DISTRICT OF COLUMBIA APPROPRIATIONS FOR 2000

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON DISTRICT OF COLUMBIA APPROPRIATIONS

ERNEST J. ISTOOK, JR., Oklahoma, *Chairman*

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NOTE: Under Committee Rules, Mr. Young, as Chairman of the Full Committee, and Mr. Obey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all subcommittees.

AMERICO S. MICONI, *Staff Assistant*

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DISTRICT OF COLUMBIA APPROPRIATIONS FOR 2000

THURSDAY, APRIL 15, 1999.

MAYOR'S SHORT-TERM ACTION PLANS

AND

FISCAL YEAR 2000 D.C. BUDGET

WITNESSES

HON. ANTHONY A. WILLIAMS, MAYOR
HON. LINDA W. CROPP, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA
ALICE M. RIVLIN, CHAIRMAN, D.C. FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY

OPENING REMARKS OF CHAIRMAN ISTOOK

Mr. ISTOOK. The Committee will come to order.

I would like to welcome everyone to the first hearing this Congress of the District of Columbia Subcommittee of the House Appropriations Committee.

Mr. Mayor, Madam Chairman, Madam Chairman. Very good to have you here too, Mrs. Norton. I am pleased to have for this first hearing the officials from the District of Columbia. I would like to welcome you all.

Let me make just a couple of brief comments before we proceed and recognize our Ranking Member, Mr. Moran.

IMPROVED FINANCIAL SITUATION

I think everyone is very pleased that the District has an improved financial situation. We would never want to mistake movement in the right direction for full and complete success, but I think everyone has been working diligently, very cooperatively. I want to express my sincere appreciation for that.

I am also very grateful on coming into the chairmanship of this Subcommittee to inherit better circumstances than some other people did. I am very fortunate in that regard too.

REVITALIZATION PROCESS

I think it is important that we understand the significant amount of progress that has been made. In addition to the work of the control board, the Mayor and the Council, there is also involved here a change in the congressional relationship with the District—the revitalization process—whereby a number of func-

tions were assumed by the Federal Government, whether it be the $5 billion in pension funding, the annual cost of corrections or the criminal justice system; they all made a significant difference.

ELIMINATION OF FEDERAL PAYMENT

So, yes, we eliminated the annual Federal payment of about $660 million. That has made a big difference because, frankly, the amount that Congress has assumed is greater than the amount of the Federal payment that was being made. Let's not leave out of that equation the extra Medicaid expenses that are being paid or reimbursed to the District too.

So I think that is an important measurement, to realize that every member of the team, whether it is the Congress, the Council, the control board, or the Mayor's office, each has had a significant role. Nobody knows for sure and nobody wants to know with certainty what the city's financial situation would have been had these measures not been undertaken.

[CLERK'S NOTE.—See "Clerk's Note" at bottom of this page.]

BUDGET SUBMISSION

I wanted to point that out and ask that this cooperation extend to a very key area. I realize there is a statutory deadline of June 15th to have a consensus budget submission available to the Congress. I would certainly hope that it will be possible to have that done by May 15th so that we can go through our internal processes and meet our congressional deadlines so that we can have the District appropriations measure completed through the House of Representatives by the end of June before the July 4th district work period. That is what I want to say by way of preliminary comments.

[CLERK'S NOTE.—Regarding the District's improved financial situation, the following should be helpful and informative to the reader.

First, Congress had to cut the budgets that were sent to Congress by the mayor, council and control boards. Those cuts since FY 1995 total over $1.4 BILLION cumulatively, with the budget base being reduced by over $315 million. If those budget reductions had not been made, there would not have been a surplus of $185 million for FY 1997; instead, the District would have ended up with a $130 million DEFICIT. And the surplus for FY 1998 would not have been $445 million; it would have been $130 million.

Second, the Revitalization Act (title XI of Public Law 105–33) shifted $900 million in so-called "State" functions to the Federal government along with $5 plus billion in unfunded pension liabilities. Congress also eliminated the Federal payment of $660 million. The arithmetic shows that the city was broke and woke up the day after the President signed the Revitalization Act with over $200 million cash in the bank. And instead of a $445 million surplus for fiscal year 1998, there would have been a $70 million DEFICIT ($445 less $315 less $200).

Third, in last year's appropriations bill Congress added over $150 million in Federal funds for the District.

Fourth, the national economy and stock market boom have generated an infusion of tax revenues into the city's treasury.

Basically, the District's newfound prosperity is not necessarily due to extreme sacrifices made by the District, including the control board. Some would say the budgets as submitted by District officials, including the control board, reflect a 'business as usual' attitude. The city has had only 2 years of surplus and positive fund balances—that does not necessarily signal that the District should resort to its prior spending habits and less than stellar management practices. The District still has to be careful about its

spending and should be careful not to jeopardize its precarious financial well being.]

Let me recognize Mr. Moran, the Ranking Member.

OPENING REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. Thank you very much, Mr. Chairman, and thank you for having this hearing. It is nice to see such first-class people representing the District before us: Mayor, Chairwoman Cropp, Dr. Rivlin and Congresswoman Norton. We thank you for all you do in behalf of the District's residents and really the entire metropolitan Washington region.

Your election to office marks the beginning of a new era for the District. It is one of professionalism and fiscal responsibility and social progress. I think we are going to find increasingly that, one, you can't have one without the other. You can't have sustainable social progress without fiscal responsibilities and vice versa. But two, it is also an era of goodwill not just between the District of Columbia government and its citizens but also between D.C. and its suburbs and I think between the Congress and the city.

D.C. MANAGEMENT RESTORATION ACT

The D.C. Management Restoration Act was passed in record time. That is a reflection of this new era of goodwill. It was introduced February 2 and signed into law March 1. That breaks virtually all records. I think deliberately so. It sent a clear signal.

In your inaugural address, Mr. Mayor, I am going to quote a little: You said, "Self-governance is a prerequisite of true freedom. A city that governs itself makes decisions that voters can evaluate, a joy in solving problems. The epicenter of democracy must reflect the core values of democracy." And you promise that the Williams' administration will be a tireless champion of that cause.

I know they were not only good words. That was a true personal commitment that you were expressing.

I hope and trust and expect that Congress is going to follow your lead and limit its direct involvement in the affairs of the D.C. government to only those issues that directly involve Federal appropriations.

CHAIRMAN ISTOOK'S VISITS TO D.C. AGENCIES

Mr. Chairman, I want to compliment you on your commitment to understand and to address District of Columbia issues. I have talked with a number of members of the subcommittee. All of them have been asked by you to go out and to see what is happening around us, not just to stay on Capitol Hill but to see what is happening in D.C.'s neighborhoods. I know that your effort is a sincere effort, and I know that you personally have devoted a considerable amount of time to touring the District schools, looking at its low-income housing and the local agencies. You have met with District officials. You familiarized yourself with local issues. That is a clear demonstration of goodwill. I do think it marks a new chapter in Congress' relationship with the District of Columbia.

So with the last mayoral election and with this City Council and obviously with this tireless advocate as our colleague in the Congress and now with this inaugural hearing of the D.C. Appropria-

tions Committee, this is a chapter that I think people are going to look back on with fondness, and it is a critical one and a very positive one. So I thank everybody that is writing it, and we can get on with the business of doing so.

Mr. Chairman, thank you.

INTRODUCTION OF WITNESSES

Mr. ISTOOK. Thank you very much, Mr. Moran.

There is something very unique about the District of Columbia with its relationship to Congress; and because of that, before we hear from the witnesses, I would like to allow the delegate from the District of Columbia, Mrs. Eleanor Holmes Norton, to be the one to introduce our panelists to us.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

I very much appreciate the approach you are taking to your chairmanship, and I must express that appreciation before I introduce the three officials that have come here this afternoon.

We appreciate this early introductory hearing. I appreciate what you just said, Mr. Chairman, that you have put fire in the District to get the budget here early because you intend, if you get it early, to get it out early. That would be a turnaround for the District and would be very much appreciated, to be the first out or among the first out rather than the last out.

I very much appreciate your visiting units of the District government to see for yourself what is happening there. Mr. Chairman, you have even resisted the calls I know that you must have been receiving from the press who expect you to opine on any and everything even before you have gotten used to handling your gavel.

I want to thank you for all of your courtesies to me for coming to see me when you initially became chairman, for then seeing the Mayor and me and for asking who else you should see and then seeing the Superintendent of Schools Arlene Ackerman and Police Chief Charles Ramsey.

The three top officials you see before you today are among the very best doing anything in any city in the United States today.

Chairman Linda Cropp is providing very able leadership to an entirely revitalized City Council where oversight is now the watchword.

Alice Rivlin is the only one among us sitting here who isn't paid, Mr. Chairman, at least not by the District of Columbia. The District didn't have a lot of good fortune in the 1990s, but it had the best of good fortune when it was able to attract to chair its Financial Authority one of the Nation's leading economists, a founding director of the CBO, the vice chair of the Federal Reserve Board and a long-time Washingtonian with hands-on experience and knowledge about this city that few of us have.

I come now to our new mayor who, it must be remembered, came to office with the very experience that a mayor most needs to run a big city today and that was experience, proven experience, prudently managing the finances of a big city.

The people of the District of Columbia clearly recognize Mayor Williams as one of the chief architects of its financial recovery when it elected this person who is new to the city as its mayor.

MAYOR WILLIAMS' FIRST BUDGET

Mayor Williams is now doing for city services what he did for city finances before becoming mayor. He has submitted his first budget. It is the first budget that is also a policy document I can remember seeing from the District of Columbia, I might say. It has promoted some comment within the District, but that is exactly what a budget ought to do, and we finally see a budget that makes people think and makes them know what they are for and what they may not be for.

I am very pleased to introduce the new Mayor of the District of Columbia to tell you the long story.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you very much, Mrs. Norton.

The hearing this afternoon is intended to focus on two issues, the fiscal year 2000 budget, which currently is in the form of the Mayor's submission; and also the short-term action plans that Mayor Williams has been pursuing. We realize, of course, the budget is still in process with the Council and the control board.

WITNESSES SWORN

Just to let the witnesses know, it is standard procedure to require that all witnesses be sworn in as provided by Rule XI Clause 2(m) of the Rules of the House and section 1(b) of the Rules of the Committee.

So to administer the oath, if each of you would stand and raise your right hand.

[Witnesses sworn.]

Mr. ISTOOK. Thank you very much.

Of course, we have your written statements for the record. There is certainly no need to go through the entire depth and length of those. Feel free to depart from them as you wish, because the entirety of your statement will be placed in the Committee's hearing record.

Mayor Williams, I am really happy to have you here. There is a lot of faith and hope that rests on your shoulders. I don't think anybody has seen or expressed anything that is inconsistent with the fact that that faith and hope seems to be very well placed. We are happy to hear from you at this time.

OPENING REMARKS OF MAYOR WILLIAMS

Mayor WILLIAMS. Thank you, Mr. Chairman, and thank you for having me here as well as my colleagues, Linda Cropp and Alice Rivlin. We are a team working together for the future of our city. We have a good working relationship; and also I am proud of the relationship we have with Eleanor Norton, who is our fearless advocate on the Hill for the needs of our city.

