convicted—U.S. District Court for the District of Columbia
1950, 1955, 1960, 1965]

Auto theft		Forgery, counterfeiting		Rape		Commercial vice		Other sex offenses		Narcotics		Gambling		Weapons		Other		Total	
No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
1950—Continued																			
																		1	.1
27	20.3	38	24.8					8	21.0	5	12.8	59	50.4			57	43.2	366	23.1
												8	6.8			1	.7	11	.7
8	6.0	2	1.3									19	16.2			17	12.9	105	6.6
49	36.8	49	32.0	3	33.3			11	28.9	9	23.1	24	20.5	6	85.7	25	18.9	368	23.3
38	28.6	42	27.4					4	10.5	18	46.2	5	4.3			14	10.6	345	21.8
9	6.8	9	5.9					5	13.1	4	10.2					4	3.0	131	8.3
1	.7	13	8.5					4	10.5	1	2.6	2	1.7			5	3.8	150	9.5
1	.7			2	22.2			6	15.8					1	14.3			67	4.2
				3	33.3													17	1.1
				1	11.1	2	100.0			2	5.1					9	6.8	21	1.3
133		153		9		2		38		39		117		7		132		1,582	
1955—Continued																			
																2	1.3	3	0.2
23	27.7	33	27.7	3	20.0			1	5.9	3	2.2	32	53.3	1	25.0	70	44.9	257	21.3
																7	4.5	10	.8
4	4.8	2	1.6	2	13.3					1	.7					9	5.8	53	4.4
1	1.2	1	.8									4	6.7	2	50.0			32	2.6
8	9.6	15	12.4	1	6.7			3	17.6	7	5.2	13	21.7			19	12.2	137	11.4
25	30.1	34	28.1			1	100.0	3	17.6	31	23.0	4	6.7			15	9.6	234	19.4
21	25.3	19	15.7					1	5.9	58	43.0					14	9.0	173	14.4
		7	5.8	2	13.3			5	29.4	18	13.3			1	25.0	7	4.5	157	13.0
		8	6.6	3	20.0			3	17.6	3	2.2					3	1.9	97	8.0
				4	26.7					1	.7							16	1.3
1	1.2	2	1.6					1	5.9	13	9.6	7	11.7			7	4.5	36	3.0
83		121		15		1		17		135		60		4		156		1,205	

TABLE 1.—*Sentence imposed, by type of crime for which*

Sentence	Murder, first and second degree		Man-slaughter		Robbery		Assault		Bur-glary		Larceny, theft		Embez-zlement		Fraud	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
1960																
Suspended without probation											1	1.0				
Probation			3	9.4	9	6.4	19	19.6	21	17.5	27	25.7	18	81.8	4	20.0
Fine only																
FYCA*			2	6.2	45	32.1	16	16.5	21	17.5	9	8.6				
Prison term (maximum):																
Under 1 year							5	5.2	5	4.2	11	10.5			1	5.0
1–2 years	2	15.4	2	6.2	2	1.4	14	14.4	7	5.8	20	19.0	2	9.1	4	20.0
2–3 years	2	15.4			16	4.3	15	15.5	21	17.5	17	16.2	2	9.1	8	40.0
3–5 years			3	9.4	11	7.8	6	6.2	22	18.3	10	9.5				
5–10 years			7	21.9	35	25.0	18	8.2	15	12.5	8	7.6			1	5.0
10–15 years			14	43.8	20	14.3	4	4.1	5	4.2	2	1.9				
Over 15 including life	5	38.5	1	3.1	2	1.4										
Other	4	30.8							3	2.5					2	10.0
Defendants convicted, 1960	13		32		140		97		120		105		22		20	
1965																
Suspended without probation					1	.8			2	1.9						
Probation	1	10.0	4	18.2	11	8.5	27	22.7	20	19.0	34	34.0	7	87.5	11	57.9
Fine only											1	1.0			1	5.3
FYCA*	1	10.0			31	24.0	17	14.3	16	15.2	12	12.0				
Prison term (maximum):																
Under 1 year			1	4.5	1	.8	13	10.9	10	9.5	11	11.0				
1–2 years					2	1.6	7	5.9	17	16.2	19	19.0			1	5.3
2–3 years	1	10.0	1	4.5	14	10.8	12	10.1	6	5.7	9	9.0	1	12.5	4	21.0
3–5 years					8	6.2	12	10.1	16	15.2	4	4.0			1	5.3
5–10 years	2	20.0	6	27.3	35	27.1	19	16.0	17	16.2	7	7.0				
10–15 years			9	40.9	25	19.4	8	6.7	1	1.0	3	3.0				
Over 15 including life	5	50.0	1	4.5			1	.8								
Other					1	.8	3	2.5							1	5.3
Defendants convicted, 1965	10		22		129		119		105		100		8		19	

* Federal Youth Corrections Act.

convicted—U.S. District Court for the District of Columbia—Continued

Auto theft		Forgery, counterfeiting		Rape		Commercial vice		Other sex offenses		Narcotics		Gambling		Weapons		Other		Total	
No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
1960—Continued																			
												1	1.1			1	1.0	3	0.3
30	27.8	16	18.6	2	13.3	4	100.0	3	23.1	13	10.5	60	65.2	3	33.3	31	32.0	263	24.0
												1	1.1			9	9.3	10	.9
28	25.9	1	1.2	3	20.0			2	15.4	2	1.6	1	1.1	1	11.1	10	10.3	141	12.9
2	1.8									1	.8	11	12.0			3	3.1	39	3.6
13	12.0	18	20.9	1	6.7					5	4.0	15	16.3	2	22.2	14	14.4	121	11.0
19	17.6	29	33.7					4	30.8	9	7.2			1	11.1	11	11.3	154	14.0
14	13.0	13	15.1	1	6.7			1	7.7	42	33.9	1	1.1	1	11.1	5	5.2	130	11.8
		7	8.1	1	6.7			1	7.7	26	21.0			1	11.1	5	5.2	125	11.4
		1	1.2	2	13.3			2	15.4	22	17.7					3	3.1	75	6.8
				3	20.0					4	3.2					2	2.1	17	1.5
2	1.8	1	1.2	2	13.3							2	2.2			3	3.1	19	1.6
108		86		15		4		13		124		92		9		97		1,097	
1965—Continued																			
1	1.5											1	1.3	1	3.0	3	3.9	9	1.0
18	27.7	21	50.0			2				9	20.0	40	52.6	6	18.2	34	44.7	245	28.4
												20	26.3			2	2.6	24	2.8
19	29.2			2	28.6			1	25.0			1	1.3			6	7.9	106	12.3
										1	2.2	1	1.3	4	12.1	10	13.2	52	6.0
8	12.3	3	7.1					1	25.0	8	17.8	11	14.5	10	30.3	11	14.5	98	11.4
12	18.5	10	23.8					1	25.0	3	6.7	2	2.6	4	12.1	6	7.9	86	10.0
6	9.2	4	9.5					1	25.0	9	20.0			3	9.1	1	1.3	65	7.5
		1	2.4							10	22.2			5	15.2			102	11.8
		3	7.1	3	42.9					4	8.9					1	1.3	57	6.6
				2	28.6													9	1.0
1	1.5									1	2.2					2	2.6	9	1.0
65		42		7		2		4		45		76		33		76		862	

the offender was convicted were examined, and comparisons were made with the sentences imposed in other jurisdictions.

Probation

There was a moderate increase in the District Court's use of probation in the 1950–1965 period. In the 4 years studied, the percentage of offenders placed on probation varied as follows: 1950, 23.2 percent; 1955, 21.5 percent; 1960, 24.3 percent; 1965, 29.4 percent (Table 1).[18] The percentage of those imprisoned increased from 76.1 percent in 1950 to 77.5 in 1955 and decreased thereafter, partly because of an increase in the use of fines, to 74.6 percent in 1960 and 67.6 percent in 1965.

District Court sentences reveal an increase in the use of probation from 1950 to 1965 for nearly all crimes (Table 1). In 1950, 5.2 percent of robbery offenders received probation. The figure rose to 6.0 percent in 1955, 6.4 percent in 1960, and 9.3 percent in 1965. Similarly, the percentage of housebreakers placed on probation rose from 14.2 percent in 1950 to 20.9 percent in 1965. For auto thieves the increase was from 20.3 percent in 1950 to 29.2 percent in 1965.

The court has consistently placed at least 50 percent of convicted gamblers on probation or imposed a fine. In 1950, 57.2 percent were so sentenced, 53.3 percent in 1955, 67.4 percent in 1960, and 80.2 percent in 1965 (Table 1). Detailed data for fiscal years 1964 and 1965 indicates that of 150 persons convicted of felonious gambling offenses, 92 were placed on probation, 36 were fined, and only 22 were imprisoned. Of those placed on probation, 20 had previously been convicted as adults and 17 more had been imprisoned. Of the 36 fined, 22 had prior adult convictions.

Since the Metropolitan Police Department reports that most gambling activities are operated as ongoing enterprises which pay fines imposed as a "cost of doing business," the sentencing practices of the District Court do not appear to offer any meaningful deterrence to organized gambling in the city. Moreover, "license fee" sentencing serves to engender community disrespect for law enforcement.

As shown by Tables 2 and 3, the District Court uses probation to a somewhat lesser extent than do other jurisdictions, probably due in part to the availability of specialized correctional treatment for youths under the Federal Youth Corrections Act. The President's Commission on Law Enforcement and Administration of Justice surveyed sentences imposed in 8 states and the District of Columbia in 1934 and 1964 and found that the District Court has made comparatively limited use of probation (Table 4). The District imprisoned proportionately more offenders in 1934 than all but one of

TABLE 2.—*Use of probation and suspended sentences—U.S. District Court for the District of Columbia and comparable courts in five jurisdictions*

[Convicted felony defendants]

	Year*	Percent of total convictions
District of Columbia	1963	22.9
	1964	24.5
	1965	28.1
Cook County, Ill	1964	20.1
Illinois	1964	30.0
Massachusetts	1963	39.4
Ohio	1964	50.1
California	1964	28.8

Sources: Administrative Office of the U.S. Courts, Annual Reports (1963, 1964, 1965); Administrative Office of the Illinois Courts, Annual Report to the Supreme Court of Illinois (1964); Statistical Reports of the Commissioner of Correction (Mass., 1963); Ohio Dept. of Mental Hygiene and Correction, Ohio Judicial Criminal Statistics (1964); Bureau of Criminal Statistics, California Dept. of Justice, Crime in California (1964).

*Fiscal years for District of Columbia; all others are calendar years.

the jurisdictions studied, and in 1964 was second to none in its imposition of prison terms. Only California and District of Columbia courts utilize probation less today than they did in 1934.

Whenever there are no countervailing considerations, probation is the preferred method of dealing with offenders. It affords individualized treatment, allows reform to take place in a normal framework, preserves family life, obliges the offender to carry the main responsibility for his own rehabilitation, and avoids the "shattering impact" of imprisonment.[19] Moreover, the direct daily cost of incarcerating an offender is ten times the cost of supervising him on probation.[20]

For these reasons, probation is an increasingly favored sentence. In the Federal system, 50 percent of convicted offenders were placed on probation in fiscal 1964 compared to 37 percent in fiscal 1955.[21] Some authorities believe there should be a presumption in favor of probation, at least for certain offenses.[22] Thus, the Model Penal Code states:

> The Court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for protection of the public because:
>
> (a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
>
> (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
>
> (c) A lesser sentence will depreciate the seriousness of the defendant's crime.[23]

TABLE 3.—*Disposition by percent of total convictions—U.S. District Court for the District of Columbia and comparable courts of three States*

	D.C. 1963	D.C. 1964	D.C. 1965	Mass. 1963	Ohio 1964	Calif. 1964
Manslaughter:						
Probation, suspended sentence	10.0	7.1	14.8	9.1	35.2	10.9
Imprisonment	83.3	85.8	81.5	90.9	63.7	85.5
Special youth	6.7	7.1	3.7	------	------	3.1
Other	------	------	------	------	1.1	.5
Rape:				*		
Probation, suspended sentence	------	------	------	44.0	39.2	41.1
Imprisonment	81.3	83.4	100.0	55.9	51.7	51.0
Special youth	18.7	16.6	------	------	------	4.6
Other	------	------	------	.1	9.1	3.3
Robbery:						
Probation, suspended sentence	5.8	4.4	7.1	25.0	28.6	4.7
Imprisonment	64.3	75.2	73.9	75.0	70.7	81.8
Special youth	29.9	20.4	19.0	------	------	12.1
Other	------	------	------	------	.7	1.4
Housebreaking:						
Probation, suspended sentence	23.2	19.0	16.0	44.5	51.5	19.6
Imprisonment	55.4	54.0	69.4	55.4	47.0	68.8
Special youth	21.4	27.0	14.6	------	------	9.2
Other	------	------	------	.1	1.5	2.4
Aggravated assault:						
Probation, suspended sentence	12.3	20.0	18.1	38.2	51.8	32.0
Imprisonment	67.7	57.5	54.1	46.8	41.8	62.6
Special youth	20.0	22.5	27.8	------	------	4.0
Other	------	------	------	15.0	6.4	1.4
Grand larceny:						
Probation, suspended sentence	17.2	29.6	29.2	51.8	61.8	33.4
Imprisonment	58.6	68.1	58.3	43.2	32.0	61.7
Special youth	24.2	2.3	12.5	------	------	3.6
Other	------	------	------	5.0	6.2	1.3
Auto theft:						
Probation, suspended sentence	26.4	28.7	32.2	37.4	40.9	23.2
Imprisonment	48.0	46.5	39.1	56.3	54.8	61.7
Special youth	25.6	24.8	28.7	------	------	14.1
Other	------	------	------	6.3	4.3	1.0

Sources: See sources for Table 2.

*Includes "indecent assault".

The judiciary, however, has been reluctant to adopt this presumption; some judges favor the contrary generalization, and others prefer to consider the issue on the traditional ad hoc basis.[24]

We think the presumption in favor of probation is the enlightened one. Nevertheless, it must be acknowledged that offenders appear more likely to violate the conditions of probation in the District than

TABLE 4.—*Percent distribution of sentences in general jurisdiction courts in seven States and the District of Columbia.*

[1934 and 1964]

	Probation			Imprisonment		
	1934	1964	Change	1934	1964	Change
District of Columbia	26.9	24.5	−2.4	70.6	72.2	+1.6
California	36.3	27.8	−8.5	55.6	60.7	+5.1
Connecticut	21.4	33.8	+12.4	61.6	52.8	−8.8
Illinois	22.9	30.0	+7.1	74.4	65.5	−8.9
Massachusetts	39.0	49.2	+10.2	57.0	39.0	−18.0
Minnesota	24.4	45.5	+21.1	58.4	34.9	−23.5
Ohio	34.8	50.6	+15.8	52.6	42.9	−9.7
Pennsylvania	25.2	32.5	+7.3	44.0	39.3	−4.7

Source: President's Commission on Law Enforcement and Administration of Justice.

elsewhere in the Federal system. In fiscal 1965, 28.5 percent of the District probationers removed from supervision had violated their probation conditions, compared with 17.8 percent of those in the Federal system,[25] although only 46 percent of the District violations were new felonies as opposed to 56 percent in the Federal system.[26] Moreover, only 8 percent of the convicted felons sampled by Stanford Research Institute (SRI) had no prior arrest, and only 17 percent had not been previously convicted of some crime. This information must be considered by the sentencing judge, although we have no basis for knowing how the SRI portrait of District offenders compares with other jurisdictions with higher probation rates.

Length of Prison Terms

From 1950 to 1965 the average minimum prison term imposed by the District Court increased from 1.1 years to 1.9 years, while the average maximum term increased from 4.4 years to 5.9 years (Table 5). Substantial increases were recorded for certain offenses; the maximum term for rape increased from 9 years to 15.9, and for robbery the increase was from 6.4 years to 8.9. On the other hand, the average minimum and maximum terms for murder decreased from 7.7 and 14 to 6 and 12.7, respectively.

There has been a slight increase in the imposition of longer prison terms. Sentences to a maximum term of 3 or more years increased from 23.1 percent (of all sentences imposed) in 1950 to 26.9 percent in

TABLE 5.—*Average prison sentence, by type of offense—U.S. District Court*

[Calendar years 1950, 1955, 1960, 1965]

Most serious offense on termination	1950			1955			1960			1965		
	Defendants sentenced to prison *	Average years		Defendants sentenced to prison *	Average years		Defendants sentenced to prison *	Average years		Defendants sentenced to prison *	Average years	
		Min.	Max.		Min.	Max.		Min.	Max.		Min.	Max.
Murder, 1st and 2d degree	19	7.7	14.0	10	5.8	15.0	12	6.2	11.6	8	6.0	12.7
Manslaughter	29	2.8	11.0	15	2.5	11.0	29	3.3	10.8	19	2.3	11.0
Robbery	167	1.2	6.4	119	2.0	9.2	90	1.7	8.7	88	2.0	8.9
Assault	152	1.2	4.1	75	1.3	6.0	67	1.7	5.2	80	2.0	6.5
Burglary	219	1.0	5.0	180	1.6	6.1	82	1.2	5.6	76	1.1	5.0
Larceny and theft	201	1.2	3.0	76	.9	3.8	68	1.9	4.0	58	2.5	3.6
Embezzlement	17	.8	3.8	12	.7	3.7	6	.5	3.2	6	.6	6.9
Fraud	35	1.0	2.9	25	.6	3.4	14	.7	3.4	9	.7	.7
Auto theft	116	.5	3.0	70	.6	4.0	55	.9	3.8	33	.7	3.8
Forgery	131	.7	3.8	97	1.0	5.2	74	.7	4.5	23	.7	6.0
Rape	9	4.1	9.0	12	3.6	10.9	9	3.8	11.7	5	7.6	15.9
Vice	2	.3	1.9	1	.8	3.9						
Sex	34	1.2	6.0	15	1.4	7.2	9	1.1	6.8	3	.8	3.9
Narcotics	36	.6	3.8	130	1.0	5.9	111	2.5	7.8	38	2.3	6.1
Gambling	72	.3	1.6	32	2.3	1.9	37	3.8	1.8	24	1.4	2.4
Weapons	7	4.0	3.9	3	2.0	3.1	6	.8	4.2	30	1.0	3.3
Miscellaneous	67	.4	2.4	53	.8	4.1	22	.6	3.6	29	2.5	3.0
Total	1,313	1.1	4.4	925	1.4	5.9	691	1.7	6.0	529	1.9	5.9

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

* Includes only defendants with a known offense on termination. Totals represent those defendants with a maximum sentence there are fewer defendants with minimum sentences. The declining number of defendants sentenced to prison is mainly attributable to the fact that fewer defendants are processed through the U.S. District Court each year.

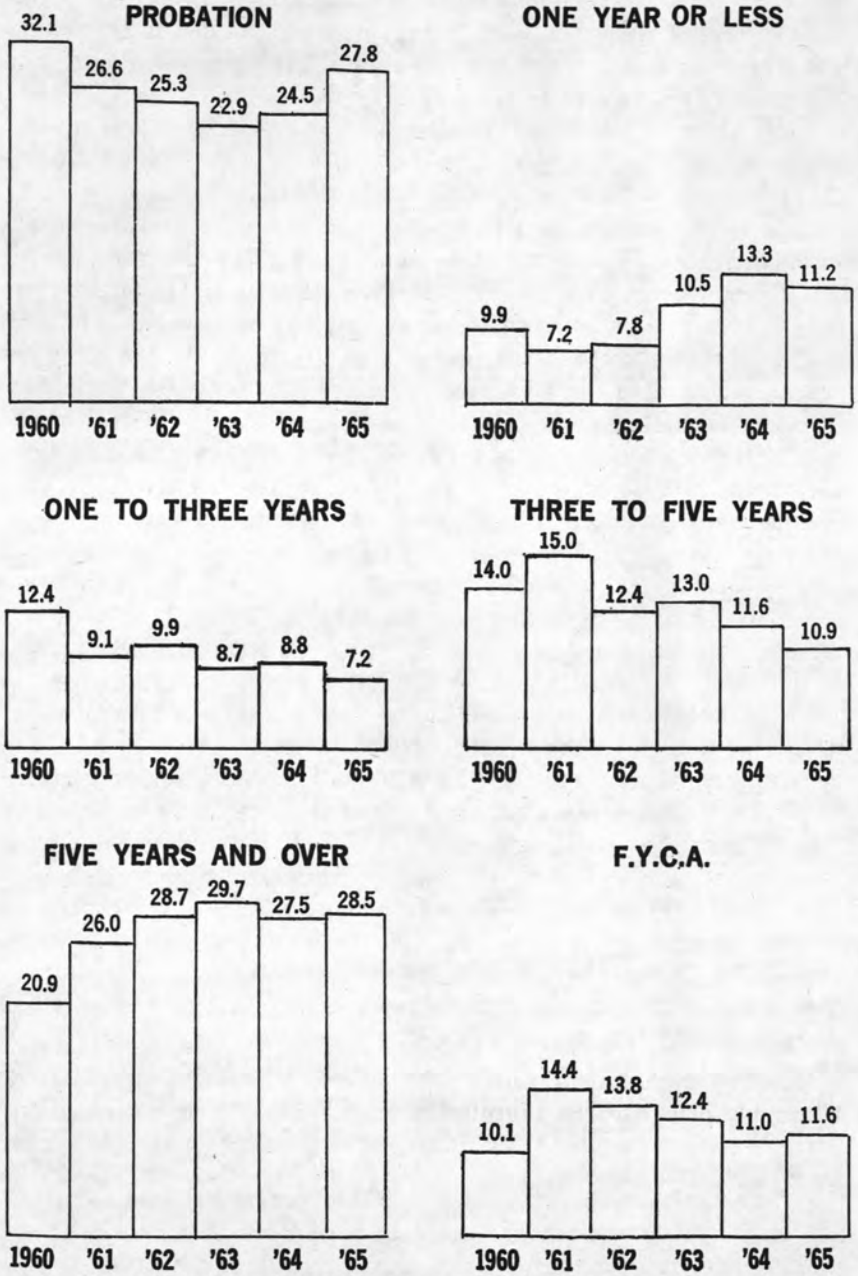
1965 (Table 1). The intervening years saw percentages of 36.7 in 1955 and 31.5 in 1960. These figures, however, do not reflect sentences under the FYCA, which may result in institutionalization for a period of more than 4 years. If FYCA sentences were added to those with terms of 3 or more years, the percentages of the 4 years studied would be: 1950, 22.1; 1955, 41.1; 1960, 44.4; and 1965, 39.2. Sentences to 5 or more years imprisonment ranged from 14.8 percent in 1950 to 22.3 percent in 1955, 19.7 percent in 1960 and 19.4 percent in 1965. During the more recent period from 1960 through 1965 there has been a gradual decline in the percentage of shorter sentences—1 to 3 years—and a slight increase in longer sentences—5 or more years (Figure 1).

Although terms of imprisonment imposed for certain offenses appear to have become somewhat shorter, this may be misleading because of the increased use of the Federal Youth Corrections Act in recent years. Sentences of 5 or more years imprisonment for robbery offenders increased from 33.2 percent in 1950 to 46.5 percent in 1965 (although in 1955 the percentage rose to a high of 61.7). However, an additional 24 percent in 1965 were sentenced under the Youth Corrections Act. Sentences of 5 or more years imprisonment for housebreaking offenders rose from 23.8 percent in 1950 to 30.2 in 1955, then decreased sharply to 16.7 in 1960 and 17.2 percent in 1965. Another 15.2 percent received Youth Corrections Act sentences in 1965. Auto theft offenders were sentenced to 3 or more years imprisonment in 8.2 percent of the cases in 1950, 25.3 in 1955, 13 percent in 1960 and 9.2 percent in 1965; however, by 1965, an additional 29.2 percent of these offenders were sentenced under the Youth Corrections Act.

Comparisons with specific prison terms imposed in other jurisdictions show that the terms imposed by the District Court in 1960 were shorter than the median sentences in the United States except for homicide offenders (Table 6).[27] Compared with median sentences in New York, Illinois, and California, those given by the District Court in 1960 were lower than the three States for the crimes of robbery, aggravated assault, burglary, larceny, and auto theft. Preliminary data indicate that shorter sentences were also generally imposed in the District in 1964.[28]

Indeterminate sentencing places a great deal of responsibility for determining the actual length of imprisonment on boards of parole. Although sentences imposed may be shorter, the median sentences actually served by District offenders in 1960 were generally longer than those served by offenders in other jurisdictions (Table 7). Preliminary data available from the Federal Bureau of Prisons' study of 1964 first releases show that District offenders continue to serve more time in prison than do offenders in other jurisdictions.[29]

FIGURE 1.—Percent Distribution of Sentences,* All Offenses—U.S. District Court
[Fiscal years 1960–1965]



Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

*Indeterminate sentence maximums. Percentages do not add up to 100 because of miscellaneous dispositions.

TABLE 6.—*Median sentence length, by offense*

[1960]

	All States	District of Columbia	New York	Illinois	California
Homicide	188. 0	216. 0	161. 9	107. 6	213. 3
Robbery	166. 0	72. 5	99. 2	83. 2	(*)
Aggravated assault	79. 2	46. 5	67. 7	96. 3	177. 4
Burglary	100. 5	52. 2	79. 2	76. 8	185. 5
Larceny	68. 1	43. 3	53. 1	62. 4	96. 5
Sex offenses	146. 9	96. 0	76. 6	86. 3	(*)
Auto theft	89. 8	41. 4	81. 8	62. 0	94. 8

Source: Federal Bureau of Prisons, Characteristics of State Prisoners—1960 (undated).

*In California, offenders are frequently committed for a maximum of life, but are usually released conditionally.

TABLE 7.—*Median time served by felony prisoners before first release*

[1960]

	All States	District of Columbia	New York	Illinois	California
Homicide	52. 0	83. 6	59. 0	73. 1	53. 7
Robbery	33. 9	45. 8	35. 4	35. 3	36. 0
Aggravated assault	19. 5	31. 8	27. 4	30. 5	32. 6
Burglary	20. 4	29. 0	27. 4	26. 3	26. 2
Larceny	16. 7	20. 3	22. 9	24. 9	22. 4
Sex offenses	30. 0	52. 5	33. 9	39. 2	38. 3
Auto theft	18. 9	25. 3	24. 3	30. 4	22. 3

Source: Federal Bureau of Prisons, Characteristics of State Prisoners—1960 (undated).

The Federal Youth Corrections Act

Youthful offenders present a particularly perplexing sentencing problem. Although they exhibit high rates of recidivism,[30] their rehabilitative potential is considered higher since their anti-social behavior patterns are less ingrained. The Federal Youth Corrections Act (FYCA) attempts to meet both considerations by permitting confinement for substantial lengths of time while authorizing the early release of youths who demonstrate motivation and capability for constructive change. Unlike short-term imprisonment it places the responsibility for early release on the offender himself:

> It has been demonstrated, certainly, that those young offenders sentenced for say one year or 18 months often have little inclination to 'turn to' and do their

level best to develop skills and self-discipline; whereas the lad who faces the possibility of staying in confinement four years usually is motivated to put forth his best effort at self-improvement.[31]

District offenders committed under the FYCA to the Lorton Youth Center are confined an average of 20 months.[32]

The Act, applicable in the District since 1952, has been used by the District Court with some frequency since 1955. In 1955, 4.4 percent of convicted offenders were sentenced to FYCA treatment; in 1960, 12.9 percent; in 1965, 12.3 percent (Table 1). For certain offenses, involving primarily young offenders, FYCA sentences are particularly common; 24 percent of robbery offenders and 29.2 percent of auto thieves were committed under the Act in 1965 (Table 1).

Nonetheless, the Commission questions whether FYCA dispositions are used often enough. In 1965, 260 District Court offenders were under 22 at the time of their conviction, and thus eligible for sentencing under the Act.[33] Of these 260, 112 were sentenced to FYCA treatment. Of the remaining 148, 79 were placed on probation and 69 were sent to an adult penal institution. Of these 69, 48 had no prior convictions or only a previous juvenile commitment.

The Commission believes that there should be a presumption in favor of FYCA treatment for youthful offenders. We endorse the standards adopted on the subject by the Sentencing Institute of the Sixth, Seventh and Eighth Judicial Circuits in 1961:

> The indeterminate sentencing provisions of the Youth Corrections Act should be used in the case of a youth offender under the age of 22 unless (a) the court, for specific reasons, does not wish the offender detained as long as four years; or (b) the offender has failed previously to respond to institutional treatment as a youth or has clearly demonstrated by his criminal, antisocial or deviant behavior that his influence on other youths would be harmful. However, the presumption should be against using the Youth Act for young adult offenders aged 22 and over, unless there are affirmative reasons for believing that the offender would benefit from treatment in a youth institution rather than in an institution for adults.[34]

Intelligent employment of this sentencing option would be enhanced by a greater use of presentence commitments for intensive observations of youthful offenders pursuant to the provisions of 18 U.S.C. 5010(e), which has been infrequently used by the District Court.

Sentence Variation by Method of Adjudication

An offender's sentence varies significantly with the method by which he was convicted. As shown in Table 8, offenders in 1964–65 who pleaded guilty were more likely to receive a milder sentence than those who were tried, particularly those who demanded a jury trial.[35] Thus, 53.4 percent of those convicted after a jury trial were sentenced to 5 or more years imprisonment, while only 20.9 percent of those who pleaded

guilty to the offense charged were so sentenced. A similar pattern exists throughout the 1950–1965 period.[36]

TABLE 8.—*Sentence variation by method of adjudication—U.S. District Court*

[Fiscal years 1964 and 1965]

Sentence	Number of cases	Plea same		Plea lesser		Court trial		Jury trial	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1 year or less	258	92	9.8	127	21.5	2	4.1	37	7.1
1 to 3 years	168	71	7.6	61	10.3	8	16.3	28	5.4
3 to 5 years	240	116	12.4	63	10.6	11	22.4	50	9.6
5 years and over	566	196	20.9	77	13.0	16	32.7	277	53.4
Probation	552	312	33.3	170	28.7	10	20.4	60	11.6
FYCA	254	93	9.9	93	15.7	2	4.1	66	12.7
Fine	58	36	6.0	1	0.2	0	0.0	1	0.2
Total	2,096	936	-----	592	-----	49	-----	519	-----

Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

The Commission is concerned with the extent to which the court sentences more leniently where offenders plead rather than go to trial. Although it has been argued that an offender who pleads guilty demonstrates remorse [37] and deserves more lenient treatment than the offender who is "trying to get away with it," the imposition of more lenient sentences upon guilty pleas or conversely the imposition of harsher sentences on defendants after trial is often primarily motivated by calendar concerns. Leniency is the defendant's reward for his contribution to the prompt processing of criminal cases. Such a policy mitigates against objective sentencing. We believe the following comment on probation applies equally to all forms of leniency in exchange for guilty pleas:

> There is little to be said in favor of the practice of making a plea of guilty a condition precedent to the granting of probation. It amounts in fact to a form of compromising justice. . . . A plea of guilty does not justify the assumption that the offender will be a good probation risk. In fact, the professional criminal with a strong case against him usually welcomes an opportunity to plead guilty to a lesser offense, especially if he believes that a lenient sentence or probation will more likely follow his plea of guilty than if he stands trial. A defendant's plea of guilty is no indication of his reformative or rehabilitative potentialities.[38]

If there is an optimal sentence for each offender, departing from this sentence because of the needs of judicial administration will not

enhance the likelihood of rehabilitation. It is the Commission's view that the state of the criminal court calendar should not be a factor in sentencing.

Sentence Variation by Judge

There were considerable disparities in sentences imposed by 22 District Court judges in the period 1964–1966 as well as a markedly disproportionate assumption of the court's criminal caseload by 2 judges. Table 9 shows the number of guilty pleas, court trials and jury trials before selected judges; it indicates that Judges A and B, with 273 and 892 dispositions respectively, handle roughly 40 percent of the court's criminal business, and accept over half of all guilty pleas. On the other hand, Judge C conducts twice as many jury trials as he accepts guilty pleas.

TABLE 9.—*Method of adjudication of criminal cases by judge—U.S. District Court*

[Fiscal 1964–1966]

Judge	Guilty plea	Court trial	Jury trial	Total
A	271		2	273
B	836	8	48	892
C	49	2	96	147
D	154	5	48	207
E	126	10	61	197
F	118		33	151
G	93	1	48	142
H	119		10	129
I	82		68	150
All others (13)	325	18	377	720
Total	2, 173	44	791	3, 008

Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

Not unexpectedly, judges who accept a disproportionate number of pleas place a great many offenders on probation. Tables 10, 11 and 12 set forth the types of sentences imposed by selected judges in the period 1964–1966 for the offenses of robbery, housebreaking and gambling.

Computations based on Table 10 show moderate variations among judges in sentences imposed upon convictions for robbery. Judge E, for example, sentenced 91 percent to a maximum term of 5 or more years imprisonment, while the remaining judges averaged 65 percent, and Judge D only 39 percent. Computations based on Table 11 also

disclose some degree of variation. Although 35 percent of all the convicted housebreakers received a maximum term of 5 or more years imprisonment, Judge A imposed such sentences in only 3 of 18 cases

TABLE 10.—*Type of sentence imposed for robbery, by judge—U.S. District Court*

[Fiscal 1964–1966]

Judge	Probation	Split sentence	1–3 years	3–5 years	5 years or over	Fine	Total
A	3	------	1	2	14	------	20
B	2	------	------	14	24	------	40
C	------	------	------	7	17	------	24
D	1	2	------	14	11	------	28
E	------	------	------	2	21	------	23
F	2	------	------	9	18	------	29
G	1	1	------	9	10	------	21
H	2	------	------	3	4	------	9
I	2	2	------	6	15	------	25
All other (13)	8	1	------	24	106	------	139
Total	21	6	1	90	240	------	358

Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

TABLE 11.—*Type of sentence imposed for housebreaking, by judge—U.S. District Court*

[Fiscal 1964–1966]

Judge	Probation	Split sentence	0–1 years	1–3 years	3–5 years	5 years or over	Fine	Total
A	4	------	1	3	7	3	------	18
B	17	------	1	2	24	15	------	59
C	4	------	------	------	4	6	------	14
D	1	2	------	------	13	------	------	16
E	3	1	2	------	7	13	------	26
F	2	------	------	------	5	5	------	12
G	3	2	------	------	7	4	------	16
H	1	------	------	------	4	2	------	7
I	2	------	------	1	4	4	------	11
All other (13)	5	2	1	6	22	36	------	72
Total	42	7	5	12	97	88	------	251

Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

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(17 percent), and Judge D in none of 16 cases. In contrast, all judges except Judge B sentenced housebreakers to probation in 14 percent of the cases, while Judge B did so in 29 percent of his cases. Finally, computations based on Table 12 show that Judge B sentences a remarkable number of gamblers (87 percent) and sentenced only 24 (14 percent) to prison. Not surprisingly, of the 167 gamblers sentenced by Judge B, 165 pleaded guilty. Similarly, Judge H sentenced all of the 7 gamblers before him to a fine or probation.

These tables suggest the extent to which "judge-shopping" is practiced in the District Court. It is perhaps induced by the more frequent use of probation or fine by the judges who accept the bulk of the guilty pleas. The tables also indicate the degree of disparity in the sentences imposed for particular offenses by different judges. These disparities lead the Commission to suggest greater consultation among the judges with a view toward increased uniformity of sentences; a sentencing institute might prove to be the most appropriate vehicle for this purpose.

TABLE 12.—*Type of sentence imposed for gambling, by judge—U.S. District Court*

[1964-1965]

Judge	Probation	Split sentence	0–1 year	1–3 years	3–5 years	5 years or over	Fine	Total
A	2	------	------	------	------	------	1	3
B	103	------	10	11	3	------	40	167
C	1	------	------	------	------	------	------	1
D	------	------	1	1	------	------	------	2
E	3	------	------	------	3	------	------	6
F	------	------	------	1	------	------	------	1
G	------	------	------	------	------	------	------	------
H	6	------	------	------	------	------	1	7
I	------	1	------	------	------	------	------	1
All other (13)	------	1	------	1	1	------	------	3
Total	115	2	11	14	7	------	42	191

Source: Staff computations based on data provided by the Administrative Office of the U.S. Courts.

The practice of "judge-shopping" is facilitated not only by disparity of sentence but also by the knowledge that the judge before whom a plea is entered will most likely also sentence the offender. While it is advantageous for a judge to sentence an offender whose demeanor he has observed at trial and whose testimony he has heard, the same considerations do not usually apply when a plea is entered.

In this situation, the judge is limited to what the prosecutor, the probation office and the defense counsel tell him about the offender, supplemented by only the briefest personal observation. A judge who accepts a plea of guilty is generally no better equipped to sentence the offender who pleads than are other judges. Distributing cases where a plea is entered to any one of the several judges available for sentencing would—by eliminating the present opportunity of counsel to "pick" a lenient judge—substantially reduce "judge-shopping."

Evaluation

Several criteria may be applied in evaluating sentences imposed by the District Court—the use of probation versus imprisonment, the length of prison terms imposed, comparisons of sentences with those imposed by other Federal and State courts. Each provides only a partial measure by which to assess local sentencing policies. Compared with other Federal jurisdictions, the sentences of the District Court are generally longer and less use is made of probation; compared with most State courts also, probation is used less frequently here. Since data is not available from other jurisdictions, however, on the frequency and severity of offenses committed, or the character and prior record of offenders sentenced, it is dangerous to attempt to compare the leniency of one court's sentences as opposed to another's. In the District of Columbia, too, conservative parole policies serve to make the "effective" sentence—the length of time actually spent in prison by an offender—as long or longer than those in State jurisdictions.

In brief, judgment on the severity or leniency of District Court sentences is critically handicapped by the lack of appropriate criteria and comparable data from other jurisdictions. Evaluation of particular sentences in particular cases, even if possible, would be fruitless. In fact there is no unified court policy on sentencing; some judges grant probation frequently and impose long terms of imprisonment rarely, while others forswear probation and mete out lengthy prison terms. The available data in our view fail to support any conclusion that District Court sentences, on the whole, are either excessively lenient or severe.

The Sentencing Process

Several suggestions have been offered to improve the sentencing process in the District Court. Legislation has also been proposed to increase the severity of the sentences imposed.

Sentencing Institutes

In 1958 Congress passed legislation authorizing the Judicial Conference of the United States to establish periodic institutes on sentencing "for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing. . . ." [39] Since the passage of this legislation, many circuits have held institutes to agree on selected sentencing principles.[40] The District of Columbia Circuit held its only institute in 1960 and adopted a set of "policies and standards for sentencing." [41] These spell out the traditionally relevant factors to be considered in sentencing, but provide little guidance for actual decision making. For example, the Sentencing Institute observed that:

> Each defendant's case must be considered upon its highly individualized basis and a sentence imposed which is tailored to fit that case. Sentencing judges must in all instances consider all of the factors in each case, giving appropriate weight to each factor, and impose a sentence which is just to the defendant and just to the community." [42]

Later institutes in other jurisdictions have attempted to articulate more precise standards for the selection of particular dispositions.[43] In order to encourage the framing of objective sentencing standards and minimize sentence disparity, we recommend a new sentencing institute in the District of Columbia to focus on particular sentencing problems in the District, such as the youthful housebreaker or the inveterate criminal with an extensive prior record.

Sentencing Councils

The Eastern District of Michigan, the Eastern District of New York, and the Northern District of Illinois have created sentencing councils, a procedure whereby several judges of the District Court discuss the sentencing possibilities in a case set for sentencing before one of them.[44] Although the reactions and recommendations of his colleagues do not bind the sentencing judge, the process of mutual consideration has resulted in a significant reduction of sentencing disparity.[45] This procedure also encourages the development of common standards among judges on the same court.

In 1964 a Sentencing Institute for the Federal Circuits recommended that: "Multiple judge district courts should consider adoption of a Judicial Sentencing Council plan similar to those used in the Eastern District of Michigan and Northern District of Illinois, wherever such adoption is feasible." [46] The Commission believes that this recommendation deserves serious consideration by the U.S. District Court for the District of Columbia.

Appellate Review of Sentences

It has been suggested that appellate courts be authorized to review certain sentences imposed in the district courts of the United States.[47] A bill (S. 2722) not acted on by the 89th Congress provided for: A right to appeal all sentences to imprisonment for more than one year on the ground that the sentence, though lawful, is excessive; the availability of presentence reports to defense counsel; authority in the appellate court to reduce, increase or modify the appealed sentence; and disposition of the appeal without a hearing unless the sentence is increased. It has also been suggested that sentence appeals be taken to a special panel of trial court, rather than appellate court, judges.

Proposals for appellate review of sentencing have been debated with considerable vigor. A former United States Attorney for the District of Columbia has expressed his preference for keeping review of sentences out of the appellate court, arguing that appellate judges are not well suited for sentence review because reexamination of facts found at the trial level is outside their traditional function, because they have no greater expertise than trial judges, and because variances among appellate panels are likely to result in very little reduction in sentence disparity.[48] On the other hand, one jurist of the United States Court of Appeals for the Fourth Circuit, supporting appellate review, noted that:

> A trial may be technically perfect to the last detail, yet the sentence may be a miscarriage of justice. How odd it is that the existing appellate process scrutinizes the most trivial decisions of the trial, but must blind itself to the most momentous.[49]

The traditional rationale for appellate review is to correct the occasional glaring excess in sentencing. In those jurisdictions where appellate review is in effect, this type of case has generally been the occasion for its invocation. This Commission does not feel it necessary to endorse or reject appellate review at this time. We believe that primary emphasis should be placed on the minimization of sentencing disparities by the District Court judges themselves through institutes and councils.

Increased Punishments

As part of its Omnibus Crime Bill, the 89th Congress passed legislation providing for increased punishment for robbery, housebreaking, certain types of assaults, and offenses committed with weapons. Burglary was to be classified in two degrees—first degree burglary, punishable by not less than 5 nor more than 30 years imprisonment, and second degree burglary, by not less than 2 nor more than 15 years

imprisonment.[50] The lowest maximum penalty for certain assaults was to be set at 2 years, and at 4 years (in lieu of 6 months) for robbery.[51]

The Commission does not believe that such statutory increases in punishments prescribed by statute are necessary. It has not been demonstrated that the District Court lacks the authority to commit offenders for long terms of imprisonment when appropriate for deterrence or for a meaningful corrective program. The court presently may sentence offenders to at least 10 years for most serious crimes, and often, when convictions of more than one count of an indictment are involved, to more than 20 or 25 years imprisonment. While long sentences may serve as a deterrent to some offenders and are necessary for the rehabilitation of others, the Commission believes that remedial efforts in this area should concentrate on the quality of the community's correctional and rehabilitative institutions.

THE COURT OF GENERAL SESSIONS (U.S. BRANCH)

Statutory and Administrative Framework

The U.S. Branch of the Court of General Sessions has jurisdiction over criminal offenses for which the prescribed penalty is one year or less, except those petty misdemeanors, in the nature of municipal ordinances, cognizable in the D.C. Branch of the Court.[52] Sentences in the U.S. Branch are all definite (not indeterminate) and suspended sentences, with or without probation, are authorized.[53] Offenders sentenced to more than 180 days are eligible for parole after serving one-third of their sentence.[54]

The Probation Department of the Court prepares relatively few presentence reports and, according to the American Correctional Association (ACA), those that are prepared are cursory at best.[55] The operations of the Probation Department are discussed later in this chapter. Aside from the presentence report, the judge relies on a reading of the police record and his personal observations of the offender.

The court does not maintain records which would permit analysis on a continuing basis of its overall sentencing practices and those of individual judges. Such data, comparable to that specially collected by the Commission for this Report, would permit periodic evaluation of this aspect of the court's performance. The Commission recommends that the court maintain and annually publish such data.

The Sentences Imposed

The Use of Probation

The Commission examined the frequency with which the Court of General Sessions placed offenders on probation or suspended the imposition of sentence in fiscal 1965.[56] Table 13 sets forth the figures for the three most common offenses in the court. It reveals that approximately 59 percent of the offenders convicted of the three most common misdemeanors were sentenced to terms of imprisonment: 17 percent were placed on probation; 8 percent received a suspended sentence; and 16 percent were given the alternative of imprisonment or payment of a fine.

Without a detailed study of the characteristics and prior records of specific offenders and the sentences imposed in individual cases, the Commission cannot properly evaluate the court's use of probation and the suspended sentence. Elsewhere in this chapter we have stressed the dependence of such sentences on the quality of a court's probation services. If these are deficient, as is the case in this court, the court's option of sentencing offenders to other than imprisonment is limited.

TABLE 13.—*Use of probation or suspended sentence by selected crime—Court of General Sessions*

[Fiscal 1965]

	Offense					
	Larceny		Assault		Carrying dangerous weapon	
	Number	Percent	Number	Percent	Number	Percent
Probation	29	11.7	33	16.7	38	24.5
Suspended sentence	17	6.9	15	7.6	14	9.0
Fine or imprisonment	28	11.3	36	18.2	33	21.3
Imprisonment	174	70.1	114	57.5	70	45.2
Total in sample	248		198		155	

Source: Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

The fact that offenses adjudicated in the Court of General Sessions are less than those in the U.S. District Court suggests that probation might be used more frequently in the former court than in the latter one. Yet the opposite is the case. In fiscal 1965, 29 percent of those convicted in the District Court were placed on probation,[57] while

24 percent were placed on probation or given a suspended sentence in the Court of General Sessions. Moreover, the Court of General Sessions' Probation Department has a much lower revocation rate than the District Court,[58] which implies that good probation risks are being sent to prison. As the court's probation services expand and improve, probation should be used more often, coupled with more intensive post-release supervision and guidance.

The Use of Fines

In the period studied, 222 (19 percent) of the sample of 1,183 persons were sentenced to a monetary fine and, in the event the fine was not paid, a jail term. Of these, 105 persons could not pay the fine, and were incarcerated. While 80 percent (41 of 51) of offenders convicted of possessing numbers slips were able to pay their fines, only 11 of 27 persons convicted of larceny had the necessary funds. The Commission believes that making imprisonment dependent on an offender's financial status is wrong. If a fine is to be imposed, it should be set in light of the offender's ability to pay and this information should specifically appear in the presentence report. If the offender cannot pay a fine all at once, periodic installment payments should be established. If it appears that he will not be able to pay a fine under any circumstances, the court should impose a sentence of either imprisonment or probation, whichever is appropriate in the case, and not offer an offender a false option unrelated to his character or his offense.

The court appears especially lenient in sentencing for gambling offenses. In the period studied 70 persons were convicted of either possession of numbers slips or maintaining gambling premises, but only 17 were incarcerated. The great majority were given the option of paying a fine. As in the case of sentences imposed in the District Court for gambling offenses, the meting out of "license fees" by the court does not appear to offer any significant deterrence to organized gambling in the community, nor does it engender respect for law enforcement generally.

