees of the District Court, Court of General Sessions and Juvenile Court, other public officials, and representatives of the District of Columbia Bar Association, Washington Bar Association, and Washington Criminal Justice Association. Congress instructed the Council to "make a continuing study and appraisal of crime and law enforcement in the District," and to "make a report to the Senate and the House of Representatives at the beginning of each regular session of Congress." [383]

In its early years the Council produced some very useful reports and legislative suggestions. In 1954 a Council committee filed a

report regarding the handling of juvenile offenders in the District, which proposed new efforts to coordinate the agencies engaged in preventing delinquency, and more judges for the Juvenile Court.[384] In 1955 another Council committee filed a report on the then recently-announced *Durham* rule.[385] After open hearings on the subject, the committee recommended legislation requiring commitment of all persons found not guilty by reason of insanity under *Durham* until both the hospital and court were satisfied that there had been a complete recovery; such a provision soon was enacted. At its first meeting of 1956, the Council voted to accept a study committee report dealing with narcotics use and traffic.[386] In more recent years, however, the Council has not initiated many major studies or recommendations although it has periodically made legislative suggestions or endorsed legislation pending before Congress.

The comparative inactivity of the Council in recent years is partially attributed to its heavy reliance on ex-officio members, who are responsible for the Council's prestige but can allocate little time to its affairs because of their many other duties. Because of the involvement of these ex-officio members, the Council is not well designed to scrutinize the affairs of any one agency represented on the Council. Inactivity is also attributable to its lack of staff. In the past some of the Council's most productive studies resulted from the efforts of its private members. At best, the Council in its present form can serve as a discussion and study group.[387]

This Commission supports the purposes underlying the creation of the Council on Law Enforcement and suggests that the members of the Council reevaluate its role and potential contribution. A broadening of membership, particularly to include more private members, and the development of a small staff might serve to make the Council a more effective instrument for constructive reform in the District of Columbia. Any such enlargement of the Council's membership or functions, however, should come about only with the complete agreement of the ex officio members whose agencies are the critical cogs in the administration of criminal justice.

There are many other agencies currently involved in reviewing aspects of the District's law enforcement and criminal justice machinery. The U.S. Department of Justice, Judicial Conference of the District of Columbia, District of Columbia Bar Association, and the Institute of Criminal Law and Procedure at Georgetown University have important projects underway affecting some of the problems discussed by the Commission in this Report. We encourage the active interest of these and other organizations in exploring all issues independently and creatively.

While this Commission emphasizes the need for continuing review of the administration of justice in the District of Columbia, we do not recommend the creation of another agency charged with this responsibility. Rather we emphasize the need for the proposed Bureau of Criminal Statistics, which can provide the basis for regular assessment through the collection and dissemination of accurate and comprehensive information. The Bureau's efforts will contribute greatly to the evaluative efforts of many diverse public and private groups. We are confident that such a collective and informed effort will produce the reforms necessary to ensure that the administration of justice in the District serves our highest goals.

SUMMARY OF RECOMMENDATIONS

FELONY PROSECUTIONS

1. The United States District Court should give priority to the trial of felony cases. Additional judges should be assigned to the criminal calendar, services of senior retired judges should be utilized if available, and the summer schedule should be adjusted so that several more judges try criminal cases in all months except August.

2. Pending extensive survey and analysis of its operations by a management firm, the District Court should carefully monitor its procedures for handling felony cases.

   a. The court should vigorously enforce the timetable for pretrial proceedings as provided by Rule 87.

   b. Continuing inquiry should be made into the amount of time elapsing between reserve calendar status and actual trial.

   c. Continuances should be denied in all cases which have been pending over 8 weeks unless good cause is shown.

   d. On a weekly basis the District Court and the United States Attorney should review and take action on all cases which have been continued more than twice and where the defendant has been in jail awaiting trial for more than 30 days.

3. In cooperation with the United States Attorney and the Legal Aid Agency, the District Court should experiment with a variety of mechanisms for expanding its capacity to process felony cases and for expediting the trial of those cases.

   a. An experimental project in which selected felony cases are handled on an expedited schedule should be developed.

   b. Pretrial procedures should be established for the purpose of facilitating disposition of felony cases.

4. The court should encourage and facilitate non-trial disposition of cases only where such disposition is appropriate on the merits of the case.