NATO—50TH ANNIVERSARY COMMEMORATION

I would like to say, Mr. Chairman, to the folks in the District in a couple of weeks we commemorate the 50th anniversary of NATO as the strongest alliance in history—political and military alliance—and celebrate democracy. It is important we can show that democracy works in the District and work towards full representa-

tion. We do that in a number of different ways but, most importantly, we show it as a community working together and coming together and succeeding together on the problems and challenges that face us.

MOVING TOWARD PERFORMANCE MANAGEMENT

Along those lines, because I have submitted my written testimony for the record, I just want to talk about two things briefly, the track our government is moving in towards performance management and the role of short-term action plans in that respect and a couple of highlights from the budget.

First, in terms of providing better services from the government, we believe that one of the most important things we need to do is restore the faith and confidence of District residents in their government. Those expectations are very, very high. They have to be managed. Those expectations, if they are dashed, can prove treacherous for all of us. I realize that. But suffice it to say I think it is important that we provide real, tangible, concrete benefit for our citizens as we get started in this effort to bring this government forward.

What we wanted to do was to leverage the reform work begun by the control board, the long-term systems improvements already under way in the agencies; and, in a way, that focused those efforts in a way that our citizens can see, touch and feel. What we decided to do was to put our agencies on a path of saying we are going to produce a cleaner city, we are going to produce a more customer-friendly city, we are going to become a more business-friendly city, and that not only speaks to those in need but actually delivers to those in need in a meaningful, tangible way.

GOALS ESTABLISHED

We have set out a list of goals that I submitted to the Committee. I will say, in summary, that we are succeeding in many of those goals.

When we first laid the goals out, I would be called naive. It was said I didn't know what I was doing, and I took abuse, abuse that if I understood politics I would never establish concrete goals because I would only fail in those goals. In fact, our agencies have delivered on many of those things, from the most simple—doing a better job with electrical inspections, with neighborhood inspections, collecting phone calls and managing our phone calls better—to the more elaborate.

HOMEOWNERSHIP AS A GOAL

We said we would turn over at least 100 houses in private homeownership throughout our neighborhoods. It turns out that, one, because our agency folks have been working very, very hard and, two, because we have an economy now that is, in many, many cases, a demand economy, we now have the opportunity to turn over far in excess of 100 houses in homeownership within the time allotted.

MOTOR VEHICLE SERVICES STILL NEED IMPROVEMENT

So we set very ambitious goals and we are achieving many of those goals, with the notable exception of cars and motor vehicles. While there is better customer service—we hear from many, many citizens throughout the city they have actually gotten better treatment in getting their license renewed and that service—there are still long lines for people getting their first registration and first license in the District, which brings to mind the need for something longer term.

What I think we need longer term is to fold together citizen input and neighborhood building, at a local level, into a sense of real performance management in the District, which is a fancy way of saying building a consensus of District residents, the business community, the foundation community, faith community, everyone out in our neighborhoods and our government on the goals of our government, agreeing on where we are starting, agreeing on where we want to go and holding ourselves accountable for getting there point by point, step by step, measure by measure, and making that information available most importantly to the public and to the local legislature, the Council and, during the control period, the control board for needed oversight. That isn't just another meeting but is oversight that actually has some traction.

STRATEGIC PLANNING PROCESS IS BEGINNING

We are going to be meeting with our agency heads beginning this week. We have had a couple of meetings. We are meeting intensively this week to begin with them on this strategic planning process. We are holding a number of sessions with the public to build public input into this process. We have placed a customer survey to fold in real citizen input on what the conditions of the government are and, again, were this to be a State, where we want to realize we should be. All of this is an important part in my mind of setting out a set of goals and keeping a scorecard on how we are achieving those goals.

I think a new model, a new paradigm for our city, but I travel to other cities, and it is working well in other contexts. I think it can work well here in our Nation's capital.

NEW LABOR STRATEGY

Along the lines of moving our government forward, we have included in our budget a number of steps that we hope will encourage and promote productivity in our government. Along with this general goal of performance management we have brought together a group of law firms in the District working with us on a pro bono basis to develop with us a new labor strategy for the District. This new strategy is intended to invest in our workers and by investing in our workers create a state of conditions, a context where we have the flexibility and have the kind of productivity we need to have our agencies perform for our people.

GAIN SHARING BY EMPLOYEES

You will find in our budget an emphasis on what we call "gain sharing", which is allowing our employees and work teams to reap the benefits of greater performance.

You will see an effort and intent on our part to rationalize the relationship between nonunion and union pay scales.

MIDDLE MANAGERS NOW AT-WILL EMPLOYEES

You will see an effort in our budget to create, pursuant to an act actually passed by the Council, to create a first-rate cadre of middle managers who are at-will employees but are well paid, well compensated and well trained to manage our agencies and deliver services for the people.

MANAGED COMPETITION

You will find in the budget something called "managed competition", something done in Philadelphia, Indianapolis, Portland, many cities and States now. And I say "managed competition" as opposed to introducing competition because I am a firm believer that our government and our city already is exposed to competition for that matter. The idea of managed competition is to manage the competition in a way that our workers have a legitimate chance of winning that competition and doing a better job for our people.

INVESTMENT IN EMPLOYEE TRAINING

In that respect, we have invested in training, we have invested in the tools that are going to be needed to make this process work. They include doing the right kind of reengineering, the right costing of our activities, very, very importantly working with our labor unions to help establish the framework of managed competition and how it will work.

I believe if we do these things our workers and the city has shown we will not only survive that competition, in most cases we will win that competition, because I have confidence in our people to do that.

COMMITTED TO CHILDREN

Just a couple of other areas. We have a major emphasis on children in our budget, and our commitment is not to simply take an additional amount of money and give it to the government in a traditional way but to think anew, boldly addressing the needs of children where two out of five still live in poverty, one of ten die before the age of 3. We have the highest percentage, 14 percent, of low-birth-weight babies. There are 3,100 foster care children in the District, and 98 percent of them are African American, all numbers of different problems across the spectrum of children in the District.

This is an effort to set aside the resources and to create a coalition of the faith community, the foundation community, local business and government working together to provide the overall needs of children to allow them to perform not only better in school but to perform better in their lives. I think this is very, very important that we do it in a way that encourages performance and encourages innovation.

ECONOMIC DEVELOPMENT

Finally, we also talk about economic development in the budget in the following ways: One, we work to rebuild the infrastructure of economic development in the city. There is support for the National Capital Revitalization Corporation, rebuilding the planning office, not a whole new, separate facility but an office that will leverage and complement the resources already available in the Federal Government, particularly in the National Capital Planning Commission.

TAX REDUCTION

In addition to that, to make an investment in tax reduction. I believe that tax reduction is important. I believe that tax reduction can be an important stimulus for economic development in the city, but I also believe that tax reduction has to keep the following in mind, that is, that throughout this we are trying to promote not only overall economic recovery but we are also trying to protect and promote the fiscal and financial stability in the District, and my only question is, at all times and at what benefit and at what cost are any of our initiatives met? And where I am satisfied those tests are met I, like any other normal politician, am more than happy to offer a tax cut to our citizens. It would be foolhardy to argue otherwise.

If we look at all those things, Mr. Chairman, we are talking about a budget that envisions a city that is thinking anew, creating a climate for investment, a city working much better and, very, very importantly, building a community, a fundamental element of returning democracy to our Nation's capital.

I thank you very much to testify to you.

Mr. ISTOOK. Thank you, Mr. Mayor. I know we will all have questions for you after we hear from the other panelists.

PREPARED STATEMENT OF MAYOR ANTHONY A. WILLIAMS

[The prepared statement of Mayor Williams follows:]

ANTHONY A. WILLIAMS
MAYOR

MAYOR'S FISCAL YEAR 2000 BUDGET

Testimony of Mayor Anthony A. Williams

Subcommittee on the District of Columbia
Appropriations Committee
U.S. House of Representatives

April 15, 1999

Chairman Istook, Congressman Moran, and Members of the Committee, thank you for the opportunity to testify before you today. It is indeed an honor and a privilege to share with the committee my administration's fiscal year 2000 budget for the District of Columbia and to discuss the progress we are making in our short term action plans.

Short Term Action Plans

In the first 100 days we have made rapid and substantial progress toward a government that works for everyone. We still have some work to do in some areas where we are behind, but as you can see from the handout (Appendix 1), we have met a significant percentage of our short-term goals. To briefly review, I have chosen to group the reforms around goals: A Clean City, A Safe City, Business Friendly City, First-Class Customer Service, Increased Employment Opportunities and Enhanced Neighborhoods.

I am proud of the progress we have made in the past three months, and I am committed to doing even more. But ultimately, the success of our efforts will depend not on short-term fixes, but on long-term planning and strategic investments in our infrastructure.

Budget Philosophy Bold Choices

Over the last few years, largely through the work we did in the CFO's Office, we have stanched the financial bleeding and stabilized the revenue stream. Through cooperation and hard work we have put the District temporarily on sound footing. However the fiscal health of the District needs to be pointed in a long-term corrective position. The people of the District deserve an innovative initiative that reflects the results of the election.

That is why I have proposed a bold budget for our city that will systematically upgrade our capacity to provide quality services to our residents—particularly with regard to education, health care, and other basic services. I am in the process of working with the Council and the Control Board so that the budget sent to Congress will reflect these initiatives.

Let me tell you why I think it is so important for our city to make bold decisions now.

Even though the District of Columbia faces surpluses in the short term, difficult decisions lay ahead. We must plan for the inevitable return of the business cycle, which could send the national economy into a downturn. Our surpluses will be rapidly wiped out if the economy falters and we have let down our guard against inefficiency and waste. We need to retool and rethink our government to put the city on solid financial footing for both good times and bad.

The time has come for us to make the crucial decisions that will put us in a competitive position for the next millennium -- decisions about what the government can and cannot do, should and should not do. Decisions that will determine, to a large extent, whether our city ultimately succeeds or fails.

This budget takes those tough decisions head on. It will put the District on a path to a stable future, ensuring for years to come that Washington will be a source of pride for all Americans. Most importantly, it strengthens our investment in critical areas such as: supporting children, improving government services, rebuilding the human service network, and expanding the economy.

At this point, I would like to briefly discuss how my budget affects each of these priority areas and submit my full testimony for the record.

SUPPORTING OUR CHILDREN

The future of the District is vested in our children. Children are our most precious resource and the wisest investment for our city. Unfortunately, we have lacked a unified strategy or a strong enough commitment from the government to assure that our children are safe, educated, happy and healthy. The results are ominous:

- 2 out of 5 children in the District live in poverty
- 1 out of 10 children in the District die before the age of 3
- The District has the highest percentage (13.4%) of low birth weight babies in the nation
- 40 percent of our children do not graduate from high school
- 1 out of 4 of our young men spend time in prison
- The 3,128 foster children in the District – more than 98 percent of whom are African American -- languish in the child welfare system for an average of 3.5 to 4 years, more than twice the national average.

These statistics highlight the moral imperative we face to renew and strengthen our commitment to children. This budget reflects that imperative, and follows through on my promise to devote $33 million toward children's programs.