The Length of Term Imposed

A study of the frequency of the court's use of the statutory maximum sentence of one year and of sentences in excess of 180 days indicates that lengthy sentences are not usually imposed (Table 14) even though many cases in the Court of General Sessions originated as felony arrests. Furthermore, most offenders sentenced to prison in that court already have substantial prior records. A sample of misdemeanant offenders incarcerated in the Workhouse Division of the Department of Corrections as of July 30, 1965 indicates that 94 percent

of the assault offenders had a prior misdemeanor conviction and that 78 percent had 2 or more prior convictions; 80 percent of the petit larcenists had prior convictions, with 51 percent having 2 or more prior convictions.[59]

TABLE 14.—*Sentences in excess of 6 months, and sentences of 1 year, by type of crime—Court of General Sessions*

[Fiscal 1965]

Offense	Number of convictions	Term of imprisonment			
		Over 180 days		One year	
		Number	Percent	Number	Percent
Larceny	248	28	11. 2	12	4. 8
Assault	198	19	9. 6	6	3. 0
Carrying dangerous weapon	155	8	5. 1	4	2. 6
Total (3 offenses)	601	55	9. 2	22	3. 7
All offenses	1, 183	97	8. 2	39	3. 3

Source: Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

The median sentences imposed by the court for all offenses and for the specific offenses of larceny, assault and carrying a dangerous weapon are shown in Table 15. Over half (419) of the 772 persons sentenced to jail received sentences not exceeding 90 days.

TABLE 15.—*Median sentence for all offenses, and three specific offenses—Court of General Sessions*

[Fiscal 1965]

Offense	Median sentence by days*
Larceny	71–90
Assault	51–70
Carrying dangerous weapon	21–30
All offenses	51–70

Source: Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

*The 71–90 category is heavily represented with 90 day sentences; the 51–70 category with 60 day sentences; and the 21–30 day category with 30 day sentences.

Assuming the one year limit on sentences, and the difficulties of evaluating sentencing policies generally, the Commission finds an apparent incongruity in the small number of sentences approaching the maximum. This is so particularly in those cases initiated as felonies but thereafter "broken down" for prosecutive or other reasons to misdemeanors—cases where the nature of the offense and the background of the offender raise a substantial likelihood of recidivism. In such cases the correctional authorities require more than a few weeks or months to effect any change in the offender's motivation.[60] Conversely, we encourage the use of probation, rather than short terms of imprisonment, in cases where the risk of recidivism is outweighed by the likelihood of successful rehabilitation. Sentences to short or medium-length terms of imprisonment are less likely to be satisfactory resolutions of the conflict between considerations of community protection and offender rehabilitation. The success of such a change in policies depends, of course, on the quality of probation services and the correctional and rehabilitative resources of the penal institutions.

Sentence Variation by Method of Adjudication

As in the District Court, a misdemeanor defendant is more likely to receive a milder sentence if he pleads guilty than if he is found guilty after a trial (Table 16). Moreover, a General Sessions offender is more likely to receive a suspended sentence or be fined if he pleads guilty rather than goes to trial (Table 17).

The Commission reemphasizes its belief that justice is not served by sentencing policies which actively encourage pleas in order to process a large volume of cases quickly. While pleas of guilty understandably facilitate the business of the court, and obviate inconvenience and expense to witnesses and taxpayers, they should not be solicited by the promise or the reality of lenient sentences unrelated to the character and background of the offender or the nature of his offense.

TABLE 16.—*Median sentence, by offense and method of disposition—Court of General Sessions*

[Fiscal 1965]

Offense	Median sentence in days		
	Total	Plea	Trial
All offenses	51–70	31–50	71–90
Petit larceny	71–90	51–70	91–110
Simple assault	51–70	21–30	71–90
Carrying dangerous weapon	21–30	21–30	71–90

TABLE 17.—*Offenders not sentenced to imprisonment, by method of adjudication—Court of General Sessions*

[Fiscal 1965]

	All offenses	Petit larceny	Simple assault	Carrying dangerous weapon
Total:				
Cases	1,183	248	198	155
Not imprisoned	411	57	65	69
Percent	34.7	23.0	33.0	44.5
Plea:				
Cases	926	196	110	122
Not imprisoned	354	47	44	57
Percent	38.2	24.0	40.0	47.0
Trial:				
Cases	257	52	88	33
Not imprisoned	57	10	21	10
Percent	22.2	19.2	24.0	30.3

Source (Tables 16, 17): Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

Sentence Variation by Judge

The sentencing practices of the judges of the court vary considerably. Table 18 presents the median sentences imposed by different judges. The table clearly indicates the considerable sentencing disparity among the judges of the court. It is difficult to see how these variations, particularly the different patterns exhibited by Judges B, D and G, can be explained in any way except as a result of the judges' personal predilections.

Disparity between judges is also noticeable in the frequency with which they impose maximum sentences. Table 19 indicates that while Judge D imposes the maximum sentence in 16 percent of his cases, and Judge I in 28 percent, Judges C and E never employ the maximum.

The disparity in sentences imposed by the several judges of the Court of General Sessions encourages judge-shopping in this court too.[61] There is also reason to believe that it produces a reaction reflected in lower prisoner morale at the Workhouse. It is disturbing that the median sentence for a misdemeanor offense can vary by 6 months from one judge to another. So far as we can tell, there has been no recent attempt in the court to discuss this problem and develop sentencing guidelines or agreement on general principles. The court could derive considerable benefit from a promptly convened sentenc-

ing institute. Furthermore, we think that unfair disparity could be reduced and judge-shopping minimized by the adoption of a policy providing for the rotation among judges of sentences to be imposed pursuant to guilty pleas, regardless of which judge accepted the plea.

TABLE 18.—*Median sentence in days*, by judge—Court of General Sessions*

[Fiscal 1965]

	All offenses	Larceny	Assault	Carrying dangerous weapon	Total cases
A	51–70	71–90	51–70	31–50	393
B	11–20	21–30	21–30	------	141
C	51–70	71–90	------	31–50	138
D	111–130	171–190	71–90	------	133
E	51–70	------	------	------	90
F	51–70	------	------	------	79
G	21–30	21–30	------	------	79
H	71–90	------	------	------	49
I	71–90	------	------	------	29
All Judges	51–70	71–90	51–70	21–30	1,183

Source: Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

*Medians not calculated where a judge sentenced fewer than 20 times for a specific offense. Medians for all judges based on all sentences.

TABLE 19.—*One-year sentences imposed for all offenses and three selected offenses, by judge—Court of General Sessions**

[Fiscal 1965]

Judge	Total		Larceny		Assault		Carrying dangerous weapon	
	Cases terminated	1-year sentence	Cases terminated	1-year sentence	Cases terminated	1-year sentence	Cases terminated	1-year sentence
A	393	6	80	------	59	1	61	------
B	141	1	31	------	25	------	16	------
C	138	------	29	------	18	------	20	------
D	133	22	24	8	36	3	8	1
E	90	------	17	------	18	------	11	------
I	29	8	9	4	3	2	2	1

Source: Staff computations based on court dockets. Sample of 1,183 cases, 25% of all convictions, U.S. Branch.

*Most offenses carry a one-year maximum.

Implementation of this policy would eliminate immediate sentencing following pleas. But immediate imposition of sentences, while it may move the calendar along, conflicts with the advisability of deferring disposition until at least minimal background information about the offender is provided the judge by the Probation Department.

The Federal Youth Corrections Act

The Court of General Sessions generally does not utilize the Federal Youth Corrections Act, although it appears applicable to misdemeanor offenders between 18 and 22 years of age.[62] While it may be argued that in the case of many misdemeanants it would be excessive to authorize FYCA treatment, involving a possible commitment of 4 years,[63] the U.S. District Court occasionally so disposes of misdemeanor convictions before it.[64] In view of the superior correctional facilities and rehabilitative services at the Lorton Youth Center, the Commission recommends that the judges of the Court of General Sessions give greater consideration to sentencing youthful misdemeanants under the FYCA in appropriate cases.

CONCLUSION

The Commission recognizes the immense difficulties entailed in the process of sentencing. It is perhaps the most troublesome of all tasks confronting judges, who too often do not receive enough information about the background of offenders to render the most appropriate sentence. The complexities of the task, as well as the lack of precise data on recidivism and deterrence, suggest that debates as to the severity or leniency of sentences are of limited value. We do not think, however, that other major deficiencies in our system of criminal justice and the community's total response to its crime problem can be compensated for by increasing the severity of sentences.

The Commission urges that data concerning the success or failure of sentences, as measured by the eventual adjustment or non-adjustment of the offender to society, be collected and thoroughly analyzed. This should be one of the important contributions of the Bureau of Criminal Statistics proposed in chapter 5. Detailed information on the extent of recidivism among Washington's criminal offenders, and the likely reasons for the recidivism, are essential predicates to any study of sentencing. Moreover, we urge experimentation with the development of sentencing prediction tables based on research into the relationships between recidivism and the varying personal characteristics of offenders. Providing judges with reliable predictive tables and detailed presentence reports would enable them to impose sentences better suited to the individual offender.

Until reliable and detailed data are gathered, the Commission cau-

tions against insufficiently informed responses to reports of rising crime, which assume unproved relationships between sentence severity and crime control, and restrict the discretion and flexibility of the courts and correctional authorities to deal with convicted offenders. Unfortunately, such responses mask the need for experimentation with new sentencing alternatives and methods in the light of current knowledge in the fields of correction and the behavioral sciences.

PROBATION

THE PROBATION DEPARTMENT OF THE UNITED STATES DISTRICT COURT

Organization and Administration

The Probation Department of the U.S. District Court of the District of Columbia performs all probation services for the court, prepares presentence investigation reports, and supervises parolees residing in the District who have been released from the Federal prison system and the Youth Center.[65] Responsible to the Chief Judge of the court with respect to its probation duties, the Department is responsible to the U.S. Board of Parole in fulfilling its parole duties.[66]

The Department is directed by a Chief Probation Officer, whose authorized professional staff includes a deputy, 2 supervising officers, 19 probation officers, an administrative assistant and 16 clerk-stenographers. Salaries for probation officers start at $7,696 and increase to $12,873 for supervisory officers; the American Correctional Association (ACA) views these salaries, as well as the Department's personnel practices, as excellent.[67] The Department conducts annual ratings of its staff, using official guidelines. In the opinion of the ACA, interim evaluations, either formal or informal, would contribute even more to effective administration and would benefit individual staff members.[68]

Probation officers spend an average of 5 hours a month in training.[69] Professional staff meetings every 2 weeks emphasize current and new supervisory and investigative techniques. At these meetings, case material and demonstrations by staff members are employed as part of the training process to increase the staff's understanding of probationer problems. The Chief Probation Officer recognizes that the range of services his staff provides for probationers and parolees could be enhanced by a greater exposure of the staff to representatives of new, as well as established, community social service agencies at staff meetings.[70]

The bulk of the Department's work entails presentence investigations and the preparation of presentence reports. A 1958 study showed that 55 percent of the Department's time was spent performing these functions, and 29 percent in performing the duties of probationer and parolee supervision. The Department's workload has increased in recent years (Table 20) and it has been estimated that a greater share of the Department's time is now spent on supervisory functions.[71] In fiscal 1965, 1,254 presentence investigations were conducted,[72] and 1,135 persons were under the Department's supervision, mostly District Court probationers (Table 20). As of October 31, 1966, its caseload included 747 probationers and 468 parolees for a total of 1,215.[73]

TABLE 20.—*Caseload activity of Probation Department, U.S. District Court*

	Fiscal year			
	1962	1963	1964	1965
Cases received by:				
Court probation	276	245	319	324
Parole	150	145	219	212
Mandatory release	46	55	63	32
Military parole	1	1	2	1
Transfer	71	59	70	60
Total received	544	505	673	629
Cases removed by:				
Court probation	352	322	289	270
Parole	114	114	151	161
Mandatory release	44	58	54	52
Military parole	----------	2	3	2
Transfer	61	61	60	56
Supervision	986	933	1, 048	1, 135
Total removed	*573	*558	*558	*542

Source: Annual Reports, Director of the Administrative Office of the United States Courts, Fiscal Years 1962–1965.

*The individual columns in this section do not equal the total because of cases that were removed for either deferred prosecution or U.S. Commissioner probation.

The Department must obtain additional staff if it is to offer specialized case services such as family counseling, produce comprehensive presentence investigations, perform the broad range of supervision responsibilities entrusted to it, and continue with essential staff train-

ing. The present caseload per probation officer is 78—28 in excess of the maximum established by the National Council on Crime and Delinquency.[74] The Commission therefore recommends that additional professional and supporting clerical staff be employed to reduce caseloads to prescribed acceptable standards. In the interim, classification of caseloads into high, medium and low risk offender categories would facilitate the most efficient utilization of professional staff. Special emphasis should be given to intensive services for youthful offenders, who are usually the most resentful of authority and most likely to become involved in situations that need immediate services. Experimentation with new techniques for treating these offenders necessitates small specialized caseloads supervised by the most capable staff members. The Commission recommends that the younger offender be assigned to separate and smaller caseloads where more intensive treatment services can be offered.

Probation and Parole Services

The Presentence Process

A presentence report is prepared in almost every case before the District Court; the court requires its preparation in all cases involving felony convictions. In fiscal 1966, the number of presentence investigations conducted declined from the 1965 figure of 1,253 to 1,041, of which 985 were complete.[75] The investigation and report are thorough. The defendant is interviewed concerning his offense, his prior criminal record and his social background are studied, and all persons or agencies who might have relevant information about him are contacted. The investigations and reports are generally prompt; the investigation is usually completed within 3 weeks.[76]

The Probation Department classifies presentence investigations into three categories, in accordance with the anticipated need for information.[77] A Class I investigation is a complete study of an offender not previously known to the Department. A Class II investigation, required in approximately 20 percent of the cases, is conducted when a report previously prepared is in need of updating. A Class III investigation is conducted in cases where the basic report has been or is being prepared by another probation department, or where a recent report has been prepared locally by the staff; it consists essentially of the earlier report and a cover memorandum.

Presentence reports contain sentencing recommendations except where prepared for judges who do not want the Department's opinion. A recent study revealed that the Department's officers recommended probation in 22 percent of the cases, sentencing under the Youth

Corrections Act in 14 percent, and imprisonment in 72 percent.[78] Probation recommendations were particularly frequent in cases of gambling (58 percent) and fraud (41 percent), and infrequent in cases of narcotics offenders (6 percent), robbers (7 percent), and murderers (10 percent).[79] The judges agreed with the Department's recommendations in approximately 75 percent of all cases. In the remaining 25 percent the judge was equally as likely to release offenders for whom imprisonment had been recommended as imprison those for whom probation had been recommended.[80]

Pre-Release Procedures for Parolees

Inmates seeking release on parole prior to expiration of their term of confinement must have an approved release plan before a certificate of parole will be issued.[81] The plan must include provisions for acceptable housing, a verified and approved offer of employment, and a community advisor.[82] The Probation Department investigator studies the employment proposal, the character of the employer, and the type of work, wages, and hours. The residence plan is carefully reviewed; relationships of family members are explored, as well as family attitudes and other situations which may affect the progress of the parolee upon his release. The investigator expresses his approval or disapproval of the plan in his report to the Parole Board. The report also indicates any additional preparation necessary prior to the inmate's release. The fact that an inmate cannot offer even an incomplete release plan will not necessarily disqualify him from parole consideration; the investigator will aid in the formulation of an acceptable plan, and solicit the assistance of relatives and employment placement services.[83]

The Department also supervises persons who are required to be released from confinement by reason of earned statutory "good time" and time credited for work performed in custody. Mandatory releasees with more than 180 days remaining to be served are released "conditionally"—on good behavior and under the supervision of a probation officer;[84] an approved release plan is desirable but not necessary. Nevertheless, the probation officer makes family and neighborhood contacts prior to the inmate's release in order to ease his transition back into the community. If a plan has been proposed by the inmate, its merits are evaluated in the same manner as for regular parolees and the report to the releasing authorities is similar in content. The Department properly places considerable emphasis on the release plans of youthful offenders to be discharged from the Youth Corrections Center. The investigation particularly stresses the importance of home and community environment.

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Supervision of Probationers and Parolees

The Probation Department is responsible for the supervision of all probationers sentenced by the District Court residing in the District, all resident youthful offender parolees, mandatory releasees, and parolees to the District from other jurisdictions. The supervisory techniques of the Department are similar in cases of parole and probation and conform to sound correctional principles. A period of supervision begins with a probationer or parolee interview, where the individual's plans for return to the community and his responsibilities to the Probation Department are discussed.[85] If necessary, the supervisor interviews or contacts relatives and employers. The Department uses the technique of group orientation to instruct several probationers and parolees at one meeting of their rights and responsibilities while at liberty. Releasees must report to their probation officer monthly, or in some cases more frequently; the office is open two evenings a month to facilitate reporting.[86] Field visits are conducted as needed; generally, the Department's officers average one field visit per case per month.[87] Extensive use is made of the Department of Public Welfare and some of the more prominent community social service organizations, such as the Salvation Army and Shaw House. There is less contact with some of the newer agencies, however, such as the Job Corps and the Neighborhood Youth Corps; liaison with these and similar agencies should be fostered.[88]

Because of the pressures of heavy workloads, the Probation Department has in recent years concentrated on the technique of group counseling, whereby several probationers and parolees meet periodically in the evening to discuss common problems with a supervisor. This technique affords the Department the opportunity to supervise more clients for longer periods of time and offers the benefits that flow from open analysis of shared problems. Thus, the Family Counseling Group seeks to help its members overcome difficulties in achieving satisfactory family relationships; the Employment Counseling Group encourages members to discuss their employment problems and work out solutions in concert with group members; and the Alcoholic Counseling Group focuses on its members' drinking problems and offers supportive therapy through Alcoholics Anonymous and other community resources.[89]

The Commission endorses the emphasis placed on group counseling by the Probation Department, though we realize it is not necessarily effective with all individuals. Use of the technique should be supported, and training in group counseling should be given to all staff

members through the Department's staff development and in-service training program.[90]

It is axiomatic that the better a probation officer knows the neighborhood where the probationer lives, the more effective he can be in his supervisory role. The Department is presently considering a project which will place staff in the community where they can set up "headquarters" and become acquainted with the resources of the neighborhood.[91] This plan has proved effective in communities where neighborhood characteristics vary and the total agency caseload encompasses a large geographical area. Since we strongly encourage decentralization of parole and probation services wherever feasible, we endorse the American Correctional Association recommendation that a pilot project be developed to locate probation staff in the neighborhood.[92]

Violation of Parole or Probation

Violation procedures differ in the cases of probationers and parolees. Probation violations include minor transgressions which can be handled administratively, such as late reporting and failures to report, as well as the more serious violations like new arrests requiring a hearing before the court. With the concurrence of his supervisors, the supervising officer decides whether to refer an alleged violation to the court. If this course is chosen, the probationer is interviewed by his officer before a violation hearing and a report is prepared for the court. Probation violation hearings are usually held on regularly scheduled sentencing days by the judge who granted probation, if he is sitting on the criminal bench. Some judges insist on holding violations hearings in any cases they have initiated. For fiscal years 1964 through 1966 the probation violation rate for the District Court has remained between 10 and 12 percent.[93]

A parole violation may be the result of a new offense or a breach of some parole condition. All violations, whether new offenses or technical breaches, are investigated and a report incorporating the results of an interview with the parolee is submitted to the Parole executive even if issuance of a D.C. Parole Board warrant is not being requested.[94] Probation officers submit recommendations for or against revocation but the final decision rests with the Board. A copy of the report is also sent to the institution from which the violator was released. Violations in cases of youthful offenders are immediately reported to the Youth Division of the U.S. Board of Parole, whose revocation procedures correspond to those followed in adult cases.

Conclusion

The Probation Department of the U.S. District Court appears to be performing its duties in a commendable manner. The progressive attitude of its administrators, good salaries and working conditions, experimentation with different treatment techniques, and staff development programs all reflect the Department's excellence. With the addition of sufficient personnel, which will reduce caseloads and allow intensified supervision, as well as the development of research and evaluation capabilities, the District can have a probation office of the very highest caliber.

PROBATION SERVICES IN THE COURT OF GENERAL SESSIONS

Organization and Administration

The Probation Department of the Court of General Sessions performs three major services for the four branches of that court's Criminal Division. It conducts presentence investigations of selected offenders awaiting sentencing; it supervises offenders placed on probation by the court; and it renders specialized services for offenders referred to the Alcohol Rehabilitation Unit. The Department consists of a Director, an Assistant Director and 12 probation officers, five of whom are assigned to the Alcohol Rehabilitation Unit.[95] Department personnel are not obtained through Civil Service, but by private solicitation and advertisement, with the responsibility for selection delegated by the court's Chief Judge to the Probation Director. New employees are hired at an annual salary of $7,696 (GS–9), advanced to GS–10 after one year, and at the completion of a second year of satisfactory work may be advanced to GS–11 ($9,221).

The Department has been handicapped over the years by several administrative and organizational deficiencies, resulting in inadequate staff training and probationer supervision. These deficiencies stem in part from the Department's substantial workload and its shortage of professional personnel. As Table 21 indicates, in 1966 almost 7,000 presentence screenings and over 800 presentence investigations were conducted, over 1,500 field visits were made, and almost 1,500 probationers were under the Department's supervision. Computed on the basis of each probation officer's workload, these figures clearly indicate the Department's need for additional manpower. Although the recommended standard for an officer's workload is a maximum of 50 units (1 unit for each probationer supervised and 5 for each pre-

TABLE 21.—*D.C. Court of General Sessions Probation Department*

[Fiscal years 1962-1966]

Fiscal year	Placed on probation	Field visits	Presentence investigations	Screened for report to court
1966	1,442	1,584	834	6,923
1965	1,448	1,861	910	6,284
1964	962	1,862	799	7,931
1963	1,249	1,623	951	6,055
1962	579	1,283	938	8,908

Source: Annual Reports, Probation Department, D.C. Court of General Sessions.

sentence investigation completed in a given month), the present workload averages 114 work units per officer.[96] Each officer averages 84 cases of probationer supervision plus 6 presentence investigations monthly. The court's probation officers are thus attempting to cope with caseloads which are double the recommended maximum.

The Department also investigates the background of traffic violators on request of the Traffic Court; approximately 200 investigations were conducted in 1965.[97] The American Correctional Association (ACA) observed:

> Because of the special problems presented by Traffic Court and the needs of probation services in other areas of the Court's jurisdiction, much valuable time and energy is now spent unnecessarily with these relatively petty offenses.[98]

We agree with the Association that these offenses could adequately be handled by fine, license revocation or suspension, or driver education, without any presentence investigation.[99]

The necessity for an increase in probation officer personnel was emphasized almost 10 years ago in the 1957 Karrick Report.[100] That report called for an increase of 20— to 28—in the number of probation officers then employed. Since 1957, however, only 6 officers have been added, while the number of criminal cases before the court has increased from 65,770 to 81,307.[101] The retiring Director of the Department acknowledges the need for additional personnel, but estimates it at six for 1967—notwithstanding the fact that a significant case overload would still exist were that number of officers added to his staff.[102]

It is apparent to the Commission that the Probation Office is in urgent need of additional personnel, particularly in view of the addition of five new judges to the court. We recommend that enough additional probation officers be authorized to reduce the monthly

caseload to no more than 65 work units per officer. If caseloads continue to be excessive, the court will be deprived of essential information about offenders awaiting sentencing because adequate presentence investigations cannot be conducted, and probationers will continue to be ineffectively supervised. In the future all personnel should be obtained through the Civil Service Commission and all personnel should be given Civil Service status. This will ensure that new officers meet minimum educational and experience requirements and are selected on a merit basis. It would also provide greater job security and added fringe benefits, thereby heightening the positions' attractiveness to qualified applicants. The Commission also recommends that the salary structure of the Department be altered; the position of probation officer should be classified up to GS–12, rather than the present GS–11, and the salary structure of supervisory personnel should be upgraded commensurately.

Women should be included in the officers named to the staff. There are now no female probation officers in the Court of General Sessions; accordingly, all female probationers are now being supervised by men. Correctional authorities contend, and in some jurisdictions the contention is codified into law, that it is not sound probation practice to have female probationers supervised by male probation officers.[103]

Shortages of professional personnel have also required the Director and his assistant to perform nonadministrative functions. According to the ACA, these functions "could best be handled by subordinate staff." [104] In the absence of case supervisors in the Department, for example, the Director and his assistant have unsuccessfully attempted to perform the duties of that position, but they have not been able to devote the requisite time to the task.[105] As the ACA points out:

> This has left the individual probation officer virtually without supervision and guidance, with a resulting lack of uniformity in standards of day to day operations.[106]

Moreover, the performance of other line functions by the Director, such as the screening of prospective probationers, "has left no time whatever for administrative planning and guidance." [107] It is apparent that the new Director should be allowed an opportunity to apply himself exclusively to the direction and supervision of the Department. This could be accomplished in part by providing him with an additional Assistant Director. The ACA has recommended a division of function and responsibility, with one section of the Department to prepare presentence reports and another to handle probationer supervision and related responsibilities.[108] One Assistant Director could supervise presentence functions, and the other would be responsible for the supervision of probationers.[109] This staff addi-

tion would also help improve presentence investigations, which are presently "squeezed in among the problems of supervision" and other matters handled by probation officers.[110]

At present, there are only six secretaries on the clerical staff of the Department, too few to handle its clerical burden. Probation officers are obliged to spend much of their time making record entries, taking fingerprints, and occasionally typing presentence investigations.[111] The absence of a sufficient number of dictating machines adds to the problem. To remedy these deficiencies and to meet the needs of an increased number of probation officers, the Department should be provided with additional clerical assistance.

The addition of needed personnel will, however, only aggravate the existing overcrowded conditions unless more physical space is provided. The ACA found "gross overcrowding, a lack of privacy in three-quarters of the offices."[112] Although overcrowding is a problem common to all agencies in the court building, the critical nature of the Probation Department's role in the criminal process suggests a high priority for its needs.

The Department's deficiencies are not, however, due solely to a shortage of personnel or a lack of space. The leadership of the Department has in the past consistently failed to provide the direction, imagination and vigor which are essential to effective probation services. Outmoded techniques of presentence investigation, inadequate supervision of probationers, and hours of operation unsuited to the needs of the Department and probationers can be traced just as easily to a lack of leadership as to a shortage of manpower. Supervision and direction are further impeded by the Department's lack of a procedural manual.[113] Reference to a manual would reduce the amount of staff time now spent obtaining answers to routine policy and operational questions, and would provide an excellent tool for staff training. Such training, in any event, has been negligible. There has been no in-service training of the staff, and neither funds nor time have been made available to enable personnel to participate in training institutes and conferences. Even the device of staff meetings, at which qualified speakers inform personnel of new improved techniques, has not been employed; the ACA found that regular staff meetings have not been held for several years.[114]

The Presentence Process

The Probation Department plays a vital role in advising the judges of the Court of General Sessions of the background and criminal history of offenders awaiting sentence. A properly conducted presentence investigation also provides the court with information about

an offender's capacity, motivation and resources for a law-abiding life.[115]

Screening

The heavy workload of the court makes it impossible for the Probation Department to conduct complete presentence investigations in all instances. Consequently, a "screening" process is employed in those cases in which the judge desires some background information about the offender, but not in the detail that would be produced by a full presentence investigation. Judges order screenings when they believe that the offender might profit from some form of treatment other than imprisonment. A screening consists of a brief interview with the offender in the detention cell by the Director or Assistant Director of Probation; the interrogation centers on the offender's criminal record, his community resources and his employment status. On the basis of this conversation the interviewer determines whether a full presentence investigation is warranted.[116]

These screenings do not meet the needs of the court and elicit little information not already available to the judge.[117] They have often been conducted irrationally: A "fingertip" test has been employed to ensure truthful answers; the interviewer holds the offender's hand, moves his fingers over the offender's palm, looks him in the eyes and demands the truth.[118] Moreover, the contents of the interviews are not made available to the court, which is only furnished a brief summary statement regarding the screened offender and the recommendation of the interviewer. No records of these interviews are kept, and they are conducted according to no established procedure or criteria. As Table 21 indicates, 6,923 screening interviews were conducted in 1966; in approximately 6,000 cases the offender interviewed was reported to the judge as not worth further investigation. In these cases, then, the judge was usually left with little choice other than to commit the offender to jail. As the ACA concluded:

> In general, the screening process is little more than a hurried and inadequate interview, with the recommendation to the court based largely upon "hunch."[119]

Notwithstanding the volume of cases in the Court of General Sessions, immediate steps must be taken to improve the extent and quality of presentence information provided judges. We therefore recommend that the Probation Department form a Screening Unit, to be staffed by an adequate number of probation officers or investigators.[120] Its personnel would interview all convicted offenders and complete a Screening Sheet during the interview, developing information on which an informed judicial judgment as to the necessity for a full presentence investigation could be based. With the passage of legislation

enabling misdemeanor defendants to participate in work release programs only if the sentencing judge specifically allows that privilege and sets the terms and conditions,[121] it becomes doubly necessary that adequate presentence screenings be conducted. Otherwise the judge will not have the essential information about the offender's character and his job possibilities to decide if such a privilege is appropriate.

Much useful information about offenders will be contained in the reports of the D.C. Bail Agency, which is charged with investigating the background and criminal history of offenders in order to permit the court to make enlightened decisions as to pretrial release.[122] Effective coordination and liaison between the Bail Agency and the Screening Unit will minimize if not eliminate duplication of investigative effort, and permit the Probation Department to devote more of its limited resources to detailed presentence investigations and probationer supervision.

The Criminal Court of New York City is considering the adoption of a limited presentence investigation form.[123] It would provide information concerning the defendant's record, community resources and family responsibilities that could be used in those cases not requiring a full presentence report. The Commission suggests that the Probation Department's screening form might be patterned on the New York proposal, so as to provide vital information to the court where a full presentence investigation is not warranted.

Improved and expanded screening techniques will permit the Probation Department to broaden the scope of the criteria presently employed during screening interviews. The ACA suggests that inordinate emphasis is placed on considerations of residence and current employment. The criticism appears to the Commission to be well-taken:

> It seems grossly unfair to conclude, as a matter of principle, that a person who committed a crime against property primarily because he was out of work and in need of money has a lesser chance for probation consideration than a man who committed a similar crime but was gainfully employed at the time of the offense.[124]

The Presentence Report

The importance of a thorough presentence investigation and report cannot be overestimated. The report is a guide to the court in determining a case's disposition; it aids the probation officer in developing supervision plans for probationers; it assists the institution to which an offender is sent in classification, custody and treatment; and it assists the parole officer in planning for the inmate's release and supervision in the community.[125]

Despite their importance, presentence investigations and reports in the Court of General Sessions suffer from several major deficiencies: Offender-supplied information is not verified, there is little if any contact with members of the offender's family, and the information collected is not interpreted.[126] Although the arresting officer and the offender are interviewed, complainants are contacted in only a minority of cases. The ACA noted that the Probation Department appears to make no attempt to resolve, or to highlight for the court, conflicts between the statements of the offender and the complainant where the latter was interviewed.[127] Moreover, as the ACA found:

> There is no section on mitigating and aggravating circumstances—thus there is no area in which such factors as long histories of disputes between the defendant and the complainant can be explored, or where the amount of provocation by the complainant could be spelled out. If the defendant's behavior in the present offense is part of a long, repetitive pattern, this is not pointed out.[128]

The substance of prior arrests is not explored; the bare arrest records are simply copied into the report. Relationships between the defendant and his family are not examined. Prior employment and the defendant's work history are inquired into, but seldom verified.[129]

In short, as the ACA concludes, "the reports tend to be superficial," and fail to give "a highly personal picture of the defendant." [130] Indeed, the ACA was told by one judge

> that he gets so little of the personal feeling regarding the defendant from the presentence investigation that he has found it necessary, on an average of twice a week, to go out and make home visits on prospective probationers prior to sentencing.[131]

The system of distributing the reports further limits whatever utility they do possess. A copy is not forwarded to the institution to which an offender is committed or to the Parole Board. Accordingly, the process of eliciting background information from the offender is needlessly repeated by these agencies at a later stage.[132]

Both the quality and quantity of presentence reports must be substantially increased. The Probation Department must make more detailed inquiries into an offender's background and criminal history, and to a far greater extent attempt to verify information collected. Only 834 presentence reports were prepared in 1966, although 1,442 persons were placed on probation. During a survey conducted by the U.S. Department of Justice,[133] the court referred only about 35 percent of convicted defendants (38 of 108) to the Probation Office for an initial presentence evaluation. Of the 38 persons referred, 21 received no more than a quick screening while 17 received a "full" presentence report, three of whom were recommended for probation.

The ACA recognizes that it is neither feasible nor necessary to

conduct a full scale presentence report for all convicted misdemeanants. However, it recommends that such an investigation be mandatory prior to placing an offender on probation or sentencing him to prison for more than 6 months.[134] While the Commission endorses this recommendation, we think that in cases where it is abundantly clear from the facts of the offense and the criminal record of the offender that probation is the most appropriate sentence, the judge could forego the requirement of a presentence report. Implementation of this recommendation may result in at least a doubling of the number of reports prepared by the Probation Department; it thus highlights the importance of augmenting the Department's professional and clerical staffs.

Presentence reports should contain the probation officer's forthright recommendation on the suitability of probation. Unfortunately, the ACA has noted the lack of an atmosphere in the court which would allow probation officers to offer independent judgments; as a consequence, recommendations tend to be "unusually harsh." [135] The ACA's review of presentence reports disclosed no case where the probation officer recommended a fine or suspended sentence without probation: "In the majority of cases reviewed, apparently good probation subjects were recommended for prison sentences and most of those recommended for probation did not appear in need of supervision." [136] This conservatism may in part be a function of the excessive caseload of the office—presentence investigators in effect recommend an increase in their caseload when they recommend probation. More likely, however, it is due to a climate which discourages the probation officer from exercising his professional judgment freely, an atmosphere the ACA deems inhibiting to effective and impartial recommendations.[137] It has emphasized:

> Incarceration of offenders for whom probation would be more suitable can harm society and the individuals involved as much as placing on probation offenders who are dangerous risks. There are many individuals who may become involved with the law due to a situational circumstance; for these there often is no need for either incarceration or supervision in the community. No one should be placed on probation or kept on probation longer than is necessary to accomplish the purpose for which the probation sentence was imposed.[138]

The findings of the ACA suggest that the Probation Department might recommend probation in more cases if adequate presentence reports were prepared. Coupled with the suggested improvements in probationer supervision, and facilitated by a substantially increased staff, we believe a selective increase in probation would benefit the administration of criminal justice in the Court of General Sessions.

Supervision of Probationers

Within conditions set by the sentencing judge, the probation officer is responsible for guiding the probationer's behavior and arranging for special treatment or services to assist his adjustment in the community. In the Court of General Sessions, probationers must agree not to repeat the offense, to maintain good behavior, to abstain from intoxicants, to report to the probation officer when directed, and not to leave the District without the Probation Director's permission.

In 1966, 1,442 persons were placed on probation by the court.[139] Each probation officer averages 128 probation cases at any one time. Most probationers (90 percent) are required to report to their probation officer on a monthly basis. The regular hours of the Department are from 9 to 5; each officer also works a half-Saturday every sixth week. There are no night reporting hours for probationers. Only 538 home visits were made by probation officers in 1966—an average of approximately 1 visit to every 3 probation cases.[140]

The inconvenient reporting hours, the infrequent home visits, and the fact, as reported by the ACA, that "it is possible for a probationer to complete an entire year on probation supervision without ever being seen by his probation officer"[141] are reflections of the extent to which the rehabilitation of misdemeanant offenders in the District is being ignored. The ACA attributes much of the difficulty to excessive workload: "When work is continually added past capacity, corners are cut and both the probationer and society are short-changed."[142] Once caseloads conform to reasonable standards, the Department should be able to increase the number of home visits and engage in planned contact with the probationer's family, relatives and employer.

Certain improvements in supervision, however, need not await an increase in Department staff. A more vigorous Department administration, and experimentation with such techniques as group counseling and night reporting, would substantially strengthen probation services in the Court of General Sessions. A change in the working hours of the Department would permit more frequent interviews between probationers and their officers. The ACA reports that departments in most other jurisdictions schedule officers to work one day a week until 8:00 p.m.[143] Officers should make greater use of available community resources in counseling and guiding probationers. As the ACA notes, the agencies used "seem to be restricted to the psychiatric clinic and the employment service. Records reflect almost no use of any private agency."[144]

The Probation Department generally needs more experimentation and flexibility in its operations. The Department might employ the technique of group reporting, where several probationers report at the same time and discuss matters jointly. Often the men gain a better understanding of their own problems after hearing how others are overcoming similar difficulties. This technique is being used successfully by the U.S. Probation Department in the District Court.

Another model for experimentation was provided by the demonstration project conducted by the court and the United Planning Organization under a Federal grant for calendar 1966.[145] This project was funded to (1) test the effectiveness of investigators in providing presentence information, (2) offer constructive alternatives to jail, (3) predict the efficiency and effectiveness of a relatively brief screening process, and (4) permit study of recidivism. It was designed to test new methods of screening and supervising probationers through the use of investigators (case aides) located in the community and was limited to Cardozo area residents under 30 years of age convicted of misdemeanors. The investigator's responsibility was to determine such factors as employment stability, family responsibility and permanence of residency to ensure a more objective and knowledgeable sentencing decision. Although the project encountered serious administrative difficulties and terminated in September 1966,[146] it suggested the extent to which probation services in the court can be supplemented and intensified. The Commission believes that continued experimentation with selected research and demonstration projects, fully supported by the Court of General Sessions and its Probation Department, would lead the way to needed improvements.

Conclusion

It is clear that the quality of the Probation Department's services has been seriously hampered by an excessive workload. Nevertheless, the Department's response to the needs of the court and its probationers has been lacking in direction, imagination and professionalism. The operations of the Department have been marked by an administrative rigidity. The District is fortunate in having the nucleus of a dedicated professional staff of probation officers. Given proper leadership, supervision and resources, this nucleus could convert the Probation Department into a superior unit. Substantially reduced caseloads, development of a procedural manual, and the establishment of acceptable professional standards for investigation and supervision are necessary. However, unless there is a realization of the Department's inadequacies by its administrators and a full commitment on

their part to improve its operations vigorously and imaginatively, there will be no substantial improvement in the court's probation services. The leadership of the Court of General Sessions and the Department must demonstrate the capacity and dedication essential for such reform.

THE D.C. DEPARTMENT OF CORRECTIONS

ORGANIZATION AND ADMINISTRATION

The Department of Corrections is charged with the responsibility of supervising, caring for and rehabilitating persons committed to its custody.[147] The Department operates the four institutions which comprise the District's penal system. Three institutions—the Workhouse, the Reformatory for Men and the Youth Center—are located on a 3,500 acre reservation near Lorton, Virginia, approximately 20 miles from Washington, as is the Women's Reformatory previously operated by the Department. The D.C. Jail is located in the southeast section of the city.

Each year approximately 25,000 persons are incarcerated for varying periods of time in the District's penal institutions (Table 22). The inmate population totalled 4,572 at the beginning of fiscal 1966, but decreased to 3,276 by the year's end. As shown in Table 23, the average daily population of the institutions decreased slightly in 1966. In recent years the District's prisoner population totals have gradually declined, following a national trend.[148] Not all District offenders are housed in the city's four penal institutions. In 1965 approximately 300 were confined in Federal prisons. On the other hand, the District's prisoner population includes a number of Federal prisoners; in fiscal 1966 the average was 382.[149]

The Department of Corrections spends over $11 million annually and employs approximately 1,000 persons. The ACA has spoken highly of employee caliber and morale.

> Morale among the employees is excellent, as there is a strong feeling that they are part of an organization dedicated to helping those sent to them for correction and training. Outstanding, too, is the general regard and respect for the contributions of the various administrative, clerical, correctional officer, and professional personnel to the program for inmates.[150]

Nevertheless, personnel recruitment and retention problems persist. The ACA noted 35 vacancies in the institutions' correctional officer complements in February, 1966; this was reduced to 13 by August 31, 1966.[151] ACA-established minimum staffing requirements for professional staff have not been met.[152] Medical personnel are in short supply; there are no psychiatrists in the Health Division.[153]

TABLE 22.—*Admissions to Department of Corrections institutions*

[Fiscal years 1956–1966]

Fiscal year	Reformatory	Workhouse	Women's reformatory	Youth Center*	Jail †
1956	690	16, 558	1, 207	----------	27, 764
1957	618	17, 651	1, 201	----------	26, 453
1958	627	16, 638	1, 306	----------	25, 697
1959	700	14, 061	1, 201	----------	24, 251
1960	617	13, 101	1, 056	175	25, 357
1961	610	12, 735	1, 031	172	25, 847
1962	544	16, 950	1, 131	184	28, 806
1963	417	19, 609	1, 321	144	30, 825
1964	524	18, 307	1, 292	222	28, 709
1965	459	14, 899	1, 083	230	26, 796
1966	632	14, 927	1, 080	217	25, 436

Source: Office of the Director, District of Columbia Department of Corrections.

*The Youth Center was not opened until 1960.

†All admissions to the Department enter through the Jail, so its admissions reflect the Departmental total.

TABLE 23.—*Average daily population, Department of Corrections institutions*

[Fiscal years 1956–1966]

Fiscal year	Reformatory	Workhouse	Women's reformatory	Youth Center*	Jail
1956	1, 857	1, 327	205	----------	1, 003
1957	1, 931	1, 426	204	----------	1, 097
1958	1, 872	1, 309	200	----------	1, 083
1959	1, 896	1, 238	202	----------	1, 028
1960	1, 830	1, 427	201	153	1, 027
1961	1, 705	1, 543	205	255	1, 104
1962	1, 680	1, 376	170	273	1, 125
1963	1, 558	1, 389	169	284	1, 207
1964	1, 464	1, 557	170	302	1, 155
1965	1, 308	1, 540	167	297	1, 203
1966	1, 265	1, 397	148	304	1, 154

Source: Office of the Director, D.C. Department of Corrections.

*The Youth Center was not opened until 1960.

The Department of Corrections is concerned that only about 15 percent of its employees are Negro and believes that the racial distribution of the staff should more accurately reflect the racial distribution of the inmate population.[154] This goal has been difficult to achieve, in part because of the lack of scheduled transportation to Lorton from Washington. The Department has taken several steps to correct the situation: (1) Walk-in examinations for correctional officers are given by the Civil Service Commission on the third Saturday of each month; (2) a Negro officer has been employed on an overtime basis to recruit correctional officers in the District of Columbia; (3) the Director and Deputy Director have made many appearances before church and civic groups in the District of Columbia, emphasizing the opportunities that are available in the Department of Corrections; (4) the Department's personnel office provides information to Negro applicants concerning housing in the Northern Virginia area in conjunction with the Northern Virginia Fair Housing Association; and (5) the Urban League has been advised of the Department's needs for correctional personnel and has been asked to provide applicants.. The Department is presently exploring the possibility of providing transportation from the District to and from the Lorton reservation for its employees.

The Department is composed of 12 divisions, the four penal institutions, and several service units concerned with such matters as agriculture, engineering, health industries, and transportation. In addition, the Department has for several years maintained an Institute for Criminological Research to conduct offender studies, reviews of prison and correctional practices, and other criminological research.[155]

The Department is considering reorganization plans designed to improve delegation of authority, strengthen chains of command and offer greater support for line functions.[156] Each division head and director of the Department's smaller specialized units is personally responsible to the Director. In practice, however, many other subordinates also report directly to him.[157] Such an administrative design may contribute to inefficient operations, particularly in an agency as large as the Department of Corrections. Later in this chapter the Commission recommends a major reorganization of the Department and the consolidation of its functions with other allied agencies in the District.

In the following sections of this chapter, the Commission discusses the several penal institutions which comprise the Department. The Women's Reformatory is not considered, since its inmates have been transferred to the Jail and the institution is being converted into a treatment center for alcoholics under the Department of Public Health.[158]

CORRECTIONAL INSTITUTIONS

The District of Columbia Jail

The D.C. Jail is a maximum custody institution for men and women where several categories of prisoners are detained: Persons awaiting trial or final disposition of their cases in the Court of General Sessions, the U.S. District Court, and the U.S. Court of Appeals; persons held for other law enforcement authorities, such as Immigration officials; persons serving short sentences; and those awaiting transfer to Federal or District prisons.[159] As a detention center, it is important that the Jail provide productive activity for its inmates, efficient and protective supervision, diagnostic services for convicted offenders, and screening services for the courts and other correctional institutions. Because of insufficient staff, inadequate facilities and an excessive prisoner population, these services have not been performed adequately.

The Jail is located in southeast Washington on approximately 7½ acres of land. The physical plant was built in 1872 and has undergone several modifications over the years. The Jail contains four cellblocks, two open dormitories, a hospital, a kitchen, administrative offices, dining facilities, and storage areas of various kinds. It is surrounded by a combination of brick walls and double cyclone fences. In 1945 tool-proof steel was placed on all windows and openings. Since then, there have been additional heavy expenditures for fireproofing, repair and maintenance of utility lines, and some modernization of offices and the hospital facilities.

The size of the Jail's prisoner population has remained relatively stable over the last 10 years, until recently when it decreased sharply. Since 1957 the annual average daily population has regularly exceeded 1,000, although the Jail's rated capacity is 695; daily fluctuations have sometimes reached highs exceeding 1,300 (Table 24).

In March 1966, 596 inmates at the Jail were awaiting court action (Table 25). Of 141 inmates who had been in the Jail more than 2 months, 15 were awaiting action by the Court of General Sessions. In addition, 41 inmates had spent 2 months, and 31 inmates 4 months, awaiting action by the Grand Jury. Only 20 of the 252 awaiting action by the U.S. District Court had been confined less than 2 months; 60 had been jailed for 4 months, 80 for 6 months, 32 for 8 months and 30 for 12 months or longer.[160]

By August 1966 the number of persons awaiting court action and the duration of their wait had been reduced. Of the 129 awaiting action by the Court of General Sessions, 114 had been confined less

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TABLE 24.—*District of Columbia Jail commitments and average population*

[Fiscal years 1957–1966]

Fiscal year	Commitments	Average daily population
1957	26,453	1,097
1958	25,697	1,083
1959	24,251	1,028
1960	25,357	1,027
1961	25,847	1,104
1962	28,806	1,125
1963	30,825	1,207
1964	28,709	1,155
1965	26,796	1,203
1966	25,436	1,154
10-year average	26,817	1,118

Source: Inmate Records Office, D.C. Jail, D.C. Department of Corrections.