5. To the greatest extent possible, witnesses in criminal cases should be placed "on call", and unnecessary appearances should be avoided at every stage of the judicial process.

MISDEMEANOR PROSECUTIONS

6. In cooperation with prosecution and defense counsel, the Court of General Sessions should develop schedules and procedures which keep the jury calendar current and assure maximum time for due deliberation, presentence inquiry and other matters pertinent to the quality of justice in all branches of the Criminal Division.

a. At least two of the five additional judges should be regularly assigned to the Criminal Division. More should be assigned if required to achieve prompt and deliberate dispositions.

b. Continuances in all cases which have been pending over 20 days should be denied unless good cause is shown, and all but the unusual criminal cases before the court should terminate within 30 days.

7. The effectiveness of the new assignment court system should be evaluated by collecting detailed data on time lapses between information and termination, number of continuances, rate of pleas of guilty, incidence of jury trial demands, and utilization of judicial time.

8. Rules of court should be amended to authorize use of summonses in lieu of arrest warrants and the return times on the summons should be used to spread the court workload over less busy hours of the day.

9. A night court should be established to act as a committing magistrate on felony matters and to dispose of any criminal matters which do not require the presence of a jury.

10. The court should facilitate non-trial disposition of cases by proper negotiation between defense counsel and prosecutors but should not participate in such negotiation by offers of leniency.

11. Attendance of witnesses should be facilitated by enactment of legislation authorizing increased fees.

12. The judges of the Court of General Sessions should receive substantial increases in salary. When adequate data become available and reliable estimates can be made, legislation should be enacted which automatically increases the number of judges in accord with a designated increase in caseload, population or other pertinent indicia.

13. The physical facilities of the court should be expanded and improved by:

a. Acquiring such temporary facilities as may be available; and

b. Developing plans for a judicial center located within easy access of other courts and police headquarters and sufficient in size to accommodate such court adjuncts as the United States Attorney's office, the Corporation Counsel, the District of Columbia Bail Agency, and facilities for jurors, witnesses and police officers.

14. Congress and the District of Columbia Government should substantially increase budgetary expenditures for operations of the Court of General Sessions.

APPELLATE REVIEW

15. The United States Court of Appeals for the District of Columbia and the District of Columbia Court of Appeals should minimize the time required for appellate proceedings in criminal cases.

a. Strict adherence to court rules governing time should be required.

b. Trial and appellate courts should cooperate to ensure adequate court reporting staffs and to eliminate delay in preparing transcripts for appeal.

c. Administrative procedures to assure appointment of counsel for the indigent defendants no more than 5 days after notice of appeal should be established.

d. Consistent with proper deliberations, every effort should be made to minimize the amount of time between oral argument and final decision, utilizing the order form of decision to the fullest extent possible.

16. Criminal cases pending on appeal more than 6 months and criminal cases involving more than one appeal or one trial should be brought to the attention of the court by the clerk of the court and placed on a special calendar for expedited handling.

17. In order to minimize conflict in panel opinions by different panels of judges, the U.S. Court of Appeals should consider increased use of en banc hearings.

18. The U.S. Court of Appeals should participate in the proposed project to expedite felony cases and should develop modified appellate procedures which reduce time for preparing records and briefs.

UNITED STATES ATTORNEY'S OFFICE

19. The number of Assistant United States Attorneys in the District of Columbia should be increased, and the Classification Act should be made applicable to them for salary purposes.

20. The United States Attorney should maintain close liaison with the courts and develop coordinated procedures to assure prosecution of all cases which merit criminal proceedings and to minimize delay in the processing of criminal cases.

a. The United States Attorney should take the initiative in proposing remedies for easing calendar congestion in both the United States District Court and the Court of General Sessions, and should keep detailed records on time lapses in prosecutions, cases not reached as scheduled and other pertinent matters.

b. To assist in calendaring felony cases under Rule 87, the United States Attorney should obtain the services of persons skilled in scheduling techniques.

c. Schedules should be arranged which permit grand jury proceedings almost immediately after presentment, certification of cases to the ready calendar, usually within 2 weeks after motions are decided, and utilization of appellate motions for summary decision where issues are not complex.