Children's Initiative
Under my proposal, the children and youth investment partnership will distribute $33 million for out-of-school programs. This approach allows services to be competed by community organizations and government agencies. This is part of a new paradigm of public-private partnerships that is a core principle of my administration.

Some people have questioned whether it makes sense to provide these services through community organizations rather than government agencies. While I believe that our agencies have a critical role to play in the lives of our children, we need to make use of the energies and expertise of service providers in the community. I feel strongly that these programs should be community based—designed by people familiar with particular neighborhood needs, and implemented by performance-driven, efficient non-profit organizations.

In addition to the $33 million, I have included more than $21.3 million for new and expanded District programs. These funds support child care, foster care programs, youth employment and internship programs, resources for public libraries, and services for youth in the juvenile justice system. Investments in foster care and juvenile justice will help better serve children and meet mandated court requirements and specific performance criteria.

Public Education
If we are to build a stable and prosperous future for our city, we must have a well educated and prepared workforce. More fundamentally, education is about giving children a chance to fulfill their innate talents so that they can become all they are supposed to be in life. Simply put, we must do better for our children.

This budget will make a significant investment in capital improvements for our city's crumbling schools. We will invest $364 million in capital improvements. This will fund our program to renovate eight schools per year plus build two new schools and fund the bathroom renovation program.

Our students deserve to learn under a roof that doesn't leak. They deserve schools where bathrooms work and classrooms stay warm in the winter and cool during summer school.

I am proposing such a massive investment in schools to provide children a safe, clean and effective learning environment. Special focus will be put on technology upgrades in our schools to prepare students for the 21st century.

I am also recommending a 5 percent increase in teacher salaries. The fact is, we have by far the lowest teacher salaries in the region. It is hurting our ability to compete for the best and brightest educators. A large percentage of the District's teachers are fast

approaching retirement age—we need incentives to bring dedicated young teachers into our school system. We owe our children nothing less.

Higher Education
A first class education depends on first class schools, from kindergarten through college. While the need to invest in primary and secondary education is critical, we must also expand access to quality higher education for high school students. As a first step, we must improve opportunities for higher learning at the University of the District of Columbia.

The University of the District of Columbia
A historically Black, Land-grant University, and our only public, four-year institution of higher learning, the University of the District of Columbia has a critical mission for our city. As with institutions of higher education across the country, we must focus the mission of UDC and rebuild it into a high-quality institution. Our children deserve the best education we can offer and these graduates of UDC will be a part of our region's well-educated labor force. Again, this requires us to take a look at the current structure and focus of UDC and to make important decisions about its future.

UDC's campus desperately needs an overhaul costing in excess of $125 million. There is a proposal to move it across the river, but that is not the point. The point is that regardless of where it is located, do we go down the same track allowing it to continue unfocussed or invest so that it survives and thrives.

My vision for UDC has several components. First, the District will invest $5 million as seed money for the UDC's endowment, to provide for the long term health and prosperity of the University. Second, the plan will allow us to capitalize the assets of UDC in order to have more resources available to further the University's educational mission. Third, I believe we must devise ways to provide dedicated revenue streams to the University to enhance its long-term stability.

Additionally, I believe we must refocus the energies of UDC to concentrate on technology and preparing students for the world of work. These changes are not easy, but are necessary if we are to build UDC into a first rate university that meets the needs of its students and the community in the next century.

College Access Program
A third part of our strategy to improve access to higher education is to work with public private partnerships such as the D.C. College Access Program. DC-CAP is a creative partnership including 15 companies and foundations—a partnership that will awaken students to the opportunities available for higher education and make those opportunities possible by providing scholarships to make college affordable. DC-CAP is funded entirely by local corporate and foundation grants. It has already raised $14 million, and plans to raise a total of $20 million by the end of the year.

IMPROVING GOVERNMENT SERVICES

As part of this budget, I am proposing two major changes in the way our government serves its citizens. First, we must implement a series of reforms designed to invest in our workforce, promoting productivity, training, and more efficient service delivery. Second, where appropriate, we should introduce competition into our government, allowing our workers to make more money while providing residents better service at reduced cost.

Workforce Investment Strategies

To support ongoing efforts to improve workforce compensation and productivity, I propose a workforce investment strategy that addresses the pay disparity between union and non-union employees, links pay to performance, and improves training.

Pay parity will enhance morale and improve productivity. Under my proposal, pay parity will be achieved by FY 2002, beginning with a 3.8 percent base pay increase in FY 2000. In addition, I propose a 2.2 percent performance bonus fund for non-union workers, bringing the total increase to 6 percent in FY 2000. The effect of this proposal is to link part of employees' compensation to performance while, at the same time, achieving pay parity.

In addition to addressing pay parity, I propose a gainsharing initiative for certain programs that have measurable outcomes. When employees reduce costs through reengineering or other means and increase productivity, they are awarded a performance bonus for their efforts. By working with the unions, we can use gainsharing initiatives to improve services and reduce costs.

Human Resources Development

The employees of District government are our most important partners in building a government that is more responsive to the needs of citizens. Therefore, it is critical that the workforce is properly trained to do their job. Under my proposal, District employees will receive additional training to enhance their ability to provide quality services. This will include foundation skills (orientation, ethics), rehabilitative, and special skills training. This proposed workforce investment is a long-term strategic approach to improving management and compensating the workforce for a job well done.

Managed Competition

Managed competition is a process whereby public and private entities compete for the provision of services. Cities across the country have used managed competition to improve service quality, efficiency, as well as reduce costs. I propose to work together with our labor unions to inject competition into certain government services. We will give our workers new opportunities for increased training, performance incentives, and the ability to rethink their work.

The assumption behind managed competition is that in most cases our workers are the best prepared, most experienced people for the job. Given the monopolistic nature of government, however, they lack incentives to go the extra mile required to provide the highest quality service at the lowest cost. Under this plan, workers will be allowed to organize themselves and bid for a contract to deliver certain government services. They will receive training and technical support to help them get organized and to prepare them

for a competitive bidding process. Contracts will be structured with incentives for efficiency and quality.

Productivity Savings and Productivity Bank
The Fiscal Year 2000 budget also includes line items for productivity savings of $20 million. Savings are expected because of investments the District made in FY 1998. The productivity bank is intended to be a revolving fund that will enable the District to finance projects that decrease the cost of delivering services or increase revenues. Funding for the bank totals $30 million in FY 2000.

REBUILDING THE HUMAN SERVICES NETWORK

The District currently spends about one-third of its budget on health care related services. Despite this spending, the health care system in the District fails to meet the needs of many residents. On a series of health status indicators, the District ranks poorly compared to other large cities. The District has higher than national average rates of infant mortality, homicide, and communicable diseases including HIV/AIDS. An alarming 17 percent of our citizens – 80,000 residents – lack health insurance coverage. This budget reflects my belief that we must fundamentally restructure the health care delivery system to provide access to quality health care to every District resident regardless of income level and geographic location.

Health Care Restructuring
The centerpiece of my health care initiative for the city is to build on recent health care expansions to children and families and guarantee the availability of comprehensive health insurance coverage to every District resident with income at or below twice the federal poverty level. These expansions will cut the uninsured rate by more than half, from 17 percent to 8 percent, putting us in the top ten percent of states, and first among benchmark cities. Washington can and should become a leader in health care coverage.

The second component of my health care plan is a new emphasis on primary care services, including substance abuse treatment. Although our city has enough overall primary care capacity, some areas of the city are dramatically underserved. My proposal will work to solve this inequity, building two replacement primary care facilities in wards 7 and 8. Through insurance coverage and capital investments, this budget will greatly increase access and resources available for primary care service to District residents.

The third priority in this area is to strengthen the health care delivery system and the "safety net." This proposal begins to achieve this goal by reducing the number of uninsured in the District, thereby reducing the burden of uncompensated care on health care providers. In addition, this proposal maintains funding for the uninsured. The proposal contains two accounts to fund contractual arrangements with the Public Benefits Corporation (PBC). These contracts will reimburse the PBC for services provided at D.C. General Hospital and the clinics to individuals who remain uninsured.

A fourth component of my health care plan is the establishment of a health care commission to make recommendations for the improvement of health care service

delivery to District residents. The commission will devise ways of delivering equitable services to all of our communities.

Substance abuse treatment and prevention is also an important part of this initiative. The health care restructuring proposal includes the addition of substance abuse services as part of the standard managed care benefits package. Thus, all those newly insured and current Medicaid enrollees would have access to substance abuse services.

Welfare, Child Care, and Homeless Service

The FY 2000 proposed budget contains an increase of $13.5 million over FY 1999 for child care subsidies and facilities improvement. This increased funding supports subsidized child care for approximately 2,000 more children and increased child care subsidy rates. The FY 2000 budget includes $12 million for homeless services, which includes $200,000 for homeless shelter maintenance. In addition, the FY 2000 proposed budget includes $140.3 million for the Temporary Aid to Needy Families (TANF) Program. This budget supports the placement of 8,000 TANF recipients into work activities. Of the budgeted amount, $1 million in federal TANF funds are set aside separately within the budget for DHS to serve as a rainy day fund. These funds will remain deliberately unspent during FY 2000, ensuring that at least a carryover of $1 million will be available in FY 2001 and to begin to build a reserve to protect against future fiscal pressures.

EXPANDING THE ECONOMY

To support service delivery and to ensure financial prosperity, the District must invest resources wisely and continue to build on our recent financial progress. To this end, this budget includes proposals in the following areas:

Small Business Tax Relief

This initiative will provide substantial tax relief for small businesses, in the amount of $66.7 million the first year. Specifically, it will reduce filing thresholds; accelerate depreciation of electronic equipment; change the net operating loss deduction and eliminate carry-back of losses; eliminate the office of tax and revenue's professional license fee; restrict the arena fee to entities with District gross receipts over $3 million; reduce the commercial real property tax in the District's economic development zones; and eliminate the sales tax on internet access.

Neighborhood Revitalization

To be prosperous, a city must have a strong and vital core, and we are moving forward with plans to ensure that our downtown remains an engine of economic growth. But economic development downtown cannot come at the expense of our city's greatest treasure—the many diverse and unique neighborhoods from which is woven the fabric of our social and cultural life.

The District has many great neighborhoods, each with a rich history, traditions, and identity. Good people raise their families here. They worship, educate their children, and

relax with friends—all in our neighborhoods. If our city is to prosper, we must have healthy, vital neighborhoods.

This budget seeks to vastly upgrade the District's ability to address key neighborhood issues including jobs, affordable housing and clean streets. To do this, we will first upgrade our internal capacity to address neighborhood issues by putting more resources into the understaffed offices of planning and zoning. Second, we will dramatically step up street cleaning efforts and begin to coordinate cleaning efforts with community and private sector groups. Third, we will work through the National Capital Revitalization Corporation to leverage new investments in business and housing—investments that will renew our neighborhoods, one block at a time.