TABLE 25.—*Number of inmates awaiting court action at D.C. Jail*

[March–August, 1966]

1966	District Court	Grand Jury	General Sessions	Total
March	252	203	141	596
April	295	151	77	523
May	332	131	73	536
June	300	92	152	544
July	249	58	73	380
August	219	99	129	447

Source: Inmate Records Office, D.C. Jail, D.C. Department of Corrections.

than 30 days, and only 1 for more than 60 days. Ninety-nine persons were awaiting Grand Jury action and 96 of these had been confined less than 60 days. Less progress had been made by the District Court. A total of 219 persons were awaiting its action; 174 had been in the Jail more than 60 days, 46 persons had been confined over 6 months, 6 persons had been confined over 1 year, and 3 persons had been confined more than 2 years.[161]

Conscientious efforts by correctional authorities as well as the courts and the U.S. Attorney's office contributed to these reductions in the Jail population. By order of the Department, the jurisdiction

of the Jail over persons sentenced to less than 10 days imprisonment was reduced to cover only those with terms of less than 5 days. Sentenced misdemeanants, formerly detained at the Jail for 2 days processing before transfer to the Workhouse, are now transferred the following day. Felon inmates formerly classified at the Jail following conviction and imposition of sentence now go directly to the Reformatory for this purpose. Inmates were formerly transferred to the institutions at Lorton on only 1 day a week; they now are transferred daily. A number of sentenced prisoners assigned to the Jail's work-detail block have been replaced with unsentenced volunteers.[162]

In addition, the Court of Appeals' decision in *Easter* v. *District of Columbia*[163] sharply reduced the number of persons awaiting disposition on charges of drunkenness or serving a short sentence for that offense. Approximately two-thirds of the 25,436 persons confined at the Jail during fiscal year 1966 were charged with or convicted of drunkenness.[164] The March 31, 1966 *Easter* decision was largely responsible for reducing the Jail's average daily population of 1,268 in January 1966 to 896 in June 1966.[165] The lowest daily population for the current fiscal year was 739 on August 19, 1966. However it had risen to 812 on November 14, 1966.[166] Although the impact of the Bail Reform Act, effective in September 1966, is not yet fully apparent, it is reasonable to anticipate a further reduction in the Jail's population, as inmates formerly confined because of inability to meet a monetary bond are released under the non-monetary conditions of the Act.

The Jail's 139 correctional officers perform a variety of duties which are not simply custodial. They supervise and schedule visits by families, attorneys and others, and control the constant traffic of inmates being released, going to court, or being sent to other institutions. Two social workers and four records officers are responsible for inmate classification and processing all records. The ACA noted the consequences of understaffing and overcrowding:

> The double-decking of bunks in the dormitories, extra men in the cells, the almost impossible task of picking out potential homosexuals, psychotics, psychopaths, and agitators among so many admissions with relatively little personal data about the individual, and the relatively few correctional officers available for supervisory duties at any time can spell trouble if allowed to go on for a longer period of time.[167]

Compounding the problems of overcrowding, there are not enough productive activities for the inmates. Some prisoners are assigned to maintenance, culinary and clerical duties in the Jail or the D.C. General Hospital, but "the remainder sit around idle."[168] Some who perform clerical duties have access to confidential records of prison-

ers; [169] these assignment policies, a product of a lack of personnel, have in other institutions led to blackmail, extortion or similar problems.

As a result of a series of newspaper articles criticizing conditions at the Jail, an investigation of inmate complaints was conducted by a committee of lawyers of the Junior Bar Section, who interviewed 332 inmates on April 5, 1966. Of this number, 135 made no complaints about the Jail, 90 prisoners complained about the food and 79 about the lack of recreation.[170] A limited number of prisoners complained about mail, visiting hours, medical facilities, and overcrowded conditions. Not one inmate indicated that any Jail employee had assaulted him during his confinement or had intimidated him in any way regarding the interviews. The committee concluded, however, that racial strife is probably a significant factor in the Jail, primarily due to the number of Black Muslims, and that homosexuality does exist but is not a major problem.

Greater efforts must be made to develop programs designed to keep all inmates busily engaged in constructive activities. When men are idle and spend an undue portion of each day in dormitory areas or locked cells, resentment and hostility may build up to such a degree that future rehabilitative programs are adversely affected. The Commission therefore recommends the development of an education program for the Jail, which would emphasize short-term courses in reading and mathematics and would be administered by a Director of Education. A remedial reading clinic should be established; instruction in filling out employment applications, and reading and understanding contractual agreements should be part of the curriculum. Furthermore, the present limited recreation program should be expanded. The correctional officer now serving as Director of Recreation should be replaced by a trained recreation specialist.

Difficulties arising from inactivity are aggravated when inmates cannot get assistance in resolving personal problems arising from their incarceration. The Jail should appoint a Counseling Director, a specialist who would assist inmates in dealing with family problems, employment, and similar matters. This type of service is particularly important in a detention facility where time is available for the inmate to brood or to worry about real or fancied problems. During the past year the Department of Corrections developed a proposal to provide assistance in resolving Jail inmates' personal and family problems. Caseworkers and other staff would be stationed at the Jail to interview new inmates, resolve personal problems themselves where possible, and when necessary refer the problems to other staff members to be worked out in the community. The proposal was sub-

mitted to UPO and the Office of Law Enforcement Assistance, but was not funded. The Department plans to resubmit a modified version in early 1967. The Commission urges favorable consideration of this proposal.

A New Facility

Although the programs and services we have recommended will contribute to short-term improvements in the administration of the Jail, major problems of space and facilities still confront the institution. The ACA concluded that these deficiencies can best be cured by the design and construction of a new detention facility. Describing the present facility, the ACA found that:

> The physical structure is such that adequate space is not available for the average daily inmate population. This has contributed, along with the shortage of custodial personnel, to improper supervision of prisoners. Overcrowding, sexual perversion, idleness, gambling, and strong-arm tactics by inmates have resulted. Action must be taken now to prevent these conditions from becoming worse and to eliminate them entirely in the future by building a new Jail.[171]

A new facility is needed not only because of the overcrowding which has marked the Jail in the past. The construction of a new institution will offer an important opportunity to provide a centralized detention center for arrested persons, increased diagnostic services, treatment programs for problem inmates, and supervised productive activity and recreation for all inmates.

Jail design is an area where bold innovative planning is essential. Representation in planning conferences should not be limited to the agencies presently using the facility, but should extend to those whose programs could profitably be incorporated in the future. Space should be planned to accommodate diversified programs and to allow access, working space and maximum freedom of movement for correctional and auxiliary services without compromising security. The ACA has set forth its recommendations for the design and needs of the new facility in detail, including observations on its size, location, security, and medical services.[172]

A new facility could serve as a centralized detention center for persons arrested by the police but not yet ordered by the court into the custody of the Department of Corrections. At present, arrested persons are detained in precinct station "lock-ups," and then transferred to a central lock-up at police headquarters. Not only are these lock-ups often poorly maintained and supervised, but police personnel who perform custodial tasks are unavailable for their primary duties of preventive patrol and protection of the community. A central detention facility which could accommodate arrested persons prior

to appearance in court would make prisoner processing, including fingerprinting, photographing and record checks, more efficient. Consultation between arrested persons and their attorneys would be facilitated. Supervision would also be greatly enhanced; recent deaths in police lock-ups have dramatically illustrated the need for transferring prisoner custody functions to authorities trained and equipped to perform them.[173] For example, in a central detention facility operated by the Department of Corrections, medical personnel would be more readily available to examine arrested persons.

Detention of arrested persons at a central facility would facilitate compliance with requirements of speedy arraignment and appointment of counsel. Arrested persons could promptly be interviewed by D.C. Bail Agency personnel concerning possible release on recognizance or under conditions to be set by a judicial officer. Determining eligibility for release, as well as assignment of legal counsel, could be accomplished more efficiently at a central location. The Commission recognizes that a central detention facility may pose certain operational problems. These might include some loss of police time in taking persons to the facility as well as occasional inconvenience to arrested persons now released by precinct personnel. However, specific directives indicating who would be transferred to the facility from the various precincts and providing guidelines for interrogation at the precinct level could resolve many such problems.

Finally, a new Jail would facilitate the performance of important diagnostic and short-term treatment services. Other jurisdictions are planning fully staffed, modern diagnostic and treatment units in detention centers which can also serve as the base for creative community-oriented treatment programs; the District can profit from their vision and experience.[174] The ACA recommends the construction of a Diagnostic and Outpatient Clinic adjacent to but separate from the new Detention Center.[175] The facility would provide for intensive diagnostic services for detained persons and also outpatient services, including family counseling of probationers, pretrial releasees and parolees. We support this recommendation.

According to the ACA, the D.C. Jail "has provided little except housing for the untried and short-term prisoners."[176] The Commission agrees that the most effective way to provide for improvement in all aspects of prisoner detention—from supervision to productive activity—is through the design and construction of a new Jail. At the same time, centralization may result in greater efficiency of operation, and produce needed economies.

The Reformatory for Men

The Reformatory for Men is a 51-year old medium-security institution housing persons sentenced to imprisonment for more than 1 year. Serving as the Department of Corrections' penitentiary, its facilities include a hospital, industry building, chapel, academic and vocational school building, gymnasium, auditorium, maintenance and industrial shops, cell blocks, and dormitories.

Normally capable of housing 1,218 inmates (1,345 during times of need), the Reformatory is presently moderately overcrowded. Over 1,500 new prisoners are admitted annually; approximately 800 are transferees from other institutions (Tables 26, 27). Although the average daily population in fiscal 1962 was 1,680, it dropped to 1,308 in 1965; at the end of fiscal 1966, the population had declined to 1,248 (Table 26). Overcrowding has interfered with orderly classification procedures, impaired the educational programs of the institution, and generally reduced the effectiveness of the correctional process.[177]

The Reformatory is authorized 216 correctional officers—a ratio of 1 officer for 6 inmates. Recent recruitment difficulties, resulting in a personnel shortage, have led to instances of inadequate supervision of dormitories and cell blocks. The Department is considering a program providing for closer attention to individual inmates, whereby each officer will be responsible for periodically reporting on the progress of eight or nine "assigned" inmates and making recommendations concerning their future programs.[178] The Commission encourages the program's implementation, in order to enhance the Reformatory's treatment and guidance of its inmate population.

TABLE 26.—*Inmates committed to the Reformatory for Men*

[Fiscal years 1961–1966]

	1961	1962	1963	1964	1965	1966
Average daily population	1,705	1,680	1,559	1,465	1,308	1,248
Total received*	713	657	557	611	547	611
Discharges:						
Parole	155	88	101	95	115	94
Conditional release	293	331	339	325	291	228
Expiration	200	225	159	157	184	191
Total discharges	648	644	599	577	590	513

Source: Records Unit, Reformatory for Men, D.C. Department of Corrections.

*Other than transferees; see Table 27.

TABLE 27.—*Admissions and transfers to the Reformatory for Men, by race*

[Fiscal year 1966]

	White	Negro	Total
Admissions:			
Sentenced prisoners	77	451	528
Parole violators	4	24	28
Conditional release violators	6	49	55
Transfers from:			
D.C. Jail	88	719	807
Workhouse	3	51	54
Youth Center	1	28	29
Total admissions and transfers	179	1,322	1,501

Source: Records Unit, Reformatory for Men, D.C. Department of Corrections.

The correctional officer staff is supplemented by several categories of specialized personnel, including clinical psychologists and social workers assigned to the Psychological Services Center, and several teachers in the academic education program. A variety of training and correctional programs are available to Reformatory inmates. These activities are made more meaningful through the institution's excellent reception and initial classification studies, which include psychological and educational tests, physical examinations and a social history.[179]

The academic education program at the Reformatory is directed by a supervisor of education whose staff includes 2 full-time teachers, 3 part-time day teachers, 20 to 23 inmate teachers, and 6 part-time evening teachers. Other staff members may teach selected courses. During the 1965–1966 school year, 43 academic classes were held; 226 inmates participated in the program during the first semester and 253 in the second. All of the classes met 5 days a week for 1 hour each day. A recent 9-week summer school course was even more popular, with an average daily enrollment of 309. High school equivalency tests are administered to qualified inmates. During the past year 26 men received their certificates, and 14 were recognized at a graduation exercise in June 1966. In addition, the Reformatory's educational program extends to the illiterate. In 1965, through arrangements with the Institute of Educational Research, classes were conducted for 65 inmates whose educational level was below the fourth grade.

Vocational education is stressed. Trades training is offered in 29 different shops, each with a planned curriculum leading to a certificate

of completion. As of March 29, 1966, 130 inmates were participating in the vocational education program, receiving instruction in tailoring, building maintenance, barbering, and furniture repair. Unfortunately, much of the vocational training equips inmates to do a job within the institution only, and in many cases bears little relation to work opportunities available in the community.[180] The Commission urges that the vocational education program offer training in those skills matched by employment opportunities in the Washington Metropolitan Area, as reflected by the U.S. Employment Service's skill surveys.

In late 1965 the Department started an experimental project at the Reformatory increasing inmate pay—which normally ranges from $2 to $13 per month—and instituting promotions in job categories based on participation in academic or social programs and/or vocational education and good conduct.[181] The project has succeeded, but increased participation has substantially added to the workload of the professional staff. Much of the demand for academic and vocational classes could undoubtedly be handled by increasing the number of night classes; instructors selected from neighboring school districts could be hired at an hourly rate. The Commission recommends that an adequate number of part-time teachers be authorized to staff the educational programs at the Reformatory, and to offer instruction during evening hours, weekends and in intensive remedial workshops in the summer.

Counseling and therapy are provided by the five psychologists and two social workers assigned to the institution's Psychological Services Center. Inmates volunteering for participation in the Center's program, directed at the difficult problems of recidivists, are tested and interviewed before acceptance. In fiscal 1966 only 33 of 102 inmates initially expressing an interest in the program were selected; 63 inmates were participating at the end of the year. The program is essentially a long-range therapeutic experience for the inmates, lasting 2 to 4 years and relying heavily on group and individual therapy. A recent evaluative study indicated that when coupled with adequate parole supervision the program was effective in curbing recidivism.[182] These commendable results were, however, due in part to the careful selection process, the participants' demonstrated motivation, and the relatively brief period of time during which the observed inmates were at liberty on parole.

The Workhouse

The 56-year old Workhouse houses misdemeanants with sentences ranging from 5 days to 1 year. Its facilities include an administration

building, an auditorium, a hospital, farm buildings and dormitories, but no gymnasium. Most of the buildings are in good repair.

Since 1961 the annual average daily population has ranged between 1,376 and 1,557 (Table 28). The turnover is high; during 1966, 14,919 inmates were admitted and 16,210 were released. However, the decision of the U.S. Court of Appeals in *Easter* v. *District of Columbia* has already resulted in a population decline; the Department attributes a reduction from 1,763 on August 20, 1965 to 792 at the close of the fiscal year to the decision. Table 28 shows that of 14,919 prisoners admitted in 1966, 11,857 (79 percent) were sentenced for drunkenness. As of June 30, 1966, 38 percent of the Workhouse's inmates were serving sentences for drunkenness—211 of 792 inmates.

In fiscal 1966 there were 10 prisoners to every officer; 131 officer positions are presently authorized. There is some evidence of inadequate coverage of all housing units, which increases the possibility of outbreaks.

TABLE 28.—*Admissions to the Workhouse*

[Fiscal years 1961–1966]

	1961	1962	1963	1964	1965	1966
Average daily population	1,543	1,376	1,389	1,557	1,540	1,397
Received:						
Intoxication	10,110	14,074	16,367	14,942	12,875	11,857
Other misdemeanants	2,625	1,876	3,242	3,360	3,024	3,062
Total	12,735	16,950	19,609	18,302	15,889	14,919

Source: Record Office, Workhouse for Men, D.C. Department of Corrections.

Should a disturbance assume serious proportions, it would be difficult to muster enough men to control the situation. The immediacy of this problem is reflected in a Department official's observation that resentment toward discipline and work has become more pronounced during the past year.[183] Additional correctional officers are needed both to improve prisoner supervision in the institution and to provide transportation and supervision for community-based work projects. The dimensions of this need should be carefully evaluated in the light of the opposing trends indicated by *Easter* and the expanding work-release program.

The Workhouse attempts to fill the inmates' days productively. Prisoners perform all the farm chores. Educational and vocational training opportunities, however, are limited.[184] The education pro-

gram is staffed by a single officer. Some vocational training is provided through on-the-job training involving kitchen work, furniture repair, and electrical and plumbing maintenance. In May 1966, 130 of 1,126 inmates were participating in these activities.[185]

One excellent correctional program at the Workhouse is a UPO-sponsored project for youthful misdemeanants. Begun in 1965, the project provides job-conditioning experiences for several hundred youths. In the period September 1965-June 1966, 348 inmates were accepted into the program. Since Workhouse inmates have short sentences, little effort is made to increase vocational skills, although some limited remedial academic education is provided. Rather, the development of sound work habits is stressed. Further, participants may receive individual or group counseling and job development assistance. Inmates sentenced to more than 90 days' imprisonment may be assigned to work crews for out-of-institution employment. On release participants are referred to local employment centers. The project appears to be functioning successfully, and the Commission encourages the Department of Corrections to request funds to support the project permanently on the termination of UPO financing in 1968.

The Youth Center

Young men between the ages of 18 and 26 who are sentenced under the Federal Youth Corrections Act of 1950 are confined in the 50-acre Youth Center on the Lorton reservation. These youths receive an indeterminate sentence; confinement usually cannot exceed 4 years and, together with a period of parole supervision, may not exceed 6 years. The physical plant includes an administration building, hospital, several housing units, and a large building containing classrooms, an auditorium, a library and a gymnasium. The ACA observed that the buildings were "clean, well-equipped, and in good repair."[186] The institution is neither overcrowded nor understaffed, has excellent facilities, and offers a wide variety of training, educational and therapeutic programs. It is without question the brightest star in the District's correctional constellation.

The Center is fortunate in having avoided the problems of overcrowding which have plagued other penal institutions. Its maximum capacity is 344; the highest annual average daily population (304) was reached in 1966, when 436 offenders were admitted (Table 29). The inmate population includes, in addition to Youth Act commitments, a number of older men who act as cadremen and vocational instructors, and several young men transferred from other institutions who were selected for their potential to profit from the Center's pro-

grams. In fiscal 1966, 53 inmates were 19 years old, 44 were 20 years old, 66 were 21 years old, and 45 were 22 years old.[187] There had been, prior to 1966, a substantial increase in the number of inmates released on parole (Table 30). The reduction in 1966 parolees reflects the increased number of non-Youth Act inmates in the population rather than any change in parole policies; more prisoners who have exhibited good behavior and attitude in other institutions are being transferred to the Center.[188]

Despite its authorized 94 correctional officer positions, resulting in a 3 to 1 prisoner-officer ratio, the institution still has supervision problems. No officer is assigned to the administration building, the culinary department or the shop building. The ACA found that "at times some of the towers are unmanned and ground patrols are inade-

TABLE 29.—*Admissions to the Youth Center*

[Fiscal year 1961–1966]

Category of admission	1961	1962	1963	1964	1965	1966
Committed from court	118	147	120	168	138	181
Violators returned	9	17	29	33	55	58
Transfers from other institutions	196	38	16	7	2	9
Inter-institutional transfers	37	115	122	115	152	186
Escapees returned	------	------	------	------	------	2
Total	360	317	287	323	347	436

Source: Annual Report (1966), Youth Center, D.C. Department of Corrections.

TABLE 30.—*Releases from the Youth Center*

[Fiscal years 1961–1966]

Category of release	1961	1962	1963	1964	1965	1966
Parole	44	94	115	168	168	87
Expiration	13	5	10	11	21	41
Mandatory (conditional) release	14	12	7	12	10	19
Transfers to other institutions	------	3	10	1	7	73
Released by Court	------	------	1	------	------	------
Executive clemency	------	------	------	------	1	------
Inter-institutional transfers	41	152	150	108	152	192
Escapees	------	------	------	------	------	3
Total	112	266	293	300	359	415

Source: Annual Report (1966), Youth Center, D.C. Department of Corrections.

quate." [189] According to the Association, "an increase of 10 correctional officers in the complement would give a much greater degree of control than is now possible." [190]

The number of professional workers, however, is adequate, and in large measure accounts for the quality of the program activities of the institution. The education program, staffed by five teachers, a vocational supervisor, a reading specialist, and an academic principal, offers the inmates a variety of academic, vocational and social education classes. Team-teaching is utilized in certain classes, allowing an instructor to teach an academic skill which the vocational instructor relates to a trade. In fiscal 1966 the average quarterly enrollment in the academic program was 166 students, and 23 students acquired high school equivalency certificates. The vocational education program averaged 223 students each quarter and combined classroom instruction with on-the-job training. The social education program offers such courses as current events, personal finance and consumer education, and vocational guidance; 459 students attended one or more classes during fiscal 1966.

An important project developed in 1964 under a Manpower Development and Training Act grant gives selected inmates intensive vocational training in one of seven occupations: Auto service and repair, barbering, building service and maintenance, general office clerk, food service, painting, and radio and television repair. To supplement this training, the youths are given vocational counseling and job placement assistance. As of March 21, 1966, 209 inmates had been enrolled in the program and 180 had completed the training. Of 89 who were thereafter paroled, 77 were placed in jobs related to their training and 10 in other jobs.[191] Only 9 of the 98 had violated parole and had been returned to the institution. The demonstrated success of this project led the Department of Corrections to plan its incorporation into the Center's regular program. The Commission endorses this step and encourages the implementation of similar programs of intensive vocational training and guidance at other District penal institutions.

The Youth Center provides thorough diagnostic and therapeutic services from the moment of an inmate's admission to his release on parole. The seven-man professional staff of the Classification and Parole Unit is responsible for classifying all inmates, presenting cases to the Parole Board, handling inquiries from inmates' families, and counseling inmates. The Center's Psychology Unit, with four psychologists and a clinical social worker, administers psychological tests and conducts individual and group therapy. In 1966, 158 inmates participated in group therapy and 48 received individual therapy.[192]

EVALUATION

The Department of Corrections is a fine public agency in several respects. Its administrators are dedicated and energetic, its personnel are well-trained and motivated, it has engaged in experimentation, and it appreciates the importance of continuing responsibility for a prisoner once he has left an institution. The progressive correctional philosophy of the Department is illustrated by the regulations concerning inmate mail. There are no limitations as to whom the inmate may write or on the number of letters that he may receive. Visiting hours are also liberal; for example, the Jail maintains a Monday through Saturday schedule. The Department encourages visitors, tours by university groups and the development and operation of special demonstration projects by other agencies or organizations. Compassionate or emergency leave may be authorized if the situation warrants such action.

Nevertheless, the Commission believes that certain changes in Department operations, facilities and organization would contribute to a material improvement in correctional services in the District of Columbia. Since our recommendations for departmental reorganization include incorporation of most of the probation and parole services performed in the District, reorganization will be discussed after all those services have been evaluated.

Facilities and Equipment

Several units of the Department of Corrections are in need of substantial modification or replacement. The Jail must be replaced by a new facility. The Reformatory needs additional dormitories. We have recommended the construction of a Diagnostic and Outpatient Clinic, separate from but adjacent to a Detention Center. Facilities should be designed or modified to maximize decent living conditions, including privacy, consistent with security considerations. With respect to security, we are concerned about the lack of motorized units to patrol the Lorton reservation. The area is surrounded as well as crossed by public roads and highways. In recent months persons entered the reservation at night and disrupted the electrical system in an attempt to free a prisoner. In "open" institutions such as the Workhouse, there is a constant danger of prisoners absconding. A motorized patrol may deter and detect escapes and contribute to the quick apprehension of fleeing prisoners.

Personnel and Staff Training

Ratios of inmates to correctional officers are far in excess of acceptable standards. ACA-established minimum staffing requirements for professional personnel have not been met, except at the Youth Center. It is difficult to establish the optimal ratio of correctional officers to inmates. The goals, programs and policies of the Department, the physical plant of the institution, and the type of inmates incarcerated all affect the requirements for each facility. Prisoners must be supervised 24 hours a day; each officer is on duty only 40 hours a week. Staff availability for supervision is further limited by annual and sick leave and the performance of various emergency duties. At any one time, therefore, inmates may outnumber correctional officers far in excess of any reasonable ratios.

The consequences of these staff shortages are of the utmost seriousness. At times guard towers are unmanned and dormitories may be unsupervised. Lack of adequate supervision permits intra-prisoner assaults in institutions. Poorly designed and overcrowded facilities with a prisoner population displaying racial hostilities must have an adequate correctional staff to prevent violence and fear. Many important educational and recreational programs are the first to be curtailed or the last to be initiated when correctional staff is lacking; personnel assigned to these duties must be transferred when supervisors are in short supply.

The Commission has discussed the extent of the need for more personnel with superintendents of the penal institutions, other officials within the Department of Corrections, and with representatives of the ACA. On the basis of these conferences, and examination of the physical plants and programs of the several institutions, the Commission recommends that the Department should be authorized approximately 100 additional correctional officer positions. Supplementing present staff to this extent will ensure adequate supervision within all the institutions, as well as provide personnel to administer the increasing number of community-based programs. It will also allow further improvement of the inmate counseling program, increased training of inmates, and greater experimentation with new programs.

We think it essential that prescribed ratios of inmates to personnel offering specialized services be met. The ACA recommends that for every 600 inmates a minimum staff of one psychiatrist, three clinical psychologists, and two vocational counselors be available.[193] Each institution should have a recreation program directed by a trained supervisor.

The Department's present health division employs seven physicians, four dentists, eight nurses and eight medical technicians. The ACA recommends a medical staff, for each institution housing 500 inmates, of a full-time physician, a psychiatrist, a dentist, a psychologist, five medical technicians, and a suitable complement of consultants.[194] To provide the Department with the supportive health services it needs, the ACA recommended that the Public Health Service assume responsibility for the operation of all health facilities and services in the District's penal institutions.[195] The Commission believes that this would be the most efficient method of meeting a major need of the Department. As the ACA noted:

> The Federal Bureau of Prisons [which contracts with the Public Health Service] unquestionably operates a medical services program which is far superior. The broad scope of this program makes possible more highly-developed and comprehensive services, sufficiently versatile and diversification of programs, and recruiting resources which are necessary to the development and operation of a comprehensive mental and medical health service.[196]

The Department's current staff training programs are by no means inadequate; an instruction and orientation course and periodic in-service training are conducted,[197] and training materials have been made available.[198] Nevertheless, the programs do not apply to all personnel, nor are they sufficiently comprehensive. Training must be expanded and improved. This can best be accomplished through a centralized training unit. The Commission recommends that a Correctional Training Academy be established on the Lorton reservation to serve the Department and other related agencies. Training on a reimbursable basis could be provided to staff members of the courts, the juvenile institutions, and private agencies such as the Bureau of Rehabilitation. The Academy should have a close affiliation with a local university whose resources and staff could be used in various training programs. The university could offer selected courses for academic credit at the Academy leading to a degree in corrections. The American University currently offers a similar program in police administration participated in by area police departments.

The curriculum of the Academy should encompass orientation training, specialized training and advanced training in management and the behavioral sciences. Full-time departmental scholarships for specialized undergraduate or postgraduate college work might be provided. Such programs are already in wide use in governmental agencies and private industry. The New York State Board of Parole, for example, currently awards 60 scholarships to its employees annually. It is common practice to expect an employee to pledge his return to the employer and to perform 1 to 2 years of service for each year of study.

Operations and Programs

The correctional process must keep inmates busy, it must seek to provide them with the motivation and skills necessary to obtain and hold employment in the community, and it must attempt to prepare inmates for release and its attendant personal problems. These goals may be accomplished by several means: Vocational programs, remedial education, job counseling, therapy, and supervision and guidance. The Department's endeavors in these areas have been noteworthy, but expansion and improvement of existing programs and the development of new ones are essential to a more successful rehabilitative effort.

Work Experience and Job Training

Prison industries in the District are for the most part geared to providing inmates with a job to do within the institution, and are not now designed to prepare the worker for opportunities in the community which will be available to him on release. The ACA has pointed out that there are several reasons for this:

> Industry operations in correctional institutions are often handicapped because they must exist on profits rather than on general funds. Supervisors must seek out industries that offer a profitable return, regardless of the training potential for the inmates. Machinery and tools are often outdated because profits are not sufficient to update them. Further problems involve buying equipment, supplies, and raw materials on a "low-bid" basis rather than from suppliers who can furnish goods to meet exact specifications; delays often experienced in purchasing of raw materials because of governmental "red tape," and opposition by some purchasing agents to the use of prison-made goods.[199]

As the site of most of the Department's industries, the Reformatory faces these problems. It maintains 11 industrial operations, including a pattern shop, foundry, print shop, furniture repair shop, broom, brush and mattress shop, machine shop, and tag and sign shop. Skills obtained in these units can rarely be successfully marketed in a city characterized by a paucity of industrial employment opportunities.

The Commission urges the Department to give high priority to inmate development of skills and good work habits in trades and occupations for which there is a need in the community. If the consequence is a reduced prison industry profit, this will be a small price to pay; the cost to the community is far greater when an unemployed releasee returns to criminal pursuits.

To improve prison industries in the District's correctional institutions, the Commission recommends that the Department of Corrections contract with Federal Prison Industries, Inc. for the reorganization

and future operation of its industries programs.[200] Federal Prison Industries (FPI), a government corporation organized in 1934, provides training and employment for prisoners in Federal correctional institutions oriented to the outside market. FPI operates industries involving electronics repair; the manufacture of clothing, furniture, textiles, tools and machinery; furniture repair; and printing. Training is also available in business, management and clerical skills.

Various Federal departments and agencies purchase the goods manufactured by FPI. During fiscal 1966 earnings of $10,930,000 were received from total sales of $52,400,000.[201] Most of the earnings are reinvested to improve the vocational training program, under which more than half of the prisoners receive occupational training. FPI is authorized to use these funds in the vocational training of inmates without regard to their production of FPI goods and to compensate inmates for work performed in institutional operations. At present inmates may earn between $2 and $13 per month, with provision for overtime pay and a production bonus plan in the industrial shops; there is no restriction on the amount of money that an inmate may earn. FPI funds may also be authorized to compensate inmates or their dependents for injuries suffered in any industry. The Commission believes that Federal Prison Industries has the technical competence, the financial resources, and the established relationship with industry and government to develop a model industries system for the District of Columbia.

It must be recognized, however, that some inmates are suited for only the most routine jobs in an industrial operation. They may be handicapped by physical problems, mental or emotional limitations, or a lack of motivation for trade or academic training.[202] By careful selection, those who have potential for training should be assigned to jobs offering the greatest opportunity for civilian employment, while the others should be placed in less demanding occupations.

Though the Department is well aware of the importance of meaningful job training, the programs offered in several institutions exhibit some serious shortcomings. Even the Youth Center suffers in this regard. Without a single vocational instructor on its staff, it is forced to use maintenance men, skilled inmates and stewards as instructors in the 11 vocational training courses offered.[203] This accommodation has proven unsatisfactory, as job training has been subordinated to Center maintenance. The job training programs of the Department will be materially improved if responsibility for the operation of the prison industries program is transferred to FPI. We stress the importance of continuing and exhaustive counseling and consultation

with inmates whose apparent lack of motivation will keep them from getting or holding jobs.

Although not directly geared to job training, the Department's academic programs offer important support to its employment activities. Academic educational programs, providing courses in remedial reading, basic mathematics and aspects of community living, are important weapons in the battle against recidivism. The Department has been quite successful in developing such programs, particularly at the Reformatory, by linking increases in industrial pay to attendance at school and therapy sessions.[204]

Work-Release Programs

Work-release programs have been used successfully for years in other jurisdictions, but were authorized in the District of Columbia only a year ago by the Prisoner Rehabilitation Act of 1965.[205] The Act may prove to be one of the major elements in solving the difficult employment problems of former inmates. Under a work-release program, selected prisoners are allowed to work during the day at jobs in the community, frequently those they held before being committed, and return to the institution at night. The employer deposits the inmate's wages with prison authorities. A work-release program benefits the community as well as the inmate.[206] The inmate works, pays taxes, remits room and board payments to the institution, supports his family, and saves money toward his eventual release date.

The present work-release program of the District's Department of Corrections is, at best, modest. Requested funds for expansion of the program have been withheld by Congress; the first year's limited operations were financed with Department of Corrections funds. Only 30 felons were placed in jobs in the community. The Commission strongly recommends expansion of the program. It offers one of the more viable alternatives to the distressing cycle of prison-release-offense-prison. The State of North Carolina, for example, has approximately 1,500 inmates participating in work-release programs.[207] The District must increasingly employ modern and demonstrably successful rehabilitative methods such as work-release programs.

The Prisoner Rehabilitation Act of 1965 deals only with felons. However, Congress recently passed the District of Columbia Work-Release Act, signed by the President on November 10, 1966. This Act, which is primarily for the benefit of misdemeanants, allows the sentencing judge to grant a convicted defendant the privilege of release to work at his former employment or to seek employment.[208] The court's Probation Department or the Director of the Department of Corrections may recommend to the court that the person concerned

be granted the privilege of work-release. The Act provides for the collection of wages and their utilization for travel expenses, room and board, family support, payment of fines or debts, and payment of the balance to the inmate on release.[209] The work-release privilege may be granted at the time of sentencing or at any subsequent time, but only under terms set by the sentencing court.

Community-Based Programs

Pre-release guidance centers are desirable auxiliaries to programs designed to assist prisoners in developing the personal and occupational skills and habits necessary to obtain and hold employment. The one District Guidance Center is located at the 12th Street YMCA and operated by the Federal Bureau of Prisons. Selected prisoners reside at this "halfway house" in the evening and work in the city during the day. Participants are subject to close supervision, receive individual and group counseling, and appropriate remedial and social education. At present the modest program includes only releasees from the Youth Center; 69 were housed in the Guidance Center in its first year of operations.[210]

Nationally, the six centers currently in operation are proving successful, perhaps due in part to careful selection of prisoner participants. A study of all such prisoners released in 1962 showed that 70 percent completed a 2-year period of parole supervision successfully, while the success rate for persons not processed through guidance centers was roughly 52 percent.[211]

The District's Center has received financial assistance from the United Planning Organization. A recent request to Congress by the Department of Corrections for the necessary funds to assume full responsibility for the Center was denied. The Commission agrees with the Department that it is the logical authority to operate the Center and recommends that its request be renewed. Work-release programs are one of the most hopeful innovations in correctional methods. These programs allow for continuing guidance and supervision of offenders, and offer temporary support for the needy releasee without funds or living accommodations. We urge that these programs be supported and expanded. In the opinion of the ACA, "several hundred offenders now incarcerated might be safely cared for in community-based residential and treatment programs at a great reduction in cost and with no increased risk to society." [212]

Community-based centers offer a valuable opportunity for correctional and allied agencies to centralize the variety of correctional, employment and social services available to the releasee. In line with the coordination and consolidation of correctional and related activi-

ties recommended later in this chapter, one or more Community Service Centers would prove an appropriate location for field offices of probation and parole services, the Employment Counseling Service, legal services, and housing for approximately 50 offenders. Employment bonding facilities, limited financial assistance, and aid in finding housing could be provided. All services, except residence, would be available to the mandatory releasee as well as to the probationer or parolee. The Center could also house an out-patient counseling clinic for releasees and members of their families. The clinic would be operated by professional staff from the Department, supplemented by volunteers and personnel from other agencies.

The California Department of Corrections has been a leader in the development of the type of facility we propose. Its Community Correctional Center includes out-patient psychiatric services, a prerelease guidance unit, a sheltered workshop, a parole unit, a presentence diagnostic clinic available to the local courts, a 50-bed halfway house, and an information service relating to community resources.[213] We recommend that the District build upon the experience of California and other jurisdictions.

Research and Program Evaluation

The Department of Corrections conducts its major research and evaluation projects and studies through its Institute for Criminological Research. The work of the Institute focuses on studies of prison and correctional practices, the personality of the offender, and causes of crime.[214] Although the Institute has been handicapped by a lack of funds and staff, it has clearly demonstrated the value of research as an integral part of the correctional program.

The Department's self-evaluation efforts, however, are the weakest part of its overall research program. As the ACA emphasized:

> Program evaluation research is needed to understand what we are doing, [and] to assess the relative successes of the various programs . . . All new treatment and control programs should have an evaluative research design feature whereby accomplishments can systematically be appraised and ineffective programs can be terminated and resources reallocated to more promising techniques.[215]

The ACA recommends that "a major research and evaluation program" be established in the Department to improve the effectiveness of all components of the correctional process.[216] The Association suggests some primary tasks and what is needed to perform them:

> Adequate professional staff and supportive resources are needed to carry on and expand the existing basic administrative statistical service of the Department of Corrections, in particular to include movement and performance data on

probationers and parolees, and on the decisions of the Parole Board with respect to terms, paroles granted and deferred, and parole violation dispositions.

Base expectancy or predictive tools regarding the performance or risks of various types of offenders are needed in order to make better sentencing and parole decisions without increasing the risk to society.[217]

Research and evaluation functions would be vested in a Research Division in the new Department of Correctional Services. The Division should assume the responsibility of developing plans for the early application of data processing equipment and techniques to the Department's total efforts. A recently approved grant from the Office of Law Enforcement Assistance, permitting an increase in the Institute's staff of four professional researchers should assist the Department's efforts at program evaluation.[218] The Department plans to finance these additional staff members from its regular budget at the completion of the grant period.

PAROLE

THE DISTRICT OF COLUMBIA BOARD OF PAROLE

Jurisdiction and Organization

The District of Columbia Board of Parole administers a program under which selected inmates of the city's penal institutions are released to the community under its supervision. In addition, the Board administers a community rehabilitation program for prisoners who are not selected for parole, but are released by operation of law with deductions from their maximum sentences for good behavior. Appointed by the District Commissioners, the Board of Parole's five members include a full-time, salaried parole executive whose tenure is indefinite and four "public" members who are compensated for their part-time services on an hourly basis. The Board employs a 27-man staff of professional parole officers under the supervision of a Chief Parole Officer.[219] The Board's fiscal 1967 operating budget is $419,000.[220]

Measuring human behavior is a most complicated, inexact science, and "it seems incongruous that in dealing with such an involved, complicated problem, the Government of our Nation's Capital would be satisfied with the services of people employed to deal with it on a part-time basis."[221] The Commission strongly supports the ACA recommendation that the District create a Parole Board of the kind first recommended by the Karrick Report 9 years ago, composed of 3 full-time members to be appointed by the District Commissioners from

candidates with broad experience in the fields of correctional services, rehabilitation, law, education, or other behavioral sciences.[222] A full-time Board, whose duties would be limited to parole-related decisions, could process approximately 1,000 parole applications each year, far more than the present Board.[223] As the ACA has recommended:

> The responsibilities of the Board should be limited to the quasi-judicial decisions of setting term, setting release to parole, determining violation of parole and determining time of discharge. The Board should have the authority to establish general standards regarding conditions of parole and the conditions under which the probation and parole staff should report on their respective cases.[224]

The Chairman of the Board should be given the authority to administer and coordinate the work of the Board and its staff, which should include an executive officer and such investigative and clerical personnel as are needed to carry out Board functions. The Commission approves the present requirement that members serve staggered terms. To ensure continuity of parole policy, all members of the proposed Board should be appointed for 6-year staggered terms and be eligible for reappointment.[225]

Operating Procedures

Parole Eligibility

Misdemeanants serving sentences in excess of 180 days are eligible for parole after serving one-third of the sentence. Inmates serving indeterminate sentences for felony convictions are eligible for parole after completing the minimum sentence imposed minus time spent in jail prior to conviction. In order to be considered for parole, however, eligible inmates must make formal application to the Board. The Parole Board requires that all individuals eligible for release consideration be interviewed by the institution's parole officers; "if a man decides to forego his privilege to apply for parole, he must sign a statement to that effect."[226] The Corporation Counsel has ruled that the Board must hear the cases of all inmates who apply for a hearing, but there is no present requirement that the Board hear every eligible case, whether or not application has been made. Parole consideration is thus not automatic and, as indicated by Table 31, many eligible individuals do not apply for it. The Commission believes that consideration for parole should not be contingent on an inmate's application; a parole hearing should automatically follow parole eligibility.[227] In appropriate cases the Board should use the hearing to determine why certain inmates do not want to return to society on parole and to ensure that such decisions are informed.

TABLE 31.—*Applications for parole*

[Fiscal years 1962–1966]

Category of applicant	1962	1963	1964	1965	1966
Felons:					
Eligible	468	402	366	323	303
Applied	359	316	296	296	251
Percent	76	77	80	83	83
Misdemeanants:					
Eligible	338	359	475	563	545
Applied	132	134	193	251	220
Percent	39	37	40	44	40
Nonsupport:					
Eligible	54	28	28	3	----
Applied	30	13	9	1	----
Percent	55	46	32	33	----
Total:					
Eligible	860	789	869	889	848
Applied	521	463	498	521	471
Percent	56	59	57	59	56

Source: Annual Reports, D.C. Board of Parole (1962–1966).

Disposition of Applications for Parole

Table 32 indicates the percentage of paroles granted by the Board in recent years. Only 11 to 12 percent of new applicants were granted parole during fiscal 1964-1966; in 1962 and 1963, 22 percent of all new applicants were paroled. In 1962, 31 percent of all applications were granted by the Board; in 1966, the figure dropped to 22 percent. The 1957 Karrick Report concluded that the Board was extremely conservative when it paroled 20 percent of those eligible.[228]

A 1959 survey of State institutions which included the District of Columbia also reflects the relatively conservative policies of the District's Parole Board.[229] The percentage of first release applications granted in the District was 39.2.[230] Thirty-three states had higher percentages—Ohio and Washington had over 95 percent and California 87 percent. Although the national trend in recent years has been toward more liberal parole practices, the opposite has occurred in the District.[231] The Commission appreciates the limitations on accurate comparisions of District and state parole policies; statutes governing sentencing and the imposition of minimum and maximum terms of im-

TABLE 32.—*Disposition of cases heard by Board of Parole*

[Fiscal years 1962-1966]

	Granted	Continued	Denied	Total	Percent granted
1962:					
New applicant	140	3	470	613	22
Rehearing	80	--------	24	104	77
Total	220	3	494	717	31
1963:					
New applicant	135	1	484	620	22
Rehearing	74	--------	44	118	62
Total	209	1	528	738	28
1964:					
New applicant	55	7	428	490	11
Rehearing	78	11	37	126	62
Total	133	18	465	616	21
1965:					
New applicant	59	--------	468	537	12
Rehearing	111	4	47	162	68
Total	180	4	515	699	26
1966:					
New applicant	55	1	431	487	11
Rehearing	84	--------	45	129	65
Total	139	1	476	616	22

Source: Annual Reports, D.C. Board of Parole (1962–1966).

prisonment vary significantly. As the Board itself has said: "We grant a much lower percentage of paroles in comparison to those granted by many State parole systems." [232] The Parole Board thus acknowledges its conservatism, but justified its policy to the ACA as follows:

> If [parolees] become involved in further violations of law, their misconduct would be prominently reported by news media with the result that the Board of Parole would continually be on the defensive and, in fact, could be abolished if the number of rearrests of parolees proved to be high.[233]

Nevertheless, the majority of the Commission believes that the substantial disparity between the District and many other jurisdictions suggests a clear difference in the degree of commitment to a philosophy of supervision as opposed to unconditional release. A minority of the Commission believes that the high rate of parole revocations (Table 33) compels the conclusion that the Board's policies are not, in fact, too conservative.

Authorities generally believe that the public is best protected from further crimes by parole policies under which most prisoners leave prison under parole supervision rather than outright discharge. Studies on the effectiveness of parole supervision indicate that inmates released on parole have lower recidivism rates than full termers.[234] The 1957 Karrick Report concluded that "A somewhat larger percentage of our current offenders can be safely released into the community if we provide adequate facilities for their selection and supervision." [235]

Release on parole is, of course, not an end in itself. For parole to prove successful, pre-release preparation in the institution and post-release guidance and supervision in the community must be of the highest quality. The extent to which inmates can be released on parole is in large measure dependent upon the capacity of the correctional system to make supervised freedom a productive experience. As the Board has stated:

> We believe the effectiveness of the program must be measured by evaluating whether parole is being extended by the Board to the maximum number of prisoners where there is a reasonable *probability* that the prisoner will live and remain at liberty without violating the law and where his release is not incompatible with the welfare of society.[236]

We believe the probability of successful parole can be increased by expanding and improving pre-release preparation and post-release supervision and guidance. Accordingly, greater numbers of offenders should be able to be released on parole.

When parole is denied, the Board does not usually set a time for the inmate's reapplication. In most cases, however, an inmate may reapply for parole 6 months after initial denial if his maximum sentence is 4 years or less; after 1 year if his maximum sentence is more than 4 years but not more than 10; and after 2 years if his maximum sentence is 10 years or more.[237] When an inmate reapplies for parole his application is accompanied by a report from the institutional parole officer describing the inmate's adjustment since his last Board appearance. Applications for rehearing are reviewed by Board mem-

bers without a formal hearing or Board discussion; each member merely annotates the reapplication, voting in favor of or against the requested rehearing. A majority vote decides whether the request of the inmate is to be granted or denied.

The Commission believes that every application for a rehearing should be thoroughly explored by the Board, and its decision discussed with the inmate within a reasonable period of time. The decision should be in writing and made a part of the Board's official records. The Commission endorses the ACA recommendation that the Board advise each inmate when he will again receive consideration, and that reapplication should not be barred for a period longer than 12 months.[238]

Parole Violation Procedures

Apprehended parole violators are brought before the Board of Parole as soon as possible for parole violation hearings. Table 33 shows the number of paroles granted and the reasons for parole revocation during the last 5 fiscal years. The cases of those whose violations are based on an arrest for a criminal offense are generally held in abeyance pending the disposition of the new criminal proceeding in the courts; the parole warrant is not issued or executed until that disposition, and the completion of whatever sentence is imposed.[239] Although the Board is authorized to hold an immediate hearing, it prefers to await the action of the courts in such cases.

Violators are advised of their rights, including the right to have counsel, but indigents are not presently assigned an attorney.[240] Violators who decide not to exercise the right to obtain counsel are asked to sign a statement to that effect and are then interviewed by mem-

TABLE 33.—*Number of paroles granted and reasons for parole revocation*

[Fiscal years 1962-1966]

Fiscal year	Number of paroles granted	Violation of conditions	New misdemeanor	New felony	Total revocation	
					Number	Percent
1962	220	20	26	15	61	27.7
1963	209	24	19	8	51	24.4
1964	133	18	22	19	59	44.3
1965	180	9	16	8	33	18.3
1966	139	25	11	6	*41	29.5

Source: Annual Reports, D.C. Board of Parole (1962–1966).

*One person revoked twice.

bers of the Board who decide the case at that time.[241] In all parole violation hearings the recommendations of the parole officer and his supervisors are to be carefully weighed. If it regards the violation as serious, the Board can issue a return parole violation warrant, thus ordering the parolee transported to the penal institution from which he was paroled. The Board can also order the violator reinstated to parole.[242]

The broad range of conduct that may constitute a parole violation suggests the need for certain safeguards for the accused violator. In fiscal 1966 only 7 of 49 violators were represented by counsel. The Commission recommends that the Board seek assistance from the court of initial conviction for the assignment of counsel in cases where the fact of violation is not apparent and where the indigent wishes representation.