21. The exercise of prosecutive discretion by the United States Attorney should be made more visible.

a. Detailed reasons for declining prosecution, dismissing cases or reducing charges should be recorded.

b. Regular review of these reasons for exercising discretion should be initiated to ensure the use of proper and uniform criteria.

The exercise of discretion in handling citizen complaints should be recorded and reviewed in the same manner.

22. The United States Attorney should develop training programs covering police practices as well as legal developments and the exercise of prosecutive discretion. Assistants should regularly participate in special training institutes and programs for prosecutors.

23. Investigative units staffed by the Metropolitan Police Department should be assigned to assist the United States Attorney in the Court of General Sessions and in the United States District Court.

CORPORATION COUNSEL'S OFFICE

24. The Corporation Counsel should expand and improve his facilities for advising the law enforcement agencies of the District Government and should take vigorous leadership in resolving the problems of dealing with petty offenders in our criminal process.

25. The Law Enforcement Division and the Juvenile Court Branch of the Corporation Counsel's office should develop a record keeping system which reveals the manner in which offenders are handled. Training programs and criteria for exercise of discretion should be developed.

DEFENSE COUNSEL

26. In order to realize the full benefits of the Judicial Council Plan for Representation of Indigent Defendants under the Criminal Justice Act, funds should be appropriated for the coordinator, deputy coordinator, and adequate staff.

27. At least five Legal Aid Agency attorneys should be assigned to represent indigent defendants in the Court of General Sessions.

28. The bar associations of the District of Columbia should develop a plan for wider participation by the bar as counsel for indigent defendants in the criminal branches of the Court of General Sessions.

ADMINISTRATION AND COORDINATION

29. The courts of the District of Columbia should obtain the assistance of professional management firms for the purpose of devising procedures and scheduling systems which will permit prompt but judicious consideration of all criminal cases.

30. Court administrators with adequate professional staffs should be established in both the Court of General Sessions and the United States District Court.

31. Congress should create a Bureau of Criminal Statistics as a separate agency of the District of Columbia Government.

a. In cooperation with the police, prosecutors, correctional institutions, and courts, the Bureau should undertake a survey of the criminal records and statistics being maintained in the District of Columbia, to the end that record keeping methods and statistics can be modified to permit a uniform reporting system.

b. The Bureau should be empowered to direct such changes as may be necessary in the data collection methods of District law enforcement and judicial agencies.

c. The Bureau should be directed to collect, analyze and publish annual statistics on law enforcement and the administration of criminal justice in the District of Columbia.

COURT REORGANIZATION

32. The Judicial Council Committee on the Administration of Criminal Justice should be supported in its study of reorganization of District of Columbia courts and should be provided with funds for detailed study of the potential effects of any reorganization of the courts.

Chapter 6

Sentencing, Imprisonment and Supervision of the Adult Offender

The complex process of adjudicating guilt is often only a prelude to the more troublesome problems of sentencing and rehabilitating an offender. A sentence must be fashioned that protects the community at the same time that it facilitates the offender's successful treatment. The sometimes conflicting considerations of deterrence, punishment and rehabilitation must be resolved by the judge in each case. Immense difficulties have to be faced in training, conditioning and motivating offenders in penal settings toward a constructive life when they reenter society.

After sentence an offender may be immediately placed under the supervision of probation authorities, or he may be institutionalized for weeks, months or years and then released under the supervision of parole officers. Misdemeanant probationers are supervised by the Court of General Sessions' Probation Department, which also provides presentence information about offenders to the judges. The Probation Department of the U.S. District Court supervises felon probationers, prepares presentence reports, and supervises parolees released by the U.S. Board of Parole from the Federal prison system and the Youth Corrections Center at Lorton. The D.C. Board of Parole releases and supervises all other parolees from District correctional institutions.

In this chapter the Commission reviews sentencing practices and policies of the U.S. District Court and the Court of General Sessions, and probation, parole and correctional services in the District of Columbia. The Commission employed the American Correctional Association (ACA) to survey the resources and programs of the D.C. Department of Corrections, the D.C. Board of Parole, the Probation Department of the Court of General Sessions, and the U.S. Probation Department of the District Court. The findings and conclusions of the ACA are discussed at appropriate points in this chapter; the ACA report is reprinted in the Appendix.