Capital Financing Strategies

Financial management targets are policy parameters that are important in the budget and financial planning process and are designed to both guide policy decisions and help meet financial and operating goals. The specified targets should allow the District to retain resources necessary to meet all critical operating and capital needs during the planning period. Furthermore, these targets should allow for the retention of resources necessary to reverse economic decline and facilitate economic development that improves the life of District of Columbia citizens. The financial management targets for the District are: maintaining structural balance, maintaining a positive fund balance, reducing the debt burden, restructuring of long-term debt obligations, and improving the District's credit ratings.

A debt restructuring plan is also in this budget. I am proposing to restructure our front-loaded debt to provide flexibility to fund tax relief. In addition, tobacco settlement securitization is a financial initiative that will also serve education. The FY 2000 budget includes $16 million in additional revenues due to the securitization of tobacco settlement funds. This amount is fully committed to fund debt service for the rehabilitation of public schools and the construction of two new schools.

The $150 Million Financial Reserve

Let me mention one other point. In addition to my budget, I have also submitted a budget and financial plan that complies with the congressional mandate to budget for a $150 million reserve. However, I strongly believe that the provision for the reserve is an excessive requirement for three reasons:

First, it is unnecessary due to the current financial position of the District government. Based on the financial results of Fiscal Year 1998 and preliminary Fiscal Year 1999 revenue and expenditures projections, the District will have a positive fund balance of more than $300 million at the end of Fiscal Year 1999. This is over 6 percent of general fund expenditures, which is higher than the norm of 5 percent for a positive fund balance.

Second, it would prevent needed investments to improve service delivery in the District. Setting aside an additional $150 million reserve would severely limit the funds available for critical initiatives such as health care, education, and economic development.

Third, it is inconsistent with budget stabilization practices in other jurisdictions. Many states establish a 'rainy day' fund and use prior year revenues as a cushion against potential economic downturns. The District has projected a fund balance that can be used as a reserve without the need to contribute additional resources.

Even though it is well intentioned, setting aside a $150 million reserve is not the best strategy for putting the District on stable footing for the 21st Century. I am proposing strategic investments to train and prepare our workforce, repair our crumbling schools, and secure our infrastructure. We must address the problems that are steadily eroding the long-term viability of our city.

TOWARD THE 21ST CENTURY

This budget sets out aggressive policy goals for our children, our schools, our health care system, and our neighborhoods. It provides new investments our citizens want and deserve. To meet these goals without exposing the District to the danger of another financial collapse, we need a smaller, more efficient government. We need to fundamentally rethink how the government is delivering services to our citizens. We need to change minds, attitudes, and old habits.

The District has come farther and faster toward economic and financial recovery than perhaps any city in the nation. Unlike New York or Philadelphia, we have engineered this recovery without resort to borrowing. Not long ago, it seemed inconceivable that we would now face surpluses instead of deficits. This remarkable recovery has come about because of a number of factors, including a strong economy, better tax collection, and tough fiscal discipline.

As I have said many times, however, the best time to fix the roof is when the sun is shining. We stand at the brink of an unprecedented era of hope and promise for our city. We need only have the courage to seize that future for our children. The time has come for bold leadership and difficult choices. We must not let our children down.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ACHIEVING OUR GOALS

Goal: *A Clean City*

ACTION ITEM	Promised	Delivered
Thomas Circle Underpass Reopened	Feb. 15	Complete
Rid-a-Rat Campaign Launched	Feb. 28	Launched
Pothole Blitz Launched: 95% of Reported Potholes Filled within 48 Hours	Feb. 28	Launched
Gateway Beautification Launched along Georgia Ave., New York Ave., and East Capitol St.	Feb. 28	Launched
Graffiti Elimination Campaign Launched	March 31	Launched
Public-Private Partnership to Clean Gateways Launched	March 31	Launched
Rat Summit Held to Discuss Best Practices for Rat Abatement	April 17	On target
Selected Abandoned Buildings along New York Avenue Demolished	June 30	Being worked on

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ACHIEVING OUR GOALS

Goal: *A Safe City*		
ACTION ITEM	***Promised***	***Delivered***
Enhanced Police Service in each Police District	**April 15**	**On target**
Reduced Response Time for Fire/Emergency Medical Services	**May 15**	**On target**
Crime Information to Officers Enhanced with Implementation of New Technology	**August 31**	**On target**
Open-Air Drug Market Abatement for Six Sites Launched	**August 31**	**On target**
Free Fire Inspections to District Homes Increased by 10%	**Dec. 31**	**On target**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ACHIEVING OUR GOALS

Goal: *A Business-Friendly City*		
ACTION ITEM	*Promised*	*Delivered*
Decreased Waiting Time for Electrical Inspections to 48 Hours	Feb. 28	Complete
Expedited Building Plan Review	Feb. 28	Launched
Decreased Regulatory Hassles with the "Development Ambassador Program"	Feb. 28	Launched

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ACHIEVING OUR GOALS

Goal: *First-Class Customer Service*		
ACTION ITEM	*Promised*	*Delivered*
Extended Hours on Wednesdays until 8:00 p.m. at Departments of Human Services, Employment Services, Motor Vehicles, Consumer and Regulatory Affairs, and Selected Public Libraries	March 17	Launched
Enhanced "One Number" for District Government Agencies	March 31	Launched
Improved Customer Service Centers at the Departments of Human Services, Employment Services, Consumer and Regulatory Affairs, and Motor Vehicles	March 31	75% (DMV still needs work)
Reduced Waiting Time at the Department of Motor Vehicles	March 31	Not Met
Neighborhood Drop Boxes for the Department of Motor Vehicles placed in Police Stations	April 30	On target
Applications for Licenses and Permits Available Online through the Department of Consumer and Regulatory Affairs	May 31	On target
"Answers, Please" Social Service Referral System Established	June 30	On target

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ACHIEVING OUR GOALS

Goal: *Increased Employment Opportunities*		
ACTION ITEM	***Promised***	***Delivered***
Decentralized System for Welfare-to-Work Job Placement	**Feb. 28**	**Complete**
Bilingual Satellite Career Center Opened at the Latin American Youth Center	**March 31**	**Launched (Open)**
Vocational and Undergraduate Education Provided to Qualified Welfare-to-Work Recipients	**April 30**	**On target**
Rates for Around-the-Clock Child Care for Welfare-to-Work Families Established	**April 30**	**On target**
6,500 Private and Public Sector Jobs Secured for the District's Youth Summerworks Program	**May 31**	**On target**
Department of Employment Services Revamped in Partnership with the Federal Government and the Private Sector	**August 31**	**On target**

ACHIEVING OUR GOALS

Goal: *Enhanced Neighborhoods*		
ACTION ITEM	***Promised***	***Delivered***
Neighborhood Stabilization Program Launched with 32 Neighborhood Inspectors	**March 30**	**Launched**
Thirteen Neighborhood Learning Centers Opened for After-School Homework and Computer Assistance	**April 30**	**On target**
Backlog of 75 Home Improvement Loans Eliminated	**June 30**	**On target**
One Hundred Boarded-Up Houses in Columbia Heights and Shaw Neighborhoods Sold	**July 31**	**Being worked on**
Three Recreation Facilities Developed: Banneker Ballfields, "THE ARC", and Southeast Tennis and Learning Centers	**Sept. 30**	**On target**

Mr. ISTOOK. Chairman Cropp.

OPENING STATEMENT OF CHAIRMAN LINDA CROPP

Ms. CROPP. Good afternoon, Chairman Istook, Mr. Moran and other Members of Congress and staff. I am pleased to be here with my colleagues, the Mayor Tony Williams and with Alice Rivlin from the Financial Authority and our representative on the Hill, Eleanor Holmes Norton. I want you to know it feels good, as many of you have said, to sit here as part of a city that is turning itself around. It feels very good, extremely good, to sit here and to walk through the streets of our town with our citizens holding their shoulders back, their heads up high and smiles on their faces and to know we are a part of this turnaround.

Our resolve as elected officials is to sustain this type of change in our city and to improve the service delivery to our citizens.

Let me give you just a brief update as to where we are in the Council, what the Council has been doing since the Mayor submitted his budget March 15.

BUDGET REVIEW PROCESS

We are currently in the process where we are having our budget review. It is systematic, extensive and a rigorous exercise where the committees are charged with promoting a public dialogue on the budget among the agencies, the community and the private sector.

After the budget submission, the Council immediately conducted a series of hearings that lasted for several weeks, including weekends and even during the recess. Agency heads, staff, city workers are invited to discuss the specific needs. This is the point at which the public will have an opportunity to come in and give its input after having the review of the budget as the Mayor has submitted it to us. It gives us all the opportunity to hear these comments and to also hear from other individuals. Some may be experts in certain areas and elements of the budget. The final product will be one hopefully that we have all come together and developed.

CONSENSUS BUDGET PROCESS

We are looking at a consensus process where the Mayor and the Financial Authority will come together and discuss all of these issues and come together with a decision. Probably in the outcome we don't always agree to everything as the way it usually is, but we are committed to work together and come together with a budget that will meet the needs of the citizens of the District of Columbia.

BUDGET MARKUP PROCESS

Following our public hearings, the budget markup process will start. In fact, we will start part of that process in the very near future so that we can meet the guideline and time lines that Chairman Istook has suggested may be beneficial to the city as a whole, and we are going to try very hard to do that.

In some cases, revisions to the funding levels will be recommended. These revisions will be the culmination of efforts of the

committees, the testimony by public witnesses and the priorities of the Council.

After the committees report their recommendations, the Committee of the Whole will put together a final budget. The final budget the Committee of the Whole will put together will be an outcome of all of us working together, from the Mayor to the Financial Authority and the Council, in a consensus budget process.

PENDING BUDGET REQUEST—TWO SCENARIOS

The budget request which is now pending before the Council has two scenarios. One is the budget that we have said is the "legal budget". That is the framework that Congress has set before us. It does have a $150 million reserve as required by the Congress. And then there is the Mayor's "alternative budget", which presents a budget where the Mayor is showing a lot of new ideas and his vision for the city.

PROBLEM WITH THE $150 MILLION RAINY DAY FUND

One problem that we are facing is that some of those priorities and some of those ideas the Mayor would like to put into effect, we have a problem if that $150 million rainy day fund stays in there. I would refer to the spending plan with the $150 million reserve as the legal budget and the one without as the alternative budget.

There are many reasons why we support the budget without the rainy day fund. I am going to talk about what we mean by that. It does not mean we don't believe in a reserve. We truly do believe there should be a reserve. We have balanced our budget for 2 consecutive years, and we expect to do so for fiscal year 1999. In fact, we now project that we have accumulated a surplus of $312 million that will probably even grow. This is an outgrowth of an awful lot of different things that have taken place to reduce spending within the city and, too, our revenue estimates have been extremely conservative.

These funds are, in effect, reserved in an amount twice as big as the $150 million rainy day fund. Given this financial good news, this provision is somewhat outdated because it does not reflect our current financial situation. Moreover, this requirement prevents us from investing in and improving basic municipal services such as a good public school system, efficient public service and an effective police force.

COUNCIL'S PRIORITIES

For fiscal year 2000, the Council has emerged with a list of priorities. We have several financial management targets to accomplish. These targets range from debt policy, establishing a cash reserve and possible prefunding of some expenditures. We are considering tax reforms that will allow more supermarkets and retailers not just downtown but also in the underserved areas, because such activities will increase the city's revenue as well as improve the quality of life. We intend to upgrade our workforce and make city workers more competitive and professional.