Parole Supervision and Guidance

The Parole Board has several operational units: the parole unit, the good-time release unit, the interstate unit, the institutional unit, and the employment counseling unit. In addition, the Board conducts disciplinary interviews and counseling sessions in its central office on Tuesday mornings and one evening each month. Although these hearings demonstrate the Board's desire to further the rehabilitative process, the ACA recommends that the Parole Board's practice of sitting for disciplinary interviews be discontinued.[243] We agree with the ACA's suggestion that all disciplinary interviews be conducted by the parole officer and become part of the parolee's record.[244]

Pre-Release Activities

Institutional Parole Unit. This unit, located at the Reformatory and staffed by four parole officers, provides services for inmates of the Reformatory, the Workhouse, and the D.C. Jail. The unit's officers explain the parole program to inmates, process parole applications and assist inmates in pre-release planning. In addition, offenders with long criminal records are supposed to be interviewed in efforts to increase the chances of successful release on parole for this high risk group.[245] The unit unfortunately suffers from disorganization and personnel shortages; according to the ACA it "operates in a constant state of emergency."[246]

All inmates eligible for parole are interviewed by the unit several months before release consideration by the Board. The opportunity for parole release is explained, and assistance is given to inmates who desire to apply. Prior to Parole Board hearings, brief histories of the

applicants' cases are prepared by the unit. Although these summaries detail the applicants' criminal record, social background, and parole plans, they do not contain evaluative and interpretive material or offer comments regarding motivation, outlook, goals, or relationships with family members or others. The ACA views these omissions as "wholly improper." [247]

Post-Release Activities

Parole Unit. Staffed by a supervisor and eight parole officers, the parole unit is responsible for supervising all persons released to the community by the Board of Parole. As of November 1, 1966 there were 355 parolees under its supervision. Officers averaged 51 cases each.[248] After an inmate is approved for parole, the supervisor of the parole unit assigns the case to one of his officers. The assignment is made according to the size of the officer's caseload, the location of his residence and any particular skill he may have for working with the special problems of the parolee. The parole officer is expected to develop a program for the inmate within 30 days. As part of his pre-release planning, the field parole officer interviews the inmate and discusses the availability of community resources such as housing and employment. If the parole officer and his supervisor are unable to work out a satisfactory program for the inmate, the case will be referred to the Employment Counseling Unit.

One of the caseloads in the regular parole unit is known as "Series X," averaging 25 individuals who require intensive supervision. This special caseload was established in conjunction with the Department of Corrections in a program designed to provide specialized treatment for serious or chronic offenders at the Psychological Services Center at Lorton.

When an individual is first paroled he is under maximum supervision. The parole officer is required to contact the parolee, either at his home or his place of employment, once a week for approximately 6 weeks. Thereafter, and for 6 months to a year, the parolee is carried on medium supervision and a contact is required every other week. Minimum supervision (monthly contact) is in order after the man has been under medium supervision, with a good record, for a period ranging from 6 months to a year.

Good-Time Release Unit. Consisting of one supervisor and four parole officers, the good-time release unit has operated as a separate part of the parole office for 8 years. This unit supervises individuals who either never applied for parole or who, after applying, were denied but were subsequently released to the community under supervision as a result of the application of "good time" laws. These in-

dividuals are regarded by the Board of Parole as least likely to make a successful adjustment outside of the institution and accordingly are most in need of intensive supervision. As of November 1, 1966 there were 300 persons under the supervision of the good-time unit; caseloads averaged 75 per officer, well in excess of the ACA-recommended staffing of 50:1.[249] The officers in this unit, as in the regular parole unit, develop parole programs for releasees and may refer difficult cases to the employment counseling unit.[250]

Interstate Unit. The unit, a supervisor and two parole officers, supervises parolees who have been released to the District of Columbia from other jurisdictions. Regular reports regarding the parolee's progress are sent to the jurisdiction from which he was paroled. As of November 1, 1966 there were 114 parolees under this unit's supervision.[251] The unit also maintains close contact with various state agencies concerning those parolees from the District who reside in other jurisdictions during their period of supervision.

Field Services

Employment Counseling Unit. This unit, staffed by four employment counselors, offers its services to probationers and parolees of the D.C. Board of Parole, the U.S. District Court and the Court of General Sessions. The ACA found that the unit "has maintained a high rate of efficiency and has been very helpful to the Board of Parole and its staff.[252] The unit's services are strengthened by its use of the skills of a Legal Psychiatric Services psychiatrist at periodic meetings of all counselors. At these meetings the counselors discuss their more difficult cases, and the psychiatrist offers suggestions on handling the parolee and his problems.[253]

Other Services. The Board conducts a group counseling program for persons with alcoholic problems on parole and good-time release. Thirty to 45 persons participate in the bi-weekly evening sessions held at the Parole Board office in the District. Five parole officers act as group leaders. The Board also conducts a group counseling program for parolees and good-time releasees who are having particularly difficult problems in adjusting to community life. The total number of persons in this program averages 35 to 40 per month; 6 parole officers act as group leaders.

Absconders and Violators

When a parolee absconds, a warrant is issued by the D.C. Parole Board. Although the U.S. Marshal's office, the Metropolitan Police Department and the Department of Corrections share statutory authority and responsibility for the apprehension of violators, in practice

the Marshal's office assumes almost total responsibility. Each parole officer is assigned 2 or 3 absconders and attempts to gather information as to their whereabouts.[254] The ACA has found that absconders are not adequately searched for:

> Apparently a parolee or probationer who does not care to remain under supervision merely fails to report, changes his residence without notifying his probation or parole officer and, if he is successful in avoiding arrest on a new charge, is practically immune to arrest.[255]

Table 34 illustrates the extent of one aspect of the problem; well over 100 parole violation warrants remain outstanding each year. The ACA characterizes this situation as "impossible," and one which if permitted to continue "could undermine the entire parole and probation system." [256] The Commission shares the Association's concern, and urges the U.S. Marshal for the District of Columbia, with increased support from the Metropolitan Police Department, to redouble his efforts to search out and apprehend absconders.

TABLE 34.—*Number of paroles and warrants*

[Fiscal years 1962–1966]

Fiscal year	Number of paroles granted	Warrants issued	Parole revoked	Warrants outstanding	Percent of paroles where warrants were issued
1962	220	65	61	146	29.5
1963	209	76	51	163	36.3
1964	133	59	49	138	44.3
1965	180	52	33	140	28.8
1966	139	51	42	129	36.7

Source: Annual Reports, D.C. Board of Parole (1962–1966).

When a parole violator is arrested pursuant to a violation warrant, he is initially confined at the Jail and then returned to the institution from which he was paroled. The ACA suggests, however, that it is not always necessary or desirable to effect this transfer. Rather, the Association recommends that the parolee be detained in the Jail pending expeditious investigation of the parole violation and the final disposition of the matter by the Board.[257] This "temporary confinement," the ACA concludes, will permit a more thorough investigation, and is a reasonable accommodation to the reluctance of

parole officers to request issuance of violation warrants—which will return the parolee to prison. The new procedure would simply detain him in a detention center until final disposition in situations where the fact of violation is not clear.[258]

Evaluation

Caseloads and Personnel

The parole officers of the D.C. Board of Parole are not plagued with the overwhelming caseloads of the Probation Department of the Court of General Sessions, but neither do the caseloads of all its field units meet ACA standards. As of November 1, 1966, the average parole officer caseload was 51 in the parole unit, 75 in the good-time unit, and 57 in the interstate unit.[259] This is an improper distribution of personnel; the good-time releasees, who generally need the closest supervision, are supervised by officers with the highest caseloads. At the earliest opportunity, additional personnel should be authorized so that the optimal caseload standard of between 40 and 50 cases can be approached by all field units.

Moreover, it is clear that inmates are not receiving sufficient guidance and counsel from the understaffed institutional parole unit. Its officers are constantly travelling from institution to institution, explaining parole matters and accepting and processing parole applications. Satisfactory preparation for parole for more inmates requires an increase in the number of officers assigned to the unit.

All female parolees are supervised by male parole officials. The ACA has noted that this arrangement has frequently produced "unfortunate incidents" in other jurisdictions, and characterizes it as "manifestly poor practice." [260] We support the ACA's recommendation that the addition of female parole officers be authorized.[261]

The parole staff has only three employees with a master's degree in social work.[262] At present pay scales the Board is able to compete with other social agencies in the District for personnel with advanced degrees in social work, criminology, or sociology. The Commission suggests that as professional vacancies occur they be filled with persons holding graduate degrees in the social sciences. Positions should be made available so that senior parole officers can reach the GS–12 level of supervisory parole officers. This would improve the quality of services rendered to the parolee and offer career advancement for the well-trained and experienced parole officer.

Case Records

Case records include data gathered from community agencies and other sources as well as reports submitted by institutional parole officers and Department of Corrections personnel. As a parolee is added to his caseload, each parole officer completes a field sheet containing the person's name, number, type of sentence, length of sentence, address, and similar information. The parole officer makes periodic entries on the field sheet, recording developments in the case. The entries, which do not follow uniform guidelines, do not reflect the time and effort expended by the professional staff, nor, as the ACA states, "the parolees' reactions" to the staff.[263] As a result, supervisors are hampered in giving professional advice relative to the treatment offered parolees.

The Commission has previously discussed the inadequacies of the written summaries prepared for the Parole Board's use at hearings. These shortcomings in the written reports and records of the agency, as well as other deficiencies noted by the ACA, suggest the need for an operating manual. This manual, which should be developed with the assistance of professional consultants, would set forth standards governing the maintenance of reports, records and files.

Staff Training and Development

Indoctrination and in-service training of parole officers is presently limited. A new officer's training consists of field visits with experienced officers and learning through observation. In addition, there are standard conferences of officers with supervisors, but the instructive value of these sessions is limited by the inadequacy of the social case records.

The Board of Parole has stated its intention to establish a formal in-service training program for parole officers.[264] It also proposes to send staff members to refresher courses in social work at the local universities. The Commission recommends that these proposals be implemented at the earliest opportunity; we note that the Board anticipates that no budget increase will be required for the in-service training program and that the cost of refresher training will be nominal.[265]

Research

The Board of Parole has acknowledged that its programs of research and evaluation are inadequate and in need of strengthening.[266] The Board is utilizing the results of research and evaluation studies conducted by the National Council on Crime and Delinquency's National

Parole Institutes. The consolidation of probation and parole services in the District which this Commission recommends should facilitate evaluation of the variety of rehabilitative techniques in the correctional process. We find merit in the ACA recommendation that formal research projects focusing on the effectiveness of local parole and probation supervision be developed, preferably with the assistance of an independent research group. Universities in the Metropolitan Area might provide the requisite facilities for conducting such projects.

THE UNITED STATES BOARD OF PAROLE

The parole of District youths committed to the Youth Corrections Center under the FYCA is the responsibility of the Youth Corrections Division of the United States Board of Parole.[267] All other District parolees are under the jurisdiction of the D.C. Board of Parole. Parole supervision functions for the U.S. Board of Parole are performed by the U.S. Probation Department of the District Court.

The U.S. Parole Board's procedures differ from those of the D.C. Parole Board. A person committed under the Youth Corrections Act is eligible for parole as soon as his term of confinement begins. He does not need to submit an application for parole, and he cannot waive his parole hearing. The Youth Corrections Division may terminate parole supervision completely after the youth has demonstrated a satisfactory community adjustment for a year.[268] In fiscal 1966 the Division held 110 initial hearings and 59 revocation hearings.

It has been suggested that parole jurisdiction over District Youth Center inmates be transferred to the D.C. Board of Parole.[269] We think the suggestion is sound. The Youth Center is a facility of the Department of Corrections; its parole program should be administered by a District parole agency. Division of parole jurisdiction, requiring close familiarity of Department of Corrections units with the parole procedures and policies of two agencies, has too often resulted in administrative difficulties, inconvenience, unnecessary expense, and procedural errors by the Department.

Representatives of the D.C. Board of Parole have in the past expressed a disinclination to assume responsibility for FYCA cases, citing the part-time status of its members, and its inability to bear an increased caseload. The Commission, however, has recommended that the Board be restructured to consist of three full-time members; this should permit it to assume a responsibility which we think logically belongs to it. Accordingly, the Commission recommends that legislation be submitted to Congress to provide for the transfer.

COMMUNITY SERVICES FOR THE RELEASED OFFENDER

INTRODUCTION

Approximately 27,000 inmates of adult penal institutions are released and returned to the city every year. This figure includes 3,000 felons, 8,000 misdemeanants and 16,000 persons confined for public intoxication.[270] The difficulties confronting an individual after a period of confinement in a penal institution can be almost insurmountable. The prison environment necessarily inhibits freedom of movement and choice, and can also significantly reduce a person's motivation and level of aspiration. From a regimented society a released offender enters one demanding initiative, competitiveness, marketable skills, and an education. The releasee must also possess the emotional strength to withstand the pressures of the return to an open society.

The adjustment is difficult even for the relatively stable offender with a variety of resources, including friends and family. For the less stable, the readjustment problems are intense, especially when housing, employment, counseling services, and temporary funds are inadequate or unavailable. The typical District releasee has had limited successful work experience, is retarded in academic achievement, is often unrealistic in evaluating the limited job opportunities available, has frequently demonstrated an unwillingness or inability to accept supervision and direction in his employment, has poor work habits, and often has a history of family instability.[271] The successful integration of these persons into the community presents problems that border on the unsolvable.

There is a growing awareness and acceptance in the corrections field of the need to continue effective responsibility for a prisoner once he leaves an institution, but community support for programs to meet this responsibility has not been forthcoming. Community-centered programs have for the most part been inadequate, and have provided only the barest essentials for a limited number of participants.

EMPLOYMENT

The usual employment difficulties of the unskilled and undereducated are aggravated when the job-seeker is an ex-convict. Bonding companies may refuse to endorse a convict; employers may reject applicants with records of convictions. Coupled with the traumatic

after-effects of incarceration, these obstacles minimize his chances of obtaining and retaining the employment he needs so desperately. Moreover, an arrest record which comes to the attention of prospective employers, even where the arrest does not lead to conviction, often serves as a disqualification in Washington's competitive job market.

Records of Convictions

The fact that a person has been convicted of one or more crimes is almost unanimously conceded to be relevant to his desirability as an employee. Nevertheless, there is a commensurate need for fairer and more sophisticated consideration of conviction records by public and private employers alike. Many prospective employers view convicted offenders as wholly untrustworthy and undependable, and believe that the public would resent contact with or service from such persons. Fears persist that "ex-cons" may again commit crimes when given the opportunity to do so in the homes or offices of customers. Possible legal liability for the misfeasance of employees with criminal records confirms the prospective employer's disinclination to hire former offenders.

The Commission's examination of the convicted felon—his personal characteristics and the likelihood of his return to criminal pursuits—suggests that though recidivism is a legitimate concern generally, it is important to consider the characteristics of the individual. Moreover, it is necessary to give due weight to the effect of the correctional process and the recommendations of a releasee's probation or parole officer. Employers in the community, whether corporate or individual, public or private, have a continuing obligation to view the applications for employment of convicted offenders objectively, without malice or unreasoned trepidation, and with an appreciation of the degree to which successful employment of these people is, in fact, a public service.

Arrest Records

The employer's right to be informed of an applicant's past convictions is indisputable; the wisdom and necessity of providing prospective employers (or job seekers, who in turn are obliged to provide employers with the information) with records of arrests is a more widely debated proposition.

It is argued that arrest records do not reflect adjudicated violations of law, yet are commonly relied on by employers to disqualify applicants. The dimensions of such a disqualification are significant; the Washington Urban League reported that 92 of 175 job applicants it

processed in 1965 had arrest and/or conviction records.[273] UPO officials estimate that a majority of their job applicants have records; a study in September 1965 showed that 90 percent of all men requesting employment assistance at 5 Neighborhood Centers had records of arrests and/or convictions.[274] It has also been argued that arrest records are almost a fact of life for young Negro residents of the city's slums. In brief, the mere fact of arrest may prove little about the criminal activities of the applicant in a great many cases; nevertheless it often serves unfairly to effectively disqualify qualified job-seekers.

On the other hand, employers argue with considerable merit that they deserve as much information about job applicants as possible and that they are fully capable of evaluating the information in the light of all relevant qualifications. Although it is generally conceded that an intoxication arrest, for example, is irrelevant to an application for a sanitation worker position, there are positions of trust and security which demand that the employer have any information suggestive of defects or lapses in character. Finally, it is contended that arrests often *do* mark offenses committed, even though they do not terminate in convictions because of the complex factors involved in prosecutorial discretion, overcrowded courts, or the operation of technical rules of law.

The Commission believes that raw arrest data should not be released to anyone without an accompanying explanation of what happened to the case, including the reasons for dismissal or the fact of a subsequent acquittal. This kind of complete record will become increasingly possible as the Commission's proposed information system is implemented. All arrest records should be accompanied by a letter stressing their limitations as measures of the applicant's character, especially in cases of collateral forfeiture and minor matters. The Commission also feels that the hardship engendered by an arrest record for minor offenses would be alleviated by a requirement that summons be substituted for arrest to the maximum extent possible where the physical custody of an arrested person is not essential. Furthermore, in many of these minor offenses provision should be made for expunging such arrests in the event of dismissal or acquittal.

The Commission recommends that public and private employers make requests for arrest data on applicants personally, rather than specifying that applicants get their own police clearance as a prerequisite for the job interview. In that way applicants will have a chance to be evaluated on their own merits before the factor of an arrest record enters the picture, and potential applicants with such records will not be discouraged from even applying. Where jobs are registered with the United States Employment Service, that agency should make con-

certed efforts to persuade employers to delay asking for the record until after preliminary screening; in this way the individual's capabilities can be weighed along with the record.

We believe that the business community of Washington should initiate some specific steps aimed at reducing the indiscriminate use of arrest record data. One means of accomplishing this might be for representatives of the city's major employers to develop criteria for those positions of trust and sensitivity which require that employers have access to arrest data, and to encourage employers not to routinely seek such information from the police for jobs not covered by the criteria. As an additional remedial step the business community, in conjunction with such organizations as UPO and the Urban League, should consider financing and staffing a special employment office to assist persons seeking employment who have arrest or conviction records. This is an area where Washington employers have a special responsibility to assist in eliminating a condition which is closely tied to recidivism—specifically, the unfair denial to men with records of employment and the opportunity to demonstrate that they are capable of holding a job and living a law-abiding existence.

Bonding

An increasing number of jobs are becoming subject to insurance and bonding requirements. Bonding companies, concerned with poor risks, are often hesitant to bond individuals with criminal records, although a few are willing to consider such cases.[275] If an employer indicates to a bonding company that he desires a particular employee to be covered, the bonding company will more often than not accept his recommendation.[276] Conversely, if a prospective employer does not make a special request, then it is assumed that he does not wish to have the person bonded. As a result some observers have suggested that bonding is often used as a convenient excuse to cover up discrimination by employers. Increased job potential for the former offender lies in special arrangements whereby bonding companies agree to bond all persons recommended by probation officers, correctional authorities or job training supervisors.

The Manpower Redevelopment Training Act encourages bonding companies to cover higher risk employees by providing $500,000 for a 2-year period to bond those "who have successfully completed or participated in a federally assisted or financed training, counseling, work training, or work experience program." [277] In April 1966, UPO, the Department of Corrections and the U.S. Employment Service received approval of a joint project to provide bonds for 350 persons

under this program.[278] Each of the agencies may select participants from persons who have a promise of a job that requires bonding and have a record of arrest or confinement.

UPO also received approval in June 1966 of a proposal submitted to the President's Committee on Juvenile Delinquency and Youth Crime requesting approximately $80,000 to provide bonding for 300 persons who have been confined in correctional institutions.[279] This project, entitled "Bonabond" and staffed primarily by ex-inmates, stresses the social support given its participants just as much as the actual providing of bonds. A person may apply for membership if he has been out of prison for at least 2 weeks. He is interviewed and if accepted will be eligible for counseling, job development and bonding up to $2,500. The Commission commends these efforts; successful operation of such projects should stimulate bonding companies to make their services available to persons handicapped by a record of arrest or conviction.

Federal Government

Until recently, persons with criminal records had little hope of obtaining satisfactory employment in many agencies of the United States Government—the District's largest employer. In part, this was due to the conservatism which characterized employment policies of particular agencies as well as the Civil Service Commission, and was reflected in the standard inquiries on application forms about arrest records. In the past year, however, ameliorative steps have been taken by the Civil Service Commission.

Until August 1966 applicants for Federal employment were required to list all arrests (even those for investigation) other than those for minor traffic violations, or those occurring before the applicant's 16th birthday. The amended regulations now require applicants to answer this question:

> **Have you ever been convicted of an offense against the law or forfeited collateral or are you now under charges for any offenses against the law? (You may omit: (1) traffic violations for which you paid a fine of $30 or less; (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or under a youth offender law).**[280]

Only those convictions in the military service which resulted from a general court martial need be indicated. We commend the Civil Service Commission for taking this action. Nevertheless, we believe the inquiry in its present form is an invitation to incongruities. For example, the 19 year old who forfeits collateral for disorderly conduct must list the offense, while the 19 year old robber sentenced under the Youth Corrections Act need not. The Civil Service should reconsider

inclusion of convictions under youth offender laws which have not been set aside.

The Civil Service Commision has also stated that persons with records of criminal convictions are to be considered for employment on an individual basis, with account taken of the seriousness of the offense, whether it was an isolated or repeated incident, the age of the offender when he committed the offense, the circumstances under which it occurred, and any evidence as to the success of rehabilitation.[281] These factors are to be weighed in the light of the nature of the position being applied for. It is important that Federal agencies implement this policy without reservation. To ensure compliance, we recommend that the Civil Service Commission initiate a program to stimulate a non-discriminatory policy in Federal hiring practices relating to persons with criminal records; as in the case of the program designed to spur the employment of the physically handicapped, Federal agencies could be required to submit periodic status and progress reports. A special unit could be established in the Civil Service Commission to review employment applications of former offenders and maintain relevant statistical data. This unit would assume the responsibility for developing agency-wide programs to encourage the hiring of offenders.

Parolees and probationers have been in a somewhat different status than offenders who completed their requisite periods of incarceration and supervision in the community. The Civil Service Commission recently amended its regulations to permit agencies to employ parolees and probationers without its prior approval; agencies may now hire these people on the basis of individual merit.[282] This change should produce expanded opportunities for offenders who have already demonstrated a measure of reliability to probation and parole authorities. Here too, we think the Civil Service Commission's response to the problems of the offender is to be commended.

We cannot, however, overemphasize the need for the Federal Government to assume leadership in increasing the employment opportunities of former offenders. Because of the wide variety of jobs it controls, the Federal Government is in a unique position to experiment with the classification of jobs as relevant or irrelevant to a record for particular crimes. Federal experience over a few years with the hiring of ex-offenders for different types of jobs could, if successful, then be used as a selling point with large-scale private employers. Their experience in turn would then begin to filter down to the smaller employers. It is essential that a program to hire offenders in the Federal Government be a systematic attempt at such job classifications in terms of relevance of a criminal record and experimentation with the hiring

of different kinds of ex-offenders rather than a general exhortation to agencies.

District of Columbia Government

The District of Columbia Government is the city's second largest employer. The District Commissioners have periodically encouraged the city's agencies to employ a greater number of former offenders, but have established no special programs to implement this policy. Nevertheless, the District's stated policy is not to deny consideration to:

> A person whose record indicates that he has been convicted of a felony, if he is otherwise qualified. In the absence of information indicating that employment would be contrary to the public interest or the good of the service, such an applicant shall be considered for employment on the same basis as other applicants. The record of the aplicant shall be investigated and a determination made as to suitability, prior to appointment, by the employing department. Such investigation will not be undertaken, however, where the felony conviction occurred in the distant past and is known to have been followed by a long period of good behavior.[283]

The Commissioners have issued general standards for consideration of applications from ex-felons:

> No hard and fast standards may be prescribed for the consideration of persons who have been convicted of a felony. Each case must be considered on its own merits. Generally, it may be said that only those whose records indicate every probability of sucessful integration in society and on the job should be employed. The felony conviction should be considered in terms of the nature of the offense and its possible relationship to duties to be performed, the time element, the probability of recurrence, and the extent to which the offense represented an isolated exception to, or was truly typical of, the person's total record.[284]

A spokesman for the Personnel Office of the District's Department of General Administration stated that "the District Government has long been liberal in regard to employing persons with criminal records." [285] The available data are too limited to permit evaluation of this conclusion. The District Commissioners reported that in the period from July 1, 1965 to December 1, 1965, the District hired 138 persons (13 felons and 125 misdemeanants) with conviction records out of a total of approximately 1,800 appointments, or 7.6 percent of all appointments.[286] The Commissioners reported that felons were employed in 15 categories of jobs and misdemeanants in 35 categories.

This Commission encourages the District Government to intensify its efforts to employ more former offenders. As the second largest employer in the city, the District Government should take leadership in formulating a specific program to classify jobs as open to offenders.

It should cooperate actively with the Pre-Release Guidance Center and other community-based programs to ensure their success by affirmatively stressing the eligibility of their releases for certain kinds of District jobs.

Employment Services

U.S. Employment Service

The U.S. Employment Service for the District of Columbia (USES–DC) is a clearinghouse where the applicant can seek aid in finding a suitable job and the employer with an unfilled position can request help in locating a qualified employee. The fact that a person has a criminal history does not limit the professional services that may be offered to him by the Employment Service, but it does narrow his chances of being offered a satisfactory job opportunity. The Director of USES–DC has pointed out that job orders submitted by employers are particularly restrictive with respect to offenders.[287] Many occupations require bonding or security clearances. Applicants with records must often either possess special skills in demand or resign themselves to marginal or substandard jobs.[288] Offenders are apt to be hired only to fill in until another applicant without a record is available. When an offender is occasionally placed in a satisfactory position, the placement usually involves a counselor with an excellent relationship with both job-seeker and employer.

The Commission recommends that USES-DC establish a unit to coordinate its efforts to provide employment services to former offenders. These services should include job development, placement, referrals to training programs, and intensive counseling. Present efforts, in view of the immensity of the problem, are inadequate. Specialists, trained and motivated to assist and guide the offender, are needed urgently, and are as necessary as the counselors and specialists now providing services to other special applicant groups. Such a unit would coordinate the efforts of all local Employment Service offices and provide closer cooperation between the Employment Service and the Department of Corrections.

The Employment Counseling Service

The Employment Counseling Service was established in 1959 to service the D.C. Board of Parole, the Court of General Sessions and the U.S. District Court for the District of Columbia. Its three professional staff persons develop jobs and provide placement assistance to probationers and parolees. No assistance is given the inmate

who has completed his sentence and is released directly to the community. During fiscal 1966, 666 referrals were made to the Service by the three departments; the Employment Counseling Service placed 596 persons in jobs.[289] The Service made 200 placements for the D.C. Board of Parole, 205 for the District Court, and 191 for the Court of General Sessions, for a placement rate of 89 percent. Many of the jobs, however, were temporary and the income was low.

The Director of the Employment Counseling Service believes a much more comprehensive service could be offered if he had an adequate number of counselors and job developers.[290] He also recognizes the need to assist persons who have completed their sentences, but the Service's resources do not allow it.[291] Officials of the participating agencies express satisfaction with the work of the Service, but agree that additional staff would contribute to its effectiveness.

More efficient employment services could be provided by a shift in responsibility for the functions of Employment Counseling Service. The Commission recommends that the Employment Counseling Service, now administratively under the D.C. Board of Parole, be transferred to the Department of Corrections and be placed under the supervision of the Assistant Director for Field Services. We also recommend that the staff of the Counseling Service be increased so that it can extend its current services to all inmates released from the Department of Corrections, whether the release is to parole or through expiration of sentence. Moreover, the Counseling Service must intensify its job development program. We recommend that a number of job development specialists from the U.S. Employment Service be assigned to the Counseling Service. Private employment services and placement offices of business organizations should be involved in its programs. There must, of course, be a continuing close relationship established between its counselors and probation and parole officers so that their efforts will be mutually reinforcing.

OTHER SERVICES

Several private and public agencies participate in the difficult process of offender rehabilitation, emphasizing personal rather than employment services. The Bureau of Rehabilitation is the only private agency in the city dealing specifically with the problems of persons who have been in prison. The Bureau seeks to resolve personal difficulties, provide material assistance, and mobilize a variety of community resources on behalf of its clients, who represent all segments of the prison population. During 1965, 419 new cases were accepted for service.

The Bureau runs a "halfway house" known as the Shaw Residence. Financed since 1964 by a grant from the National Institute of Mental Health, Shaw House is an attractive, two-story structure located in a residential section of the city and can house 15 residents.[292] Participants are selected from those on parole or under good time supervision for a minimum period of 6 months following release. Residents contribute to their room and board expenses, and assist in maintenance of the facility. All are required to attend two weekly group meetings. During 1965, 81 men were in residence, averaging a stay of approximately 10 weeks each. Recently, a plan was developed to include a selected number of inmates in the program prior to the completion of their sentences or the time they would normally be released on parole.[293] During residence, releasees participate in a program which includes individual counseling by case workers, group therapy, and assistance in securing employment and constructively utilizing leisure time. Community resources such as employment agencies, civic and religious organizations, and health, welfare and educational organizations are drawn upon. The Shaw Residence project deserves the full support of the community.

Another noteworthy program designed to provide offenders with needed services was initiated by the Legal Aid Agency of the District of Columbia in October 1964. In April 1966 the Institute of Criminal Law and Procedure of the Georgetown University Law Center undertook the funding of the program and expanded it into a demonstration project. Staffed by a coordinator, a social worker and four social work assistants, the Offender Rehabilitation Project offers rehabilitative assistance primarily by referring its clients directly to community service organizations. Project workers also prepare "defendant studies" for Legal Aid Agency defense counsel for use in the sentencing process.

The Legal Psychiatric Division of the D.C. Department of Public Health offers assistance to released prisoners in the form of diagnostic and personality evaluations, individual and group psychotherapy, and employment counseling services. Treatment designed to prepare inmates for release is available to persons in the D.C. Jail; in appropriate cases inmates are encouraged to continue treatment after release. Consultative services are provided to various agencies and individuals—such as rehabilitation and employment counselors—who seek information concerning programs for offenders. Some 35 to 45 new referrals a month are received for evaluation, diagnostic study and recommendation; in fiscal 1965 approximately 20 percent were from parole or probation offices. At present, the Division is staffed with

five part-time psychiatrists, one psychiatric consultant, two clinical psychologists, and two psychiatric social workers.

Unfortunately, many releasees who are in serious need of the Division's services do not receive them. The dimensions of the program must be expanded. The Commission therefore recommends that the Division be authorized an adequate number of permanent professional positions to assist the court, and the community-based programs of the Department of Corrections and the D.C. Board of Parole.

Fifteen years ago the Salvation Army established a separate unit to provide specialized services to prisoners and releasees in the city. The program has expanded; in 1965, 1,093 prisoners were interviewed while still in prison, and 1,678 were interviewed after release. The unit's emphasis is on locating employment, mainly through contacts with the U.S. Employment Service and a private employment agency. Other services include finding temporary lodging for released prisoners, lending small amounts of money for lodging, providing transportation and clothing, and counseling on family matters.

Several private clubs have been formed in the District to help ex-convicts find employment and make an adequate adjustment to community life. One of the largest is Efforts from Ex-Convicts (E.F.E.C.), whose 150 members include ex-convicts and interested citizens (community organizers, job counselors, lawyers, and businessmen).[294] The group seeks to "foster and improve the economic, social, cultural, and civic welfare of the individual and the community."[295] Its major effort is directed toward finding employment for prior offenders, but it is also trying to improve the attitudes of agency officials and police toward ex-convicts and to reduce restrictions on prior offenders' opportunities.

The Department of Labor's Report on Manpower Requirements, Resources, Utilization, and Training has offered a worthwhile suggestion to involve the community more directly in finding employment for former offenders:

> Volunteer local citizens' advisory committees might perform useful services by participating in the prerelease training programs, assisting former prisoners in finding employment, and sponsoring inmates paroled to the community. Aside from the direct assistance they would provide, the activity of such groups should make for more constructive attitudes on the part of both the individuals involved and the communities to which they return.[296]

The Commission endorses this suggestion, and urges the Department of Corrections to take the lead in stimulating the creation of such citizens' advisory committees.

THE DEPARTMENT OF CORRECTIONAL SERVICES

In this chapter the Commission has repeatedly emphasized improved coordination among the several units in Washington's correctional system. The interdependency of these units is apparent: An effective sentence depends on both an informed presentence report, a knowledge of the alternative sentencing dispositions available, and an appreciation of the capabilities of the Probation Department and the correctional institutions to control and rehabilitate the sentenced offender. Successful parole is greatly dependent upon the skills and motivation developed by an offender while incarcerated as well as the community resources available to help the releasee readjust.

To effect this coordination and provide for a continuity of service to and responsibility for the convicted offender, the ACA has recommended the reorganization of the Department of Corrections, and the consolidation of its functions with those of the probation supervision services of the Court of General Sessions and the parole supervision duties of the D.C. Board of Parole.[297] The new agency is to be called the Department of Correctional Services. The ACA has prepared on organization chart which sets forth proposed division responsibilities and lines of authority (Fig. 2).

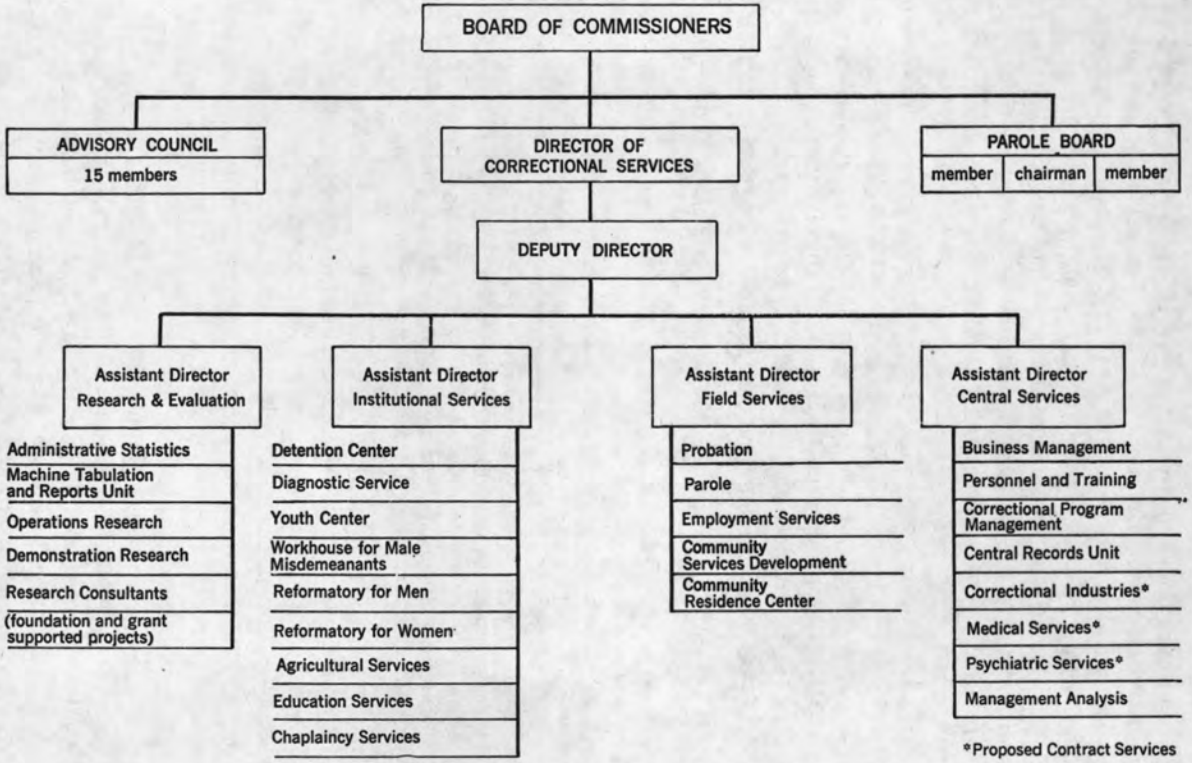
The Commission believes that consolidation of several adult parole, probation and institutional services into one cohesive agency will offer substantial benefits to correctional and rehabilitative efforts in the District. The agency would not interfere with the sentencing authority of the courts or the release and revocation jurisdiction of the D.C. Parole Board. Only the Board's duties of supervising releasees would pass to the agency; Board members would no longer be obliged to divert their attention from the difficult decisions of parole release and revocation.[298]

The new agency would be able to detain, control, supervise, and attempt to rehabilitate an offender from the instant of his introduction into the correctional process. Consolidation can lead to improved staff development and training programs, to more effective utilization of supervisory and administrative personnel, and greater flexibility in caseload assignment. It will allow the Department to develop a true career service that will attract and retain highly qualified correctional workers.

A unified correctional agency will provide not only for continuation of responsibility from probation through work-release and parole,

FIGURE 2.

PROPOSED ORGANIZATION CHART
DEPARTMENT OF CORRECTIONAL SERVICES



but more importantly for continuity of post-release support and individual program development. It will allow a probation officer to utilize a more comprehensive network of services in support of the men he supervises. If probation fails and the individual must enter a correctional institution then the same officer may follow his progress and supervise him through a community-based program. While the individual is institutionalized, the officer will maintain contact and be a member of the "treatment team," supplying information to the staff of the institution concerning the inmate's background and community activities, and gaining information of value in supervising the inmate in the community. Such a system provides support to the inmate, better utilization of staff and resources, and avoids a series of different supervisors for one individual.

The ACA has summarized the case for consolidation as follows:

> There is a growing acceptance of the principle that the adult offender should be dealt with most effectively in a continuous, coordinated and integrated correctional process, and that he should not be dealt with successively by independent and loosely coordinated services, each of which frequently pays little attention to what the others have done or may do later. The compartmented approach often involves the same questions and examinations over and over again. The repeated use of methods that have already been tried and failed tends to increase the bewilderment of offenders, especially the younger less sophisticated ones, and to create distrust of correctional guides and contempt for law enforcement in general. It is recognized, moreover, that responsibility for failure is difficult to fix when the offender has been dealt with by a series of independent agencies and services whose scope has not been clearly defined and whose efforts have frequently overlapped and conflicted.[299]

Recognition of the merits of consolidation has prompted other jurisdictions to structure their correctional agencies as we have recommended. For example, in Minnesota the Adult Corrections Commission operates all adult correctional institutions and, as well, supervises inmates paroled or placed on probation.[300] Idaho's Board of Corrections administers probation and parole, considers pardons and reprieves, and operates the adult correctional facilities.[301]

The new agency's functions could be assigned to two major operational Divisions, one for institutional management and the other for the administration of probation and parole services and all community-based programs. A third Division would administer the supportive services utilized by the Department's institutions and maintain liaison with FPI programs. A fourth major unit, a Division of Research Evaluation, deserves special emphasis. It will need support from the highest levels, the independence to be critical as well as objec-

tive, and a status which will ensure that its findings and recommendations are fully considered in the making of policy and the formulation of procedural and organizational changes. Each of the Divisions should be headed by an Assistant Director.

The Commission recommends that the Director of the reorganized Department be authorized to exercise greater control over certain aspects of the institutionalization and release of inmates than is now possessed by the Director of the Department of Corrections. We agree with the ACA that the Director should be able to transfer an inmate from one institution to another for a limited period in order to protect the inmate or other prisoners, and to approve emergency and work furloughs.[302]

CONCLUSION

Society has assigned two major tasks to its correctional services. The first, the incarceration of criminals, can be accomplished by efficiently run penal institutions. The second, turning a criminal into a law-abiding citizen through correctional and rehabilitative processes, is immensely more difficult. The effectiveness of a correctional system is often evaluated by the recidivism rate of offenders passing through the system. However, even if accurate local recidivism data were available, as well as comparable data from other cities with like populations, crime problems, and correctional resources, comparisons would still be of limited value. Factors such as the quality of parole supervision, the number of employment opportunities in the community for released offenders, the adequacy of medical and mental health programs and facilities, the extent to which offenders return to the same environmental situation that fostered the original violation, the effectiveness of the police department, and the degree to which the inmate is confirmed in a pattern of delinquent behavior—all influence the recidivism rate and are beyond the control of the correctional agency.

Bare statistics indicate, however, that there is substantial room for improvement in the community's efforts to interrupt careers in crime. The Stanford Research Institute's study of offenders convicted in the District Court in 1965 revealed that 83 percent had been previously convicted and 65 percent had been previously incarcerated. Table 36 shows the percentage of offenders in the city's correctional institutions on March 31, 1966 with records of prior confinement. On March 31, 1966, 79 percent of the felons at the Reformatory for Men, 66 percent of the felons at the Reformatory for Women, and 73 percent of the felons at the Youth Center had been confined before. The correctional

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TABLE 36.—*Percent of inmates in D.C. institutions with records of prior confinement**

[March 31, 1966]

Institution	Felons	Misdemeanants	Intoxicants	First Offenders	Total Recidivism
Reformatory for Men	78.8	12.5	----	14.8	85.3
Reformatory for Women	66.1	82.6	100.0	20.7	79.0
Youth Center	72.8	79.5	----	19.3	80.7
D.C. Jail	67.3	71.8	91.8	16.4	83.6
D.C. Workhouse	76.8	67.4	89.1	22.3	77.7

Source: Office of the Director, D.C. Dept. of Corrections, August 3, 1966.

*Includes confinement in *any* correctional institution.

system's past inability to reclaim the drunkenness offender is apparent; 92 percent of those in the Jail, 89 percent of those in the Workhouse, and 100 percent of those in the Reformatory for Women had been previously confined.

As we have suggested, the correctional process cannot be evaluated simply by reference to these statistics. A substantial proportion of our criminal population has received an indoctrination in crime and delinquency, and the social and economic conditions in which these flourish, that began early and continued on for years. To develop sound motivations, good work habits, self-awareness, a respect for persons and property, and all those elements which support and ensure lawful conduct, the correctional process is too often given insufficient personnel, inadequate facilities, overly restrictive limitations on experimentation with new programs, and little community support. The Commission thinks it essential that a major effort be made in the District to upgrade the city's correctional institutions and its rehabilitative programs.

SUMMARY OF RECOMMENDATIONS

SENTENCING

1. In order to develop uniform sentencing criteria, the District Court and the Court of General Sessions should each convene a sentencing institute to focus on especially frequent or difficult sentencing problems in the District.

2. To reduce improper sentencing disparities, the District Court should seriously consider establishing an experimental sentencing council.

3. The District Court and the Court of General Sessions should increase, if possible, the frequency with which youthful offenders are sentenced under the Federal Youth Corrections Act.

4. Greater use should be made of presentence diagnostic services authorized by statute.

5. As the scope and quality of community resources available to assist the released offender improve, the District Court and the Court of General Sessions should place more offenders on probation in proper cases.

6. The Court of General Sessions judges should impose longer sentences with greater frequency in cases where the offense is aggravated or the offender has a lengthy criminal record.

7. The court's workload and calendar problems should not be considered as relevant factors by judges in determining sentences for offenders who plead guilty.

8. The Court of General Sessions should reevaluate its use of fines as sentences. Fines should not be imposed unless the Court has information which convinces it that the offender can pay. Fines payable in installments should be imposed where offenders not in need of incarceration have limited financial resources.

9. In view of the overwhelming percentage of defendants in gambling cases who are placed on probation or fined, the judges of the District Court and the Court of General Sessions should reevaluate their sentencing policies with respect to these offenses.

10. To reduce judge-shopping, the District Court and the Court of General Sessions should consider establishing plans to rotate among their several judges the responsibility for sentencing offenders who have pleaded guilty.

11. Experimentation with the establishment of predictive indices and tables should be initiated.

PROBATION SERVICES

12. The quality of probationer supervision by the Probation Department of the Court of General Sessions must be improved. The Department should experiment with altered reporting hours, increased field visits, and group counseling techniques, and expand its use of available community resource agencies.

13. The quality of presentence investigations and reports of the Probation Department of the Court of General Sessions must be substantially upgraded. Investigations should be conducted in many more cases than at present.

14. In order to provide the court with greater information about offenders, the Probation Department of the Court of General Sessions

should form a Screening Unit. The unit should establish close liaison with the D.C. Bail Agency.

15. To reduce the excessive workload of each probation officer, the professional staffs of the Probation Department of the District Court and the Court of General Sessions should be increased.

16. The salary scale of supervisory personnel in the Probation Department of the Court of General Sessions should be upgraded, and another salary step (GS–12) provided.

17. The Probation Department of the District Court should develop a pilot project to locate staff members in neighborhood centers, in order to improve supervision and obtain a greater awareness of the extent and quality of available community resources.

CORRECTIONAL INSTITUTIONS

18. A new detention facility to replace the present jail should be constructed.

19. Approximately 100 correctional officers should be added to the Department of Corrections in order to remedy deficiencies in institutional security and prisoner supervision.

20. To assist inmates in dealing with family and personal problems while incarcerated, the Jail should establish the position of Director of Counseling.

21. A Diagnostic and Outpatient Clinic should be constructed, preferably adjacent to but separate from the new detention facility.

22. The Department of Corrections should establish a Correctional Training Academy to train correctional officers as well as employees and representatives of the courts, juvenile institutions and related private agencies.

23. The Department of Corrections should contract with Federal Prison Industries, Inc. for the reorganization and future operation of the industries programs of the Department.

24. The Public Health Service should assume responsibility for the operation of all medical and health facilities in the District's penal institutions.

25. The expansion of work-release programs for both felons and misdemeanants should be encouraged and fully supported by the District of Columbia Government.

26. A variety of community-based rehabilitative programs should be established. The Department of Corrections should be provided with the funds to assume the operation of the city's pre-release guidance center.

27. Community Service Centers should be developed in Washington to function as the locus for decentralized probation, parole and other rehabilitative services.

28. The project for youthful misdemeanants at the Workhouse conducted under the auspices of the United Planning Organization should be expanded under the direction of the Department of Corrections.

29. Security at the Lorton reservation should be improved; motorized patrols should be established.

30. To reduce inmate idleness, the D.C. Jail should develop an educational program and expand its present limited recreation program.

31. The educational program at the Reformatory for Men should be expanded.

32. The program evaluation functions of the Department of Corrections should be strengthened; emphasis must be placed on the research component of the agency.

PAROLE

33. The D.C. Board of Parole should be reorganized as a full-time body of three members, who should review the Board's policies in light of modern parole philosophy and expanded rehabilitative capacities of private and public institutions in the District.

34. The number of parole officers of the D.C. Board of Parole should be increased so that caseloads can be limited to 50 per officer.

35. To attract and retain qualified and experienced personnel, parole officer salary structures should be upgraded to allow the attainment of a GS–12 rating by supervisory officers.

36. Responsibility for the parole and parole supervision of District youths committed under the provisions of the Federal Youth Corrections Act should be transferred from the U.S. Board of Parole to the D.C. Board of Parole.

37. The D.C. Board of Parole should establish a formal in-service training program for its officers and utilize the facilities of neighboring universities.

38. Parole consideration should be automatic, and not dependent upon parole applications by inmates.

39. The D.C. Board of Parole should discontinue its practice of conducting disciplinary interviews; parole officers should assume exclusive responsibility in this field.

40. The quality of the inmate summaries prepared for the Board's use at parole eligibility hearings should be improved; interpretative data should be included.

41. Reconsiderations of parole eligibility should fully explore the inmate's backgound and progress in the institution; the present summary procedure of the D.C. Board of Parole on such reapplications should be altered to require another hearing.

42. To improve administration and the quality of written reports and records, an operating manual should be prepared for the use of D.C. Board of Parole officers.

43. Greater efforts must be made by the U.S. Marshal, in cooperation with the Metropolitan Police Department and the D.C. Board of Parole, to apprehend parole absconders.

COMMUNITY SERVICES

44. All arrest records released should be accompanied by explanatory information about the disposition of the case and caveats as to the usefulness of the data.

45. Private employers should initiate specific programs aimed at reducing the indiscriminate use of arrest data to disqualify job applicants. Consideration should be given to the development of criteria which classify jobs in terms of the employer's need for the arrest records of job applicants.