SENTENCING

Courts in the District of Columbia view the purpose of a sentence as properly influenced by "community protection, correction, rehabilitation, deterrence and punishment."[1] The difficult task of the sentencing judge is to "determine the proportionate worth, value, and requirement of each of these elements in imposing sentence in each case."[2] District courts have stated that they give primary consideration to protecting the community against the offender and to the sentence's deterrent effect. Only after questions of public safety have been resolved do the courts consider rehabilitation.[3]

The sentencing practices of a judge or court are often measured by the frequency with which offenders return to criminal pursuits once free to do so. This criterion assumes an important relationship between sentencing practices and recidivism. There are, however, several limitations on the power of the courts to affect repeated criminality through sentencing. In deciding whether to proceed against an arrested person as a felon or a misdemeanant, the police and prosecutor control the type and length of sentence a court may ultimately impose. If an offender is proceeded against as a felon, the prosecutor can choose between several offenses carrying varying maximum penalties, or charge the defendant with more than one offense in cases where more than one law was violated. The prosecutor's authority to control a court's sentencing discretion also extends to his acceptance of pleas of guilty to lesser offenses or to a lesser number of offenses than those charged.

A court's sentencing prerogatives are further limited by the maximum punishments prescribed by law. Regardless of the character of the offender or the likelihood that he will commit other crimes when free to do so, his term of imprisonment may not exceed that prescribed for the specific offense of which he is convicted. Conversely, certain statutes specifically restrict the sentencing alternatives normally available to the judge. These may in some cases compel the imposition of more severe sentences than the judge might otherwise impose.

Delays in the courts, separating offense and apprehension from punishment by months and even years, generally detract from the impact of any sentence imposed. Finally, the effectiveness of a sentence may often be attributable less to its length than to the quality of the rehabilitative methods employed by correctional and probation authorities. Renewed criminal activity may not be due to the inadequacy of the sentence but to the failure of the correctional system, the failure of post-release efforts in the community, or simply to the incorrigibility of the offender.

Within these limitations, the sentence imposed in any particular case will circumscribe the limits of both the community's protection and corrective efforts. The minimum length of any term of imprisonment imposed sets the period of absolute public protection, but it may also influence adversely the success of rehabilitative efforts if it is too long or too short.[4] The intelligent selection among available sentencing alternatives, particularly for youthful offenders, significantly affects the future conduct of the offender.

In order to sentence effectively, a judge must have sufficient information about the offender. He must be confident that the correctional and probation authorities will do their work well. The sentences he imposes should not be so disparate from those of his fellow judges as to encourage "judge-shopping" or foster disrespect for the court and criminal justice. Against these general criteria, the Commission will examine sentencing practices and policies in the U.S. District Court and the U.S. Branch of the Court of General Sessions.

THE UNITED STATES DISTRICT COURT

Statutory and Administrative Framework

The sentencing powers of judges of the U.S. District Court are governed by both Federal and the District of Columbia statutes, since the court has jurisdiction over offenses against Federal and local law. The sentencing power extends to the death penalty, although the jury in capital cases may by unanimous vote compel the imposition of a sentence of life imprisonment.[5] With few exceptions, sentences imposed are "indeterminate"—the judge sets a maximum term not exceeding the statutory maximum and a minimum term not exceeding one-third of the maximum imposed—and the offender is eligible for parole after serving the minimum term.[6]

Some crimes carry a statutorily prescribed minimum term of imprisonment. An offender convicted of robbery, for example, may not be sentenced to imprisonment for less than 6 months.[7] The sentence, however, must generally be indeterminate, so that while the court is compelled to set a maximum term not less than the minimum set by statute (6 months for robbery), it may also set a minimum term of as little as one day. Certain offenses, on the other hand, carry a mandatory minimum, which does not permit the setting of a lower minimum term of imprisonment and withholds the possibility of probation and parole.

The court may also in most cases suspend sentence and place the offender on probation "for such period and upon such terms and conditions as the court deems best."[8] A sentence may combine probation

and imprisonment. In cases where the maximum punishment for the crime exceeds 6 months, the judge may sentence the offender to imprisonment for a maximum of 6 months, to be followed by automatic release on probation—a "split sentence." [9]

The court has discretion to apply special sentencing provisions to youthful offenders under the terms of the Federal Youth Corrections Act (FYCA).[10] Persons under 22 at the time of their conviction (under 26 if their offense was a violation of Federal law) may be sentenced under the FYCA "for treatment and supervision" in special correctional facilities for youthful offenders for a maximum period of 4 years.[11] Under other FYCA provisions the youthful offender may be committed for a maximum period up to 2 years less than the maximum sentence otherwise provided for the offense.[12] In either event, conditional release under supervision is required at the end of confinement.