We face an enormous human challenge in our health care system because we need to take care of our indigent and vulnerable. We

must build a superior school system because we owe it to our children. So the priorities are many, and choices will be difficult, but that is why we are here.

REVITALIZATION PLAN

Since the revitalization plan was enacted in 1997, the city has rebounded financially. The assumption of the pension liability by the Federal government has lifted an onerous burden off our shoulders, and we are quite grateful for that. To sustain the momentum of progress the city is taking additional monies from the Federal government, especially in the areas of mental health and special ed.

CITIZEN COMPLAINT REVIEW BOARD

We ask Congress to fund the Citizen Complaint Review Board for fiscal year 2000.

TOBACCO SETTLEMENT

Furthermore, we would like to request that you look at that 70 percent Federal recoupment of the tobacco settlement to be returned not only to the District but to other States as we look at approaches for us to deal with this tobacco settlement money nationwide.

As we continue to collaborate with the Mayor and Financial Authority, the role of the Council is to present a good product to you in June, a responsible consensus budget. As you help us steer this good product through Congress, we ask that this budget, which will be diligently put together by locally elected officials, be left intact and free of unnecessary riders.

The District is one city. This city now has one government headed by an elected mayor. Be it the budget or the visible service improvements, we are committed to working side by side with him.

TWO RESERVES

I talked a little bit about the $150 million cash reserve. Actually, there are two reserves. It is the cash reserve but, in addition, it is the accumulated reserve. By the end of this fiscal year I want to make it clear the city will have probably about $312 million accumulated reserve over the cash reserve.

I certainly believe we need to have money in reserve for unforeseen challenges that we may have and also for sometimes when the economy is not as strong as it is now. But what we are expected to do at this point is much more than what is required of any other government, and so I would hope that you would look at that.

As we all work together to make this city improve, we want you to know we have been working and we urge you to support the process and endorse the budget that we will be submitting to you, and we want you to join our consensus team as we all work together to move this city forward.

Thank you so very much for this opportunity.

Mr. ISTOOK. Thank you, Chairman Cropp.

[The prepared statement of Chairman Linda Cropp follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D. C. 20001

LINDA W. CROPP
Chairman

TESTIMONY

by

Linda W. Cropp

Chairman

Council of the District of Columbia

House Appropriations Subcommittee
Hearing on the District of Columbia
Thursday, April 15, 1999
2:00 pm
Rayburn 2362

Good afternoon, Chairman Istook and other members of the House Appropriations Subcommittee, I am pleased to be here with my colleagues, Mayor Williams and Dr. Rivlin, to testify on the District's Fiscal Year 2000 operating budget and financial plan.

Let me give you a brief update on what the Council has been doing since the Mayor submitted his budget on March 15. The Council budget review process is a systematic, extensive, and rigorous exercise where the committees are charged with promoting a public dialogue on the budget among the agencies, the community, and the private sector. After the budget submission, the Council immediately conducted a series of hearings that lasted two weeks, including weekends and during recess. Agency heads, staff, and city workers were invited to discuss their specific needs, program enhancements, and plans for FY 2000. Members of the public were also given an opportunity to voice their concerns and grievances on any issues related to the budget. The objectives of these hearings are two-fold: it allows the committees to scrutinize the budget of each agency and it ensures that the proposed programmatic funding levels would permit the city to run efficiently, deliver services, and, most importantly, serve the DC residents adequately.

Following these hearings, each committee will mark-up portions of the budget which fall under their purview. In many cases, detailed revisions to the funding levels will be recommended. These revisions will be the culmination of the efforts of the committees, the testimony by public witnesses, and the priorities of the Council. After the committees report their recommendations, the Committee of the Whole will put together a final budget which will be a balanced budget that addresses the financial and programmatic priorities of our residents, the Council, and the Mayor. This Council review system guarantees that all, i.e., the Mayor, our workers, our citizens, and outside experts will be heard and consulted. This democratic process will form the basis for the development of a consensus budget with the Financial Authority.

The budget request which is now pending before the Council has two scenarios, i.e., the legal budget with the $150 million reserve as required by Congress and the Mayor's alternative budget that does not have the $150 million rainy day fund. As a point of reference, I will refer the spending plan with the $150 million reserve as the "***legal budget***" and the one without as the "***alternative budget.***" There are many reasons why we too support the budget without the $150 million rainy day fund. We have balanced our budgets for two consecutive years and we expect to do so for FY 1999. We now project that we will have an accumulated surplus of $312 million. These funds are, in effect, a reserve twice as big as the $150 million rainy day fund. Given this financial good news, this provision is outdated because it does not reflect our current financial situation. Moreover, this requirement prevents us from investing in and improving basic municipal services, e.g., a good public school system, an efficient public works department, an effective police force--conditions that are imperative to retaining and attracting more residents and businesses in the city. I hereby appeal to Congress to rescind this provision as soon as possible.

For the Fiscal Year 2000 budget, the Council has emerged with a list of priorities. We have several financial management targets to accomplish. These targets range from debt policy, establishing a cash reserve, and the possible prefunding of expenditures. We are considering tax reforms that will lure more supermarkets and retailers, not just downtown, but also in the

underserved areas because such activities will increase the city's sales revenues as well as improve the quality of life. We intend to upgrade our workforce and make city workers more competitive and professional. We face an enormous "human" challenge in our health care system because we need to take care of our indigent and vulnerable. We must build a superior school system because we owe it to the children. So the priorities are many, and the choices will be difficult, but that is why we are here.

Since the Revitalization Plan was enacted in 1997, the city has rebound financially. The assumption of the pension liability by the federal government has lifted an onerous burden off our shoulders and we are grateful for that. However, to sustain the momentum of progress the city is making, additional monies from the federal government, especially in the areas of mental health, school improvement, and special education would be needed.[1] We also ask that Congress continue to fund the Civilian Complaint Review Board for FY 2000. Furthermore, we would like to request that the 70 percent federal recoupment of the tobacco settlement be returned to the District so that we can use it to increase health service delivery.

As we continue to collaborate with the Mayor and the Financial Authority, the goal of the Council is to present a "good product" to you in June--a responsible, balanced, consensus budget. As you help us steer this "good product" through Congress, we ask that this budget which will be diligently put together by locally elected officials be left intact and free of unnecessary riders. The District is one city. This city now has one government headed by an elected mayor. Be it the budget or visible service improvements, we are committed to working side-by-side with him. That, we think, should be the way home rule works. We urge you to support this process and endorse the budget that we will be submitting because we want you to join the consensus team in moving the city forward.

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[1] Specifically, the Mayor is requesting $117 million for mental health, $73 million for schools, and $30 million for special education.

Mr. ISTOOK. We heard from two branches of government, and you might normally think we have three branches of government, but it is a little different with the control board. So we are pleased to hear from our third panelist, Dr. Rivlin.

Ms. RIVLIN. Yes it is a little——

Mr. ISTOOK. You are the judiciary maybe?

OPENING STATEMENT OF CHAIRMAN ALICE RIVLIN

Ms. RIVLIN. Right. In any case, I represent the peculiar institution known as the control board, which was put in place temporarily and which we fondly look forward to getting out of business in the not-too-distant future. However, it is a very exciting spot to be in at the moment; and despite, as Congresswoman Norton has pointed out, the fact I don't get paid I think I am getting amply paid in the rewards of working in the city which is turning around, which has vigorous political leadership dedicated to the future of the city, and where the fiscal situation which was a disaster 3 or 4 years ago, as no one needs to remind this Committee, is now in much better shape.

Now, one can't overestimate the fiscal progress. Although it has been very gratifying, the city still faces an uncertain financial future. It has a narrow tax base, and it can only grow if we make vigorous efforts to bring in new residents and new business.

CITY'S DEFERRED MAINTENANCE, CRUMBLING INFRASTRUCTURE

We also have a legacy of deferred maintenance, crumbling infrastructure, as well as poor services that have to be repaired. But we have a will in the city, led by this new leadership, to tackle those problems. We at the control board want very much to support the elected leadership and get this government moving forward, and then get out of the way.

MEMORANDUM OF AGREEMENT

In recognition of the new era in the District, the Authority and the Mayor in January signed a memorandum of agreement that described their new relationship, and this memorandum of agreement made clear that while the Authority retains all the responsibilities that it has under the statute the Mayor is in charge of the day to day running of the city and the supervision of the executive branch departments. That is as it should be. He also has responsibility for program and policy matters related to these departments and agencies.

In recognition of this new development in responsibilities, the Congress recently passed legislation that places this basic agreement that we did together into law, for which we are very pleased.

Perhaps the symbol of this new working relationship is that we all meet together very frequently. We meet regularly on Wednesday afternoons, the control board, Chairman Cropp and the Mayor. We also have other meetings, and we meet with the whole Council.

Yesterday afternoon we turned our regular meeting into a meeting with the full Council. We had to get out of our little conference room, which wasn't big enough for all these people, but we had the full Authority, the full Council, and the Mayor and some staff.

ASSUMPTIONS IN BASELINE BUDGET

It was our second meeting on the year 2000 budget. We cleared up I think any disagreements that we had on what were the assumptions in the baseline budget. That is the first thing you have to do if you are going to make a budget, you must make sure everybody is working from the same assumptions. We spent time with the Mayor talking about his priorities; we spent time with Chairman Cropp and her colleagues, talking about how their priorities differ; and then we worked out a process for coming to consensus over the next couple of weeks. We don't have a lot of time if we are going to get this budget up here early. We are hoping for the middle of May.

SEVERAL DIFFERENCES ON MAJOR ISSUES

But we are establishing some working groups in which the Mayor, the Council and the Authority will be represented to work out difficulties or differences on major issues where we know now there will be some differences of point of view. Tax reform is one. How to treat the health system is another. Exactly what to do with this youth initiative is another. Everybody wants to take care of kids, but people have a little different idea about what that should be.

So, as the others have said, we are well launched on the consensus budget process. It will not be easy, in part because there are so many things that need to be fixed or need to be done that cost money and because, although the revenue picture is a lot better, it isn't terrific yet. We are still losing population. And because we do have this obligation under the law to set aside the $150 million rainy day fund in addition, as Linda pointed out, to our growing balances in the general fund. So we do that because that is what the law says, but those things all make for a difficult budget process.

CONTROL BOARD'S PRIORITIES

I am, however, confident our only role here is to pull the two sides together into a consensus budget. One of Linda's colleagues from the Council asked me in the hearing yesterday what are the Authority's priorities, and we said we don't have priorities except to get a balanced budget in compliance with the law up to the Congress on time. We will hope to assist the elected authorities in doing that.

In the longer run, there must be economic development, as the Mayor and the Chair have said. We must improve the infrastructure, and we must improve the schools in particular. That is a particular concern at the Authority.

Then we must all work together to convince ourselves and to convince you that this city is really working and it is time to get back to what I think of as normal governance, namely a city run by its own elected officials.

Thank you.

Mr. ISTOOK. Thank you very much, Dr. Rivlin.