46. Government- and UPO-sponsored efforts to facilitate the bonding of qualified persons with criminal records should be encouraged.

47. The Civil Service Commission should vigorously enforce its new policies relating to the employment of persons with criminal records by creating a special supervisory unit. The Federal and District Governments should provide the leadership essential to successful efforts to improve employment opportunities of persons with criminal records by initiating experimental programs which abolish the inquiry into arrest records for particular types for jobs.

48. The United States Employment Service for the District of Columbia should establish a unit to coordinate efforts to provide employment for former offenders. Among other things it should arrange for applications of convicted offenders to be accompanied by endorsement letters from correctional or probation officers.

49. The Employment Counseling Service should be transferred to the Department of Corrections, and its size increased to enable it to serve all releasees from District penal institutions.

50. The Department of Corrections should stimulate the creation of citizen's advisory committees to assist in the readjustment of offenders to society.

DEPARTMENT OF CORRECTIONAL SERVICES

51. The probation supervision functions of the Probation Department of the Court of General Sessions, parole supervision functions of the D.C. Board of Parole, and functions of the Department of Corrections should be consolidated into a single Department of Correctional Services.

Chapter 7

Selected Problems in the Criminal Law

The community relies on its criminal law to accomplish a variety of difficult, and often conflicting, assignments. We expect our criminal law to deter potential criminals, to provide a legal basis for apprehending offenders, to assist in rehabilitative efforts, and to reflect the prevailing moral standards of the community. It should encompass acts committed only by those competent individuals properly chargeable with criminal conduct. It must strike the balance between the personal liberties necessary to a free society and the safety of the total community. In this chapter the Commission examines seven criminal law problems where consideration by the community appears both timely and appropriate: (1) The Drunkenness Offender; (2) Pretrial Release of Persons Charged with Crime; (3) The Mentally Ill Offender; (4) Drug Abuse; (5) Police Interrogation and the *Mallory* Rule; (6) Firearms; and (7) Criminal Code Revision.

Section I: The Drunkenness Offender

In fiscal 1965 there were 44,218 arrests for violations of the public intoxication law in the District of Columbia—50 percent of all non-traffic arrests.[1] These arrests reflect the essential inability of the police, courts and prisons to deal effectively with what is basically a major health problem in the District and throughout the United States—chronic alcoholism.[2] The need for non-criminal alternatives for dealing with alcoholics is particularly urgent in light of the March 1966 decision of the United States Court of Appeals in *Easter* v. *District of Columbia*,[3] where the court ruled that chronic alcoholism is a legal defense to the charge of public intoxication. The few changes in District practices since the *Easter* decision, however, have served only to accelerate the "revolving door" of chronic alcoholism and underline the gross inadequacy of the city's treatment resources. In this section the Commission examines the methods used in handling drunkenness offenders before and after the *Easter* case, and recommends new procedures designed to serve the needs of the public inebriate and the community.

PROCEDURES AND FACILITIES BEFORE EASTER

THE LAW ENFORCEMENT APPROACH

Prior to the *Easter* decision, the public inebriate in the District of Columbia was traditionally handled within the criminal process. Drunkenness offenders were apprehended by the police and detained until sober. Unless they could post 10 dollars collateral, they were prosecuted by the Corporation Counsel in the District of Columbia Branch of the Court of General Sessions. There was a perfunctory trial, after which the defendants might be placed on probation or fined, but were usually sentenced to the D.C. Workhouse for an average term of 32 days.[4] The ultimate dispositions of the 44,218 drunkenness arrests in fiscal 1965 were approximately as follows: Forfeiture of collateral, 20,000; dismissal by the prosecutor, 670; incarceration, 15,500; fine and/or suspended sentence, 7,240; probation, 800.[5]

Arrest and Detention

Before *Easter*, individuals arrested for intoxication in the streets or in public places were most frequently charged with violation of the District of Columbia Code provision forbidding any person to "be drunk or intoxicated in any street, alley, park, . . . or in any place to which the public is invited . . . ," with a maximum penalty of 90 days imprisonment or $100 fine, or both.[6] Related statutes were sometimes utilized in dealing with the drunkenness offender, principally the statutes barring disorderly conduct or driving under the influence of alcohol.[7] More than one-third of all disorderly conduct arrests were accompanied by an intoxication charge which appeared to be the primary reason for the arrest.[8]

In deciding whether to make an arrest under the intoxication statute the police officer exercised considerable discretion. The officer was instructed to consider such factors as the person's general appearance (clothes in disarray), odor of alcohol on breath, physical appearance (flushed face, manner of walk and speech), response to questions, apparent ability to take care of himself, and behavior toward other citizens.[9] Members of the Department were encouraged not to make an arrest if the inebriated person was accompanied by someone who could take care of him, if he was close to his home and could get there safely, or if he would take a taxicab and go home.[10] The Department recently reaffirmed a 1958 statement of policy which declared:

> District Inspectors shall direct Commanding Officers to instruct members of their commands, wherever reasonable and proper, to permit a person under the influence of alcoholic beverage to go home instead of arresting him. Provided,

the person's condition is such that he is not likely to injure himself or others and is not likely to be a source of public complaint or a subject of a police report.[11]

Intoxication charges under these general criteria each year from 1955 through 1965 have ranged from 39,506 to 47,950 (Table 1). The

TABLE 1.—*Intoxication charges compared to all non-traffic charges*

[Fiscal years 1955–1965]

Fiscal year	All non-traffic charges	Intoxication charges	
	Number	Number	Percent of all non-traffic charges
1955	94, 393	39, 824	42
1956	92, 666	39, 506	43
1957	99, 400	43, 829	44
1958	97, 085	41, 124	42
1959	101, 163	42, 898	42
1960	95, 383	40, 400	42
1961	92, 871	40, 861	44
1962	95, 182	46, 097	48
1963	99, 353	47, 950	48
1964	96, 234	44, 206	46
1965	100, 309	44, 792	45

Source: MPD Annual Reports (1955–1965). Charges (not arrests) are tabulated as the MPD did not begin tabulating arrests until fiscal 1964.

arrests in 1965 involved about 27,000 persons, many of whom were arrested in high-crime precincts.[12] As shown in Table 2, Precincts 2, 9, 10 and 13 accounted for 49 percent of the total arrests, with another 25 percent of the arrests occurring in the downtown area of the First Precinct. More arrests occurred on Friday and Saturday than on other nights.[13]

Police officers were also instructed that persons

found on any public space or on any private property in a semiconscious or unconscious condition, even though the person may be known to be of notoriously intemperate habits and has a strong odor of alcohol on his breath, shall be immediately removed to a hospital for examination in an effort to determine if such person is suffering from any serious illness or injury.[14]

Despite this regulation, 16 persons arrested for intoxication died while in police custody in 1964–1965.[15] Police and medical authorities agree that public inebriates frequently require immediate medical attention and that persons arrested for intoxication may in fact be

TABLE 2.—*Distribution of charges for intoxication, by precinct*

[Fiscal years 1956 and 1965]

Precinct	Fiscal 1956		Fiscal 1965	
	Number	Percent	Number	Percent
1	9,854	24.9	11,209	25.0
2	9,465	24.0	7,851	17.5
3	1,831	4.6	1,199	2.7
4	1,835	4.6	332	.7
5	2,268	5.7	2,759	6.2
6	682	1.7	1,021	2.3
7	618	1.6	596	1.3
8	189	.5	298	.7
9	3,473	8.8	6,455	14.4
10	2,960	7.5	4,714	10.5
11	680	1.7	1,961	4.4
12	690	1.7	765	1.7
13	3,540	9.0	3,279	7.3
14	907	2.3	1,589	3.5
Other	514	1.3	764	1.7
Total	39,506	99.9	44,792	99.9

Source: MPD Annual Reports (1956 and 1965). Charges (not arrests) are tabulated as the MPD did not begin tabulating arrests until fiscal 1964.

suffering from a serious illness.[16] In 1965, however, only 1,922 of the over 44,000 arrested inebriates were taken by the police to D.C. General Hospital and admitted for medical attention.[17] In St. Louis, by contrast, every such offender receives an immediate medical examination at a hospital and 10 percent are retained for further treatment.[18] Failure to institute similar procedures in Washington has cost lives, delayed the initiation of treatment for the alcoholic, and required the police to undertake a medical responsibility for which they were not equipped.

After being arrested, an intoxicated male was taken to the precinct station; females were taken directly to the Women's Bureau. On weekend evenings, three inebriates were often crowded into small, filthy cells designed for a single person. No objective test was used either before or after arrest to determine the individual's blood alcohol level or its effect on his physical or mental condition. After a 4-hour sobering-up period, the inebriate was released if he, or someone on his behalf, posted 10 dollars collateral.[19] In 1965 approximately 20,000 (about 45 percent) of the individuals arrested for drunkenness posted and forfeited collateral at the stationhouse.

Under the existing practice of the Court of General Sessions, forfeiture usually terminated any criminal proceedings.[20] If collateral was not posted, offenders were detained until the following morning—in the case of Saturday night arrests, until Monday morning—when they were brought into court.

Prosecution

Public intoxication cases were prosecuted by the Corporation Counsel in the District of Columbia Branch of the Court of General Sessions. Approximately 23,500 drunkenness charges were processed in the Court of General Sessions in 1965.[21] On an ordinary Monday morning prior to *Easter*, there were about 200 cases involving drunkenness or disorderly conduct before the court.

The disheveled prisoners were brought from the precincts to the "bullpen" in the basement of the courthouse and then herded en masse into the courtroom. They were perfunctorily informed of their right to counsel, which was rarely exercised; nearly all pleaded guilty. If a guilty plea was entered, the proceedings took less than a minute; they took only slightly longer if the defendant pleaded not guilty. Since there was no objective evidence on the issue of whether the defendant was actually drunk, the arresting officer's view of the facts was almost always accepted.

Upon a finding of guilty, the sentencing judge decided whether to impose a fine, suspend sentence, place the defendant on probation, or commit him to the Workhouse. In 1965 approximately 800 persons were placed on probation,[22] and about 15,500 persons were sentenced to imprisonment usually ranging from 10 to 90 days—for an average term of 32 days.[23] The remaining 31 percent of the court cases, 7,240 out of 23,584, resulted in fines, suspended sentences or occasional verdicts of not guilty.

Prior to *Easter* the court rarely invoked the 1947 Act entitled "Rehabilitation of Alcoholics," which recognized the alcoholic's need for treatment in these terms:

> The purpose of this chapter is to establish a program for the rehabilitation of alcoholics, promote temperance, and provide for the medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking on those who pass through the courts of the District of Columbia; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in mounting accident rates, decreased personal efficiency, growing absenteeism, and a general increase in the amount and seriousness of crime in the District of Columbia, and to substitute for jail sentences for drunkenness medical and other scientific methods of treatment which will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate the prob-

lem of chronic alcoholism the courts of the District of Columbia are hereby authorized to take judicial notice of the fact that a chronic alcoholic is a sick person and in need of proper medical, institutional, advisory, and rehabilitative treatment, and the court is authorized to direct that he receive appropriate medical, psychiatric or other treatment as provided under the terms of this chapter.[24]

Although the statute directed the Board of Commissioners to establish a residential treatment center and a subsidiary diagnostic center, the single facility provided was the Department of Public Health's Alcoholic Rehabilitation Clinic, which offers only outpatient services.[25]

The statute offers a treatment alternative for chronic alcoholics who are arrested and thereby enter the criminal process. The court may suspend the proceedings in *any* criminal case and hold a hearing to determine if the defendant is a chronic alcoholic.[26] The defendant is entitled to counsel, appointed if necessary, and he may request a hearing before a jury. If the court or jury concludes after the hearing that the defendant is a chronic alcoholic, the court "may" order him "committed to the clinic for diagnosis, classification and treatment as his condition may require" for no more than 90 days. Every person committed to the clinic must first go to a classification and diagnostic center, upon the basis of which the clinic director may recommend that the court: (1) permit the person "to remain at liberty conditionally and under supervision"; (2) place him in an appropriate institution for treatment; or (3) try him on the original criminal charge. After the first 90-day period has expired, the clinic director may recommend recommittal for an additional 90-day term if the person "is in need of additional treatment in an appropriate hospital or institution." If so, a second hearing identical to the first must be held.

The court was reluctant to use the commitment statute prior to *Easter* because of its cumbersome procedures and the lack of adequate treatment programs and facilities. The outpatient Alcoholic Rehabilitation Clinic, however, was used as a probation resource for 1,300 convicted inebriates between 1950 and 1963, when its use was discontinued by the Probation Department of the court.[27]

Probation

A special probation program for drunkenness offenders was initiated in 1946 by the Probation Department of the Court of General Sessions. It is operated by a supervisor and four probation officers who work exclusively with persons charged with public intoxication or offenses related to the use of alcohol.[28]

Before the *Easter* decision, defendants were selected for the program by a standardized screening process. Those with previous felony

records were automatically excluded. Defendants with lengthy intoxication records and those with only one or two prior intoxication arrests were also excluded. The former were rejected because they were considered too debilitated for successful rehabilitation, and the latter because they were thought to be insufficiently aware of their drinking difficulties. Defendants with three to five prior intoxication arrests were most likely to pass this preliminary screening.

The drunkenness offenders provisionally accepted for the special probation program were sent to the District of Columbia Jail for 3 to 4 days to "dry out." During that time the background information supplied to the probation officer was verified. The Probation Department also interceded with employers in an effort to avoid loss of jobs as a result of arrest and temporary confinement. Final acceptance in the program depended on the outcome of another interview with one of the probation officers. According to the Director of Probation, if the defendants "admitted" that they were alcoholics and expressed a desire to stop drinking, they were generally recommended for probation.[29]

If unemployed, individuals chosen for the probation program were obliged to get a job, assisted in some cases by the job placement program of the Probation Department. They were required to attend meetings twice weekly during their first month on probation and once a week thereafter. The meetings, frequently attended by as many as 200 persons, used some of the techniques of Alcholics Anonymous and usually featured two speakers who would tell of their past experience with alcohol and their redemption through A.A. Other than these meetings, there was very little supervision of the individual probationers, who had no regular personal contact with the probation officers. The average caseload in the Alcoholic Rehabilitation Unit exceeded 100 offenders for each officer.[30]

When it was established in 1946, the Alcoholic Rehabilitation Unit of the Probation Department was virtually unique.[31] Since that time other municipal courts have developed special programs designed to reduce the number of drunkenness offenders brought into the court.[32] The 1957 Report of the District of Columbia Commissioners' Committee on Prisons, Probation and Parole (Karrick Report) concluded that the Probation Department's program had made "a renewed and determined effort to salvage many of the chronic alcoholics who are brought before the court."[33] In recent years, however, the program has suffered from numerous deficiencies. The 1966 report of the American Correctional Association prepared for this Commission concludes that "what started out in 1946 as an increased service for the offender, now offers him less than the regular probationer."[34]

The screening criteria developed by the Probation Department were arbitrary and poorly designed. The emphasis on prior drunkenness arrests automatically excluded first offenders and violators with lengthy records, some of whom could benefit from a well-designed probation program. Those included in the program were accepted without a presentence investigation. They were required to express concern about their drinking by virtually acknowledging that they were alcoholics and to display an interest in trying an Alcoholics Anonymous approach. Failure to meet these standards usually resulted in a jail sentence.[35]

Program content was also poor. It consisted primarily of attendance at large group meetings; there was no individual supervision or attention unless the probationer sought out his probation officer. Probationers were required to sever any connections with the Alcoholic Rehabilitation Clinic of the Department of Public Health, since the Director of Probation believed that the clinic's drug and psychiatric approach was incompatible with his A.A.-oriented program and was not an effective rehabilitative method.[36] Clinic personnel, on the other hand, believed that the probation officers did not have the necessary medical expertise to make adequate diagnoses of alcoholics, and that the court program did not meet the health needs of the alcoholics admitted to probation.[37]

Comprehensive evaluation of the Probation Department program is handicapped by lack of adequate statistics. In fiscal 1965, 838 drunkenness offenders out of 5,416 screened by the Alcoholic Rehabilitation Unit were placed on probation.[38] There are no meaningful data, however, on what happened to these people. For example, the Department reported that about 75 percent of the individuals placed on probation "completed" the program; it did not report whether the probationer stopped drinking or whether he was arrested for drunkenness while on probation. Yet it is known that in 1965 there were 553 rearrests of individuals on probation for drunkenness (not necessarily 553 different individuals), but only 131 revocations of probation.[39] The American Correctional Association reports that in 20 years of operation the Probation Department has never undertaken an adequate evaluation of its program.[40]

The D.C. Workhouse

Persons sentenced to jail for public intoxication went to the D.C. Workhouse, which is a short-term, minimum-security installation at Occoquan, Virginia, about 24 miles from Washington. The average daily population at the Workhouse in fiscal 1965 was 1,540. As indicated by Table 3, more than 80 percent of the inmates admitted to the

Workhouse prior to *Easter* were drunkenness offenders. The average age for these offenders was 47 years, and approximately 55 percent of them were Negro.[41] Workhouse officials report that drunkenness offenders were confined for an average of 32 days in 1965.[42]

Like other institutions of its kind across the country, the Workhouse was the "end stage in America's revolving door policy toward the chronic drunkenness offender." [43] As discussed in chapter 6, it offered little in the way of rehabilitation for the public inebriate. Chronic alcoholics generally present a most difficult challenge even to the best correctional program, because of their poor physical and mental condition, general sense of dependence and poor motivation.[44]

TABLE 3.—*Commitments to the Workhouse and Women's Reformatory*

[Fiscal years 1961–1966]

	1961	1962	1963	1964	1965	1966
WORKHOUSE						
Average daily population	1, 543	1, 376	1, 389	1, 557	1, 540	1, 397
Received:						
Intoxication	10, 110	14, 074	16, 367	14, 942	12, 875	11, 857
Other misdemeanants	2, 625	1, 876	3, 242	3, 360	3, 024	3, 062
Total	12, 735	15, 950	19, 609	18, 302	15, 899	14, 919
WOMEN'S REFORMATORY						
Average daily population	205	171	169	170	169	104
Received:						
Felonies	23	32	44	54	41	22
Intoxication	774	864	800	885	654	393
Other misdemeanants	234	235	477	276	388	259
Total	1, 031	1, 131	1, 321	1, 215	1, 083	674

Source: D.C. Department of Corrections.

The short sentences given by the court and the lack of treatment resources made it nearly impossible to provide more than custodial care at the Workhouse. Notwithstanding the variety of physical ailments often associated with chronic alcoholism, no medical examinations were given on admission. Drunkenness offenders were rarely assigned to social education classes or therapy groups because of their short

term of confinement. Rehabilitative efforts were limited to providing nourishing food and farming or prison maintenance work for those who were physically able. Upon release from the Workhouse, the drunkenness offender was without supervision or meaningful assistance. He was typically transported to downtown Washington and discharged on a street corner with little money and no real alternative but to return to skid-row life. Strikingly high recidivism rates attested to the basic inadequacy of the Workhouse's correctional program.[45]

Several years ago the Department of Corrections and the Department of Public Health collaborated in an experimental effort to modify the typical institutional pattern. Special treatment was given to a group of 100 inmates who were convicted of public intoxication and committed to the Workhouse for 90 days.[46] The treatment consisted of short-term individual therapy, group therapy, occupational and recreational therapy, and social casework relating to post-release plans. Follow-up after release was provided by the outpatient services of the Alcoholic Rehabilitation Clinic. When the results were evaluated after 2½ years, it was concluded that "a sizable group of chronic drunkenness offenders can be helped through enforced psychiatric treatment." [47] This type of help, however, is not presently available for drunkenness offenders dealt with through the law enforcement process.

MEDICAL AND TREATMENT FACILITIES

Prior to *Easter* the District of Columbia had very limited treatment services for alcoholics who were not processed through the courts as drunkenness offenders. For the most part, these facilities served only alcoholics who were seriously ill or who voluntarily sought assistance.

The District of Columbia General Hospital provides intensive inpatient medical care in its Alcoholism and Drug Addiction Unit. The Unit has a capacity of 42 beds and a staff of 27. It has been used almost exclusively as a drying out facility for severely debilitated alcoholics after a prolonged drinking spree. In fiscal 1965 it treated 985 patients, 85 percent of whom were alcoholics who stayed an average of 7 days.[48] Many of the patients suffered from delirium tremens and acute brain syndrome and responded to short-term therapy; some suffered from chronic brain syndrome, a relatively permanent impairment which requires long-term treatment.[49]

Saint Elizabeths Hospital also has facilities for alcoholic patients. Most of its alcoholic patients are committed by court order under the District of Columbia Hospitalization of the Mentally Ill Act.[50] To be eligible for admission an alcoholic must also have some physiological impairment, such as a chronic brain syndrome, or be psychotic. The hospital also admits voluntary patients and a few skid-row alcoholics who are either incompetent to stand trial or who are found not guilty by reason of insanity. Approximately 300 "seriously disturbed alcoholics" are in Saint Elizabeths Hospital.[51] Their average stay is 3.9 months.[52]

The Alcoholic Rehabilitation Clinic of the Department of Public Health carries the main burden of supplying outpatient services to alcoholics in the District of Columbia. With a staff of 18, the clinic aided about 950 patients in fiscal 1965.[53] Some additional outpatients are served through the facilities of the new Area C Mental Health Center.[54] The clinic typically has had about 400 active cases each month, about 750 people on its rolls, and about 70 new cases a month. People seeking help are assisted immediately, even though the staff is undermanned so that it cannot operate evenings or weekends. Prior to *Easter*, most of the clinic's patients were self-referrals, often pressured to come in by family or employer.

Upon arrival at the clinic a voluntary patient was interviewed by a public health nurse. Individuals in an acutely alcoholic state were sent to D.C. General Hospital. Based on a testing and orientation period, the clinic staff decided on a course of treatment. Most patients were placed in one of several weekly group therapy units, depending on their educational and occupational backgrounds. The clinic staff referred some alcoholics to A.A. when they thought the individual could respond to its self-disciplinary demands. In addition to group therapy, the clinic used mild tranquilizers in the early phases of treatment and other drugs, where appropriate, to restrict drinking.

Although many patients dropped out after the first two visits, including most of the derelict alcoholics, the clinic claims a respectable improvement rate among those who remained. A study of 150 patients who had received over 25 sessions of therapy indicates quite a high improvement rate; complete sobriety for prolonged periods of time was found in 24 percent of the cases, an additional 61.5 percent were improved, and only 14.5 percent showed no improvement in their drinking pattern.[55] The clinic reports that parolees obliged to participate in the program react just as favorably as do self-referrals. The staff estimates, however, that 90 percent of its patients need more intensive treatment than can be provided at the clinic.

CONCLUSION

In 1957 the Karrick Report concluded that the procedures and facilities in the District of Columbia for handling drunkenness offenders were grossly inadequate.[56] Nine years later the same deficiencies exist.

The practice of dealing with destitute public inebriates as criminals has proved to be expensive, burdensome and futile. The cost of incarceration alone was estimated to be $2 million annually; the costs of police processing, adjudication and available treatment services increased the total cost to over $3 million.[57] In 1965 drunkenness offenders accounted for half of all non-traffic arrests, about one-third of the non-traffic cases in the Court of General Sessions, and 80 percent of the population of the Workhouse.[58] In view of the dimensions of serious crime in the District of Columbia, this expenditure of law enforcement resources on the public inebriate was clearly excessive.

Moreover, criminal procedures did not serve as a deterrent. The number of public intoxication charges in the District has increased over the last 10 years (Table 1). Repeaters accounted for a large

TABLE 4.—*Prior arrests for intoxication*

[Calendar year 1965]

Prior intoxication arrests recorded*	Distribution of prior arrests for intoxication		
	Sample	Male	Female
Total	372	345	27
	percent	*percent*	*percent*
1	23.4	22.9	29.7
2 through 4	20.2	19.8	25.9
5 through 9	14.5	14.8	11.1
10 through 14	6.9	6.4	14.8
15 through 19	5.4	5.6	--------
20 through 24	5.9	5.6	7.4
25 through 49	11.3	11.6	7.4
50 through 99	8.9	9.3	3.7
100 through 149	2.2	2.3	--------
150 through 199	1.1	1.2	--------
200 through 299	.1	.3	--------
300 through 399	(†)	(†)	--------

*Includes all prior arrests for intoxication in the District of Columbia, including those of fiscal year 1965.

†Less than 0.1 percent.

Source: 1965 sample of arrests for intoxication provided by the Metropolitan Police Department, District of Columbia.

proportion of arrests. In 1965 approximately 27,000 persons were arrested for public intoxication—8,000 two or more times, 4,000 three or more times, and 2,400 four or more times.[59] Most intoxication arrests involve persons with an extensive record of public drunkenness (Table 4). Fifty-six percent of those arrested for intoxication in 1965 had been arrested 5 times or more during their lifetime; 29 percent had been arrested 20 times or more; and 12 percent had been arrested 50 times or more. Only 23 percent were drunkenness offenders for the first time, compared to 32 percent in 1956.[60]

Substantial resources have been devoted to apprehending, convicting and punishing the estimated 6,000 skid-row chronic alcoholics in the District.[61] The resort to criminal sanctions has completely failed. Periodic commitments to a penal institution were a misguided solution, failing to meet either the alcoholic's immediate health needs or the more basic problems underlying his illness.[62] Reliance on short-term criminal remedies allowed health authorities in the District of Columbia to neglect their responsibilities to deal effectively with the problem of chronic alcoholism. To this extent, therefore, the use of the criminal law to punish alcoholics was responsible for helping to perpetuate the chronic drunkenness offender problem in the District.

DEVELOPMENTS SINCE THE EASTER CASE

On March 31, 1966, the United States Court of Appeals for the District of Columbia, in the case of *Easter* v. *District of Columbia*, unanimously held that chronic alcoholism is a valid defense to a charge of public intoxication.[63] The court stated that "the public intoxication of a chronic alcoholic lacks the essential element of criminality; and to convict such a person of that crime would also offend the Eighth Amendment." [64] The court cited congressional findings in the 1947 statute that a chronic alcoholic is suffering from a sickness and has lost the power of self-control in the use of intoxicating beverages.[65] It indicated that it would have reached the same conclusion even in the absence of congressional guidance, relying in part on the recent decision of the United States Court of Appeals for the Fourth Circuit in the similar case of *Driver* v. *Hinnant*.[66]

The *Easter* decision plainly required complete revision of the traditional punitive approach to the chronic alcoholic. The District of Columbia Government, however, was not prepared for the decision, and its response has been totally inadequate. Needed treatment facilities, originally called for in 1947, have not yet been obtained. The law enforcement approach remains substantially unaltered; public inebriates continue to be arrested, detained in precinct stations, and prose-

cuted by the Corporation Counsel.[67] No longer subject to sentencing or incarceration as criminals, however, chronic alcoholics are released without any meaningful assistance. Already severely debilitated, their health has been further jeopardized by the accelerated rate at which they have been processed through the courts.[68]

CONFUSION IN COURT PROCEDURES

The initial burden of implementing the *Easter* decision fell on the District of Columbia Branch of the Court of General Sessions. Hampered by the lack of diagnostic and treatment services, different judges proceeded in various ways. The net effect was considerable confusion concerning the manner in which the defense of chronic alcoholism should be raised and the procedures which should be followed in the event that the defense was sustained.

The first judge to deal with drunkenness offenders after *Easter* required that the defendant raise the defense of chronic alcoholism in any case of drunkenness that came before him. However, if the defendant raised the issue, the judge committed him to D.C. General Hospital for diagnosis for a maximum of 30 days.[69] A subsequent judge took the view that the court should itself raise the defense where the defendant's history showed chronic alcoholism to be a real probability. He used a procedure under which each person charged with public intoxication was examined by a Health Department doctor in the court cell block. If the doctor diagnosed the defendant as a chronic alcoholic, the judge then utilized the provisions of the 1947 Rehabilitation of Alcoholics statute to commit the defendant for further diagnosis and treatment.[70] In recent months most judges have adopted the view that "the Court has the obligation to inject this issue on its own motion when it appears likely from the evidence that the defense may be available." [71]

When the defense was raised for an alcoholic, confusion still persisted regarding procedures to be followed by the court in compliance with the *Easter* decision. After preliminary diagnosis of the defendant, some judges used the procedures of the 1947 statute. They held the hearings required by the statute and entered orders committing defendants to various facilities. Other judges entered verdicts of not guilty pursuant to *Easter* and released the defendants to the street. During the summer months, adjudicated alcoholics were convicted and sent to jail despite the prior adjudication,[72] released on the street,[73] or committed under the 1947 statute to the Workhouse, the Alcoholic Rehabilitation Clinic, D.C. General Hospital, or Glenn Dale Hospital.[74] Alcoholics sent to the latter two facilities simply walked away on occasion due to lack of supervision.[75] Alcoholics sent to the

Workhouse under the 1947 statute were locked in separate dormitories, although regular prisoners were allowed freedom of the grounds.[76] Some alcoholics were sent to facilities which were unable to accommodate them because judges continued to make commitments even though the facility was operating beyond capacity.[77]

The court's difficult burden was not eased by the Corporation Counsel. Municipal prosecutors continued to prosecute intoxication defendants as they did before *Easter*. They assumed no responsibility for exercising prosecutive discretion in those cases where the defendant's criminal record or prior adjudication as a chronic alcoholic indicated a clear and provable defense to the intoxication charge. Neither did they establish any pretrial procedures to assist the court in screening cases in which the defense should be raised. We believe that the Corporation Counsel had at the very least an obligation to call the court's attention to facts such as prior record or adjudication which suggested chronic alcoholism.[78] In view of the confusion that has developed in the wake of the *Easter* case, it is essential for the Corporation Counsel to exercise his discretion intelligently and helpfully.[79]

These circumstances projected a distorted image of the administration of justice in the Court of General Sessions.[80] Although the judges were not responsible for lack of treatment facilities and were in most cases performing their clear duty under the law, the disparate manner in which drunkenness offenders were treated engendered much confusion and little confidence. The police and court have collaborated to process the chronic alcoholic through the system at an increasing rate of arrest, release and rearrest. The number of drunkenness offenders at the Workhouse declined from 1,027 on June 30, 1965, to 211 on June 30, 1966.[81] Many alcoholics who formerly would have been in custody are now on the streets and subject to arrest. Their constant rearrest resulted in a dramatic increase in the number of public inebriates processed by the courts. The typical Monday morning docket grew from 200 to 300 intoxication cases, and additional judges have occasionally been pressed into service.[82] This additional burden has aggravated the already overcrowded conditions at the Court of General Sessions, at great cost to all misdemeanants appearing before the court.

FAILURE TO PROVIDE FACILITIES

Confusion in court procedures reflected a basic lack of planning by the city government. Responsibility for the gross inadequacy of treatment services for alcoholics rests with the Board of Commissioners and the Department of Public Health. Although the unanimous

holding in *Easter* was widely anticipated throughout the community, no effective steps were taken to prepare for it. In the 8 months after the *Easter* decision no suitable diagnostic and treatment facilities were provided.[83] During this period approximately 3,400 persons were adjudged chronic alcoholics.[84]

After the *Easter* case, the Department of Public Health failed to provide the court regularly with needed medical personnel.[85] Drunkenness defendants were obliged to wait in the D.C. Jail for several days after their initial court appearance pending the appearance of a Health Department physician and the court was forced to reschedule its cases. In recent months the Department has provided personnel to screen intoxication defendants on a daily basis. There are obvious difficulties in making a diagnosis in a cell block; yet this service merits continuation so that the court can deal in a rational manner with the many derelicts who are now coming before it.

The Department was also totally unable to provide the more extensive diagnostic facilities contemplated by the 1947 statute, which requires that the court, after making a preliminary determination that the defendant is a chronic alcoholic, commit him to a "classification and diagnostic center for observation, examination and classification." [86] No such facility existed. As a substitute the Board of Commissioners assigned two dormitories of the Workhouse to the Department of Public Health for the purpose.[87] No meaningful effort, however, was made to transform these prison buildings into a diagnostic center.[88] Medical attention was minimal; prison uniforms were simply exchanged for hospital smocks. Indeed, normal conditions at the Workhouse for regular prisoners appeared superior to those for alcoholic "patients." The prisoners had opportunities for work and recreation and grounds privileges, while the alcoholics were restricted to their dormitory and spent their days in idleness. In short, the District's "diagnostic center" was completely unsuitable for the treatment of chronic alcoholics. According to one Court of General Sessions judge, "in all but name, it is hardly more than a penal institution." [89]

Moreover, the "patients" were being retained at the Workhouse dormitory for longer periods than were necessary for any diagnosis of their condition. Although the Department of Public Health advised the court, at various times, that the duration of commitment would be 5 days, 7 to 10 days, or 2 weeks, nearly half of the alcoholics were confined for over 2 weeks in early August 1966.[90] Ultimately, the court had to explicitly limit Workhouse diagnostic commitments to 1 week.[91]

The District was similarly unable to supply the treatment facilities envisioned as a necessary component of the 1947 act's procedures.

The act specifies that upon receipt of the diagnostic report the court must commit the defendant to an appropriate treatment facility or release him. A total of about 100 beds available in various local hospitals and institutions and the exclusively outpatient facilities of the Alcoholic Rehabilitation Clinic were plainly insufficient to serve the 3,400 persons who were adjudged chronic alcoholics in the first 8 months following *Easter*.[92] Nor were the treatment programs adequate in those facilities. As a result, only the seriously ill could be given inpatient treatment, and the Department of Public Health had to recommend outpatient treatment at the clinic for the vast majority of court-adjudged alcoholics.[93] This practice proved grossly inadequate, since very few chronic alcoholics can be expected to benefit from the type of outpatient treatment available at the clinic. Patients committed to the clinic did not appear for subsequent treatment and were rearrested with great frequency.[94] Court referrals so far outstripped the clinic's limited capacity that it could no longer accept any voluntary patients even though their prognosis was far more favorable.

In 8 months since the *Easter* opinion there has been no major improvement in treatment facilities for alcoholics in the District of Columbia. Although funds were received from the U.S. Department of Justice in April 1966 for a 50-bed emergency care unit (detoxification facility), the Department of Public Health has indicated that the facility will not be open until the spring of 1967.[95] There is an acute need for an inpatient treatment center so that the city's derelict alcoholics will not be forced to face an uncertain fate on the streets of Washington this winter. Congress recently approved $300,000 of the District's $600,000 request to establish a "Rehabilitation Center for Alcoholics" at the Women's Reformatory at Occoquan, Virginia.[96] The Reformatory is to be transferred to the Department of Public Health and will provide accommodations for 300 to 500 patients. The center recently began operations and is expected to be fully available in the spring of 1967.[97]

PROPOSALS FOR CHANGE

The bankruptcy of the law enforcement approach to public intoxication is clear. Twice in the past 20 years, in the Rehabilitation of Alcoholics statute of 1947 and in the Karrick Report of 1957, public officials have recognized the need to revamp the existing system of dealing with the public inebriate. Recognition of the problem, unfortunately, has not been followed by effective action.

The *Easter* decision, however, compels a more honest response by the community. If the law is not to become a mere facade, the District

must establish a meaningful treatment program as an alternative to incarceration for alcoholics. Although the opinion of the Court of Appeals recognized chronic alcoholism as a defense to a criminal charge of drunkenness, the decision has resulted in neither the removal of the chronic alcoholic from the criminal process nor provision for his treatment. For the most part the judges in the District of Columbia have tried to utilize the 1947 act, but inadequate facilities have frustrated their good intentions. Since *Easter* there has been, in fact, a marked deterioration in the health of the city's derelict alcoholics—a condition which goes unheeded only by a callous disregard for human life.[98]

Essential to any long-term solution is the realization that chronic alcoholism is a serious public health problem that has been almost completely neglected. A meaningful community effort to combat this disease requires a wide range of costly treatment facilities. It also requires a statutory framework in which treatment goals are given priority and a reevaluation of present police, court and correctional practices.

TREATMENT FACILITIES AND PROGRAMS

Comprehensive plans for the treatment of alcoholics in Ontario, Canada, and St. Louis, Mo., suggest the following basic ingredients of an intelligent municipal program:[99]

(1) *Immediacy of Service.* Geographically decentralized facilities for the emergency care of intoxicated persons must be available at all times. Diagnosis and treatment should be initiated immediately upon the inebriate's arrival.

(2) *Comprehensiveness and Flexibility.* The range of services offered must cover the complete physiological and psychological needs of both non-alcoholic inebriates and patients in various stages of alcoholism. In addition to emergency care, this means that a comprehensive plan for alcoholics must provide diagnostic and classification services, short-term residential facilities and half-way houses, facilities for out-patient care and a full range of out-patient services, including psychological and vocational counselling, for those alcoholics who can be treated in the community.

(3) *Continuity and Coordinated Administration.* The patient should be guided to that treatment program which is appropriate to his state of recovery. This requires, at the very least, centralized administration of the entire program which permits re-

evaluation of the alcoholic's needs and reduction or transferral of supervision at proper stages in his treatment.

(4) *Prevention and Education.* The plan should include education directed at increasing public awareness of the dangers of alcoholism, as well as efforts to encourage the early identification of persons who are incipient alcoholics. The "recovered" alcoholic should be provided with facilities about which he can structure his life to help prevent a relapse, especially in the case of "skid-row" alcoholics.

(5) *Research and Evaluation.* Considering the acknowledged medical difficulties in dealing with alcoholism, any comprehensive plan must provide for continued research into the causes of the disease and the treatment needs of its victims. Evaluation of experimental programs would enable the responsible authorities to select those programs best designed to treat special types of alcoholics.

A comprehensive program along these lines has been outlined by District of Columbia officials. The plan describes a full range of facilities, including several emergency care units, a 100-bed hostel for alcoholic patients, halfway houses for men and women, a short-term intensive care unit to supplement the 42 beds at D.C. General Hospital, facilities for the extended residential care of alcoholics, and vastly enlarged outpatient services.[100] Over the long term, the program was focused on a 200-bed comprehensive alcoholism treatment center located in the heart of the District of Columbia, which would combine in one facility emergency care, diagnosis, intensive care, and outpatient units, and around which the emergency care clinics and aftercare facilities could function as satellites. The plan also suggested an extensive program of vocational training and rehabilitation services for patients referred from the Departments of Health, Corrections, Probation, Vocational Rehabilitation, Public Welfare, and the Board of Parole.[101]

On the basis of information now available, the plan appears to outline an adequate spectrum of facilities for the treatment of alcoholics. Its implementation, however, poses serious problems. Based on the responses of District officials to the *Easter* ruling, the Commission has substantial doubts that they have the requisite determination or expertise to execute a comprehensive treatment program for alcoholics.

Although the new rehabilitation center at the Women's Reformatory is perhaps essential as a temporary measure to meet the pressing needs of the city's alcoholics, it is grossly deficient as a permanent solution. The center's scheduled capacity of 500 patients may be too limited in view of the fact that approximately 1,000 intoxication of-

fenders were incarcerated in the Workhouse prior to *Easter* and that about 3,400 persons have already been adjudged chronic alcoholics. The new center is intended to provide a full range of rehabilitative services, including group psychotherapy, individual counseling, academic remediation, vocational assistance and medical care, but Congress appropriated only half of the funds requested by the District Government for this purpose. Although the center will begin to accept patients in December 1966 it will not be prepared to offer a full treatment program until the spring of 1967 because of the difficulty in obtaining skilled professional staff.

Under these circumstances the Commission is concerned about the proposed use of the new center by the Department of Public Health. If the new center is too small or services limited, the problem will not be solved by simply committing alcoholics to it for an abbreviated period of time. Inpatient care is a suitable approach only when community-oriented residential treatment is available upon release. Since Washington has no hostels, halfway houses or other intermediate aftercare treatment steps, the treatment potential of the new center cannot be maximized. While the line between penal and treatment care is far from clear, the community's experience over the last several months makes it incumbent upon the Board of Commissioners and the Court of General Sessions not to authorize the involuntary commitment of chronic alcoholics to the new center if its program is only custodial and unaccompanied by the necessary aftercare program and facilities. Until the new center at Occoquan is fully operational and fully integrated into a comprehensive treatment program, alcoholics should be taken there only on a voluntary basis so that they will not have to face the rigors of a winter on the streets.

The shortcomings of the Occoquan center emphasize the need for a treatment center within the District of Columbia. As originally proposed by the District Government, the Occoquan center was to be a temporary facility which would be replaced by a hostel and diagnostic center for alcoholics built on the grounds of D.C. General Hospital within the next 3 years. However, a request for $320,000 for plans and specifications for the hostel was rejected by Congress. As the Director of Public Health has recognized, chronic alcoholics require community-oriented treatment so that they can gradually adjust to urban living.[102] Confining them in a rural institution and then suddenly depositing them back in the city without extensive aftercare support is likely to cripple the rehabilitative process. Incarceration at Occoquan will be little more helpful when a health facility is used rather than penal institution unless substantial

aftercare facilities are provided in the District. The indigent, homeless derelict requires room and board in an outpatient residential facility if there is to be any real chance for his rehabilitation. The Commission recommends that the Department of Public Health continue to develop plans for an in-town treatment center and appropriate aftercare facilities, and that a supplemental appropriation for such purposes in fiscal 1967 be sought from Congress.[103]

The Department's efforts to develop an emergency care clinic for alcoholics have also been disappointing. After several months of planning the District obtained a grant in April 1966 from the Office of Law Enforcement Assistance of the U.S. Department of Justice for a 50-bed emergency-care unit for intoxicated persons.[104] This facility is designed to treat acute alcohol intoxication. It will be located in a mid-town area, will be open on a 24-hour basis, and it will accept volunteer patients and intoxicated persons picked up by police officers and brought to the facility. It is estimated that patients will average 4 days in the unit, which means that it could serve approximately 4,500 patients a year. Such a facility can perform an important function in an overall treatment program, and it could be of substantial assistance in aiding the Court of General Sessions to respond to the crisis precipitated by the *Easter* case. Although the original grant proposal indicated that the facility would be open in November 1966, the Department of Public Health recently notified the Department of Justice that implementation would be postponed until March or April 1967.[105] In contrast, St. Louis was able to initiate such a project within 1 month after the grant was awarded.[106]

Reorganization of the District's efforts in the alcoholism field would ensure a more expeditious and successful implementation of its comprehensive plan. Fragmentation of effort is already a problem. A recent order of the District Board of Commissioners directs several District agencies to develop programs for alcoholics which, at some subsequent time, will be coordinated by the Director of Public Health who has "primary responsibility for initiating such cooperative arrangements."[107] The Department of Public Health, however, can hardly execute this responsibility with a staff of only a single professional charged with the development of programs for both alcoholism and drug addiction. The Commission recommends that responsibility for alcoholism program development should be centralized in the Department of Public Health, which should increase its staff resources devoted to alcoholism. We recommend also that the Department solicit the advice and guidance of experts in this rapidly changing field to ensure a sound, creative program for the Nation's Capital.

LEGAL PROCEDURES AND PRACTICES

As chronic alcoholism is increasingly recognized as a public health problem, existing practices of the police, prosecutor, courts, and correctional officials must be substantially changed. Every effort must be made to eliminate conflicts between the treatment needs of the chronic alcoholic and the practices of law enforcement officials.

The Commission recommends a two-track system for handling the public inebriate:

(1) The first track is a non-criminal process for the person who is intoxicated in public and cannot care for himself, but who is not disorderly. Such a person will be taken into protective custody and brought to a medical facility. After initial examination and emergency care, he will be "dried out" for a short period (3–4 days) on a voluntary basis and then channeled into a medically advisable, voluntary treatment program. Civil commitment under a carefully limited statute would perhaps be available as a last resort only for severely debilitated alcoholics.

(2) The second track is a criminal process for the person who is both intoxicated in public and disorderly. He will be arrested for violation of a criminal statute and taken to a medical facility for initial examination and emergency care. If the offender is a chronic alcoholic, efforts will be made to direct him to a treatment program, and criminal charges will be dropped. If he is not a chronic alcoholic, the prosecutor will exercise his discretion either to initiate a criminal proceeding or dismiss the charges, depending on the severity of the offense, the violator's prior record, and other relevant considerations. Forfeiture of collateral will be available to enable these offenders to terminate criminal proceedings.

Development of such a two-track process requires not only a full range of treatment facilities but also extensive legislative and administrative changes.

Removal from the Streets

The Commission believes that public intoxication alone should not be a crime in the District of Columbia. Criminal sanctions should be restricted to individuals who, in addition to being intoxicated, behave in a disorderly manner so that they substantially disturb other citizens. Persons who are so drunk that they cannot care for themselves should be taken into protective custody by the police, and taken immediately to an appropriate health facility.

Amendment of the Public Intoxication Law

Comparative arrest figures from other major cities suggest that the Metropolitan Police Department is particularly rigorous in enforcing the public intoxication statute in the District of Columbia. Compared with other cities over 250,000 in population, the District of Columbia police in 1965 made more than three times the number of intoxication arrests per unit of population.[108] Whereas the number of intoxication arrests in the District of Columbia in 1965 was 44,218, Cincinnati (population 502,550) had 6,205 arrests,[109] and St Louis (population 750,026) had 2,445, down from 3,761 in 1964 and 7,897 in 1963.[110] Few cities, whatever their size, have intoxication arrest figures approximating the District's.[111] Moreover, the long-term trend of intoxication arrests in the District has been upwards.

Nine years ago the Karrick Report recommended that "appropriate action be taken by the Chief of Police to encourage the policeman on patrol to make a more determined effort to send persons who are simply intoxicated directly to their homes and avoid, where possible, arrest and detention."[112] Nonetheless, many people who are neither disorderly nor incapacitated continue to be arrested, since the existing statute makes it a misdemeanor simply to be intoxicated in public. Only about 12 percent of all drunkenness charges are accompanied by a disorderly conduct charge.[113] Although police criteria attempt to limit arrest discretion, they focus primarly on the degree of intoxication rather than on the behavior of the inebriate. Experience since the Karrick Report indicates that reliance on internal Department controls is not the most effective mechanism for developing proper arrest standards under the intoxication statute.

The Commission recommends that the public intoxication law be amended to require specific kinds of offensive conduct in addition to drunkenness. Other states have laws which require both intoxication and a breach of the peace before an arrest may be made.[114] In the City of New York and the State of Illinois there are no public intoxication statutes; these jurisdictions rely on disorderly conduct laws to arrest intoxicated persons who invade the rights of others.[115]

The Chief of Police has suggested that "most arrests for drunkenness have some element of disorderly conduct" and that the proposed amendment would not materially decrease the number of arrests.[116] However, we recommend that the proposed amendment be drafted to define a narrow range of behavior that would make the inebriate subject to arrest. A substantial interference with other citizens should be required. Persons who are simply noisy, unable to walk properly, or unconscious should not fall within the reach of such an

amended intoxication statute or the existing disorderly conduct statute. The effect of the proposed amendment to the intoxication statute would be a substantial reduction in the number of intoxicated persons arrested. This proposal, of course, would be of no avail if the police resorted routinely to the far-reaching provisions of the District's disorderly conduct statute, rather than the amended intoxication law. The Commission believes that the handling of persons who appear to be intoxicated should be governed by the provisions of the proposed intoxication statute and not left to police interpretation of the broad disorderly conduct statute.