To aid District Court judges in sentencing, the U.S. Probation Office investigates nearly all convicted offenders. The offender's criminal record, the circumstances of his offense, and his social and economic background are explored.[13] A judge may obtain further sentencing information about an offender by means of presentence diagnostic commitment. A Federal offender may be temporarily committed to the custody of the Attorney General to obtain a more detailed report concerning the offender's criminal record, social background, capabilities, and mental and physical health.[14] A similar commitment is authorized for offenders eligible for sentencing under the FYCA.[15] The District Court has made limited use of these provisions; in fiscal years 1964 and 1965 presentence commitment was ordered 21 times, in all but one case under the FYCA.[16]

Offenders have the right to speak on their own behalf at the time of sentencing, and both offender and his counsel may present relevant mitigating information for the sentencing judge's consideration. Although not required by statute to permit the offender or his attorney to review the presentence report, on occasion judges or probation officers will afford counsel this opportunity or summarize the contents for him. Under present policy, the prosecutor does not offer any sentencing recommendations unless asked by the judge.

The Sentences Imposed

A Commission study of the sentences imposed in the District Court in 1950, 1955, 1960 and 1965 was undertaken to determine the use of probation, the length of sentences imposed for particular offenses, and the use of the FYCA (Table 1).[17] In addition, the relationship between the sentence imposed and the method—trial or plea—by which

TABLE 1.—*Sentence imposed, by type of crime for which*
[Calendar years

Sentence	Murder, first and second degree		Manslaughter		Robbery		Assault		Burglary		Larceny, theft		Embezzlement		Fraud	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
1950																
Suspended without probation					1	.6										
Probation					8	4.6	41	53.2	34	14.2	60	25.0	15	53.6	14	31.8
Fine only									1	.4	1	.4				
FYCA*																
Prison term (maximum):																
Under 1 year			1	3.4			16	9.0	12	5.0	29	12.1			1	2.3
1–2 years			2	6.9	28	16.0	44	24.9	33	13.8	63	26.2	8	28.6	14	31.8
2–3 years	2	10.5			42	24.0	36	20.3	72	30.0	58	24.2	1	3.6	13	29.5
3–5 years	1	5.3			38	21.7	11	6.2	29	12.1	18	7.5	1	3.6	2	4.5
5–10 years			9	31.0	36	20.6	23	13.0	48	20.0	6	2.5	2	7.1		
10–15 years	1	5.3	17	58.6	21	12.0	6	3.4	9	3.8	3	1.2				
Over 15 including life	13	68.4			1	.6										
Other	2	10.5							2	.8	2	.8	1	3.6		
Defendants convicted, 1950	19		29		175		177		240		240		28		44	
1955																
Suspended without probation	1	9.1														
Probation			2	15.8	8	6.0	13	14.3	32	14.7	26	27.1	3	21.4	7	22.6
Fine only			1	5.3											2	6.5
FYCA*			1	5.3	9	6.8	7	7.7	16	7.3	2	2.1				
Prison term (maximum):																
Under 1 year			1	5.3			1	1.1	10	4.6	8	8.3			1	3.2
1–2 years			1	5.3	2	1.5	20	22.0	13	6.0	23	24.0	3	21.4	9	29.0
2–3 years			1	5.3	17	12.8	14	15.4	59	27.1	13	13.5	8	57.1	9	29.0
3–5 years	1	9.1			15	11.3	8	8.8	20	9.2	13	13.5			3	9.7
5–10 years			4	21.0	42	31.6	16	17.6	46	21.1	9	9.4				
10–15 years			8	42.1	39	29.3	10	11.0	19	8.7	1	1.0				
Over 15 including life	8	72.7			1	.8	1	1.1	1	.4						
Other	1	9.1					1	1.1	2	.9	1	1.0				
Defendants convicted, 1955	11		19		133		91		218		96		14		31	

Source: Staff computations based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court.

* Federal Youth Corrections Act.