[The prepared statement of Dr. Alice Rivlin follows:]

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY



Hearing before the
Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives

Alice M. Rivlin
Chairman

Constance Newman
Vice Chairman

Robert P. Watkins
Member

Eugene Kinlow
Member

Darius Mans
Member

Statement of Alice M. Rivlin

April 15, 1999
For Release Upon Delivery

Good afternoon, Mr. Chairman and Members of the Subcommittee. It is a great pleasure to be here with you today. I welcome the opportunity to discuss the District of Columbia and its recent progress, and the process by which the City will develop a consensus budget for fiscal year 2000.

It is also a pleasure to be on this panel with the Mayor of the District of Columbia, Anthony Williams, and with the Chair of the Council, Linda Cropp. The District is indeed fortunate to have such strong, qualified elected officials at the helm to lead us into a new era of effective, responsive city government.

Mr. Chairman, I believe we are entering a new era in the District. It is an exciting time of new leadership and new opportunity. There is renewed energy in the city and a sense of hope that, through the cooperative efforts of the District, the region and the Federal Government, the progress that the Nation's Capital has made in the past few years will accelerate.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) has enormous respect for Mayor Williams. My four colleagues and I are working hard to build a collaborative and constructive relationship with him. We also are working closely with the new Council. The Council has three energetic new members elected in November. Both new and returning Council Members are

endeavoring to build on the positive results that the City has recently achieved. All together, it is a promising time to be working for the revitalization of the Nation's Capital.

District's Status

As you know, the Authority was created by an act of Congress in April, 1995, to assist the District in restoring financial solvency and improving management effectiveness. At the time of the Authority's creation, the District Government was virtually bankrupt: it was unable to pay its employees or its contractors, it was running a significant operating deficit and a large accumulated deficit. Since the District's bonds could not be sold at market rates, the U.S. Treasury was the City's only source of funds.

Moreover, the District at that time was not responding adequately to the needs of its citizens. Streets were filled with potholes and often went unplowed in winter. Citizens seeking ordinary services, such as motor vehicle inspections or building permits encountered long delays and confused records. Medical care for the needy, child welfare services, and assistance to the elderly were often lacking or inadequately provided. Crime was rising, neighborhoods were decaying, and the public schools were deteriorating. Residents and businesses were fleeing the City.

Nearly four years later, the District is in much better shape. Thanks to the efforts of many people, including the former members of the Authority, Mayor Williams in his former position as Chief Financial Officer, Members of the Council, the President and the Congress, the District has not only stemmed the deterioration, it has considerably improved its overall condition. For fiscal year 1998, the City ran an operating surplus for the second straight year and was able to pay off its accumulated deficit. The City has greatly improved the integrity and internal controls of its budgeting process and financial systems. The bills get paid, taxes are collected, and the District's securities sell at market rates. From a financial standpoint, the City's comeback has been remarkable.

However, while the fiscal progress has been gratifying, it is important to understand that the City still faces an uncertain financial future. Its tax base is narrow and can only grow if vigorous efforts to attract new residents and enhance business opportunities are sustained and successful. Deferred maintenance and inadequate investment have left a legacy of decayed and outmoded infrastructure -- from bursting pipes to leaky roofs and decrepit or non-existent computers -- that will take substantial resources to put right.

Similarly, while the quality of the District's public services has demonstrably improved, much remains to be done. In response to the National Capital Revitalization

and Government Self-Improvement Act passed by Congress in 1997, the District has laid the groundwork for long term, sustainable improvements in the quality of public services. As the Authority's last annual report details, public services in many agencies are better than they used to be. With sustained effort, they will be even better in the near future.

Relationship with Elected Officials

In recognition of the new era in the District, the Authority and the Mayor in January signed a Memorandum of Agreement describing their new relationship. The memorandum made clear that, while the Authority retains all its responsibilities under the statute, the Mayor is in charge of the day-to-day running of the City and supervision of executive branch departments. The Mayor also has the responsibility for program and policy matters related to these departments and agencies. In recognition of this new development in responsibilities, the Congress recently passed legislation that places this basic agreement into law.

To ensure effective cooperation and communication, the Authority has invited the Mayor to attend meetings of the Authority in a non-voting capacity. The Authority has extended the same invitation to the Chair of the Council. We have met numerous times under this arrangement and are communicating well.

I am very pleased by the strong working relationships that the elected and appointed officials of the City are developing. We have found shared purpose and common ground in our efforts to improve the District. Together, we are already working to achieve consensus in such areas as the Fiscal Year 2000 financial plan and budget, strategic plan priorities for the District, health care management, improving the labor-management environment, the National Capital Revitalization Corporation, and a strategy for accelerating economic development.

The Mayor has publicly stated his strong intentions to make immediate improvements in public services, and Authority Members have told the Mayor that he can count on our full support in his efforts to improve the quality and performance of government services. And the faster the better! All of us look forward to cleaner and safer streets and alleys, more responsive public officials, a safety net that is compassionate and timely, and all of the other things that citizens expect that their local government will effectively provide. We believe that visible short-run improvements are feasible, but we are also conscious that many aspects of D.C. service delivery are still deeply broken and will take sustained effort to repair.

Fiscal Year 2000 Budget

Mr. Chairman, the Authority is committed to working with the Mayor and the Council to develop a consensus on priorities and objectives for the fiscal year 2000 financial

plan and budget, due to Congress on June 15, 1999. In fact, it is our hope that we can submit a budget to Congress in advance of the statutory date. We believe that an early budget submission will help Congress to act quickly on the City's budget.

In the past several years, the Authority has worked very hard to ensure that a consensus budget was developed by the Mayor, the Council and the Authority. We intend to do so again. It is extremely important that all the elements of the District's governing structure together develop the framework for budgetary progress and priorities. I will let the Mayor provide the Committee with the details on the budget's development as it stands today, but be assured that the Authority is so far very pleased with its overall development.

As you know, Congress has required that beginning with fiscal year 2000, the District must set aside a reserve of $150 million. The funds in this reserve are "intended to provide flexibility to the District government when unforeseen circumstances arise." The establishment of this fund will require the District to make some hard budget choices. There are likely to be some areas where the Authority, the Mayor and the Council will not agree, but I believe that we will amicably work out these differences in the weeks ahead. We look forward to working closely with the Subcommittee in the coming months to enact the District's budget on a timely basis.

Long-term Priorities

The Mayor, the Council and the Authority are also working together on long-term priorities for the District. One of the fundamental goals that we have agreed upon is accelerating economic development. In collaboration with Congress and the Administration, the District recently completed a strategic plan and funding plan for the National Capital Revitalization Corporation, a new entity that holds great promise for helping the City to make targeted economic development commitments and facilitate private development efforts throughout the District. We believe this Corporation can make an important difference in the District's ability to support strong economic development, and we hope that Congress is fully behind this endeavor.

Additionally, the District, through a collaborative process with the private sector, non-profit organizations and community groups, last fall issued an economic development strategy that focuses on a list of specific actions to leverage jobs and growth in the City. We view this approach as the beginning of an intensive effort to make the District more attractive to new business, retaining those businesses and Federal agencies that are already located in the City, and creating greater opportunity for neighborhood development – not just activity in the central business district. It is vital that we focus our attention on economic development: the economic health and future vitality of the District are directly tied to the success of our efforts in this area.

Other long term priorities the Mayor, the Council and the Authority will stress in the comings months include continued improvements in financial management, tax reform to create a more equitable structure, targeted investments in technology and other infrastructure areas, and the widespread improvement of public services. We will give special emphasis to investing in our young people and the skills and vitality of our workforce.

The Authority is working closely with Superintendent Arlene Ackerman, who has charted an ambitious and impressive course, to strengthen the D.C. Public Schools. There is no question that our ability to build a brighter future for the City, and to keep and attract residents, requires quality public education and safe schools. We are optimistic that the strides made in the last year to rebuild decaying schools, make facilities safer, and increase the quality of the education that all children receive, are laying the groundwork for sustained improvement in education. The Authority, in collaboration with the Superintendent of Schools, the Emergency Transitional Education Board of Trustees, and the Board of Education must make the schools a beacon of hope and opportunity for the District. We are optimistic that the Board of Education will implement the transition plan developed under the leadership of Dean Mary Futrell. This will mean that full authority will be returned to the Board on June 30, 2000. Along with the Mayor and the Council, we are also working closely with UDC to strengthen public higher education in the District.

Return to Normal Governance

Finally, the District must make the transition to normal governance. This City, like every other city in America, deserves to be managed by professional managers responsible to elected officials who, in turn, are responsible to an engaged electorate. Democracy is the cornerstone of our nation's heritage, and the District should be an example of how well democracy can work, not a shameful exception.

We all recognize that the District is our nation's capital at the same time it is our local community. As such, it occupies a unique and sometimes complex place in our governmental structure. The District is fundamentally intertwined with the Federal Government. The City's prosperity, its well being, its future are all influenced by how we interact with the Federal Government and responsibly steward the resources that support the City – both the community and the capital.

In 1995 and 1997, the Congress was sufficiently concerned about the condition of the District that it passed laws aimed at improving the financial and management health of the City. The laws stipulate that control periods would remain in force -- and the Authority would remain active -- until certain conditions were met. The District was required to first run its operating budget without a deficit for four consecutive years, and to repay any borrowings by the Authority. More general provisions of the law

mandated that the District improve the quality of its public services and strengthen the structure of government in the City, and help to sort out the functions between the District and the Federal Government.

Mr. Chairman, the District is on its way to accomplishing the goals and objectives of the congressional statutes, but let me stress that we are not there yet. In my testimony today, I have highlighted some of the achievements made so far and some of the issues that we will be working on in the coming months. Through the cooperation that the Mayor, the Council and the Authority have established, I believe we will continue making progress in meeting the goals set by Congress so that the District can make the transition to normal governance as soon as possible. I know that the Mayor and the Council Chair join me in welcoming opportunities to come back to the Hill and report to the Subcommittee as we move toward the statutory objectives that will help to bring about a timely return to normal governance.

Conclusion

In closing, I wish to say again how pleased all the members of the Authority are that a new, more promising era is dawning in the District. We look forward to a close working relationship with the new Mayor and the new Council, and we also look forward to working with the Subcommittee. We all have the same goal: to bring about permanent and positive change for the citizens of the District and the nation's capital.

Mr. ISTOOK. I want to mention before we have questions from the members of the subcommittee, we have the 5-minute rule on addressing the members of the subcommittee, and intend to follow the practice of taking people, alternating parties, but, beyond that, taking it in the order of arrival at this hearing.

I better set the example and make sure I adhere to the 5-minute rule myself. My time is running.

QUESTIONS ABOUT TAX CUTS

This is a question to each of the panelists, because I think a large part of our mission is making sure that you have the tools to do the job, not that you are asked to do something that cannot be done. There is a lot of positive discussion about significant tax cuts for taxpayers in the District. I applaud this. I think a favorable tax environment is an absolute necessity to attract businesses and residents back to the District. That may be the most important part of economic development that you can undertake.

I also believe a more vigorous economy will create some positive revenue benefits for the District, too. But it is important to recognize how is this going to fit into the framework of what we have been trying to do?