A New Protective Custody Statute

Amendment of the public intoxication statute to require an element of disorderly behavior should be accompanied by legislation giving the police and public health personnel authority to take into "protective custody" and detain until sober any person who is so intoxicated he cannot care for himself. Such a statute would enable police or other public officers to remove incapacitated persons from the street without invoking criminal sanctions inappropriately.

Authority for protective custody rests in a statutory recognition of the common law power of the police to civilly detain on an emergency basis persons dangerous to themselves. This common law authority was recognized by the United States Court of Appeals in analogous circumstances relating to the mentally ill.[117] It is implicit in General Order No. 6, 1962 Series, of the Metropolitan Police Department, authorizing police removal of semi-conscious or unconscious persons to a hospital for examination. Authority of this type is exercised in St. Louis where persons intoxicated on private property (not an offense) are taken into "protective custody," given medical treatment, and released when sober.[118] It also accords with New York law which recognizes the propriety of the use of force by any citizen to detain persons temporarily or partially deprived of reason where "necessary for the individual's protection or restoration to health."[119] Finally, it is practiced by the police regularly when they rush epileptics and heart attack victims to hospitals without first obtaining an informed consent.

Consideration should be given to using public health personnel to take incapacitated inebriates into protective custody. This could avoid the traditionally punitive relationship of the police officer to the alcoholic and free the police from an onerous task which detracts from their other duties. Experiments along this line in New York City and Boston have shown potential and ought to be pursued in Washington.[120]

Emergency Care

Law enforcement and medical authorities agree that public inebriates frequently need prompt medical attention and that persons apparently intoxicated may in fact be suffering from some more serious illness. Moreover, proper treatment for chronic alcoholics requires their immediate introduction into a nonpunitive milieu. All public inebriates, whether arrested because of disorderly conduct or taken into protective custody, should receive emergency medical care.

The proposed emergency care unit is a crucial stage in the Commission's two-track plan. The unit would diagnose all public inebriates to determine their medical needs and whether they are chronic alcoholics. It would then advise the inebriate, the Corporation Counsel and the court of the most appropriate method for dealing with the inebriate's condition. The Corporation Counsel has agreed to cooperate in the operation of the unit by dropping charges against offenders who desire to remain at the unit for several days.

Under the procedures proposed by the Commission, the incapacitated inebriate would be detained only until he attains sobriety. However, if he wishes to remain in the unit for several days on a voluntary basis, he would receive more extensive medical care and diagnosis. Depending upon available resources in the community, the attending physician would then refer the patient to an appropriate treatment program of inpatient or outpatient care.

Several alternatives would also be available for dealing with the disorderly inebriate who is under arrest while at the emergency care unit. He would continue to have the option of posting collateral. If he did not do so, a medical judgment would be made as to whether he is a chronic alcoholic. If chronic alcoholism were diagnosed, the Corporation Counsel would either nolle prosse the case, leaving the individual to follow voluntarily the treatment advice of unit medical personnel, or seek a commitment order under the 1947 statute. If the offender is found not to be a chronic alcoholic, the prosecutor could proceed as in an ordinary disorderly conduct case.

The single 50-bed unit now planned cannot meet the need for detoxification facilities in the District.[121] Until a sufficient number of emergency care units are established, alternative arrangements should be made so that medical care is provided for all public inebriates. We recognize that this will necessitate substantial adjustments of police procedure and the expansion of medical services. Experience in St. Louis during the past 3 years, however, demonstrates that both can be accomplished if responsible officials place high priority on the health needs of intoxicated individuals.[122]

Statutory Commitment for Treatment

The intoxicated individual who is taken into protective custody would not be subject to prosecution. Upon attaining sobriety he would be free to leave the medical facility. Those in need of further care would be so advised by attendant physicians. Experts say that the vast majority of chronic alcoholics, typically passive and dependent personalities, would voluntarily join in an effective, comprehensive treatment program.[123] However, it may eventually prove necessary to provide authority for the compulsory treatment of severely debilitated alcoholics who refuse treatment.

The Commission recognizes that the constitutionality of a civil commitment law for alcoholics, in the absence of a criminal charge, is far from clear. In the recent cases of *Lake* v. *Cameron* and *Rouse* v. *Cameron*,[124] there was a division within the Court of Appeals as to the standards under which the government may deprive an admittedly ill person of his liberty. The decision in *Driver* v. *Hinnant* takes the position that the civil commitment of alcoholics is permissible [125] but the *Easter* decision appears to restrict such power to persons who are a "menace to society," although it also stated that the court was not "called upon to speculate as to the range and nature of permissible detention which could be authorized by Congress beyond that contemplated in the act of 1947." [126] Nevertheless, a narrowly drawn statute, providing for short-term commitment of severely debiliated chronic alcoholics who pose a direct threat of immediate injury to themselves, might be a useful adjunct to a treatment program.[127]

Effective implementation of the Commission's plan will probably require some modification of the 1947 statute, which may still be used for disorderly inebriates. As the Department of Public Health develops the necessary facilities and services, it would be preferable for the statute to provide for commitment to the Department rather than to specific facilities. At that time consideration should also be given to replacing the 90-day commitment with an indeterminate sentence not to exceed 1 year, as recommended by the Karrick Report, with appropriate safeguards. Procedures could be abbreviated without diminishing protection of the defendant's rights. The Commission recommends that issues relating to the operation of the 1947 statute be reviewed by the Judicial Conference of the District of Columbia.

Judicial Procedures

As new procedures are developed for handling public inebriates, it would be an opportune time to enhance the dignity of the judicial process in the D.C. Branch of the Court of General Sessions. Efforts

by the court and prosecutor to schedule hearings in advance would permit the defendant arrested for an alcohol-related offense to come into court in presentable condition. In many cities a special effort is made by the judge to talk with the defendant about his problems, carefully advise him of his basic legal rights, and inform him of the treatment facilities available in the community.[128] This brief expenditure of time makes for a more meaningful experience for the defendant, assists the judge in evaluating his capacity for change, and may have therapeutic significance.[129]

As long as drunkenness offenders remain subject to penal sanctions, the Commission believes that they should be provided with counsel. The impact of legal assistance in these cases may be great. In New York City counsel are now assigned to all defendants in the section of the Criminal Court that deals with drunk-and-disorderly men. In March 1965, prior to assignment of counsel, 1,590 homeless men were arraigned; 1,259 pleaded guilty, 325 were acquitted and 6 were convicted after trial. In March 1966, 1,326 were arraigned; 1,280 were acquitted, only 45 pleaded guilty and one was convicted after trial.[130] In the District at least one Legal Aid attorney should be assigned to the D.C. Branch to interview defendents to see if they desire counsel. Experience with one assigned attorney will help guide future planning for more extensive representation.

Sentencing practices in the court should also be improved. Under the proposed procedures, only disorderly inebriates who are not chronic alcoholics would come before the court for sentencing. Some of them may be incipient alcoholics, however, and might well benefit from some of the sentencing procedures used in intoxication cases elsewhere in the United States, which appear to have shown positive results.[131] The judges of the Court of General Sessions should attempt to agree on specialized sentencing procedures for defendants who have serious drinking problems.

Correctional Programs

Probation services and prison programs for individuals with drinking problems continue to be significant. Neither *Easter* nor the changes proposed by the Commission obviate their importance for incipient alcoholics and for alcoholics who are convicted of crimes other than public intoxication.

As the burden of handling chronic alcoholics shifts to the Department of Public Health, the Probation Department of the court should concentrate its efforts on persons convicted of serious crimes. The Department should prepare complete presentence reports to assist the judges in choosing a proper sentence.[132] Where probation rather than

imprisonment is the sentence, the Department should provide intensive personal contact and field supervision. For those probationers with drinking problems, the Department should rely on the range of outpatient services offered by health authorities and private agencies, instead of limiting the probationer to weekly lecture meetings of dubious value. The special alcoholism unit should be integrated into the overall operations of the office. Finally, the new resources recommended by the American Correctional Association should enable the Probation Department to provide a modern, meaningful probation program for offenders with drinking problems.[133]

The Department of Corrections must also prepare a program for persons who have problems with alcohol. These people need special assistance of the type provided during the 1960 experiment at the Workhouse. A program of post-institutional services should be developed; the chronic alcoholic who is convicted of a crime other than public intoxication should be referred to the appropriate treatment resource upon release.

CONCLUSION

The statutory and administrative changes suggested by the Commission should provide a sound framework for transferring responsibility for chronic alcoholism from law enforcement agencies to public health authorities. These reforms were overdue long before the *Easter* decision. They are now urgently needed.

The Commission's recommendations will not provide the final solution to the problem of the derelict alcoholic. Many of these men have poor prognoses and may never become self-sufficient. For these unfortunate people, simple humanity demands that we stop treating them as criminals and provide voluntary supportive services and residential facilities so that they can survive in a decent manner.

There can be no improvement, however, unless substantial resources are devoted to the establishment of a comprehensive treatment program. In 1947 and again in 1957 public officials recommended substantial revisions in the community's approach to public intoxication, yet change was minimal. The public crisis caused by the *Easter* case has once more brought to the community's attention the quiet despair of thousands of Washington's derelict alcoholics. The community's answer to the *Easter* crisis must not again be expedient, punitive remedies aimed only at removing the problem from public concern; it must reflect a determination for the first time to grapple with the deep-seated disabilities of the city's derelicts.

SUMMARY OF RECOMMENDATIONS

IMMEDIATE ACTION

1. All persons detained for public intoxication or for being drunk and disorderly should be taken initially to a medical facility.

2. The Department of Public Health should assign sufficient personnel to the D.C. Branch of the Court of General Sessions so that all persons detained for public intoxication or drunk and disorderly can be promptly diagnosed.

3. The Corporation Counsel should prosecute only those public intoxication and drunk and disorderly defendants who have not been already adjudged to be chronic alcoholics and should raise the defense of chronic alcoholism where appropriate in any criminal case.

4. The Legal Aid Agency should assign an attorney to the D.C. Branch of the Court of General Sessions.

5. The Alcoholic Rehabilitation Clinic staff should be increased so that outpatient services can be offered to adjudicated chronic alcoholics and voluntary patients and so that weekend and evening hours can be established.

6. The Rehabilitation Center for Alcoholics at the former Women's Reformatory at Lorton should be established as a temporary facility with the full range of planned treatment services.

7. Supplemental appropriations for fiscal year 1967 should be sought for high-priority services and facilities: expanded detoxification centers, an inpatient diagnostic and treatment center in the District, and a comprehensive aftercare program including residential facilities.

LONG-TERM ACTION

8. The Department of Public Health should become the central planning agency for the treatment of alcoholism and should develop a comprehensive treatment program for persons with drinking problems. All other agencies with related programs should be required to plan and coordinate their activities in accord with Department of Public Health supervision. In order to execute these duties properly, the Department of Public Health should enlarge its Office of Drug Addiction and Alcoholism Program Development and enlist the assistance of expert consultants.

9. The public intoxication statute should be amended to require disorderly behavior as an element of the offense.

10. Police and public health personnel should be authorized by statute to take into protective custody intoxicated persons who are incapacitated.

11. All persons arrested for disorderly intoxication or taken into protective custody as incapacitated inebriates should be taken to an emergency care unit for medical attention and diagnosis followed by appropriate prosecutive action or treatment referral.

12. The Corporation Counsel should be guided in his exercise of prosecutive discretion by Department of Public Health diagnostic experts.

13. The Court of General Sessions should develop a uniform sentencing policy for disorderly inebriates.

14. The Alcoholic Rehabilitation Unit of the Probation Department of the Court of General Sessions should be disbanded.

15. Under the guidance of the Department of Public Health, the Department of Corrections should establish a treatment program for prisoners with drinking problems.

16. After an appropriate period of experimentation with voluntary treatment of alcoholics under a comprehensive program, the Judicial Conference of the District of Columbia should consider the need for and the constitutionality of a civil commitment statute for chronic alcoholics and amendment of the existing Rehabilitation of Alcoholics statute.

SECTION II: PRETRIAL RELEASE OF PERSONS CHARGED WITH CRIME

Persons accused of crime are presumed to be innocent and are generally entitled to their freedom until the charges against them are resolved.[1] Release from police custody after arrest, however, is not automatic, but is governed by the operation of laws and judicial practices which comprise our system of pretrial release. Increasingly in recent years this system has been criticized because its reliance on monetary bail causes the pretrial incarceration of those defendants who are too poor to pay the bondsman and obtain release.[2] The system has also been challenged because it permits the release of many persons who commit additional crimes prior to trial.[3] In this section the Commission evaluates the laws and procedures governing the pretrial release of persons charged with criminal offenses in the District of Columbia.

CURRENT PRACTICE AND PROCEDURE

Persons accused of crime in the District may obtain release from custody in various ways. Some post collateral or monetary bond at the police station; others remain in custody until release conditions are set by a judicial officer; a few obtain release upon order of an appellate court. All, however, except those charged with offenses punishable by death, are entitled to bail before conviction and may obtain release by complying with the conditions specified by the court.[4]

RELEASE ON BAIL

Before September 20, 1966, when the Bail Reform Act of 1966 became effective,[5] pretrial release was heavily dependent upon an accused person's ability to pay for a bail bond. The courts were authorized to set bail which would ensure the defendant's presence at trial and, in so doing, could consider such factors as the nature of the offense, character of the defendant and his ability to post bond. The sole purpose of bail was to ensure the defendant's presence at trial. In practice, most bail was conditioned on the posting of a money bond,[6]

which in the District generally ranged from $100 to $50,000.[7] Release on personal recognizance without surety bond was rare until January 1964, when the experimental D.C. Bail Project began operation. These traditional bail practices have now been substantially altered by the Bail Reform Act of 1966, the recent amendment of Rule 46 of the Federal Rules of Criminal Procedure,[8] and the creation of the District of Columbia Bail Agency.[9]

Deficiencies of Old Procedures

The deficiencies of a bail system based on monetary bond have been frequently documented.[10] The experience of the District of Columbia mirrors experience elsewhere in the United States. As shown in Table 1, monetary bonds resulted in substantial pretrial detention because of the defendants' inability to pay bondsmen. Of the 1,321 defendants for whom the United States District Court set bond in calendar year 1965, only 769 (58 percent) were able to obtain release. This contrasts with 43 percent obtaining release in 1960, 38 percent in 1955, and 52 percent in 1950.

Under traditional bail practices in the District, those who were detained pending trial were not as successful in disposing of their criminal charges as those who were released. Although conviction ratios were nearly the same for both groups, those in jail pleaded guilty more often (Table 2). Moreover, the penalties given the two groups of offenders appeared to differ, although it is not known whether the persons detained were in fact more serious offenders. In cases filed in calendar 1965, for example, 40 percent of the 414 convicted persons who had obtained pretrial release were placed on probation, whereas only 18 percent of the 328 convicted defendants who had not been released were granted probation (Table 3). Similarly, only 43 percent of those released before trial went to prison, in contrast to 64 percent of those detained in jail pending trial.

Pretrial detention of large numbers of defendants ensured their appearance in court but at high personal and public cost. As shown in Table 2, 89 persons who were detained in jail in calendar 1965 were acquitted (61 by a verdict of not guilty and 28 by a judgment of acquittal) and 27 ultimately had their cases dismissed. Neither the time which these 116 persons needlessly spent in jail nor the cost of their custody is known precisely, but in fiscal 1962 the average length of detention for persons incarcerated before trial was 51 days and the cost of pretrial detention for all persons accused of crime was over $500,000.[11]

TABLE 1.—*Amount of bond initially set compared with amount actually posted to obtain release**

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

Amount of bond	1950				1955				1960				1965			
	Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Personal bond or recognizance	7	0.3	16	0.7	4	0.3	21	1.4	3	0.2	5	0.3	59	3.7	157	9.8
Up to $500	340	14.8	253	11.0	141	9.1	79	5.1	26	1.8	33	2.3	73	4.6	72	4.5
$501 to $1,000	643	28.1	341	14.9	369	23.8	210	13.5	407	28.3	271	18.8	452	28.2	288	18.0
$1,001 to $2,000	495	21.6	235	10.3	308	19.8	101	6.5	263	18.3	109	7.6	279	17.4	117	7.3
$2,001 to $3,000	156	6.8	57	2.5	200	12.9	57	3.7	168	11.7	59	4.1	183	11.4	68	4.2
$3,001 to $4,000	11	.5	2	.1	42	2.7	13	.8	90	6.8	26	1.8	34	2.1	15	.9
$4,001 to $5,000	56	2.4	11	.5	132	8.5	9	.6	172	11.9	22	1.5	139	8.7	38	2.4
$5,001 to $10,000	49	2.1	6	.3	55	3.5	8	.5	61	4.2	5	.3	64	4.0	11	.7
Over $10,000	28	1.2	1	.0	41	2.6	----	----	33	2.3	2	.1	38	2.4	3	.2
Total	1,785	77.9	922	40.2	1,292	83.2	498	32.1	1,223	85.0	532	36.9	1,321	82.4	769	48.0
Ratio of release obtained to bond set	51.7%				38.5%				43.5%				58.2%			
Bond data unknown	507		22.1%		260		16.8%		217		15.1%		282		17.6%	
Total defendants	2,292		100.0%		1,552		100.0%		1,440		100.1%		1,603		100.0%	

*Because the court may grant a motion to reduce bond, the persons recorded in the bond set columns are not necessarily the same persons who are recorded in the bond posted columns; e.g., a person for whom bond was initially set at $1,000 may obtain release on personal recognizance.

Source: Staff computation based on data collected by C-E-I-R, Inc. from criminal jackets of the United States District Court for the District of Columbia.

TABLE 2.—*Type of disposition for persons released and for persons not released prior to trial*

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

Type of disposition	On bond		Not released		Bail denied or unknown		Total		On bond		Not released		Bail denied or unknown		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	1950								1955							
Convicted:																
Plea of guilty	459	49.8	486	54.2	249	52.6	1,194	52.1	272	54.6	491	60.7	144	58.8	907	58.4
Finding of guilty	172	18.7	128	14.3	119	25.2	419	18.3	69	13.9	45	5.6	27	11.0	141	9.1
Not guilty, insanity	2	.2	1	.1	1	.2	4	.2	2	.4	-------	-------	-------	-------	2	.1
Not convicted:																
Finding of not guilty	122	13.2	151	16.8	50	10.6	323	14.1	56	11.2	158	19.5	25	10.2	239	15.4
Judgment of acquittal	44	4.8	34	3.8	17	3.6	95	4.1	29	5.8	36	4.4	11	4.5	76	4.9
Dismissal	88	9.5	55	6.1	18	3.8	161	7.0	45	9.0	46	5.7	24	9.8	115	7.4
Other and unknown	35	3.8	42	4.7	19	4.0	96	4.2	25	5.0	33	4.1	14	5.7	72	4.6
Total defendants	922	-------	897	-------	473	-------	2,292	-------	498	-------	809	-------	245	-------	1,552	-------
Percent convicted	68.4		68.5		77.8		70.4		68.5		66.3		69.8		67.5	
Percent pleading	49.8		54.2		52.6		52.1		54.6		60.7		58.8		58.4	
Percent tried	36.9		35.0		39.5		36.7		31.3		29.5		25.7		29.5	

Type of disposition	On bond		Not released		Bail denied or unknown		Total		On bond		Not released		Bail denied or unknown		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	1960								1965							
Convicted:																
Plea of guilty	275	51.7	365	54.4	145	61.2	785	54.5	335	43.6	252	46.8	116	39.3	703	43.9
Finding of guilty	69	13.0	58	8.6	19	8.0	146	10.1	113	14.7	104	19.3	50	16.9	267	16.7
Not guilty, insanity	2	.4	1	.1	3	1.3	6	.4	1	.1	-------	-------	-------	-------	1	.1
Not convicted:																
Finding of not guilty	76	14.3	138	20.6	23	9.7	237	16.5	76	9.9	61	11.3	28	9.5	165	10.3
Judgment of acquittal	37	7.1	35	5.2	17	7.2	89	6.2	38	5.0	28	5.2	7	2.4	73	4.6
Dismissal	49	9.2	35	5.2	15	6.3	99	6.9	45	5.9	27	5.0	12	4.1	84	5.2
Other and unknown	24	4.5	39	5.8	15	6.3	78	5.4	161	20.9	67	12.4	82	27.8	310	19.3
Total defendants	532	-------	671	-------	237	-------	1,440	-------	769	-------	539	-------	295	-------	1,603	-------
Percent convicted	64.7		63.0		69.2		64.7		58.3		66.0		56.3		60.5	
Percent pleading	51.7		54.4		61.2		54.5		43.6		46.8		39.3		43.9	
Percent tried	34.6		34.6		26.2		33.2		29.6		35.8		28.8		31.6	

Source: Staff computation based on data collected by C-E-I-R, Inc. from criminal jackets of the United States District Court for the District of Columbia.

Reform Experiments

Efforts to reform bail procedures in the District of Columbia were given impetus in 1963 with the creation of the privately financed District of Columbia Bail Project. Patterned after a comparable New York experiment, the Project operated on the premise that circumstances other than monetary bond would frequently assure a defendant's presence at trial. Investigators employed by the Project determined the accused's length of residence in the community, his family ties, and his employment record. If these conditions appeared favorable, the Project recommended that the court release the accused on personal recognizance rather than on money bond. Judicial officers in the District placed increasing reliance on the Project's recommendations as experience demonstrated the value of this approach. As of July 1, 1966, the Project had secured the release of 779 accused felons and 1,382 accused misdemeanants.[12]

Of the 551 persons released on recognizance to the Project between January 1964 and April 1966 in the U.S. District Court, only 7 (1.2 percent) failed to appear when required.[13] This compared with a "no show" rate of 5.7 percent (97 out of 1,695) among those released on money bond in the U.S. District Court between September 23, 1963 and October 8, 1965.[14] These facts confirm the view that the presence of most accused persons can be assured without money bond and that a rational pretrial release system need not accept the sacrifice of personal freedom and the high custodial costs which characterize a money bail system.[15]

Bail Reform Act Procedures

Under the Bail Reform Act of 1966, any person charged with an offense other than one punishable by death must be released by a judicial officer on personal recognizance or unsecured appearance bond unless release on these terms will not reasonably assure the accused's presence at trial.[16] The release decision takes place at the accused's first appearance before a judicial officer.

If the accused's promise or an unsecured appearance bond are not deemed appropriate, the judicial officer may impose conditions upon his release in the following order of preference prescribed by the statute:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association or place of abode of the accused during the period of release;

TABLE 3.—*Type of sentence for convicted persons released and those not released prior to trial**

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

Type of sentence	1950						1955						1960						1965					
	On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Suspended w/o probation	------	------	1	0.1	------	------	------	------	------	------	3	1.9	2	0.5	1	0.2	------	------	3	0.7	5	1.5	1	0.8
Probation	239	37.8	88	13.0	39	13.8	157	43.0	78	11.3	22	13.8	174	45.1	74	13.2	15	9.2	167	40.3	59	18.0	19	14.5
Fine only	9	1.4	1	.1	1	.4	3	.8	------	------	7	4.4	3	.8	------	------	7	4.3	21	5.1	------	------	3	2.3
FYCA†	------	------	------	------	------	------	14	3.8	34	4.9	5	3.1	34	8.8	77	13.7	30	18.4	40	9.7	52	15.8	14	10.7
Prison term	372	58.8	581	85.9	239	84.8	173	47.4	561	81.4	121	75.6	168	43.5	401	71.5	105	64.4	179	43.2	209	63.7	92	70.2
Other	13	2.1	5	.7	3	1.1	18	4.9	16	2.3	2	1.3	5	1.3	8	1.4	6	3.7	4	1.0	3	.9	2	1.5
Total	633	------	676	------	282	------	365	------	689	------	160	------	386	------	561	------	163	------	414	------	328	------	131	------
All others	289	------	221	------	191	------	133	------	120	------	85	------	146	------	110	------	74	------	355	------	211	------	164	------

Source: Staff computation based on data collected by C-E-I-R, Inc. from criminal jackets of the United States District Court for the District of Columbia.

*This table does not take cognizance of the types of crime which affect severity of sentence and amount of bond, *i.e.*, the persons who did not make bond may be the persons charged with the most serious crimes.

†Federal Youth Correction Act, 18 U.S.C. ch. 402.

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) Require the execution of a bail bond, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a requirement that the accused return to custody after specified hours.[17]

In setting conditions to ensure the accused's appearance, the judicial officer is authorized to consider the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings including any prior flight to avoid prosecution or failure to appear at court proceedings.[18]

The District of Columbia Bail Agency has been established to provide the judicial officer with information about the accused's background.[19] Reporting to the courts of the District of Columbia, the Bail Agency investigates factors relevant to the judicial officer's consideration and reports to him "with or without a recommendation for release on personal recognizance, personal bond, or other non-financial conditions, but with no other recommendation." [20] Subject to budgetary limitations, the Agency performs this task in the case of any arrested person brought before any court in the District or before the U.S. Commissioner.

If an accused fails to appear in court when required, he is considered a "bail jumper" subject to apprehension by the police and the FBI. If he has been released pursuant to the posting of a bail bond for which a bondsman has acted as surety, the bondsman, who stands to forfeit the bond if the court so orders, searches for the defendant.[21] The accused is subject to a maximum of 5 years imprisonment if he willfully fails to appear as required by the court.[22]

RELEASE AT THE PRECINCT

Over one-half of those arrested on non-traffic charges in the District of Columbia secure release prior to appearance before a judicial officer.[23] Release is usually obtained by posting collateral or giving

money bond at the police precinct and is unaffected by the Bail Reform Act.

Collateral

By statute and order of court, the Metropolitan Police Department is authorized to accept cash collateral and release certain minor offenders.[24] There are nearly 300 offenses, including public intoxication and disorderly conduct, where the offender may obtain release by depositing a nominal sum (frequently $10) at the precinct. The posting of collateral usually terminates the entire law enforcement process because the accused elects not to appear in court and the prosecutor elects to accept forfeiture of collateral. Either the accused or the prosecutor, however, may elect to proceed before the court, in which event the collateral may stand as bail, or other release conditions may be set by the court under the Bail Reform Act.

Stationhouse Bond

Police officers are also authorized to accept monetary bonds from persons charged with more serious crimes.[25] In making this determination the police must adhere to a firm court schedule which prescribes a bond amount for each offense and does not permit consideration of other circumstances. Since these bond amounts are generally high, release is not frequently obtained by this method. Among the 11,676 cases filed in the U.S. Branch of the Court of General Sessions in fiscal 1965, 9,021 of the defendants were in custody at the time of their first appearance. Similarly, among the 35,988 cases (exclusive of collateral forfeitures) filed in the D.C. Branch of that court, 26,400 persons were in custody at first appearance.[26]

SUMMONS OR CITATION

A summons or citation issued in lieu of arrest or detention also achieves the release of some persons charged with crime in the District of Columbia. A summons is a notice to appear for court proceedings and is used in various circumstances in many jurisdictions. It may be issued at the scene of an offense, as in the case of a traffic ticket; it may also be issued by a policeman at the precinct station after the accused is booked; or it may be issued by the court or the prosecutor in lieu of an arrest warrant under Rules 4 and 9 of the Federal Rules of Criminal Procedure.

In the District of Columbia the police use the summons primarily for traffic offenses. They have not used it in other cases because of

doubt as to their statutory authority to do so in the absence of specific legislation. Under existing law they have a duty to bring arrested persons to a committing magistrate,[27] and another statute makes it a misdemeanor not to arrest when a crime is committed in an officer's presence.[28] Prosecutors in the District make substantial use of informal summonses to bring potential defendants and witnesses to the prosecutor's office for conferences, but there is very little use of formal summons in lieu of arrest under the Federal rules. Both the Corporation Counsel and the United States Attorney, however, plan to use the summons increasingly in lieu of arrest under Federal and local rules of procedure.[29]

EVALUATION

The Commission strongly supports the reforms in the traditional bail system which are embodied in the Bail Reform Act of 1966 and the creation of the District of Columbia Bail Agency. Experience in the District has demonstrated that money bond is neither a necessary nor logical device to ensure an accused's appearance at trial. Pretrial release on personal recognizance is to be encouraged, and initial reports indicate that the Bail Reform Act has resulted in a significant increase in the number of persons so released.[30] We are confident that the procedures prescribed by the Bail Reform Act and supplemented in the Bail Agency Act can achieve a substantially improved and more equitable bail system.

The Commission urges that practices permitting more extensive release at the precinct station without bail be developed by the police and the Court of General Sessions. Release at the precinct relieves the police of responsibility for housing, feeding and transporting thousands of arrested people. Insofar as collateral forfeitures dispose of cases, court congestion is relieved. Most importantly, release at the precinct avoids the adverse personal effects of needless incarceration where the prosecutor decides not to proceed against a person who has been arrested and held in jail overnight or where the court immediately grants him release on bail.

In view of the individual and public benefits which may derive from prompt release, the Commission recommends the increased use of summons procedures in the District of Columbia. Experiments in several major cities indicate that a summons can be used without damage to the public safety and without serious inconvenience to courts, prosecutors or police.[31] In New York City summonses are issued at the police precinct in misdemeanor cases on the same principle as release by the court on personal recognizance: if the accused has

substantial community ties he can be released simply on his promise to appear in court at a designated time.[32] The Commission endorses the recent action of the Judicial Conference in establishing a committee to explore and develop the wider use of summons procedures.[33] The committee is currently examining those crimes that should be covered by summons procedures, the problems of issuing a summons on the street or at the stationhouse, and the need for legislative changes, if any, to implement more extensive use of summons procedures in the District of Columbia.

THE UNRESOLVED ISSUE

As the bail system was reformed to permit the pretrial release of more defendants, only limited consideration was given to the protection of the public from crimes which may be committed by persons released prior to trial. In the course of its efforts to improve the system of pretrial release, Congress specifically postponed consideration of issues relating to crimes committed by persons released pending trial.[34] The seriousness of the problem, however, is amply documented by newspaper reports of the more sensational instances in which persons released on bail allegedly committed additional crimes.[35] In one 6–week period in early 1966, three separate homicides and a related suicide in the District were attributed to persons released on personal recognizance or on money bond.[36]

Neither the new procedures under the Bail Reform Act nor the old law authorize a judicial officer in setting terms of bail to consider the likelihood that the accused may commit additional crimes before trial. If the accused is arrested for another non-capital offense while he is on pretrial release, he is nevertheless entitled to be admitted to bail on the second offense. Moveover, the first admission to bail may not be revoked, although the conditions of release may be modified to ensure the accused's appearance.[37]

It is generally recognized, however, that in setting high monetary bail judicial officials have considered the defendant's danger to the community, although historically the only purpose of bail was to ensure the defendant's appearance at trial.[38] Under the procedures of the Bail Reform Act this use of monetary bail to detain potentially dangerous persons is substantially curtailed. Application of the Bail Reform Act could result in an increased number of crimes committed by persons released prior to trial who would previously have been detained with no opportunity to commit additional crimes. In light of the seriousness of this problem the Commission has attempted to

develop the relevant facts and to evaluate the legal issues raised by possible legislative remedies.

COMMISSION STUDY

In the absence of any collected data on the general incidence of crime among persons released on bail, the Commission undertook a study of all persons who, after being held for action of the grand jury on felony charges, were released on bail with or without surety between January 1, 1963 and October 8, 1965. At the time of the study there were 2,776 such persons who were awaiting action of the grand jury, trial before the District Court, or appellate disposition. The Commission ascertained whether, while released on bail, any of these persons were again held for action of the grand jury on a felony allegedly committed in the District of Columbia. It also examined the nature of the offenses involved, the criminal record of each defendant allegedly committing an offense on bail, the time elapsed between alleged offenses, and the amount of bond set in the initial and subsequent cases.[39]

Because of the difficulty in collecting data, the Commission study included only felony offenses brought to the attention of a District grand jury. It did not include persons who were released pending disposition of misdemeanor charges, or released persons charged with felonies who were not held for the grand jury. Similarly, the study did not reveal misdemeanors allegedly committed while on bond, subsequent felony charges not brought to the attention of the grand jury, or matters arising outside the District of Columbia. It was limited also to subsequent offenses allegedly committed prior to the time the court records were examined for each releasee. All such records were examined between November 1, 1965, and March 4, 1966.

Incidence of Crime Allegedly Committed on Bail

Among the 2,776 persons who were released on bail pending disposition of felony charges, 207 (7.5 percent) were held for action of the grand jury on one or more felonies allegedly committed while on bail (Table 4).[40] A total of 253 felonies were charged against persons released on bond; 222 of them occurred while the defendant was released on a trial bond. Four persons allegedly committed offenses while released simultaneously on a trial bond in one case and an appeal bond in another case. Three persons were each allegedly involved in 4 separate felony offenses while released, 6 persons allegedly committed 3 offenses

while on bond, and 25 persons were charged with 2 offenses each. In all, these 34 persons accounted for 80 of the 253 alleged offenses.

Table 4 also indicates that the incidence of alleged offenses while on bail was highest among those who were on monetary bond with a surety. The lowest rate was among those persons released under the supervision of the District of Columbia Bail Project.

Table 5 shows the dispositions of the release offenses and the offenses allegedly committed on bond. The significant number of dismissals is attributable in large measure to a prosecution policy not to proceed to trial against a person already convicted in either the original or the subsequent case. Only 7 of the 207 persons who allegedly committed crimes while on bail were not convicted of either the original or the subsequent charge at the time of the survey. Among the 24 who allegedly committed crimes while released pending appeal only 6 had their cases reversed, and all 6 were either reconvicted on the original charge or the charge which arose out of activities committed while on bond (Table 5).

TABLE 4.—*Incidence of alleged felonies among persons released on bail*

Method of release	Number of persons released*	Persons charged with felonies while on bond†		Number of felonies charged against persons released on bond†
		Number	Percent	
All releases	2,776	207	7.46	253
Trial bond	(**)	‡187	----------	‡222
Appeal bond	(**)	‡24	----------	‡34
With surety	§2,300	¶177	7.70	¶219
Without surety	571	¶35	6.13	¶40
D.C. Bail Project	551	26	4.72	28

Source: Commission Bail Study.

*Released on bond between January 1, 1963, and October 8, 1965.

†Limited to those cases where the defendant was held for action of the grand jury as revealed by examination of U.S. District Court records from November 1, 1965, through March 4, 1966.

‡The figures add up to more than 207 offenders and more than 253 offenses because some defendants committed an offense or offenses while on bond in two separate cases—one pending trial and one pending appeal.

**Unknown.

§Estimate: The figure of 2,300 is somewhat larger than the difference between 2,776 total releases and 571 released without surety since some defendants were released twice, once with surety and once without.

¶The figures add up to more than 207 offenders and more than 253 offenses because some defendants committed an offense or offenses while on bond in two separate cases—one with surety and one without surety.

TABLE 5.—*Disposition of cases where 207 defendants allegedly committed additional offenses while released on bail*

Disposition	Number of cases in which release on bond was obtained*		Number of cases arising from offenses allegedly committed while on bond in original case†	
Trial:				
Convicted	123		97	
Convicted on trial	37		26	
Plea accepted	86		71	
To most serious charge		61		47
To lesser felony		3		8
To misdemeanor		22		16
Not convicted	52		113	
Ignored by grand jury	10		36	
After another conviction		6		24
No other conviction		4		12
Dismissed by prosecutor	35		71	
After another conviction		22		62
No other conviction		13		9
Acquittal on trial	7		6	
Trial pending	40		40	
Dead	3		3	
Appeal:				
Affirmed	15			
Reversed	‡6			
Dismissed	1			
Pending	2			
Totals	242		253	

Source: Commission Bail Study.

*Released on bond between January 1, 1963, and October 8, 1965; dispositions obtained from U.S. District Court records from November 1, 1965, through March 4, 1966.

†Limited to those cases where the defendant was held for action of the grand jury as revealed by examination of U.S. District Court records from November 1, 1965, through March 4, 1966; dispositions obtained during same time period.

‡On remand, 2 defendants were reconvicted as charged, 2 defendants pleaded to misdemeanors, 2 defendants' charges were dropped after they were convicted in other cases.

Types of Offenses Involved

Accused felons tend to commit felonies of the same type as the original offense (Table 6). Specifically, 31 of 60 robbery offenses allegedly committed by persons on bond were attributed to persons originally charged with robbery, 32 of the 57 housebreakings to accused housebreakers, 18 of the 30 auto thefts to persons accused of auto theft, and 19 of 28 narcotics offenses to persons accused of narcotics offenses. Of the 11 murder charges against persons on bail, however, 5 were allegedly committed by persons awaiting disposition of robbery cases and 1 each by persons charged with rape, manslaughter, housebreaking, grand larceny, carrying a deadly weapon, and auto theft. The 34 crimes which were allegedly committed by persons on bond pending appeal included 1 murder, 1 rape, 8 robberies, 9 housebreakings, 6 narcotic offenses, and 9 others.

TABLE 6.—*Correlation between felony for which release on bail was obtained and felony charged while released*

Most serious felony pending for which release on bond was obtained* / Most serious felony charged while on bond	Total	1st degree murder	Rape	Kidnapping	2d degree murder	Robbery	Attempted robbery	Aggravated assault	Housebreaking	Abortion	Grand larceny	Carrying deadly weapon	Counterfeiting	Forgery	Auto theft	Narcotics	Other theft, possession	Bail jumping	Bribery, obstructing justice	Operating a still	Gambling
Total	†253	6	2	1	5	60	1	19	57	4	11	5	1	7	30	28	4	1	4	1	6
1st degree murder	1	---	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Rape	5	1	---	---	---	---	---	---	2	---	---	---	---	---	1	---	---	---	1	---	---
Manslaughter	1	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Robbery	58	4	1	---	1	31	1	4	6	---	2	2	1	---	2	3	---	---	---	---	---
Attempted robbery	2	---	---	---	---	1	---	---	---	---	---	---	---	---	---	1	---	---	---	---	---
Aggravated assault	12	---	---	---	---	2	---	5	4	---	---	---	---	---	1	---	---	---	---	---	---
Housebreaking	60	---	---	---	1	13	---	3	32	---	2	1	---	---	6	---	---	1	1	---	---
Abortion	7	---	---	---	---	2	---	---	---	3	---	---	---	---	---	---	---	---	2	---	---
Grand larceny	9	1	---	---	---	---	---	---	1	---	2	---	---	---	2	2	1	---	---	---	---
Carrying deadly weapon	2	---	---	---	1	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Counterfeiting	1	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---
Forgery	8	---	1	---	---	1	---	---	2	---	---	---	---	4	---	---	---	---	---	---	---
Auto theft	37	---	---	1	1	4	---	3	4	---	2	2	---	---	18	1	1	---	---	---	---
Narcotics	33	---	---	---	---	3	---	3	3	---	1	---	---	2	---	19	2	---	---	---	---
Other theft, possession	4	---	---	---	---	---	---	1	2	---	1	---	---	---	---	---	---	---	---	---	---
Perjury	1	---	---	---	---	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Fraud	2	---	---	---	---	---	---	---	---	1	1	---	---	---	---	---	---	---	---	---	---
Operating a still	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	1	---
Gambling	9	---	---	---	---	1	---	---	---	---	---	---	---	---	---	2	---	---	---	---	6

*Felony totals in this column are higher than the actual number of releases on bond since offenders charged with more than one felony during the same release on bond are counted more than once.
†Committed by 207 persons.

Source: Commission Bail Study.

Characteristics of Offenders

While this Commission could not undertake an extensive background study of the accused felons who were charged with committing additional felonies on bail, the readily available information suggests that:

(1) As indicated above, the persons who allegedly committed additional offenses while on bail tended to be charged with crimes similar to the original offense. More than 80 percent committed crimes as serious or more serious than the original offense.

(2) The available data revealed a high incidence of prior arrests and convictions among persons who allegedly committed offenses while on bail. As shown in Table 7, 182 (88 percent) of the 207 had adult arrest or conviction records in the District of Columbia before release on bail; only 25 had no such adult criminal record. In contrast, the Stanford Research Institute (SRI) study shows that 81 percent of convicted felony offenders in 1965 had prior adult records.[41] These percentages are not precisely comparable, however, because the SRI study

TABLE 7.—*Prior adult criminal records of persons allegedly committing offenses while released on bail*

Type of prior adult record	Total number of prior offenses	Offenders with one or more		Offenders with two or more	
		Number	Percent of all offenders	Number	Percent of all offenders
Felony:					
Arrests	499	156	75.4	106	51.2
Convictions	145	89	43.0	29	14.0
U.S. misdemeanors:*					
Arrests	370	131	63.3	83	40.1
Convictions	253	108	52.2	57	27.6
D.C. misdemeanors:†					
Convictions	583	140	67.6	91	44.0
Total	----------	182	88.0	167	80.7

*Misdemeanors prosecuted by the United States Attorney for the District of Columbia. See 23 D.C. Code § 101 (1961).

†Misdemeanors prosecuted by the Corporation Counsel of the District of Columbia. See 23 D.C. Code § 101 (1961).

Source: Metropolitan Police Department criminal records.

(unlike the Commission study) covered only convicted persons and included crimes committed outside the District.

(3) The average age of the persons arrested while on bond was 26½ years. Fifty-one percent of them were 24 years or younger, compared with 41 percent of the convicted felons analyzed by SRI.[42]

(4) There is little correlation between flight to avoid prosecution and the incidence of crime allegedly committed on bail. Only 7 (3.4 percent) of the 207 persons allegedly involved in other offenses forfeited bond in connection with their initial offense—less than the average forfeiture rate of 5.7 percent found by the Commission for all persons released to bondsmen.[43] The low rate of forfeiture may be accounted for by the fact that two-thirds of the 207 defendants were not released on bail after apprehension for their second offense.

Time Elapsed Between Alleged Offenses

Most offenses allegedly committed while on bond occurred within 60 days after release (Table 8). Among offenses committed while awaiting trial, 121 (54 percent) allegedly occurred within 60 days of release, and 71 (32 percent) within 30 days of release. Persons released on appeal bond, however, did not become involved in additional crimes as quickly.

TABLE 8.—*Time between release on bail and alleged commission of subsequent felony*

Length of time in days	Release on trial bond			Release on appeal bond		
	Number of offenses	Percent of offenses	Cumulative percent	Number of offenses	Percent of offenses	Cumulative percent
0–30	71	32.0	--------	1	2.9	--------
31–60	50	22.5	54.5	5	14.7	17.6
61–90	42	18.9	73.4	4	11.8	29.4
91–120	25	11.3	84.7	4	11.8	41.2
121–150	11	5.0	89.6	2	5.9	47.1
151–210	16	7.2	96.8	5	14.7	61.8
211 and over	7	3.2	100.0	13	38.2	100.0
Total	222	100.1	--------	34	100.0	--------

Source: Commission Bail Study.

Amount of Bail

The Commission study verified the general assumption that courts consider danger to the community in setting bail. The average amount of bond set by the court more than doubled in those cases where the defendant appeared before the court a second time for an offense allegedly committed while on bail. The amount of bond increased from an overall average of $1,800 to $3,620 (Table 9). Despite the increase, 76 persons (37 percent) again obtained release.

The Commission also found that the average amount of bond set by the court was greater when bail was sought pending appeal. Over 62 percent of the bonds pending appeal were set in the amount of $2,500 or more, compared with only 27 percent of the bonds set for persons awaiting trial. Table 8 shows that bonds pending appeal averaged $3,190 and trial bonds averaged $1,800. Since the types of crime were roughly the same, there was no obvious variable except the different stage of the proceeding at which bail was sought.

LEGAL ISSUES

The Commission believes that the bail system must be modified in a manner which will give the public greater protection. Possible modifications, however, require careful consideration of the substantial legal questions which underlie any proposal which limits or restrains individual liberty prior to conviction. Whether the proposal imposes special conditions on the release of persons who are likely to commit additional crimes or includes outright "preventive detention" of such persons, the protections of the presumption of innocence, the Eighth Amendment and the Fifth Amendment must be considered.

The Presumption of Innocence

The presumption of innocence is a basic premise of the criminal law in the United States. Technically, it is a legal rule of evidence that places the burden of proof on the government, but there are those who give it much broader interpretation. It is argued that any pretrial incarceration assumes the guilt of the accused and is, therefore, in conflict with the presumption of innocence; thus the presumption has no real vitality unless it is supported by the accused's liberty prior to trial.[44] These broad contentions, however, are difficult to reconcile with the many pretrial restraints which are now accepted, including the denial of bail to persons charged with offenses punishable by death.

TABLE 9.—*Comparison of trial bonds, appeal bonds and bonds set for subsequent offenses*

Most serious crime charged	Original case in which release on bond was obtained				Subsequent case arising from offense charged while on bond in original case				
	Pending trial		Pending appeal		Number where no bond set	Bond set		Bond made	
	Average bond made	Number of bonds made	Average bond made	Number of bonds made		Average	Number	Average	Number
1st degree murder	$7,500	1			6				
Rape	1,400	5			1	$10,000	1		
Kidnapping						11,000	1		
2d degree murder						5,900	5	$3,500	2
Manslaughter	1,500	1							
Robbery	2,790	54	$2,560	9	2	5,130	54	2,860	14
Attempted robbery	1,500	2				1,000	1	1,000	1
Aggravated assault	1,790	12	2,500	1	1	6,790	18	2,340	8
Housebreaking	1,550	55	8,750	2		3,040	57	2,540	23
Abortion	1,750	2	1,000	1		2,500	4	2,500	4
Grand larceny	1,330	6	5,000	1		2,480	10	1,200	4
Carrying deadly weapon	1,600	5				1,400	5	1,400	5
Counterfeiting	500	1				1,000	1	1,000	1
Forgery	667	6			1	2,100	5	1,500	1
Auto theft	743	28	1,250	2	4	1,440	26	750	6
Narcotics	2,350	23	3,430	7	4	3,070	23	2,540	12
Other theft or possession	1,000	4				1,830	3	2,000	2
Perjury			1,000	1					
Fraud	750	2							
Bail jumping					1				
Bribery, obstructing justice	2,500	1				2,340	3	1,000	2
Operating a still	1,000	1			1				
Gambling	1,000	9			1	1,000	5	1,000	5
Average for all crimes	1,800		3,190			3,620		2,180	
Totals		218		24	22		222		90
Number of persons		187		24					76

Source: Commission Bail Study.

The Eighth Amendment

Although the Eighth Amendment provides that "excessive bail shall not be required," it does not contain words explicitly conferring a right to bail. The right to bail was separately legislated in the Judiciary Act of 1789, 2 years before the Amendment was ratified. The Judiciary Act provided that "upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death." [45]

The meaning of the Amendment, nevertheless, has been much debated. It is argued that the Amendment must create an absolute right to bail if it is to have any meaning at all. Support for this view is found in Justice Black's observation in dissent that a contrary reading would reduce the Amendment to "just about nothing" since Congress could by statute grant or withhold the right to bail as it saw fit.[46] Further, it has been contended that a draftsman's lapse prevented the Eighth Amendment from reflecting the American assumption that every man was entitled to bail in all non-capital cases.[47]

The contrary arguments rely on the literal words of the Amendment, which do not specify a right to bail, and the contention that its progenitor, the English Bill of Rights of 1689, never contemplated an absolute right to bail.[48] It is also argued that the nearly simultaneous drafting of the Eighth Amendment and the Judiciary Act indicates an intention to leave the right to bail in the legislative arena. Furthermore, the constitutional right, if it exists, is already dependent upon the legislature's definition of capital crimes, for which bail may be denied.[49]

The Supreme Court has not resolved the meaning of the Eighth Amendment although language in its opinions supports both sides of the question. In *Stack* v. *Boyle* the Court held that bail set at $50,000 for each of 12 members of the Communist Party charged with violation of the Smith Act was excessive under the Eighth Amendment in the absence of adequate evidence to the contrary.[50] The majority opinion acknowledged the statutory nature of the right to bail, but added: "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." [51] In *Carlson* v. *Landon* the Court held that bail could be denied pending deportation proceedings against aliens suspected of being members of the Communist Party; although it recognized that deportation proceedings were not criminal, the majority opinion commended the view that the Eighth Amendment did not create an absolute right to bail.[52]

The Fifth Amendment

Pretrial detention of any person based on the likelihood of additional crimes is said to violate the Fifth Amendment because it discriminates against the defendant who is detained. Such a defendant is hampered in the preparation of his defense; detention may cause him to plead guilty rather than seek a trial; and his appearance in the courtroom in the custody of a Marshal has an adverse psychological effect on the jury. Further, it is argued that pretrial detention minimizes his chances of probation.[53]

It is also contended that deprivation of liberty based on future criminal conduct is a denial of due process contrary to the Fifth Amendment. Such deprivation assumes, prior to a judicial determination, that the accused has committed a crime and will commit others. In addition, it is asserted that prediction of future criminal conduct is so imprecise that standards of sufficient certainty to satisfy due process cannot be devised. More broadly, it is said that pretrial detention "would go contrary to our whole tradition of bail" [54] and is "unprecedented in this country . . . and frought with danger of excesses and injustice." [55]

In rebuttal to contentions concerning the effect of detention on a proper defense, it is maintained that any inequity can be eliminated by changes in the judicial process. Specifically,

> (1) If a hearing discloses that detention is interfering with case preparation, the court can modify the detention by changing conditions to liberalize visitation privileges or even to grant daytime release. In exceptional cases of prejudice, release might be granted despite the risks of criminal activity.
>
> (2) The liberalized sentence-crediting provisions now incorporated in the Bail Reform Act and other safeguards, including limitation on the length of detention, would adequately guard against the possibility of a plea of guilty induced solely by detention.
>
> (3) Administrative and mechanical safeguards can readily be formulated to avoid the appearance of criminality resulting from the defendant's entrance into the courtroom from the cell block.
>
> (4) Sentences are based on the nature of the crime and the character of the defendant. Frequent denial of probation to offenders detained pending trial is attributable to these factors, and not to the mere fact of pretrial incarceration.

With respect to allegations that due process precludes any deprivation of liberty based on future criminal conduct, it is argued that

sufficient procedural safeguards can be devised to meet the standards of the Fifth Amendment. The arguments are made in this manner:

(1) The bail system authorizes restraint on liberty prior to judicial determination of guilt by permitting pretrial detention in capital cases and in those cases where the defendant cannot meet the conditions of bail. Insofar as the likelihood of the defendant's appearance at trial is considered in setting terms of bail, a prediction of future conduct is made.

(2) In other contexts deprivation of liberty is constitutional. For example, the defendant who is mentally incompetent is confined prior to a determination of guilt;[56] a mentally ill person may be civilly committed;[57] and a defendant who is being deported may be detained because of the likelihood of future dangerous conduct.[58]

(3) The public interest in protection against crime is equally as great as the other public interests which are protected by the present bail system.[59] Moreover, the difficulty in accurately identifying persons who are risks to community safety is no greater than identifying persons who may flee to avoid justice.

(4) Procedural safeguards can be established to assure a full judicial hearing on the question of future conduct and to prevent pretrial detention of persons who are not risks to the public safety.

PROPOSALS TO CURB CRIME BY PERSONS ON BAIL

After consideration of the facts and legal issues, the Commission concludes that the public can be provided substantially increased protection against persons who may commit additional crimes on bail without violating the constitutional rights of such individuals. The Commission is unanimous in supporting the first four of the following five recommendations; a majority of the Commission also supports a limited form of preventive detention.

Amendment of the Bail Reform Act

The Commission recommends amendment of the Bail Reform Act to allow the court to consider the defendant's potential danger to the community as well as the likelihood of flight in setting conditions of release. While it is possible that constitutional objections may be raised against any restrictions on a person's liberty based on a belief that he is a danger to society, we believe that reasonable restrictions would be no more unlawful than those presently imposed to ensure the accused's presence at trial.

Careful selection of conditions of release may serve to reduce crime among those who are granted bail. Conditions of release already available under the Act include close supervision of the accused by a designated organization, restriction on travel, association or place of residence, or night-time custody. We do not, however, believe that courts should be authorized to set a money bond as a condition of release in default of which a court could detain an accused whom it finds might be a future threat to the community. Such a power would be a reversion to the former practice of detention through high bail recently eliminated by the Bail Reform Act. The posting of money bond has little deterrent value since it is usually the bondsman, not the accused, who will suffer financial loss in the event the conditions are breached. Any connection between money bond and lawful conduct appears as tenuous as the now discredited connection between money bond and appearance at trial.

Additional Penalties

Legislation should be drafted which authorizes the imposition of additional penalties for an offense committed by a defendant while released on bail. The Commission recommends that the legislation permit the court to double the usual maximum sentence provided for the offense. If the maximum sentence would ordinarily be 1 year, the offense should be tried as an indictable misdemeanor with a maximum of 2 years imprisonment. If such a statute is enacted, the defendant at the time of pretrial release should be precisely notified of the possible consequences if he commits an additional offense while released.

Expedited Trial

As discussed in chapter 5, the Commission is generally persuaded that more expeditious handling of criminal cases will enhance the deterrent effect of the law and thereby reduce crime. We believe this technique to be especially applicable in dealing with the problem of additional crimes committed by persons awaiting disposition of criminal charges. According to the Commission's study, 68 percent of the offenses committed by persons on pretrial release occurred after the initial 30 days of release. Expedited processing, of course, will not guarantee that fewer released persons will commit crimes. It will serve, however, to reduce sharply the opportunity for criminal activity and to demonstrate in the most meaningful way that criminal activity is promptly followed by apprehension, prosecution and punishment.

The Commission recommends that the prosecutor and courts should expedite the trial of those persons believed to constitute a serious menace to the community. We believe that cases identified by the prosecutor as requiring expedited handling should be set down for trial within 30 days after indictment. By means of pretrial conferences and prompt handling of motions, preliminary matters should be disposed of within the prescribed timetable. Continuances should be permitted only upon showing of extraordinary cause; if granted, such continuances might also be accompanied by more stringent pretrial release conditons set by the judge under the Bail Reform Act. We believe that the rights of the defendant can be appropriately protected by judicial rulings at the same time that their cases are tried within the recommended time limits.

Revocation of Pretrial Release

This Commission also recommends legislation which will authorize revocation of pretrial release when an accused who is released on bail is again arrested and held by a committing magistrate or other judicial officer on a felony or serious misdemeanor charge. Forfeiture of a bond and criminal penalties are presently prescribed only upon the defendant's failure to appear in court. We recommend that the Bail Reform Act be amended to allow revocation where subsequent crimes are alleged and probable cause for arrest is found by a judicial officer.

The Commission is not persuaded by the constitutional objections which may be raised to legislation authorizing revocation of pretrial release where the accused is charged with a subsequent crime. Revocation of release is within the court's traditional power; it is presently used to protect the integrity of judicial proceedings and is analogous to the use of contempt powers against persons who violate court orders. Courts may now detain persons on bond who interfere with the orderly conduct of a trial.[60] We believe that the risk of misuse of the proposed revocation procedures is minimized by requiring a judicial determination of probable cause to hold the defendant on the second charge, so that the police could not accomplish revocation of release by a series of harassing arrests. Since the defendant will be held only on probable cause to believe that he has in fact committed a second offense while released, we believe that the due process problems which would otherwise be involved are substantially decreased.

After such legislation is passed, the prosecutor's offices in the District of Columbia should develop administrative procedures for full utilization of revocation authority. The names of persons held for action of the grand jury and those charged with misdemeanors should

be checked daily to determine if they were released on bail in other pending cases; motions for revocation should be filed immediately where appropriate. Pending passage of the legislation, prosecutors should initiate the recommended administrative procedures to check on all persons released in capital cases or those pending appeal, where the court presently has discretion to revoke release. Every effort must be made to avoid repetition of the cases disclosed by the Commission's study in which 34 persons committed one offense while released on bail, secured release once again, and committed further offenses.

Preventive Detention*

In addition to these four proposals, the majority of the Commission believes that the public safety also requires the outright detention in selected cases of persons accused of crime based on the likelihood that they will engage in criminal conduct if released. After considering the opposing arguments, the majority concludes that the courts are presently capable of identifying those defendants who pose so great a threat to the community that they should not be released, and that a constitutionally sound statute authorizing dentention in certain cases can be drawn.

The Commission thus recommends legislation authorizing a judicial officer to deny release on bail to a person who is arrested and presented on a felony charge and who, by reason of his prior criminal record, his prior pattern of vicious antisocial behavior, and/or the nature of the offense with which he is charged, evidences a high degree of probability that if released prior to trial he will cause the death of, or inflict serious bodily injury to, another or will be a grave menace to the physical safety of the public. As these criteria suggest, the proposed legislation is designed only for those circumstances where release poses an extremely high danger to the community. It should be enacted only with these additional provisos:

(1) Authority to detain should be exercised only when it is clear that conditional release under the Bail Reform Act, amended as recommended by this Commission, would not provide necessary protection.

(2) Such authorization may be exercised only after a hearing in which the arrested person is represented by counsel and in which the government sustains a burden of proving by a preponderance of the evidence that the accused comes within the exceptional case defined by the statute.

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*The views of the minority of the Commission on this issue are set forth at pp. 930–36.

(3) The judicial officer conducting such hearing shall be required to make findings of fact and conclusions of law, and the accused shall have an immediate right of appeal to a U.S. District Court judge and thereafter to the U.S. Court of Appeals for the District of Columbia.

(4) Any evidence taken at such hearing shall not be admissible at the trial either as impeachment or in lieu of *de novo* proof of the facts alleged.

(5) The trial of a person who is detained must commence within 30 days after entry of the order of detention unless extended for extraordinary cause.

(6) During detention the arrested person must be permitted free access to counsel, friends and family and must not be interrogated by any government officer while detained without express permission. He must also be separated from persons already convicted and be given credit for time spent in custody against any sentence eventually imposed.

The majority of the Commission believes that this legislation meets the due process requirements of the Fifth Amendment. It requires a full hearing with right of appeal and is based on a reasonable finding that alternatives to pretrial detention do not adequately protect the community. Further, there are additional procedural safeguards, including adequate provision for case preparation, prompt trial and credit for time served pending trial.

Because of the circumscribed nature of the proposed statute we do not anticipate widespread use of the power to detain. Detention should be limited to the truly high-risk population. It is our firm conviction, however, that our system must be capable of dealing with these potentially dangerous defendants and that the difficult issues involved in preventive detention should be squarely and openly confronted. The criminal law can be neither sound nor respected if it fails to provide needed protection for the public when all other reasonable alternatives are insufficient.

SUMMARY OF RECOMMENDATIONS

1. The Bail Reform Act of 1966 should be amended to permit a judicial officer to consider a defendant's danger to the community if released on bail. However, where danger to the community is a factor, the judicial officer should not be authorized to condition release of a defendant on a monetary bond.

2. The Bail Reform Act should be further amended to authorize revocation of the release of any defendant who is charged with a crime committed while released on bail where there has been a judicial find-

ing of probable cause to believe that the defendant committed the subsequent offense.

3. Legislation should be adopted which doubles the maximum penalty for any offense committed by persons while released on bail pending trial or appeal in a criminal case.

4. Persons who are potentially dangerous to the community should be tried within 30 days after indictment. Continuances should be granted only upon extraordinary cause.

5. The majority of the Commission recommends that legislation be adopted to authorize the pretrial detention of those defendants who present a truly high risk to the safety of the community.

6. In those cases where denial of bail now lies within the discretion of the court, the prosecutor should establish reliable administrative procedures to ensure that relevant facts about a defendant's background are presented to the court and that prompt notification is given to the court whenever there is probable cause to believe the defendant has committed a crime while released.

7. Further study of the type initiated by this Commission should be conducted to determine the characteristics of persons who commit offenses while released pending criminal proceedings, to formulate standards for predicting the criminal activity of persons so released, and to evaluate the effect of any of the above Commission recommendations which may be put into effect. The United States Attorney's Office, the Metropolitan Police Department, the courts, and the District of Columbia Bail Agency should assist in these efforts.

8. Procedures should be developed by the joint efforts of the courts, the Metropolitan Police Department, the United States Attorney, the Corporation Counsel, and the Judicial Conference Committee on Summons to facilitate the release on summons of increased numbers of persons after arrest and prior to presentment before a judicial officer under existing law. If legislative authority is needed, it should be formulated and adopted.

SECTION III: THE MENTALLY ILL OFFENDER

The relationship between mental disorder and criminal behavior is a matter of intense public interest, raising fundamental questions regarding the causes of crime and the timely identification and treatment of the mentally deranged. In this section the Commission considers only one of these complex problems—that which arises when the mental condition of a defendant becomes an issue in a criminal proceeding. Few disagree with the principle that persons suffering from severe mental disorders should not be held legally responsible for their criminal acts. Many, however, disagree with the application of this principle in the District of Columbia, particularly since the 1954 decision of the United States Court of Appeals for the District of Columbia Circuit in *Durham* v. *United States*.[1]

CURRENT PROCEDURES AND PRACTICES

THE LEGAL FRAMEWORK

The defendant's mental condition may become relevant at various stages of a criminal prosecution. It may become an issue before trial by a claim that the defendant is not mentally competent to stand trial. In the District of Columbia the test of fitness to stand trial is whether the accused is "unable to understand the proceedings against him or properly to assist in his own defense."[2] At the trial the accused may contend that he is not guilty because he was of unsound mind at the time of the alleged offense. The accused's mental condition may also be relevant following trial, since a defendant who is found not guilty by reason of insanity in the District is automatically committed to a mental institution.[3] In order to secure unconditional release, he must convince the court by a preponderance of the evidence that he "has recovered his sanity and will not in the reasonable future be dangerous to himself or others."[4] In sum, it is essential to distinguish between (1) competence to stand trial, (2) responsibility for the offense, and (3) eligibility for release from hospital confinement. Different legal standards and separate policy considerations are applicable to each of these problems.

Pretrial Procedures

A pretrial mental examination may be ordered by the court on its own initiative or upon the motion of defense counsel or the prosecutor. It is designed to obtain psychiatric opinion both with respect to the accused's competency to stand trial[5] and, in most cases, his mental condition at the time of the alleged crime.[6]

Most pretrial mental examinations in the District are performed at government expense on an inpatient basis at government hospitals. Defendants referred from the United States District Court are examined at Saint Elizabeths Hospital and persons charged in the Court of General Sessions are usually examined at D.C. General Hospital. Commitment to these hospitals for mental examination has ranged from a period of 30 to 90 days.[7] In addition, Legal Psychiatric Services, a division of the D.C. Department of Public Health, performs a few pretrial mental examinations.[8]

Until recently the indigent defendant's primary means of securing evidence on his competence to stand trial or criminal responsibility was through pretrial mental examination by doctors employed by the government. Now, however, the Criminal Justice Act authorizes payment of fees to private experts on behalf of indigents,[9] the Legal Aid Agency has a grant for this purpose,[10] and the Georgetown Institute of Criminal Law and Procedure has instituted a pretrial clinic.[11]

At the conclusion of the examination, a psychiatric report is submitted to the court, which determines the defendant's competence to stand trial. If any party objects to the psychiatric report, a hearing on the defendant's competence must be held; if the court finds that the defendant is incompetent to stand trial, it must commit him to a mental hospital.[12] The court may later find the defendant competent to stand trial upon certification of the hospital; if there is objection, a hearing is required.[13]

Problems relating to pretrial examinations were the subject of a recent 3-year study by a District of Columbia Judicial Conference Committee. Its report revealed that motions for pretrial mental examination were made in cases involving 1,668 (8.9 percent) of the 18,830 defendants prosecuted in the United States District Court during fiscal years 1952 through 1963. Of these 1,668 motions for an examination, 94.5 percent were granted and 28.2 percent of these examinations ultimately resulted in findings of incompetence. The study shows, therefore, that the District Court has been liberal in granting applications for psychiatric examination and that approximately 2.1 percent of all defendants during the 12-year period were ultimately adjudged incompetent to stand trial.[14] In recent years the proportion of defendants filing such motions has increased:[15]

17.1 percent of all defendants filed motions for mental examination in calendar 1965.[16]

The Judicial Conference Report also revealed that only 38 of the 379 persons found incompetent to stand trial in fiscal years 1952 through 1962 were not restored to competence by the end of fiscal 1963. The median duration between a judicial finding of incompetence and a finding of restoration of competency was 16.2 months.[17]

Criminal Responsibility

There has been relatively little dispute with respect to the standard governing fitness to stand trial. On the other hand, there has been intense controversy for more than a century concerning the appropriate rule to be applied in determining an individual's responsibility for a criminal offense.

Most American jurisdictions follow the test of responsibility formulated in 1843 by the English House of Lords in *M'Naghten's Case*.[18] Under this standard a defendant who pleads insanity must prove that "at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know that he was doing what was wrong."

Since 1929 the *M'Naghten* "right-wrong" test has been supplemented in the District by the "irresistible impulse" test, which excuses a defendant if "his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, though knowing it to be wrong."[19]

The *M'Naghten* test has been attacked for many years. The essence of this criticism has been that the *M'Naghten* rule concentrates upon the accused's intellectual capacity and disregards the psychiatric view that a person may be impelled to commit an unlawful act by deep-rooted emotional factors. Thus, an individual may intellectually know right from wrong, but lack the necessary capacity for self-control because of an emotional disorder. The *M'Naghten* test has recently been rejected as the applicable standard by the Courts of Appeals for the Second, Third and Tenth Circuits and by a number of state courts.[20] The American Law Institute has also recommended adoption of a new standard of criminal responsibility formulated as follows:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.[21]

The District of Columbia followed the *M'Naghten* and irresistible impulse rules until 1954 when the Court of Appeals in *Durham* v. *United States* announced a new test of criminal responsibility. Under this standard "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." [22] The Court of Appeals found that the "right-wrong" test did not "take sufficient account of psychic realities and scientific knowledge." [23] It also concluded that the irresistible impulse test gave "no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test." [24] The *Durham* rule was designed to reconcile the legal test of criminal responsibility with advances in psychiatric knowledge. Specifically, it was framed to permit psychiatrists to testify in their own terms concerning the accused's mental condition, thereby facilitating the kind of communication between psychiatric experts and the courts which was felt to be impeded by the existing tests.

Various objections were leveled against the *Durham* test.[25] It was argued that there was ambiguity in the requirement that the criminal act be shown to be the "product" of the mental disease. Other critics expressed concern that undue weight was being accorded to the opinions of psychiatrists. These problems were considered by a unanimous en banc decision of the Court of Appeals in 1962 in *McDonald* v. *United States*.[26] In addition to defining more rigorously the amount of evidence required for a defendant to raise the issue of insanity, the court emphasized in *McDonald* that the issue should be left in the hands of the jury; whether a psychiatrist deemed a particular defendant to be mentally diseased was not dispositive. The court also defined a "mental disease or defect" to include "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." [27] The *Durham* test, as amplified by *McDonald*, is similar to the "substantial capacity" standard of the American Law Institute.

A defendant is presumed to be sane. An accused who claims he is not criminally responsible has the initial duty of introducing "some evidence" showing that he suffered from a mental disease or defect at the time of the alleged offense. If some evidence of lack of mental responsibility is received, then in the trial courts of the District, as in all Federal courts, the prosecution bears the burden of proof on the sanity issue.[28] In such a case the prosecution must prove beyond a reasonable doubt either that the accused was not mentally diseased, or that the crime was not the product of mental disease. If the prosecution does not carry its burden, the jury, after finding that the

defendant committed the act, may then find him not guilty by reason of insanity.[29]

Post-Trial Hospitalization and Release

In 1955 Congress enacted a statute making hospitalization automatic and mandatory in every case tried in the District where a defendant is found not guilty by reason of insanity.[30] The statute is designed to guard against imminent repetition of a criminal act by persons acquitted on insanity grounds and to discourage frivolous insanity pleas.[31] However, if the insanity issue is raised against the accused's wishes by the court or the prosecution, as may be necessary if his actions cast sufficient doubt upon his mental state,[32] the defendant may not be automatically committed to a mental hospital; the only recourse in such a case after an acquittal on insanity grounds is a civil commitment proceeding.[33]

The automatic commitment statute authorizes unconditional and conditional releases from compulsory hospitalization. For an unconditional release the hospital superintendent must certify to the District Court that the defendant "(1) . . . has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital . . . ." [34] The court may authorize release solely on the basis of this certification, but a hearing must be held if the prosecutor objects. Construing this statute, the Court of Appeals has held that to secure a release "there must be freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future." [35]

Conditional release may be authorized if the superintendent certifies that the defendant is fit "to be conditionally released under supervision." [36] The court is vested with ultimate authority to determine whether, and under what conditions, probationary release will be allowed.

EXPERIENCE UNDER THE DURHAM RULE

Number of Defendants Acquitted

In the 13-year period from fiscal 1954 through 1966, 387 defendants were found not guilty by reason of insanity in the United States District Court for the District of Columbia. As shown by Table 1, this represents 2.1 percent of all cases terminated and 6.5 percent of all cases tried. The number of persons acquitted by reason of insanity

since *Durham* has ranged from a high of 66 each year in fiscal 1961 and 1962 to a low of 7 in 1957. The number of persons absolved on grounds of insanity has declined since the decision by the Court of Appeals in *McDonald* in fiscal 1963.

Since 1958, the first year for which Saint Elizabeths Hospital records an admission of a patient found not guilty by reason of insanity in the Court of General Sessions, 230 persons have been so acquitted through fiscal 1965. As in the District Court, the Court of General Sessions insanity acquittals fluctuated considerably from year to year. They ranged from 5 acquittals in fiscal 1958 to a high of 51 in 1960. Most of the insanity acquittals in the Court of General Sessions have occurred in the United States Branch (184 defendants), yet in the peak year of fiscal 1960 acquittals constituted only 0.48 percent of the cases filed in that branch. In fiscal 1966 there were 24 defendants found not guilty by reason of insanity in the Court of General Sessions.

TABLE 1.—*Persons found not guilty by reason of insanity*

[U.S. District Court for the District of Columbia, fiscal years 1954–1966]

Fiscal year	Defendants in cases terminated*	Defendants in cases tried*	Defendants NGI†	NGI as percent of def. in cases terminated	NGI as percent of def. in cases tried
1954‡	1,870	673	3	0.2	0.4
1955	1,384	453	8	.6	1.8
1956	1,595	456	16	1.0	3.5
1957	1,454	456	7	.5	1.5
1958	1,666	522	17	1.0	3.3
1959	1,642	528	32	1.9	6.1
1960	1,367	400	35	2.6	8.8
1961	1,337	457	66	4.9	14.4
1962	1,282	480	66	5.1	13.8
1963	1,183	398	53	4.5	13.3
1964	1,142	393	23	2.0	5.9
1965	1,286	372	35	2.7	9.4
1966	1,230	380	26	2.1	6.8
Totals	18,438	5,968	387	2.1	6.5

*Source: Administrative Office of the United States Courts.

†"NGI"=not guilty by reason of insanity in this and subsequent tables.

‡The fiscal year preceding the decision in *Durham* v. *United States*. Prior to this year, insanity patients were not recorded separately from all other prisoner patients at Saint Elizabeths Hospital.

Crimes Involved

Persons found not guilty by reason of insanity are usually involved in the more serious crimes. Table 2 shows that 52 percent of the persons acquitted by reason of insanity in the United States District Court were charged with crimes of murder (14.7 percent), robbery (13.6 percent), housebreaking (13.6 percent), or aggravated assault (10.5 percent). No other crime accounts for more than 10 percent of the total. Table 2 also shows that 54 percent of the insanity findings in the Court of General Sessions involved simple assault and petit larceny.

The relationship between crime and the insanity defense is further amplified in Table 3. Since fiscal 1954, 17 percent of the persons charged with murder have been found not guilty by reason of insanity. This proportion is considerably higher than the ratio for any other crime. In only two other categories, rape and other sex offenses, did insanity acquittals exceed 3 percent of the total dispositions.

TABLE 2.—*NGI admissions to Saint Elizabeths Hospital, by crime charged*

U.S. District Court, FY 1954*–1965			Court of General Sessions, FY 1958*–1965		
Crime charged	Number	Percent	Crime charged	Number	Percent
Murder	53	14.7	Simple assault	65	28.3
Rape	16	4.4	Petit larceny	59	25.7
Other sex offenses	25	6.9	Carrying deadly weapon or possession of prohibited weapon.	17	7.4
Manslaughter	6	1.7			
Robbery	49	13.6	Unlawful entry	11	4.8
Aggravated assault	38	10.5	Sex offenses	10	4.3
Housebreaking	49	13.6	Destroying private or movable property.	8	3.5
Grand larceny	16	4.4			
Forgery	31	8.6	Threats	7	3.0
Auto theft	28	7.8	Other U.S. offenses†	7	3.0
Narcotics	30	8.3	Drunk and/or disorderly	33	14.3
Other felonies	20	5.5	Traffic violations	7	3.0
			Other D.C. offenses‡	6	2.6
Total	361	100.0	Total	230	99.9

Source: Saint Elizabeths Hospital.

*Earliest year for any separately recorded not guilty by reason of insanity admission.

†"U.S. offenses," in this and following tables, are misdemeanors prosecuted by the United States Attorney for the District of Columbia. See 23 D.C. Code § 101 (1961).

‡"D.C. offenses," in this and following tables, are misdemeanors prosecuted by the Corporation Counsel of the District of Columbia. See 23 D.C. Code § 101 (1961).

Psychiatric Diagnosis

Of the 591 persons admitted to Saint Elizabeths Hospital from the two courts after verdicts of not guilty by reason of insanity during fiscal years 1954 through 1965, 326 (55 percent) were diagnosed as suffering from schizophrenia or other psychoses, organic disorders, or

TABLE 3.—*Persons found NGI, by crime charged*

[U.S. District Court: fiscal years 1954–1965]

Crime charged	Defendants in cases terminated*	Defendants NGI	
		Number	Percent
Murder	319	53	16.6
Rape	448	16	3.6
Other sex offenses	328	25	7.6
Manslaughter	393	6	1.5
Robbery	2,429	49	2.0
Aggravated assault	1,379	38	2.8
Housebreaking	2,005	49	2.4
Grand larceny	1,148	16	1.4
Forgery	1,190	31	2.6
Auto theft	1,438	28	1.9
Narcotics	1,678	30	1.8
Totals	12,755	341	2.7

*Source: Staff computations based on data maintained by the Administrative Office of the United States Courts.

mental deficiency (Table 4). Of the remainder, 85 (14 percent) were psychoneurotic, 141 (24 percent) were suffering from personality disorders, and 39 (7 percent) were diagnosed on admission as "without mental disorder."

The Commission is informed that defendants admitted "without mental disorder" fall into four categories: (1) Those examined by Saint Elizabeths before trial where the psychiatrists disagree on the

TABLE 4.—*Psychiatric diagnoses of NGI admissions to Saint Elizabeths Hospital*

Psychiatric diagnosis	U.S. District Court, FY 1954*–1965		Court of General Sessions, FY 1958*–1965		Total	
	Number	Percent	Number	Percent	Number	Percent
Organic disorder	37	10.2	26	11.3	63	10.7
Schizophrenia	141	39.1	97	42.2	238	40.3
Other psychoses	5	1.4	9	3.9	14	2.4
Mental deficiency	6	1.7	5	2.2	11	1.9
Psychoneurotic	65	18.0	20	8.7	85	14.4
Personality disorder	87	24.1	54	23.5	141	23.9
Without mental disorder	20	5.5	19	8.3	39	6.6
Total	361	100.0	230	100.1	591	100.2

Source: Saint Elizabeths Hospital.

*Earliest year for any separately recorded not guilty by reason of insanity admission.

diagnosis; if the majority agrees that the defendant is without mental disorder his diagnosis will be so recorded even if testimony of the psychiatric staff who believe otherwise results in an insanity acquittal; (2) those examined by Saint Elizabeths before trial where the psychiatrists are unanimously of the view that the defendant is without mental disorder but testimony of a psychiatrist hired by the defendant results in an insanity acquittal; (3) those who are not examined by Saint Elizabeths psychiatrists until after trial where testimony of other psychiatrists produces an insanity acquittal; and (4) those defendants who refuse to cooperate in a pretrial mental examination, are found not guilty by reason of insanity through psychiatric testimony from other sources, and when examined by Saint Elizabeths psychiatrists after admission are found to be without mental disorder. This last category consists of very few defendants; most defendants examined before trial who are characterized as without mental disorder do cooperate fully.[37]

Defendants suffering from personality disorders are also of particular interest since there is controversy whether such persons should be absolved of criminal responsibility.[38] Personality disorders are not characterized by gross distortions and falsifications of external reality as in psychoses, nor by anxiety as in psychoneuroses; the disorder is manifested by a "lifelong pattern of action or behavior, rather than by mental or emotional symptoms." [39] Persons suffering from a sociopathic (or psychopathic) personality disturbance, in particular, "are ill primarily in terms of society and of conformity with the prevailing cultural milieu." [40] Some psychiatrists regard sociopaths as mentally diseased; other psychiatrists disagree. There is, however, widespread consensus among psychiatrists that sociopaths are significantly less capable of self-control than normal persons.[41] Under the *Durham* test it is for the jury to determine whether a defendant with the personality traits of a sociopath suffers from a mental disease such that he should not be held criminally responsible.

As shown by Table 5, the number of persons found not guilty by reason of insanity who were diagnosed as having personality disorders increased after fiscal 1958, when Saint Elizabeths Hospital began classifying personality disorders as mental disease.[42] Since fiscal 1963, when the 20 admissions so diagnosed were 38 percent of all not-guilty-by-reason-of-insanity admissions coming from the District Court, the number of individuals suffering from personality disorders found not guilty by reason of insanity has declined. The same trend is evident in the Court of General Sessions. The Clinical Director of the maximum security prisoner-patient facility at Saint Elizabeths Hospital reports that patients suffering from personality disorders are generally

TABLE 5.—*Incidence of personality disorder among persons found NGI*

Fiscal year	U.S. District Court		Court of General Sessions	
	Number	Percent of all NGI's	Number	Percent of All NGI's
1954	3	100.0	--	----
1955	5	62.5	--	----
1956	2	12.5	--	----
1957	1	14.3	--	----
1958	5	29.4	1	20.0
1959	5	15.6	1	9.1
1960	5	14.3	10	19.6
1961	12	18.2	13	28.3
1962	12	18.2	9	33.3
1963	20	37.7	7	41.2
1964	7	30.4	3	10.3
1965	10	28.6	10	22.7
Total	87	24.1	54	23.5

Source: Saint Elizabeths Hospital.

confined at the hospital as long as patients in many other categories.[43] Since they have a tendency to get in trouble when they are given greater freedom and privileges, their progress toward release is slow.[44]

Tables 6 and 7 compare psychiatric diagnoses by type of crime. Among the crimes prosecuted in the District Court, manslaughter has a high proportion of mental deficients (33 percent) but no psychoneurotics; rape, other sex offenses and grand larceny show a high proportion of psychoneurotics (over 30 percent in each); and forgery and narcotics show a high proportion of personality disorders (48 percent and 53 percent respectively) (Table 6).

DIAGNOSTIC AND TREATMENT FACILITIES

Persons committed indefinitely to a mental hospital as a result of criminal proceedings in the District of Columbia are admitted to Saint Elizabeths Hospital. Since Saint Elizabeths also performs almost all the pretrial mental examinations for District Court defendants and, more recently, some examinations for Court of General Sessions defendants,[45] it is the principal diagnostic and treatment facility in the District used in connection with the insanity issue in criminal cases.

Saint Elizabeths is a Federal mental hospital, part of the Department of Health, Education, and Welfare. The hospital was opened in 1855, and now consists of over 125 buildings on 365 acres of land. Its operating budget for fiscal 1967 is $32.6 million. The institution has approximately 7,500 patients on its rolls, nearly ten percent of whom are prisoner patients—including persons under mental examination, those found mentally incompetent to stand trial,[45] those adjudged not guilty by reason of insanity (slightly more than half of the criminal patients), persons under sentence,[47] and those held as sexual psychopaths.[48]

Facilities and Treatment

Prisoner patients are kept in three separate divisions of Saint Elizabeths Hospital: the John Howard Pavilion (a maximum security facility for potentially dangerous male prisoner patients); the West Side Service (for other male prisoner patients, especially those from the Court of General Sessions); and the Cruvant Division (for women prisoner patients and transfers from John Howard).[49]

John Howard Pavilion

This five-story structure, opened in 1959, has a capacity of 396 beds distributed among 12 wards. On July 5, 1966, the patients at John Howard included 44 undergoing mental examination, 50 who were mentally incompetent, 140 persons found not guilty by reason of insanity, 54 who were under sentence, 13 sexual psychopaths, and 64 potentially dangerous civil patients. Less than 10 patients were on conditional release.

The Pavilion has excellent security features; there are only two guard-operated entrances to the building and all interior doors are key-operated. There have been only two escapes since the Pavilion opened.

John Howard Pavilion has a staff of six psychiatrists and three psychologists. Based on the patients in custody in July 1966, there were approximately 60 patients for each staff psychiatrist. Between six and nine resident psychiatric interns are also assigned to the Pavilion one day a week. The staff at John Howard conducts medical examinations for all defendants referred from the District Court. The staff psychiatrists are regularly called as expert witnesses by both prosecution and defense, and spend about half their time testifying or preparing to testify.

The staff also includes two full-time teachers, volunteer teachers who visit regularly, two social workers, one recreational therapist, three occupational therapists, one physician, one chaplain, and seven nurses.

TABLE 6.—*Psychiatric diagnoses of NGI admissions to Saint Elizabeths Hospital, by crime charged*

[U.S. District Court, fiscal years 1954–1965]

Crime charged	Total	Psychiatric diagnosis													
		Organic disorder		Schizophrenic		Other psychoses		Mental deficiency		Psychoneurotic		Personality disorder		Without mental disorder	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Murder	53	10	18.9	25	47.2	2	3.8			7	13.2	6	11.3	3	5.7
Rape	16	2	12.5	6	37.5					6	37.5	2	12.5		
Other sex offenses	25	4	16.0	8	32.0			1	4.0	8	32.0	3	12.0	1	4.0
Manslaughter	6	1	16.7	2	33.3			2	33.3			1	16.7		
Robbery	49	3	6.1	25	51.0					8	16.3	10	20.4	3	6.1
Aggravated assault	38	5	13.2	14	36.8	1	2.6	1	2.6	4	10.5	8	21.1	5	13.2
Housebreaking	49	2	4.1	23	46.9	1	2.0			9	18.4	13	26.5	1	2.0
Grand larceny	16	1	6.3	4	25.0	1	6.3			5	31.3	3	18.8	2	12.5
Forgery	31	2	6.5	6	19.4					7	22.6	15	48.4	1	3.2
Auto theft	28	3	10.7	12	42.9			1	3.6	5	17.9	4	14.3	3	10.7
Narcotics	30	2	6.7	8	26.7					3	10.0	16	53.3	1	3.3
Other felonies	20	2	10.0	8	40.0			1	5.0	3	15.0	6	30.0		
Total	361	37	10.2	141	39.1	5	1.4	6	1.7	65	18.0	87	24.1	20	5.5

Source: Saint Elizabeths Hospital.

TABLE 7.—*Psychiatric diagnoses of NGI admissions to Saint Elizabeths Hospital, by crime charged*

[Court of General Sessions, fiscal years 1958–1965]

Crime charged	Total	Psychiatric diagnosis													
		Organic disorder		Schizophrenic		Other psychoses		Mental deficiency		Psychoneurotic		Personality disorder		Without mental disorder	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Simple assault	65	7	10.8	41	63.1	1	1.5	2	3.1	3	4.6	9	13.8	2	3.1
Petit larceny	59	3	5.1	12	20.3	3	5.1	1	1.7	12	20.3	20	33.9	8	13.6
Carrying deadly weapon or possession of prohibited weapon	17	3	17.6	9	52.9					1	5.9	2	11.8	2	11.8
Unlawful entry	11	3	27.3	4	36.4							1	9.1	3	27.3
Sex offenses	10	1	10.0	3	30.0					2	20.0	4	40.0		
Destroying private or movable property	8	1	12.5	6	75.0							1	12.5		
Threats	7	1	14.3	4	57.1							1	14.3	1	14.3
Other U.S. offenses	7			1	14.3					1	14.3	4	57.1	1	14.3
Drunk and/or disorderly	33	6	18.2	14	42.4	4	12.1	1	3.0			7	21.2	1	3.0
Traffic violations	7			2	28.6					1	14.3	3	42.9	1	14.3
Other D.C. offenses	6	1	16.7	1	16.7	1	16.7	1	16.7			2	33.3		
Total	230	26	11.3	97	42.2	9	3.9	5	2.2	20	8.7	54	23.5	19	8.3

Source: Saint Elizabeths Hospital.

In the daytime there are at least two male nursing assistants for each ward and four in each of three wards where the patients are severely disturbed.

Many patients participate in the institution's educational program, which includes vocational classes in typing, barbering and tailoring, as well as weaving and woodworking shops. Plans are also being made for appliance repair, radio-TV, and auto mechanic shops. Most of the Pavilion patients are unschooled and, if released conditionally, work at laboring jobs in the city or participate in vocational training programs.

There is almost no individual psychotherapy carried on with patients at John Howard Pavilion. The large number of patients, the limited psychiatric staff and the staff's court commitments preclude such treatment as a practical matter. There are four or five group therapy sections, three guided by psychologists. Alcoholics Anonymous meetings are held weekly, and there is a special discussion group for drug addicts. Many patients are taking tranquilizing drugs.

West Side Service

All patients committed to Saint Elizabeths by the Court of General Sessions are admitted to West Side Service except those who may be particularly unmanageable or dangerous. The West Side Service is housed in the original hospital building, which was constructed in 1855 and is a rambling, four-story structure. The Service has a 422-bed capacity distributed among 8 wards, and has slightly more civil than criminal patients. In July 1966 patients committed as a result of criminal proceedings included 7 persons committed for mental examination, 68 found to be mentally incompetent to stand trial, 103 persons who were found not guilty by reason of insanity, and 27 sexual psychopaths; 25 patients were on unauthorized leave and 24 were conditionally released. The prisoner patients are not segregated from civil patients.

As suggested by its age, the building has limited physical facilities. There is one gymnasium used for athletics and social activities. Only two wards have their own dining room; in the other wards patients must eat in the halls or in their rooms. Physical arrangements for security are also limited. The admission ward has security screens and separate locks; entrances to the other wards are locked, providing the only security protection throughout the Service.

In contrast to those at the John Howard Pavilion, the patients in West Side Service are somewhat older and have more advanced illnesses. The largest ward is described as an "open ward," which the

patients may leave when accompanied by a hospital attendant. Three wards, containing only a few prisoner patients, house persons with physical as well as mental disabilities who require continual assistance for the simplest of daily tasks. Another ward consists of seriously regressed patients. One ward is a therapeutic community experiment where the patients in return for certain privileges govern themselves and participate in a "buddy system" in which each patient is responsible for another patient.

The staff at the Service consists of nine psychiatrists, including three psychiatric residents. The supporting staff is comparable to that at the John Howard Pavilion. There is a negligible educational program offered, primarily because there is little demand. The various group therapy and rehabilitation sections provided for patients, however, are substantial in number and in participation. Each staff psychiatrist has two or three patients for individual psychotherapy.

Cruvant Division

This facility has four wards with a total capacity of 123. One of the four wards is composed entirely of male patients transferred from John Howard Pavilion; another consists primarily of long-term female civil patients. On July 5, 1966, the patients included 4 individuals committed for mental examination, 15 persons found to be mentally incompetent to stand trial, 70 found not guilty by reason of insanity, 4 under sentence, 4 sexual psychopaths, and 36 civil patients. Twenty-five patients were on conditional release and seven were on unauthorized leave.

The Cruvant Division was opened to patients involved in criminal cases on December 1, 1965. For its first eight months of operation the Division had only one psychiatrist (who was also director of another service) and one part-time psychiatric intern; one additional part-time psychiatrist has recently been assigned. There are two social workers, but no recreational therapists, occupational therapists or educational specialists. There is a medical officer who spends approximately one-quarter of his time at Cruvant Division.

The security of the building itself is adequate. However, Cruvant's lack of facilities and personnel with which to occupy its patients' time means that grounds privileges are necessary if a patient is to be able to participate in programs offered elsewhere at the hospital. Since there are insufficient personnel to supervise limited grounds privileges, "walk-offs" from the hospital by Cruvant patients are not uncommon.

Types of Treatment

Three forms of therapy utilized in treating mentally ill patients are available at Saint Elizabeths Hospital in varying degrees. The first type, somatic therapy, is physical treatment which affects the mental disease or disorder. It includes shock therapy, prefrontal lobotomy, hydrotherapy, and drug therapy. Drug therapy is now the predominant mode of somatic therapy.

The second kind of therapy is psychotherapy, which is usually treatment designed to make the patient aware of unconscious conflicts. It may be on an individual or group basis, and in some cases can only be supportive rather than curative therapy. Individual psychotherapy may be the preferred mode of treatment; it is, however, costly and may require hundreds of hours of individual attention by a psychiatrist. For that reason, most of the psychotherapy in public mental hospitals today, including Saint Elizabeths Hospital, can only be group psychotherapy.

A third form of treatment is milieu therapy, or treatment by providing an environment conducive to recovery. The mere removal of a mentally disturbed person from the stresses and strains of everyday living in the outside world is a form of milieu therapy. For some illnesses, such as personality disorders, this may be the best therapy. Because of limitations of medical personnel, milieu therapy is the most widely practiced therapy at Saint Elizabeths Hospital. Vocational, occupational and educational rehabilitation are an important part of milieu therapy, and are essential to enable most prisoner-patients eventually to attain self-sufficiency.

Duration of Confinement

The amount of time spent at Saint Elizabeths by persons found not guilty by reason of insanity has been the subject of much controversy in the District of Columbia. As noted above, no such individual may be released from hospital confinement without prior approval of the court, and the hospital does not recommend release except where there is unanimity among psychiatrists and other staff members regarding the appropriateness of release. The results of the Commission's inquiry regarding the length of confinement are set forth in Tables 8, 9 and 10. Table 8 shows how many persons acquitted of felonies on insanity grounds in the District Court have been released from the hospital and how long they were confined; Table 9 compares hospital confinement of these persons with prison confinement for convicted felons; and Table 10 shows the length of hospital confinement for persons charged with misdemeanors and found not guilty by reason of insanity.

TABLE 8.—*Time until first release of felony NGI patients admitted to Saint Elizabeths Hospital, by crime charged*

Crime charged	Total NGI, FY 1954–65	Not released	Not released, died	Total released as of Dec. 31, 1965	Time until first release (conditional or unconditional)						
					Less than 6 mo.	6 mo., less than 1 yr.	1 yr., less than 2	2 yrs., less than 3	3 yrs., less than 4	4 yrs., less than 5	5 yrs. or more
Murder	53	25	1	27	3	4	7	5	5	3	0
Rape	16	12	0	4	0	0	1	2	1	0	0
Other sex offenses	*28	15	0	13	0	2	8	0	2	1	0
Manslaughter	6	4	0	2	0	1	0	1	0	0	0
Robbery	49	14	0	35	3	4	8	5	8	3	4
Aggravated assault	*35	8	1	26	4	4	7	6	3	2	0
Housebreaking	49	22	0	27	1	3	2	9	5	4	3
Grand larceny	16	3	1	12	1	1	7	3	0	0	0
Forgery	31	8	0	23	6	1	8	5	1	1	1
Auto theft	28	12	0	16	2	2	4	4	2	1	1
Narcotics	30	23	0	7	0	0	3	2	2	0	0
Other felonies	20	7	2	11	3	3	5	0	0	0	0
Total	361	153	5	203	23	25	60	42	29	15	9

*Three patients charged with assault with intent to rape have been removed from the "aggravated assault" category, where they appear in Tables 2, 3, and 6 above, and placed in the "other sex offenses" category. This was necessary for purposes of comparison in Table 9.

Source: Saint Elizabeths Hospital.

As of December 31, 1965, 203 of the 361 persons who were charged with felonies and found not guilty by reason of insanity in the United States District Court had been released from Saint Elizabeths Hospital; 144 of these obtained their first release conditionally and 59 were released the first time unconditionally. Table 8 shows that 23 persons originally charged with felonies were released from the hospital in less than six months and 25 more were released in less than a year; 19 of the 48 were conditionally released and 29 were unconditionally released. Thus, among the 361 persons found not guilty by reason of insanity in the District Court, 13 percent (48 of 361) were released in less than a year. The table also shows that 153 (42 percent) of the 361 persons committed to Saint Elizabeths have not been released, conditionally or unconditionally.

Limitations of available data prevent a precise comparison of confinement in Saint Elizabeths Hospital with length of time spent by convicted felons in prison. Information concerning average (or median) prison sentences is based on the time served by all prisoners released in a given year, some of whom may have been in prison for 5, 10, 20 or more years. However, Saint Elizabeths did not keep separate records for patients found not guilty by reason of insanity until the beginning of fiscal 1954. As of December 31, 1965, therefore, no such identified patient at Saint Elizabeths could have been confined longer than 12½ years (since the beginning of fiscal 1954). In fact, more than two-thirds of the 361 patients had been admitted since July 1960 (Table 1). For these reasons, plus the fact that those who have already been released are most likely those who have recovered their sanity the most rapidly, a comparison only between *released* insanity patients and released prisoners would give a distorted picture.

However, an approximate comparison can be made by the use of three separate groups of insanity patients, as is done in Table 9. Column 1 shows the median time of confinement until first release, conditional or unconditional, of the 203 released patients shown in Table 8. The medians in this column are low in comparison with felons released from prison, because of the recognized differences in the two groups analyzed.

The medians in column 2 are for the 153 patients (Table 8) not yet released from the hospital, undoubtedly including many of the recent admissions to the hospital who have not yet had time to recover their sanity. Many of the medians in this column are more than double the corresponding medians in column 1 and reflect the fact that the patients not yet released are those with the deepest illnesses, who have been, and probably will continue to be, in the hospital for the longest period of treatment.