I am not trying to argue figures with anyone. I have been told, for example, that if the Federal government had not assumed the extra District responsibilities that we have assumed that for fiscal year 1998, rather than a $445 million surplus, the District may have had a deficit of about $70 million. Now, I don't want to argue which reform, whether Congress or the control board or personnel policies were the most significant, but it is important to understand there are still structural things that you as leaders of the District are working upon.

But when we try to fit this into the situation with tax cuts and also concerns about some programs, trying to help some of the accumulated social problems within the District, how do you fit it together? For example, ending oversight by the control board, which is a prime objective I know for people concerned with Home Rule, requires keeping the budget balanced. There is talk about wanting to spend the $150 million special reserve. Yet might it be the stabilizing needed to make sure that things remain in balance?

EXPANSION OF SERVICES AND TAX CUTS

There are some proposals that involve expansion of some city services and programs, especially regarding health care and children. So the real question is whether the city—that means the Mayor, the Council, the control board—are prepared to make the adjustments necessary to provide a tax cut and that it occurs to me, Mr. Mayor, that things such as you propose in the Services and Improvement Act may be a key part of this.

WASTE AND INEFFICIENT PERSONNEL POLICIES

I don't think anybody is claiming that all the waste has been purged out of the system in District government, that all the difficulties with personnel policies have been totally purged out. There

are still some gains to be squeezed out of the system if people are willing to do so.

So I want to ask each of you, how aggressive are you willing to be in even accelerating some of the reforms within the District to make possible these tax cuts that seem to be a vital key to a lot of the city's future?

BETTER QUALITY OF LIFE IS NEEDED

Mayor WILLIAMS. Well, for myself, Mr. Chairman, I believe that there really are three overarching things we are looking at all the time in terms of questions. What is rightsizing our government and getting it to a competitive level when you compare many of our agencies to best practices around the country or benchmarking against ownership service levels around the country? You will find we still have room for improvement there. You will find that we have to expand our economy, as opposed to increase taxes, to provide not only the needed revenue for our government to do its job but a better quality of life for all, which is really our intent, and finally building on the Federal relationship.

CREDIT FOR RECOVERY

As it goes to the Federal relationship, I agree with you this is one of these old theological arguments. It is almost impossible to fathom out what led to the recovery. Was it a better tax plan, outside control? It all contributed. It is all there now.

[CLERK'S NOTE.—See "Clerks Note" at bottom of page 2.]

$150 MILLION RESERVE

The $150 million is different from the requirement that we have a rainy day fund. It is really something different to me. The $150 million is saying that in any given year you have to protect against overspending by setting aside $150 million which you can only spend under special provisions.

I think we have firmly established a track record where we conservatively, to say the least, estimated expenditures and revenues. Where you have positive swings year to year of $300 million, to say you have to set aside $150 million to make sure you don't have a negative swing seems to me to be somewhat—a little bit redundant. So I would say that we have established that track record.

As relates to funds left over, my view is that where there are funds left over as we bring this government into balance and get ourselves into the right fiscal situation I would make sure that we have made intelligent, prudent, responsible investments in children and education, because that is an economic development tool; to make sure we have made responsible investments in infrastructure, because that is an economic development tool; that we did a better job with street sweeping and snow removal. It is not rocket science. We just got more snowplows. So when people were actually able to go out there and plow—and then, finally, yes, that we make room for tax reduction because you are talking about the people's money, not the government's money. I agree with that.

TAX REDUCTIONS AS A BRAKING SERVICE

I also agree that, as a general rule, tax reduction can act as a brake or as a framework to keep government in its right size in overall society. That is a good thing. But a question has to be asked, too: What is the intended benefit from the particular reduction?

My particular druthers are that we focus tax reduction where we can see the benefit. Where in my budget we talk about tax reduction, it focused in a major way on small business because it is a big part of our economy. I think it is sensitive to that, and it is where you have an extraordinary discrepancy between what our small businesses are paying taxwise. And these are the emerging industries incidentally—biotech, computer technology, for example—compared to the surrounding area.

SUPPORT FOR PENDING FEDERAL TAX RELIEF BILL

As relates to individual tax relief, my personal druthers are I support our Congresswoman's bill she has before the Congress because I think the Federal Government can do a lot to provide that dramatic individual relief we need. But that is my view.

Mr. ISTOOK. Ms. Cropp.

TAX CUTS REQUIRE FISCAL DISCIPLINE

Ms. CROPP. When we look at tax cuts, there is no question we really need to take a multiple fund approach. Tax cuts in isolation probably will put us back into the position we were in a few years ago.

Mr. ISTOOK. As far as fiscal discipline that you have to exercise.

Ms. CROPP. Exactly. When you deal with tax cuts you have to look at them in a sense of how they help the economy grow, tax cuts that bring in more revenues in the long run, expand our tax base. As we do that we have to look at the impact that a revenue change will have on service delivery. I think everyone is in favor of some form of tax cuts.

DEFINING THE TAX CUTS

I think the challenge before us currently is how we define the tax cuts. What type of tax cuts are we talking about? The Mayor in his budget has I think about $64 million in tax cuts that are going towards small businesses. Several members of the Council have put out tax cuts that would reduce income tax and property tax and business taxes. For that the dollars will come from some part of the surplus.

NEED SAVINGS TO HAVE TAX CUTS

Mr. ISTOOK. Let me ask, are you prepared to bite the bullet on some programs and spending to make this possible?

Ms. CROPP. The proposal that has been introduced by Council members does not necessarily require that in the way that it has been introduced. But it seems to me that as we look—what we have to do is look at the long-range outcome of what any type of tax cut would happen, and it does also require for efficiencies and economies in government as a whole. Part of what we have to con-

tinue to do is to make our government more efficient and, while we are trying to bring in additional revenues, to see if there are approaches that things don't cost quite as much. You will see some of that in this budget. I think the executive branch has done an outstanding job in the new procurement process for the District where we will save $20 million and we have to continue to look for efficiencies along those lines.

Before we decide on any final tax cut we have to really do some long-range numbers, run some long-range numbers to see what the effect is, how much, and if we will have to reduce the cost of government.

Mr. ISTOOK. Dr. Rivlin.

GET RID OF INEFFICENCIES AND REDUNDANCIES

Ms. RIVLIN. I think you put the problem very well. There are just more things people would want to do, including tax cuts, than can be done within the resources available.

The first thing to do, it seems to me, is to look very carefully at the base budget; and we are doing that in conjunction with the Mayor to make sure that we get out all of the inefficiencies and redundancies that can be gotten out and that we are really spending on things that have high priority.

The taxes that I think I personally—not even speaking for the Board—most tax cuts that I am most attracted to are ones that can be packaged with other efforts on economic development, where we clearly can give tax breaks to small business in conjunction with other economic development measures, because we do need to grow the District economically, particularly in the neighborhoods.

CAUSE FOR LOSING POPULATION

Now, everybody would like an individual income tax cut—I suspect everybody in this room. That costs more money, and it has to be traded off against the question of better services. And it is basically the question, are we losing population in the District because our income taxes are too high or because our schools are not very good and our streets are not very safe or both? And that is what the budget question comes down to, and that is one of the things we will certainly be arguing.

The other thing is some of this can be phased in over time because clearly a tax cut, if it is to be phased in over time, can be in some ways as good an incentive as if the whole thing came in the first year. That makes it somewhat more affordable.

INEFFICIENCY IN GOVERNMENT

Mr. ISTOOK. I appreciate that. It has certainly been my impression that many people believe there are still many areas of inefficiency within city government that are very entrenched, and it takes special efforts to tackle those. And certainly I am committed, and I think you will find plenty of allies in Congress, to make sure that you have the tools that are necessary to do that job.

Thank you very much.

Mr. Moran.

Mr. MORAN. Thank you very much, Mr. Chairman.

I have three areas of inquiry, and the witnesses can choose which they wish to address.

RECOGNITION OF CONGRESSMAN DIXON'S EFFORTS

I do want to say one thing. The Mayor talked about a whole lot of factors converging to bring us to this point where we can stand tall and proud at the progress that D.C. has made, and I want to give some credit to the gentleman sitting immediately to my left who chaired this Subcommittee for a number of years. Mr. Dixon was one of the first to come out and say, "I have had it, we want some audits, we want those audits and recommendations to be adhered to, and we have to get greater accountability and fiscal responsibility in the city government." So he deserves more credit than he gets oftentimes for that.

RECOGNITION OF ALICE RIVLIN'S EFFORTS

Mrs. Rivlin deserves a tremendous amount of credit because the Rivlin Commission laid out the road map. You told us what needed to be done in the District government. And you also deserve a lot of credit when you were properly given responsibility for chairing this board and your first action was to give as much management responsibility back to the District as possible.

I think the board deserves great credit for the work they did as well. We don't want to start this new chapter out without giving credit to people who deserve it; and, obviously, the gentlelady to your left, Mrs. Rivlin, goes without saying. Let me emphasize something, and it is interesting that Mrs. Rivlin actually said it before I had a chance to. I am glad she did.

TAX RATE IN VIRGINIA COMPARED TO D.C.

When I was Mayor of Alexandria right across the river, it was too easy a sell to get businesses to locate in Northern Virginia versus the District. It was no secret to have a 9.5 percent personal income tax versus a 4.5 percent, less than half in Virginia. That was just prohibitively expensive for people to locate in the District, so I think that has got to be changed.

A lot of corporate taxes, this franchise tax, the workmen's comp situation, that affects businesses. You know they are just not comparable, and they work to the benefit of Northern Virginia and Maryland suburbs and to the disadvantage of the District. We need a level playing field.

To some extent, it is a context of your competitors' tax situation that should drive what you are doing. You want to be competitive, and it is obvious that taxes are one area where you are not competitive. It is not fair, and it is why you lose a lot of business you ought to be getting.

If we want to be in favor of good government then we in the suburbs particularly have to support levelling the playing field. But the way to do it is not to put the District back into fiscal insolvency, because too large a tax cut would do just that, as Mrs. Rivlin said.

SPREAD TAX REDUCTIONS OVER TIME

But I do think, since it takes a long time for a company board to decide to relocate and find a place, to get accustomed to the move and to actually move, you don't need to do it overnight. Even if you were to say, within 5 or 10 years, we are committed to bring this individual income tax rate down from 9.5 percent to 6.5 percent, that accomplishes it and doesn't cost a lot but achieves the same objective; and likewise with these other corporate taxes that don't yield a lot of money but lose a whole lot of business.

So comment on that, if you would like.

SAFETY NET PROGRAM

And another topic I want to address, though, is the safety net program. And I really admire what you are trying to do, Mr. Mayor, particularly with children's health services.

The abuse and neglect in this city has to stop. I know everyone here is determined that it is going to stop. It is just too high. Some of it is going unreported. It is probably worse than we realize.

But I am not sure the best way is to cut out the Medicaid DSH program. Ms. Norton caught a mistake in the 1997 balanced budget agreement, $26 million. She got it restored, but I think there is a plan not to match that DSH money. If that is the case, I worry about it.