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TABLE 9.—*Comparison of length of commitment of felony NGI patients until first release with time served by felons in prison*

Crime	Median time served in months							
	Felony patients NGI, FY 1954–65						Felons released from prison	
	1. Patients released*		2. Patients not released†		3. All patients*		D.C.‡ (1964)	National§ (1960)
	Persons	Median time	Persons	Median time	Persons	Median time		
Homicide	29	23.1	29	47.3	59	Not reached¶	More than 180 mo.	52.0
Murder	27	23.1	25	48.8	53	58.0		
Manslaughter	2	9.0	4	40.3	6	Not reached		
Sex offenses	17	20.7	27	46.4	44	Not reached	35.3	30.0
Rape	4	30.0	12	49.1	16	Not reached		
Other sex offenses	13	18.8	15	33.2	28	Not reached		
Robbery	35	30.0	14	39.5	49	42.8	38.1	33.9
Aggravated Assault	26	20.6	8	51.7	35	29.0	28.7	19.5
Housebreaking (burglary)	27	34.0	22	42.7	49	More than 60 mo.	34.0	20.4
Grand larceny	12	18.9	3	17.5	16	22.3	18.0	16.7
Forgery	23	18.8	8	45.4	31	25.2	29.2**	**17.4
Auto theft	16	22.5	12	54.3	28	45.0	22.5	18.9
Narcotics	7	27.0	23	35.5	30	Not reached	47.4	29.4
Other felonies	11	11.0	7	24.9	20	21.6	24.9	14.1
All crimes	203	22.7	153	42.4	361	49.2	33.4	20.9

*Calculated from Table 8.

†Patients who died before release are excluded.

‡Source: Information supplied by Donald L. Miller, Supervisor, National Prisoner Statistics Program, Federal Bureau of Prisons, Sept. 15, 1966. This and other 1964 data is scheduled for publication in early 1967 in a form similar to the Bureau of Prisons publication, National Prisoner Statistics, Characteristics of State Prisoners, 1960 (1965).

§Source: Federal Bureau of Prisons, National Prisoner Statistics, Characteristics of State Prisoners, 1960 (1965).

¶"Not reached" indicates that the median release time cannot be calculated because 50 percent of the patients had not yet been released as of Dec. 31, 1965.

**Includes embezzlement and fraud as well as forgery.

The figures in column 3 of Table 9 are calculated for all insanity patients, whether released or not. Statisticians at Saint Elizabeths Hospital have advised the Commission that these medians most accurately reflect the duration of confinement of the patient population and are most comparable to prison sentences served by felons. If this measure is relied upon, the median confinement at Saint Elizabeths Hospital appears to be greater than the median confinement of District felons in prison in every crime category with the very important exception of homicide and the less important exceptions of forgery, "other felonies," and possibly narcotics.

Medians may also be calculated for the length of time spent in the hospital by persons charged with misdemeanors in the Court of General Sessions (Table 10). Whereas the maximum prison sentence for a misdemeanor is 12 months or less, the median length of confinement for *released* misdemeanor patients is 15.8 months.

TABLE 10.—*Length of commitment of misdemeanor NGI patients from D.C. Court of General Sessions*

[Admissions for fiscal years 1958–1965]

Crime charged	Median time served in months			
	Patients released as of Dec. 31, 1965		All misdemeanor patients	
	Persons	Median time	Persons	Median time
Simple assault	36	17.5	65	35.3
Petit larceny	46	17.3	59	21.7
Carrying deadly weapon or possession of prohibited weapon.	10	18.0	17	30.0
Unlawful entry	9	5.4	11	18.0
Sex offenses	8	16.8	10	19.2
Destroying private or moveable property	7	18.0	8	18.0
Threats	3	15.0	7	Not reached*
Other U.S. offenses	4	30.0	7	45.0
Drunk and/or disorderly	24	10.5	33	18.0
Traffic violations	4	9.0	7	More than 60
Other D.C. offenses	6	5.0	6	5.0
All crimes	157	15.8	230	23.8

*"Not reached" indicates that the median release time cannot be calculated because 50 percent of the patients have not yet been released.

Source: Saint Elizabeths Hospital.

The Commission does not purport to judge whether persons committed to Saint Elizabeths Hospital as not guilty by reason of insanity are confined for too long or too short a time. That is a medical question which is properly entrusted to the specialists at the hospital.

These comparisons have been made by the Commission primarily in response to criticisms that persons found not guilty under the *Durham* rule are avoiding confinement or escaping punishment for their acts. The majority of the Commission believes that the facts do not support such a conclusion.

EVALUATION*

ADEQUACY OF THE DURHAM RULE

For nearly a decade following announcement of the *Durham* rule in 1954, there was widespread debate in the District concerning the desirability of the new test. Over a hundred appellate decisions involving the insanity issue were decided by the United States Court of Appeals; judges, juries, lawyers, and psychiatrists struggled with the application of the new standard for criminal responsibility. Much of the debate, however, was stilled by the 1962 decision of the Court of Appeals in *McDonald* v. *United States*. Appellate cases involving the *Durham* rule have decreased since then and insanity acquittals have stabilized at two to three percent of all defendants in the United States District Court.

Although we are unable to judge whether too many or too few persons are being found not guilty by reasons of insanity, the number of defendants whose criminal behavior is excused under the *Durham* standard is relatively small. The *Durham* rule does not appear to offer a readily available opportunity for criminal offenders to escape the consequences of their acts, particularly in view of the statute requiring commitment of those found not guilty by reason of insanity. Experience at Saint Elizabeths Hospital demonstrates that most persons found not guilty by reason of insanity under the *Durham* rule are indeed suffering from mental disease or defect and that they are sufficiently ill to remain in the hospital for substantial periods of time.

The majority of the Commission therefore concludes that there is no pressing need for change in the law. As an original proposition, several members of the Commission might favor replacement of the *Durham* rule with the American Law Institute standard of criminal responsibility or the very similar formulation passed by Congress in the recently vetoed Omnibus Crime Bill.[50] The majority does not believe, however, that the advantages of such a substitution clearly outweigh the possible disadvantages. Even a comparatively minor change in the wording of the legal test might spawn another decade

*The views of the minority of the Commission on issues discussed in this section are set forth at pp. 892–921.

of litigation, without any assurance that it would produce a significant change in the number of persons found not guilty by reason of insanity or would improve the accuracy of those determinations.

The Commission is concerned, however, about the nature of the psychiatric testimony elicited under the *Durham* rule. *Durham* was intended to enable psychiatrists to testify freely and completely without the evidentiary limitations of a right-wrong or irresistible impulse test. Based on such expert testimony, the jury was supposedly equipped to reach a just decision concerning the defendant's mental condition. Due to failures by both lawyers and psychiatrists, this essential testimony has often evolved into a series of complex, unexplained psychiatric conclusions of little value to the jury.[51] In order to remedy this deficiency, lawyers must make every effort to ask questions which promote lucid testimony and psychiatrists must in turn attempt to translate their professional terminology into lay language and explain reasons for their conclusions.

PROPOSED PROCEDURAL CHANGES

Notice of Insanity Defense

In most cases the prosecuting attorney becomes aware that the defendant intends to rely on an insanity defense as a result of a pretrial motion for a psychiatric examination. In some instances, however, there is no advance notice, as in the case of a defendant who is on bond and is examined by a private psychiatrist. When this happens, the prosecution is unprepared to meet an insanity defense and must often seek a continuance in mid-trial.[52] Since it is usually impractical to grant a continuance long enough to enable adequate psychiatric diagnosis, the Government may be left without any psychiatric evidence.

The recent Omnibus Crime Bill included a provision prohibiting an insanity defense if the accused or his attorney does not file with the court and serve upon the prosecuting attorney

> written notice of his intention to rely upon such defense (A) no later than thirty days prior to trial if there has been no court order for mental examination or fifteen days after receipt by the court of the report of the examining physician if there was a court order for mental examination, or (B) at such other time as the court may for good cause permit.[53]

The Commission supports this proposal. It creates a more orderly procedure for raising the insanity issue, and avoids potential trial delays when the Government must seek a continuance to obtain evidence with which to carry its burden of proving insanity beyond a reasonable doubt.

Burden of Proof

If the defendant introduces "some evidence" that he was suffering from mental disease or defect, the prosecution must prove beyond a reasonable doubt either that the defendant had no mental disease or defect or that the crime was not the product of the illness. This is the traditional burden on the prosecution with respect to all elements of a crime, including criminal intent, and is similar to the prosecutor's burden to disprove beyond a reasonable doubt defenses such as mistake, duress or self defense.

It has been suggested, however, that the burden in insanity cases is too heavy because of the complex nature of expert psychiatric testimony, the ease with which a reasonable doubt about the defendant's sanity can be raised in the jurors' minds, and the difficulty which the prosecution faces when the defendant refuses to cooperate in a mental examination by Government psychiatrists. To reduce these difficulties it has been proposed that the defendant should be required to prove by a preponderance of the evidence that he suffered from a mental disease or defect and that his act was the product thereof.[54] This suggestion accords with the law of several states and statutes so providing have been sustained by the Supreme Court,[55] but it is not the rule in Federal courts or that adopted by the American Law Institute.[56]

The majority of the Commission concludes that the traditional burden of proof on this issue in the District should not be shifted to the defendant for the following reasons.

(1) There is no evidence of widespread injustice under *Durham* as it presently operates. We are not persuaded that altering the burden of proof would bring about any desirable change; it might only mean that defendants with valid insanity defenses would be unable to meet the burden.

(2) The smaller number of persons acquitted by reason of insanity since *McDonald* suggests that the prosecution is not encountering any substantial difficulty in meeting its burden of proof. As a practical matter, many observers believe that jurors tend to be skeptical of the insanity defense and that defendants in fact already bear a substantial burden in order to convince the jury of the validity of their claims under the *Durham* rule.

(3) A change in the burden of proof would place an unfair burden on the indigent accused. Although legislation has ameliorated some of the handicaps of impoverished defendants,[57] we believe that a change in the burden of proof might require substantial public expenditures to provide independent psychiatrists and other experts for indigent defendants.

(4) The majority of the Commission also believes that the views of the dissenting justices in *Leland* v. *Oregon* are grounds for caution. Although the majority of the Supreme Court upheld the Oregon statute which required the defendant to prove insanity beyond a reasonable doubt, the dissenting judges concluded that to place the burden of proof upon the defendant "is to obliterate the distinction between civil and criminal law." [58] We believe that there is at least a substantial question whether requiring the defendant to prove insanity in a Federal court would be upheld by the Supreme Court.[59]

We are aware that problems inevitably result from the legal inconsistency of committing a defendant to a mental hospital on the basis of a reasonable doubt about his mental condition at some time in the past when he committed a crime. This inconsistency, however, would be reduced only in part by a change in the burden of proof. Even with such a change, a defendant institutionalized after an insanity acquittal might still claim that he was recovered. Such deliberate manipulations of the insanity defense as now occur arise not from deficiencies in the burden of proof but primarily from the infrequent problem of the uncooperative defendant discussed below. We do not see how altering the burden of proof would affect the result in these few cases. It would, however, have the effect of making legitimate insanity defenses much more difficult to sustain. For the reasons stated above, the majority of the Commission does not favor such a change.

The Uncooperative Defendant

There have been some cases in the District of Columbia in which the accused person has refused to cooperate in a judicially-ordered mental examination.[60] This failure to cooperate may be a symptom of mental disorder; however, it may also result from the advice of the defendant's lawyer who plans to interpose the insanity defense but wishes to prevent prosecution experts from examining the accused.

The number of cases involving uncooperative defendants is not known, but such instances have been described as "insignificant in number." [61] There are no formal sanctions which compel a defendant to cooperate in a mental examination. To meet the special problem of the uncooperative defendant, various sanctions have been proposed. It is urged that the uncooperative defendant be barred from raising the insanity defense at trial, that he be held in contempt of court, or that the burden of proof on the insanity issue be shifted to him upon failure to cooperate in the mental examination.

Sanctions which aim at compelling cooperation are permeated with constitutional problems. Any sanction may be held to penalize the

defendant's exercise of his Fifth Amendment privilege against self-incrimination.[62] To compel a defendant to provide evidence of his mental condition could result in a criminal conviction rather than an acquittal by reason of insanity if the examiners conclude that there was no mental disease or that the offense was not the product of the disease. Similarly, a sanction preventing the insanity defense or transferring the burden of proof could have the same penalizing effect. A change in the burden of proof may also be prohibited by the due process clause of the Fifth Amendment, and criminal conviction after a denial of opportunity to raise the insanity defense may constitute cruel and unusual punishment under the Eighth Amendment.[63]

Because of these constitutional considerations, the majority of the Commission does not support sanctions proposed to meet the problem of the uncooperative defendant. We do believe, however, that the prosecution should be permitted to prove and comment upon the defendant's refusal to cooperate in the examination.[64] The Commission endorses this procedure as a limited and effective response by the prosecution in the occasional case involving an uncooperative defendant.

ADEQUACY OF TREATMENT AND SUPERVISION

In the debate over the proper test of criminal responsibility and the appropriate procedures for raising the insanity defense, the essential question of treatment for the mentally ill offender is often subordinated. Treatment resources, rather than legal rules, may be far more important in the successful rehabilitation of these offenders.

Staff and Facilities

There are several major deficiencies in the program for the mentally ill offender at Saint Elizabeths Hospital. Physical facilities at the West Side Service are seriously inadequate. The Cruvant Division is grossly understaffed and lacks supportive facilities, including occupational training. Generally, increased staff is the single greatest need at the hospital. The clinical director of the John Howard Pavilion estimates that the psychiatric staff in that division alone should be at least doubled in order to provide treatment of high quality.[65]

There is also need for greater continuity of treatment for prisoner-patients admitted to the John Howard Pavilion. Greater privileges and freedom are increasingly important as the patient improves, but such freedom can only be obtained at the present time by transfer from the Pavilion to another service or by conditional release directly into the community. The latter method is too abrupt for most patients

conditioned to the tight security at the Pavilion. Transfer to the Cruvant Division is not currently desirable because the Division is understaffed and Pavilion psychiatrists find it difficult to treat patients once they are transferred. Such a transfer results in a loss of critical patient-staff relationships, since

> one of the most important tools in conducting therapy with many psychiatric patients is the development of a meaningful human relation between the therapist and patient. It is self-evident that the maintenance of such a relation is made difficult if there is a continual change of therapists during the treatment. . . . There are rarely valid reasons to transfer a patient from one therapist or group of therapists to another within the hospital setting.[66]

The change in staff relationships, and the freedom given to Cruvant patients to enable them to participate in group therapy, education and vocational rehabilitation programs available elsewhere at the hospital, contribute to the escape problem.

Plans are being developed by Saint Elizabeths to remedy the lack of treatment continuity and satisfactory security. The Commission supports these efforts and urges that the necessary funds for facilities and personnel be made available as quickly as possible. As part of a comprehensive program, resources should be provided for greater post-release services and experimentation with release procedures should be authorized. For example, the release of all patients constituting a therapeutic group together with a trained leader might provide the kind of self-sustaining support needed for successful re-entry into the community. We believe that the hospital should have the authority to experiment with various treatment and release alternatives, so long as it is also provided with the personnel necessary to supervise the patients and the hospital conducts its release program with due regard for community safety.

Escapes

The Commission has concluded that the number of escapes from Saint Elizabeths Hospital is a serious problem which requires immediate attention and remedial action. During the calendar years 1955 through 1965, 202 (34 percent) of the 591 persons committed after a finding of not guilty by reason of insanity left the hospital without permission. As detailed in Table 11, 139 (39 percent) of the persons who had been charged with felonies eloped, and 63 (27 percent) of those who had been charged with misdemeanors eloped. As of December 31, 1965, Saint Elizabeths had 384 insanity acquittal patients on its rolls and 39 (10 percent) were on unauthorized leave.

Although 30 percent of these escapes lasted for a day or less, 7 percent lasted longer than a year. Many had serious consequences.

TABLE 11.—*Elopements from Saint Elizabeths Hospital by NGI patients*

[Calendar years 1955-1965]

Commiting court and crime	Number of elopers	Number of elopments	Total patients
ELOPMENTS PRIOR TO ANY CONDITIONAL RELEASE			
District Court:			
Murder	7	8	53
Rape	7	14	16
Other sex offenses	4	7	28
Manslaughter	2	4	6
Robbery	26	50	49
Aggravated assault	10	17	35
Housebreaking	25	43	49
Grand larceny	7	13	16
Forgery	13	23	31
Auto theft	17	42	28
Narcotics	18	32	30
Other felonies	3	9	20
Total—District Court	139	262	361
Court of General Sessions	63	117	230
Grand totals	202	379	591
ELOPEMENTS AFTER A CONDITIONAL RELEASE			
District Court	27	82	*144
Court of General Sessions	20	44	*100
Total	47	126	*244

Source: Saint Elizabeths Hospital.

*Total patients conditionally released.

As shown by Table 12, approximately one-third of the escaped persons were arrested on criminal charges.

Most of the escapes from Saint Elizabeths Hospital are made from the West Side Service or from other facilities housing prisoner-patients; they are not made from John Howard Pavilion. These escapes are usually "walk-offs," which occur when the patients are enjoying ground privileges incident to progress in the treatment program, and are generally attributable to the lack of staff and proper facilities.

TABLE 12.—*Arrests for new crimes of escaped NGI patients**

[Escapes in calendar years 1955-1965; arrests through March 1966]

Kind of arrest	District Court		Court of General Sessions		Total	
	Number persons	Number arrests	Number persons	Number arrests	Number persons	Number arrests
Felony	35	42	6	9	41	51
2 or more felonies	5		1		6	
U.S. misdemeanor	20	29	4	12	24	41
Whose most serious arrest was for a U.S. misdemeanor	14		3		17	
D.C. misdemeanor	14	17	8	13	22	30
Whose most serious arrest was for a D.C. misdemeanor	4		5		9	
Total	53	88	14	34	67	122
	Elopers	Elopements	Elopers	Elopements	Elopers	Elopements
Number	139	262	63	117	202	379
Percent:						
Persons arrested/elopers	38.1		22.2		33.2	
Arrests/elopements		33.6		29.1		32.2

*Escapes before any conditional release.

Source: FBI identification records.

The Commission recommends that Saint Elizabeths Hospital take steps at once to improve supervision over prisoner-patients. Architectural and engineering studies are under way for new facilities, or modifications of present facilities, which will provide for contiguous maximum security, medium security and minimum security facilities—in effect, a sub-campus for prisoner-patients within the hospital. We urge more rapid implementation of these plans and adoption of interim measures by the hospital which will curtail the number of escapes.

The Commission also recommends statutory clarification of the judicial authority to direct the return of an escaped prisoner-patient to the hospital. There is currently no problem with the return of the District Court patients against whom charges are pending, but warrants for Court of General Sessions patients are of doubtful efficacy outside the District of Columbia. In the case of elopements by persons found not guilty by reason of insanity, bench warrants from both courts are of questionable authority since no charges are pending against the individual.[67] The Commission recommends that legislation be enacted which would require any state or Federal

magistrate to return an escaped patient to the District upon receipt of a proper document issued by the District of Columbia court which committed him to a mental institution.[68]

Criminal Conduct After Release

One of the few available measures of the effectiveness of treatment at Saint Elizabeths of patients found not guilty by reason of insanity is the extent to which persons released subsequently engage in criminal conduct. Of the 360 patients who were released conditionally or unconditionally prior to December 31, 1965, 134 (37 percent) were rearrested a total of 406 times after their release (Table 13). Ninety-five of these arrests were for felonies.

TABLE 13.—*Arrests for new crimes of released* NGI patients*

[Releases through Dec. 31, 1965; arrests through March 1966]

Kind of arrest	Committed from District Court		Committed from Court of General Sessions		Total	
	Number persons	Number arrests	Number persons	Number arrests	Number persons	Number arrests
Felony	41	68	18	27	59	95
2 or more felonies	16		8		24	
U.S. misdemeanor	37	50	22	38	59	88
Whose most serious arrest was for a U.S. misdemeanor	26		16		42	
D.C. misdemeanor	22	67	35	156	57	223
Whose most serious arrest was for a D.C. misdemeanor	9		24		33	
Total	76	185	58	221	134	406
Number releasees	203		157		360	
		% of Releasees		% of Releasees		% of Releasees
More serious than NGI charge	12	5.9	18	11.5	30	8.3
Equally serious	22	10.8	40	25.5	62	17.2
Less serious	42	20.7			42	11.7
Total	76	37.4	58	37.0	134	37.2

*Conditionally or unconditionally.

Source: FBI identification records.

Although these figures are alarmingly high, they are roughly comparable to the incidence of rearrest of felons after a prison term. A leading authority on recidivism statistics has reported that about 50 percent of male felons released from prison acquire a record of

subsequent arrests within 2 to 5 years after release.[69] Any comparison with the 37 percent subsequent arrest rate for persons charged with felonies in the United States District Court and released from Saint Elizabeths Hospital must be qualified, since only 52 percent of the District Court releasees had been out more than 3 years and only 69 percent had been released for more than 2 years as of April 1966.

The same authority on recidivism also concludes that about one-third of the felons released from prison are convicted of subsequent felonies. Forty-one of 203 District Court insanity releasees (20 percent) acquired a record of felony arrests (Table 13), and their convictions can only be a smaller proportion. The Commission recognizes the limitations of such statistical comparisons, which suggest that treatment at Saint Elizabeths Hospital is at least as effective a means of rehabilitation as imprisonment after conviction. These facts certainly do not permit complacency with the treatment record at Saint Elizabeths Hospital; the substantial rate of recidivism persuades the Commission that greater support must be given by the community to the hospital's efforts to enlarge its staff and improve its treatment facilities.

CONCLUSION

This Commission has considered the problem of the adult mentally ill offender whose condition becomes an issue in criminal proceedings. Other aspects of the relationship between mental illness and criminal activity are equally important, however, and must in the future command greater attention.

Notwithstanding the *Durham* rule, many people with "mental problems" are convicted and sent to correctional institutions rather than Saint Elizabeths Hospital. The study by the Stanford Research Institute reveals that 1.7 percent of adult felons convicted in the District of Columbia in fiscal 1965 had been in mental institutions, 2.7 percent had had psychiatric treatment, 1.4 percent had "serious mental illness," and 12.5 percent had "other mental problems."[70] These persons either did not raise the insanity defense or the defense was rejected by the judge or jury. A substantial number of children adjudicated as juvenile delinquents also show signs of emotional disturbance.[71]

Whether the offender is confined in prison, juvenile training school or mental hospital, one aim of the community must be to help him become a useful, law-abiding person. Yet there is not a single psychiatrist on the staff of the Receiving Home, the facility in the District in which juvenile offenders are detained following arrest, and only one on the staff at the Children's Center, which serves about 2,000 retarded, delinquent or dependent persons.[72] There is no psychiatrist on the

staff of the Youth Correction Center at Lorton.[73] Diagnosed psychotics are often kept in our prisons for months before transfer to Saint Elizabeths Hospital; pre-psychotics are given no hospitalization.[74] These shortages rate a high priority among the community's concerns.

The Commission recognizes that the *Durham* rule or other formulations of criminal responsibility are not the only mechanisms for handling the mentally ill offender; other alternatives must be constantly explored. For example, in Maryland procedures have been devised for committing mentally ill offenders and incorrigibles to a special treatment-oriented institution until "it is reasonably safe for society to terminate the confinement and treatment." [75] It has also been proposed that the criminal process be separated into two steps, the first limited to ascertaining whether the defendant committed the alleged crime without consideration of his mental condition, and the second involving selection by experts of the appropriate course of treatment.[76] Underlying these and other alternatives is the growing recognition that the dichotomies which now characterize the law's handling of this problem—sane or insane, guilty or not guilty, prison or hospital—must be replaced by emphasis on gradations of mental condition and the need for a wide range of specialized correctional and treatment facilities.

SUMMARY OF RECOMMENDATIONS

1. The majority of the Commission recommends that the *Durham* rule, as modified by the United States Court of Appeals for the District of Columbia Circuit in *McDonald* v. *United States* and other cases, should not be changed by legislation.

2. Legislation should be enacted to require defendants intending to raise the insanity defense to give notice of that intention in advance of trial.

3. In the case of defendants who refuse to cooperate with psychiatrists in a court-ordered mental examination, the prosecutor should be permitted to introduce evidence of such non-cooperation.

4. The majority of the Commission recommends that the traditional burden of proof which requires the prosecution to prove all elements of an alleged criminal offense, including criminal intent, should not be altered by placing the burden of proving insanity upon the defendant.

5. Legislation should be enacted to facilitate the return to the District of escaped patients who have been committed to a mental hospital in connection with criminal proceedings.

6. Funds should be appropriated to improve the facilities and staffing at Saint Elizabeths Hospital to enable more adequate treatment and rehabilitation of prisoner patients.

7. Urgent attention should be given to the security problem at Saint Elizabeths Hospital in the planning for new prisoner-patient facilities and interim measures should be taken immediately to curtail the number of escapes from the hospital.

SECTION IV: DRUG ABUSE

The control of narcotics traffic and the treatment of the drug abuser present legal, social and moral issues which have divided the community for many years. Because of the significant correlation between drug abuse and criminal activity, the Commission has reviewed the extent and nature of the illegal use of drugs in the District, the adequacy of existing laws and regulations concerning the traffic, and the resources for treating drug addicts.

NATURE AND EXTENT OF DRUG ABUSE

Based on their effects upon users, drugs may be classified as depressants, stimulants and hallucinogens. Heroin, barbiturates and tranquilizers are depressants; amphetamines are stimulants; and marihuana and LSD are hallucinogens.[1] Some of these drugs are addictive, such as heroin, barbiturates and certain tranquilizers; they create a physical tolerance in the user which compels him to take ever-increasing dosages to obtain a sense of satisfaction. The withdrawal of addictive drugs causes severe physical pain and discomfort. Other drugs, such as marihuana and LSD, are not physically addictive, but they are habit-forming so that users may come to depend upon them to induce pleasurable feelings.[2]

Heroin

Heroin, a narcotic drug derived from opium, creates the most serious law enforcement and treatment problems related to drug abuse.[3] It is the drug most frequently taken by illegal users in the District of Columbia and elsewhere in the United States;[4] the traffic is lucrative and treatment of the addiction is difficult.[5] Purchased in the form of a white powder, heroin is cooked to produce a liquid which can be injected with a hypodermic needle or a homemade apparatus. The effect upon the user is a relatively brief state of oblivion to the world around him.[6]

The Federal Bureau of Narcotics lists 1,116 active narcotics addicts (nearly all heroin users) in the District of Columbia as of December 30, 1965.[7] Based on these figures, which probably tend to understate the extent of addiction, the District ranks fifth in number of addicts, trailing New York, Los Angeles, Chicago, and Detroit.[8] In fiscal

1965 over 400 heroin users were arrested in the District,[9] 148 heroin addicts were admitted to D.C. General Hospital, and there were 28 civil commitments.[10]

Heroin addiction in the District, as elsewhere, is primarily a phenomenon of the urban slums.[11] In the District heroin addicts are predominantly young adult Negroes who are unemployed and unskilled. Seventy-five percent have less than a high school diploma; 42 percent are between the ages of 21 and 30 and 3 percent are under 21.[12] They are concentrated in a few areas in the heart of the city.[13] According to the Stanford Research Institute (SRI) study of felons convicted in 1965 in the District Court, 76 percent of the narcotics offenders came from 6 of the 17 statistical areas in the city.[14]

Marihuana

Marihuana is a derivative of Indian hemp and is usually smoked in the form of cigarettes. It is a mild hallucinogen, neither narcotic nor addictive. Marihuana smoking is most prevalent among older adolescents and young adults in urban slums and on college campuses.[15]

The danger of marihuana smoking is a matter of some conflict. Although not physically addictive, the use of marihuana can be psychically disruptive for some persons who have poorly organized personalities. Some experts maintain that marihuana may induce a psychological dependence on drugs which will propel the user to addictive drugs such as heroin; some law enforcement officials claim it predisposes certain individuals to violence.[16] Others claim it is no more harmful than smoking tobacco and only because of its illegal status does it represent a source of contagion to young people.[17]

The incidence of marihuana use in the District of Columbia is not precisely known. In fiscal 1965 there were 20 arrests for violation of the Marihuana Tax Act, but police records do not reveal how many marihuana users may have been arrested under other drug laws.[18] There are also indications that marihuana has spread from the inner city to local campuses.[19]

Barbiturates, Tranquilizers and Amphetamines

Barbiturates and tranquilizers, known colloquially as "goof balls," and amphetamines, or "pep pills," figure prominently in the illegal drug trade.[20] Their abuse is difficult to control because they are widely used for legitimate medical purposes.[21] Moreover, law enforcement officials and health personnel believe that misuse of these drugs in the District is extensive and transcends any one socioeconomic group or geographical section of the city.[22] These drugs may be particularly

dangerous to teenage users; withdrawal may require 10 to 35 days and the urge to return to the drug closely patterns that of heroin users.[23] In fact, barbiturates are often used by narcotic addicts as a substitute for heroin.[24]

LSD

LSD (lysergic acid diethylamide), taken orally, lifts the user to another level of consciousness for 8 to 12 hours and may include a complete "loss-of-self." Although nonaddictive, the drug has reportedly triggered psychoses in persons with precarious personality equilibrium.[25] Fatal accidents have resulted from users being out of touch with reality; other users have committed tragic crimes while under drug-induced delusions.

Although its medical potential is being studied, LSD has almost no current medical use in the District.[26] LSD users in the District of Columbia, as elsewhere, include students, cultists and others who are curious about its effects. Witnesses at hearings conducted recently by the District of Columbia Government testified, however, that its use was not widespread.[27]

DRUG ABUSE AND CRIME

The consequences of drug abuse are not limited to the shattered lives of the users themselves. The law-abiding citizen is affected both by the high frequency of drug-induced crime and by the high cost of repeatedly enforcing laws against drug users when there is little hope of rehabilitation or cure.

The drug offender solicits and willingly participates in illegal drug transactions; yet he is himself the victim. Despite the advances in treatment of the past several years, a person addicted to heroin or barbiturates has less than a 10 percent chance of full recovery to social and psychological independence.[28] As long as he is addicted, his life in the subterranean drug culture revolves around the next "fix," and home, job and educational opportunities do not exist for him. A habit which can cost $30 a day or more almost inevitably leads to criminal means to support it.

The law-abiding citizens of the District thus become the victims of drug abuse as addicts shoplift, rob and burglarize to pay for their habit. A review of the United States Attorney's files for the Court of General Sessions revealed that in 1964 drug users accounted for 56 percent of all prostitution-related offenses, 26 percent of the attempted housebreakings, and 26 percent of other miscellaneous offenses presented before that court.[29]

The Robbery Squad of the Metropolitan Police Department has reported a significant increase in the number of narcotic addicts arrested for robbery in recent years. Of 1,029 persons arrested on robbery charges in 1962, 39 (3.8 percent) were addicts; 45 (4.1 percent) of 1,089 arrested in 1963 were addicts; and 107 (8.4 percent) of 1,270 persons arrested on robbery charges in 1965 were addicts. The Robbery Squad also stated that addicts appear to be increasingly involved in crimes of violence. The squad attributed this to the rising costs of sustaining a drug habit (heroin costs $2.50 a "cap" in the District and an addict can require from 10 to 20 or more "caps" daily) and the related fact that addicts have begun to carry guns to protect their supply.[30]

The relationship between crime and addiction is also demonstrated by the characteristics of District Court offenders. According to the SRI study, 15 percent of *all* convicted felons in 1965 had a drug habit, and 56 percent of these supported it by engaging in criminal activity; 10.5 percent of the sample had a prior arrest for a narcotic offense and 9.8 percent had a prior narcotics conviction.[31] Among the convicted *narcotics* offenders, only 6 percent had no record of prior arrests and 8 percent had no prior convictions; 49 percent had arrests and 34 percent had convictions for violent crimes; 77 percent had arrests and 68 percent had convictions for crimes against property; and 49 percent had arrests and 47 percent had convictions for previous narcotics offenses.[32]

To these facts must be added the costs of apprehending, prosecuting and incarcerating illegal traffickers in drugs. In 1965 the cost of care, maintenance and treatment of narcotics users alone was well over $1 million. The Department of Corrections spent $923,272 during this period for about 300 narcotics offenders incarcerated in its five institutions; [33] Saint Elizabeths Hospital expended $116,435 for an estimated 25 narcotics offenders found not guilty by reason of insanity; [34] and D.C. General Hospital reported expenditures of $169,941 for treatment of 149 addicts.[35] These figures do not include costs for any of the addicts in the prison population who were convicted for violations other than the narcotics laws or for those addicts admitted to hospitals for mental examinations or as incompetent to stand trial.[36]

The high correlation between drug abuse and crime in the District of Columbia is cause for concern. There may be a conflict among experts over whether the criminal activity of an addict typically precedes or follows his addiction,[37] but in view of the District's experience this Commission is persuaded that a successful program of prevention and rehabilitation of drug addicts would contribute substantially to a reduction of serious crime.

PRESENT LAWS AND FACILITIES

Drug abuse in the District of Columbia is subject to a wide range of Federal and local laws. Some require the criminal prosecution of those engaged in illegal drug transactions; others provide for civil commitment and treatment of drug users.

CRIMINAL LAWS

Federal

The Harrison Narcotics Act [38] defines narcotics drugs to include opium isonipecaine, coca leaves, other opiates, and similar chemical substances.[39] Section 4704(a) prohibits the purchase, sale or distribution of these narcotic drugs except in or from a tax-stamped package. Other provisions prohibit transactions involving narcotic drugs except pursuant to strict regulation by the Department of the Treasury.[40] Enforcement of the act is facilitated by a statutory presumption declaring possession of a narcotic drug without "appropriate taxpaid stamps" thereon to be "prima facie evidence of a violation" of the act.[41] Penalties for violation of the act are severe, ranging from a minimum of 2 years and maximum of 10 years with options for probation, parole or suspended sentence for a first violation of section 4704(a) to mandatory minimums of 5, 10 and 20 years for first, second and third offenders respectively and maximum sentences up to 40 years for third offenders for violation of section 4705(a).[42] Youthful offenders may be sentenced under the Federal Youth Corrections Act despite the mandatory minimum sentences, but may not be given suspended sentences or probation.[43] The Harrison Narcotics Act does not differentiate between buyers and sellers of drugs, or between those who buy for their own use and those who profit by resale.

The Narcotic Drugs Import and Export Act (Jones-Miller Act) also prohibits illegal importing, or receiving, concealing, buying, or selling illegally imported narcotic drugs.[44] Possession of such drugs creates a statutory presumption that the owner has participated in an illegal transaction. Penalties are not less than 5 nor more than 20 years for a first offense and not less than 10 nor more than 40 years for subsequent offenses. Suspended sentences, probation and parole are not permitted but some provisions of the Youth Corrections Act may be utilized. An addict or seller of narcotics will often be charged with violation of both the Harrison and the Jones-Miller statutes on the basis of a single transaction or act of possession.

The Marihuana Tax Act parallels the provisions of the Harrison Act with regard to transactions in marihuana.[45] Presumptions of

illegality arise from possession of marihuana, and despite the non-addictive nature of the drug, the penalties are as severe as those imposed for heroin transactions. Probation and parole cannot be accorded a marihuana user except on certain first offenses, and he may be sentenced up to 10 years for possession of a single cigarette.[46]

The Drug Abuse Control Amendments of 1965 regulate the dissemination of barbiturates, amphetamines and other non-narcotic drugs.[47] The statute provides for periodic inspections, record keeping and licensing designed to guard against the sale or receipt of such drugs except in legitimate channels of commerce. It also prohibits the possession of dangerous drugs by anyone other than a licensed dispenser or an authorized recipient. The Secretary of Health, Education, and Welfare may designate any drug as dangerous by finding that the drug has "a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect." [48] Violations of either the possession or record-keeping provisions are punishable by up to 2 years in prison or a $5,000 fine, or both, for a first offense and 6 years or $15,000, or both, for subsequent offenses. There are, however, no mandatory minimum sentences and probation and parole may be used. LSD has recently been declared a dangerous drug within the provisions of the act.[49]

District of Columbia

The District of Columbia also has its own laws controlling drug traffic and use. The Uniform Narcotics Act prohibits manufacture, sale, possession, administration, or prescription of narcotic drugs or marihuana except for recognized medical purposes.[50] Penalties are considerably less severe than under the Federal acts. The first offense is a misdemeanor with imprisonment not exceeding 1 year and/or a fine of $100 to $1,000; the second offense is a felony with imprisonment up to 10 years and/or a fine of $500 to $5,000. Probation, parole and suspended sentences may be used.

The District also has a Dangerous Drug Act which prohibits the dispensing, delivery and possession of amphetamines, barbiturates and other drugs declared dangerous by the District Commissioners.[51] Penalties for violation of this act are the same as those for violations of the Uniform Narcotics Act. LSD has not yet been declared a dangerous drug under the local law.

A third District statute, the Narcotics Vagrancy Act, defines "vagrant" to include narcotic drug users or those previously convicted of a narcotic offense who: (1) Have no lawful employment or visible means of support and are found "mingling in public" unable to "give a good account" of themselves; (2) are present in places "in which

any illicit narcotic drugs are kept, found, used or dispensed;" or (3) wander "in public places at late or unusual hours of the night" alone or in the company of other addicts and fail to "give a good account" of themselves.[52] The penalty for such behavior is up to $500 fine or one year imprisonment, or both.[53]

ENFORCEMENT POLICIES

Arrests for violations of the drug statutes are made either by the Narcotics Squad of the Metropolitan Police Department or by the Federal Bureau of Narcotics. The Narcotics Squad has 13 officers, excluding the Captain, and the Federal Bureau has 10 agents in its Washington office.[54] In fiscal 1965 these agencies made 524 arrests for violations of Federal drug laws,[55] a slight increase over the preceding 5 years,[56] and there were 378 arrests made under the District of Columbia drug laws.[57]

The primary concern of the Federal enforcement agents is the large-scale narcotics distributor, whose illicit traffic depends, in large part, on smuggling drugs into the country. Most heroin is imported and most of the marihuana used in the United States is smuggled rather than home grown.[58] Narcotic drugs are brought into the District of Columbia by a few narcotics distributors who employ "front men" to handle their transactions. Some drugs are also brought in by users, and small-time pushers often pool money and send an agent to New York to buy directly.[59] There is, however, no nationwide or out-of-town syndicate operating in the District known to the authorities.[60]

Traffic in "dangerous drugs"—barbiturates, tranquilizers and amphetamines—presents a diffuse distribution picture. A congressional report has concluded that "there is no level in the entire chain of distribution from manufacturer to consumer which does not today serve as a source of supply of depressant and stimulant drugs for the illicit traffic." [61] Similarly, there are apparently no clear-cut channels of distribution for LSD.[62]

The apprehension and prosecution of drug offenders is complicated by the fact there are usually no complainants in narcotics offenses.[63] Both the Federal Bureau and the Narcotics Squad must use undercover agents and informers to enforce the laws.[64] The informers work under the supervision of police officers in return for small cash payments or lenient treatment for their own narcotics violations.[65] Their use raises frequent claims of entrapment, illegal search and seizure, and perjury.[66] The informer's character and record often make him an easily impeachable witness. Undercover agents often remain on the streets for several months at a time; when they eventually surface

and indictments are filed on the basis of their observations or contacts several months before, defendants may claim lack of speedy trial.[67] Two recent cases have questioned the reliability of an undercover agent's identification of a defendant in a narcotics sale where the agent had spent months in undercover work and had participated in dozens of such transactions before any complaints were issued.[68]

Because Federal and District of Columbia statutes governing drug abuse overlap, the United States Attorney may elect to proceed under either Federal or local law.[69] His election has a substantial effect on the ease with which a narcotics case can be proved as well as the potential penalty which may be imposed, since prosecution under Federal laws is aided by various legal presumptions and the penalties are more severe. In fiscal 1965 the United States Attorney elected to proceed under Federal law in 153 cases.[70] In making his decision he considers the type and amount of drugs involved, the offender's involvement in other offenses, and whether he is a non-addicted seller, an addicted user, a first offender, or a repeater. Federal indictments are generally drawn in three counts charging two violations of the Harrison Act and one Jones-Miller violation.[71]

Prosecutions in the United States District Court in 1965 resulted in more than an 80 percent conviction rate. In 113 Harrison Act cases terminated that year, there were 61 guilty pleas, 33 verdicts of guilty after trial, 3 acquittals, 4 verdicts of not guilty by reason of insanity, and 12 dismissals by the government. Only five cases under the Marihuana Tax Act were terminated in the District Court, four on pleas of guilty.[72] Eight percent of the narcotics offenders convicted in the District Court whose cases were filed in 1965 received probation or fine, 2 percent received over 10 years imprisonment, and 45 percent received prison terms of 3 to 6 years.[73]

Comparable data for prosecutions and dispositions in the Court of General Sessions are not available. Based on a sample of misdemeanor cases in this court, however, it appears that most of the convictions under the Uniform Narcotics Act and the Narcotics Vagrancy Act are obtained by pleas of guilty. Convicted defendants in 6.8 percent of the cases received probation or fine; 81.8 percent were sentenced to imprisonment, the median duration of which was 85 days; and 11.4 percent received the maximum sentence of one year in jail.[74]

The Narcotics Vagrancy Act poses special prosecutive problems. Its constitutionality is presently being challenged *inter alia* on the ground that under the Supreme Court's decision in *Robinson* v. *California*[75] an addict may not be punished for addiction alone. Although adhering to prior appellate decisions sustaining its constitutionality, a recent Court of General Sessions opinion expressed serious doubts

about the law's validity.[76] Its enforcement also raises troublesome questions. During a recent trial, the police testified that the statute is used to discourage "junkies" from "loitering in groups," talking to each other, or plotting crimes, and to provide a basis for interrogation and search of known addicts where possession is suspected but where the police lack the probable cause necessary to make an arrest for possession.[77] The U.S. Attorney presently requires three "observations" before prosecution will be authorized.[78] In fiscal 1965 there were 165 arrests; [79] prosecutions under the act average about 50 per year.[80]

TREATMENT OF CONVICTED NARCOTICS OFFENDERS

In most cases convicted Federal narcotics offenders may not be given suspended sentences, probation or parole. Those who receive a prison sentence and are addicted may be committed for treatment to the Public Health Service Hospitals in Lexington, Ky., or Fort Worth, Tex. within the discretion of the Attorney General. In fiscal 1966, 47 persons convicted in the District Court, 19 for narcotics offenses, were committed to Lexington for treatment. In fiscal 1965, 63 were committed to Lexington, including 32 convicted of narcotics offenses.[81]

At the Lexington hospital patients are first withdrawn from physical dependence on drugs with methadone or cyclazocine. Then they enter into a rehabilitation program, which consists basically of custodial care while the patient is involved in a work assignment. Some group therapy is offered as well as vocational training, guidance and counseling. There is no Federal provision for aftercare of these prisoners on their return either to prison or to the community.[82]

Convicted addicts who are not sent to Lexington usually serve their terms at the Reformatory in Lorton, Va. As of December 31, 1965, the Department of Corrections estimated that it had in its institutions over 300 persons convicted of narcotic offenses, and another 200 addicts convicted of other offenses.[83]

There are no special treatment programs for the addicts in these institutions.[84] Only minimal services are available for prisoners, since the Reformatory has no psychiatrist, only seven psychologists, and about six social workers to work with more than 1,200 prisoners.[85] There is no aftercare program for addicts who leave the institution, many of whom are not eligible for parole under the stringent Federal laws and therefore cannot be supervised in the community after release. In addition to these addict-prisoners, the D.C. Board of Parole estimates that nearly 150 prisoners released in its custody each year are in urgent need of an aftercare program to prevent readdiction.[86]

TREATMENT OF THE NON-CRIMINAL ADDICT

The 1953 Hospital Treatment for Drug Addicts Act provides an alternate method for dealing with drug addiction outside the criminal law.[87] The act specifically authorizes the civil commitment of persons who use habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who are so far addicted to the use of drugs that they have lost the power of self-control with reference to their addiction. Commitment may be voluntary or upon petition of the United States Attorney, but the law cannot be invoked for anyone already under arrest or on probation or parole. Actually, however, in minor drug cases the United States Attorney often agrees to drop the prosecution if the addict consents to a civil commitment.[88] Civil commitments under this law ranged from a low of 6 in 1961 to a high of 35 in 1964; in 1965 there were 28.[89]

If an addict wants treatment he must be prepared to commit himself for an indefinite period. When the United States Attorney initiates proceedings, he files a petition for commitment in the U.S. District Court. The person being committed is entitled to prompt examination and a judicial hearing before a jury with the assistance of counsel. The court may order commitment of the addict to a designated hospital for an indefinite period until the hospital certifies that the patient is no longer in need of confinement or has received maximum benefits from the commitment. The patient may petition the court for release if still confined after one year. After the patient is released, the law prescribes a 2-year period during which he must report for physical examinations to detect any return to drugs.

An addict in the District of Columbia who seeks treatment is usually referred to the Alcoholism and Drug Addiction Unit of D.C. General Hospital, the principal public facility for treating addicts in the District.[90] Only about 10 to 12 of the 42 beds in the Unit are available for narcotics cases, but the hospital staff says it does not turn away addicts who seek treatment. The staff advises the addict about the commitment law, notifies the Narcotics Squad of the Metropolitan Police Department and the United States Attorney, and usually admits the patient. Decision whether to seek civil commitment under the law is not made immediately unless the addict has been at the hospital two or three times before. Such an addict will not be admitted for treatment unless he is willing to be civilly committed.

The addict is first detoxified. Within the week required for this process, the hospital recommends to the United States Attorney whether the addict should be civilly committed. Patients whom the hospital does not recommend for civil commitment are usually dis-

charged after detoxification. These are likely to be obstreperous and poorly-motivated addicts who cannot be effectively managed or treated with the limited facilities and personnel at the hospital.

Patients processed under the civil commitment law are usually committed for 90 days to D.C. General Hospital, but an addict may be committed to a private hospital if he has funds to pay for his care. Patients committed to D.C. General are kept in a locked ward. The treatment program consists primarily of detoxification and physical reconditioning for a period of 4 to 8 weeks. Work therapy assignments in the hospital are possible if a court order for non-security detention is obtained. Limited staffing precludes any psychotherapeutic or individualized supportive treatment; rehabilitation services which would assist the addict when he returns to the community are meager. The 2-year aftercare procedures prescribed in the law are ignored because the outpatient facilities for assisting recently detoxified addicts are nonexistent.[91] Consequently, the recidivism rate of addicts treated under civil commitment is estimated at 90 percent.[92]

There is no community-based outpatient treatment for addicts in the District. Private physicians and psychiatrists are reluctant to treat them; usually the patients who do receive private attention are middle-class persons addicted to drugs other than heroin. The Health Department clinics do not treat addicts, and D.C. General Hospital services only a few. There are no private addict self-help groups operating in the District, in part because of the parole restrictions on frequenting with other addicts and the vagrancy law which could be applied to any such congregation of addicts.[93]

EVALUATION

The District of Columbia has up to now relied primarily on the criminal law to deal with drug addiction. Although strict enforcement of the Federal narcotic laws is credited with reducing large-scale narcotics traffic,[94] its impact on addicts and small-time pushers is limited. Despite severe sentences and efforts to limit the supply of drugs, the addict population in the District has increased. Present Federal laws severely limit the judge's sentencing discretion; he cannot differentiate between the addicts who may be rehabilitated and those who must be isolated as substantial threats to society. The same mandatory minimum sentences apply to the addict who buys and the drug profiteer who sells. The occasional marihuana smoker goes to prison along with the confirmed heroin user.[95]

Just as the threat of long prison terms does not seem to deter the addict, neither does the reality of prison life cure him.[96] Lorton Reformatory does little to rehabilitate the addict, who reenters the com-