PUBLIC BENEFIT CORPORATION

I wonder if the Public Benefit Corporation—one of the new acronyms. I am not sure that the PBC should be competing with other private nonprofit entities. Howard University Hospital and Children's Hospital have got to be able to compete fairly with Public Benefits Corporation and not give a bias to PBC because they are supporting D.C. General. I don't want them to end up subsidizing D.C. General.

I am out of time.

METRORAIL

The third topic Metrorail, big problem. It is critical for D.C. Would you support a regional revenue raising program where we could raise it within the metropolitan region and fund Metrorail and some of our other regional transportation projects rather than relying on Richmond or Annapolis——

Mayor WILLIAMS. Speaking for myself and not for Chairman Rivlin or Chairman Cropp, I personally believe and have spent some time now trying to foster better relationships in the region. I believe one of the first steps in building a regional partnership, and realizing once again the role of this city as the central region, is to begin a transportation program along those lines.

COMMUTER TAX

Mr. MORAN. Better idea than a commuter tax.

Mr. ISTOOK. Are you going to endorse the commuter tax?

Ms. RIVLIN. No, no.

Mr. MORAN. If so, I think the time is up.

METRO-WIDE AUTHORITY TO TAX

Ms. RIVLIN. No commuter tax, but just to say that in the 1990 report that I chaired, which Mr. Moran graciously referred to, we came out with a metropolitan wide authority with tax power; and I think that is a good idea.

NEW WORKERS' COMPENSATION LAW

Ms. CROPP. If I may comment on a couple of questions, one, there is a new law in the District with regard to workmen's comp and the new law passed in December—with the wound still in my back—brings us closer to parity and really has changed. I would be more than happy to share that with you. And you see the District took a Herculean step with respect to workmen's comp.

HEALTH CARE ISSUES

Health care is an important issue in the District. We have about 125,000 citizens uninsured or underinsured. These are the people who work. Those who don't work usually have Medicare, Medicaid or something else. They are the working poor, and we need to look at our health care policy.

The other problem we face in the District is we have a lot of our hospitals such as Howard that you mentioned, such as the Washington Hospital Center, Greater Southeast, who provide an awful lot of uncompensated care to our citizens. There is no doubt that we need to develop a different approach in dealing with health care to keep our hospitals open and provide health services.

Actually, the Mayor started a process that was different; and I think it gives us a starting place for us to come in and try to look at different approaches to meet this very important need.

Mr. MORAN. Thank you very much. Thank you for your indulgence.

Mr. ISTOOK. Thank you, Mr. Moran.

I am going to remind people, to be sure every member has the opportunity to participate, to pay a little more attention to the time. We are not doing that bad.

Mr. MORAN. I apologize. That was directed at me properly.

Mr. ISTOOK. That is all right.

Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman. It is a pleasure to have the opportunity to ask a few questions at this point, given that I am the most junior member of the subcommittee.

MANAGEMENT REFORM, PRODUCTIVITY, AND INFORMATION TECHNOLOGY

I would like to ask some questions, and you can answer generally or specifically, about a fairly narrow topic or set of topics having to do with management reform, productivity and information technology, just to get a sense of what progress has been made in those areas over the past couple of years. I know it is something near and dear to your heart, given your previous work. Maybe you could talk about what your priorities might be and the opportunity for further investment in those areas.

$10 MILLION PRODUCTIVITY SAVINGS—USE OF MANAGEMENT REFORM MONEY

In last year's budget, I believe in the final version, there remained an allowance for productivity savings of approximately $10 million. Perhaps you could begin by talking about whether those savings were realized, in what areas they were realized and what areas had the greatest promise for further savings and for other reform.

Mayor WILLIAMS. I would be happy to get you the information of where we think savings were realized in the general management reform effort. Because we have been working on this with the Council and with the Board, and the management reform money invested in the District I think has brought near-term savings. But I think, more importantly, it is going to bring long-term savings because of the system investments.

[The following was supplied for the record. In addition, a copy of a letter dated June 17, 1999 from the Committee to the control board requesting an analysis and status of the approximately $568 million allocated for 'management reforms' follows on pages 52–54:]

MANAGEMENT REFORM/PRODUCTIVITY SAVINGS

Management Reform was under the direction of the Chief Management Officer at the time of FY 1999 savings target was set. Although specific percentage shares were assigned to agencies to achieve the full $10,000,000 target, only three agencies reported savings totaling $1,500,000 all of which were one-time savings.

While Management Reform savings targets from previous years may not have been realized, the Williams Administration is committed to making the District government more efficient. To that end, we have taken steps to ensure that savings targets projected for FY 2001 are both realized and recurring.

—The Office of the City Administrator is developing a plan to track and secure the $47,000,000 in productivity savings projected for FY 2001 so savings will begin to be captured at the outset of the fiscal year.

—The largest source of these savings will be a workforce reduction of up to 1,000 employees through the elimination of long-standing funded vacancies and attrition through regular and early retirement during FY 2000.

—While there will be expenses associated with achieving these workforce reductions during FY 2000, the projected FY 2001 savings are up to $37,000,000.

—Additional areas targeted for savings include—

—better management of disability claims;

—additional Medicaid reimbursements the District has historically failed to pursue;

—eliminating unused telephone lines and extra service options on active lines; and;

—cell-phone account management.

MAJORITY MEMBERS
C. W. BILL YOUNG, FLORIDA, CHAIRMAN
[illegible]

Congress of the United States

House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

dc00cb617

MINORITY MEMBERS
[illegible]

June 17, 1999

Mr. Francis S. Smith
Executive Director
D.C. Financial Responsibility and
Management Assistance Authority
One Thomas Circle
Suite 900
Washington, D.C. 20005

Dear Mr. Smith:

The Committee appreciates your prompt reply to the requests made in our letter of June 4, 1999. Item number 8 was a request for an analysis and status of the savings from management reforms reported in the fiscal years 1998 and 1999 budget documents. The material provided in response to the request was exhaustive, but we would appreciate if a summary could be provided for the Members' review. The summary should include the expected dollar savings for each of the agencies and programs, and the total cost for each year which agrees with the amounts reported in the budget documents, after adjustments by the control board. Our understanding is that the FY 1998 budget included $257,061,219 for management reforms. We understand that that amount was adjusted by the control board to $285,435,010. For FY 1999, the budget included $72,419,000 for management reforms, and subsequently adjusted to $102,100,000 by the control board. In addition, the Conference agreement provided another $25,000,000 for management reforms.

The above amounts total $412,535,010 for management reforms. In addition, we understand that the control board has spent some of the interest earned on funds from various sources held by the control board on behalf of the District on management reforms. From the limited information we have on non-appropriated expenditures of the control board, it appears the control board spent approximately $2.6 million in addition to the above $412.5 million. This totals approximately $415 million on management reforms for fiscal years 1998 and 1999.

Mr. Francis S. Smith
June 17, 1999
Page two

Enclosed also is a letter from Dr. Brimmer indicating that $155,164,654 of the annual benefit of $201,090,000 the District would receive for fiscal year 1998 as a result of the National Capital Revitalization and Self-Government Act of 1997 was to be spent on management reforms. With this amount, the total becomes approximately $568 million. The Committee would like an analysis and status of that amount, including the expected savings, when those savings are to be realized and for what agencies and programs.

Lastly, the fiscal year 1998 budget document included $152,375,000 of estimated cost-saving initiatives as part of the Mayor's Transformation Plan. Please provide an analysis and status of those savings as well.

Thank you once again for your cooperation and timely response to our requests. Please call me at (202) 225-5338 or Stephen Monteiro at (202) 225-2132 if you have any questions.

Sincerely,



Americo S. Miconi
Staff Assistant
Subcommittee on District of
Columbia Appropriations

Enclosure

District of Columbia Financial Responsibility
and Management Assistance Authority
Washington, D.C.
June 24, 1998

The Honorable Charles H. Taylor
Chairman
Subcommittee on the District of Columbia
Committee on Appropriations
United States House of Representatives
H-148 The Capitol
Washington, D.C. 20515

Attn: Mr. Migo Miconi

Dear Mr. Chairman:

The District of Columbia Appropriations Act, Public Law 105-100, requires that the District of Columbia Financial Responsibility and Management Assistance Authority ("Authority") allocate the one time net benefit that will accrue to the District of Columbia government during Fiscal Year 1998 as a result of enacting the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105-33).

Under the requirements of the Appropriations Act, the Authority must allocate these funds to management and productivity improvements, capital expenditures, and the reduction of the accumulated deficit.

Pursuant to these requirements, the Authority has approved a plan to allocate $88,902,343 to management reform projects in the Fiscal Year 1998 operating budget; $66,262,311 in the capital budget authority (PAY-GO) for management reform projects, and $1,340,000 for additional debt service in Fiscal Year 1998 related to the increased capital borrowing of $50,000,000 for management reform related capital equipment; and, $44,585,346 to reduce the accumulated deficit.

If you have questions, please contact my office.

Sincerely yours,

Andrew F. Brimmer

Andrew F. Brimmer
Chairman

CONTROL BOARD—ALLOWED CITY TO ACQUIRE NEW SYSTEMS

Mayor WILLIAMS. One of the things that the control board environment allowed the District to do was to invest in new financial systems, procurement system and background systems that allow the government to achieve better productivity; and my goal in the government is to, on a central level, to think about it as a tool kit, to provide a tool kit for each of our agency managers to use to manage their agencies on a performance basis.

REENGINEERING PROCESSES AND MANAGED COMPETITION

So one of the tools, for example, is reengineering processes and improving processes; and another is managed competition. Another is the whole labor strategy. These are all tools we want our managers to use as they bring their agencies to size.

The best indicator of where our agencies ought to be in size is two different points, one, from the marketplace in managed competition, because you give real-life information on how your government compares to the real world; and, two, by comparing what our government does with agencies in other cities. If you have one FTE doing 20 units of work a year and another in a comparable city doing 200 units, you know you have some work to do with that manager to get yourself down to the proper level.

Mr. SUNUNU. Is there an ongoing effort to conduct those comparable studies with other cities across the country?

PERFORMANCE MEASURES DUE MAY 15TH

Mayor WILLIAMS. We are committed to submitting to the Congress—it may not be May 15th, maybe a little after, because we accelerated the budget—but we are committed to submitting to the Congress a plan stating an initial set of measures, a scorecard on what we want to achieve as a government. This is an important tool for everyone to use to keep us accountable.

Mr. SUNUNU. Are there objectives within the criteria? And who developed the criteria for those comparisons?

Mayor WILLIAMS. The criteria was originally developed a couple years ago with work done by Deloitte & Touche, a lot of work done by the Financial Authority. We are building on that work in the individual agencies, a lot of help from the Federal government. OMB has helped tremendously. And all of that is incorporated into the measures and the plan you are going to see.

[CLERK'S NOTE.—The material supplied by the Mayor appears on pages 1237–1290, this volume.]

QUALITY OF INFORMATION SYSTEMS AND Y2K STATUS

Mr. SUNUNU. Can you talk about information system quality? You mentioned a few areas where you have invested in new information technology. Could you talk about where it is strongest, where the weak areas are that remain, and in general terms how you feel about your Year 2000 compliance level?

Mayor WILLIAMS. Congressman, I applaud you in asking questions about systems, because a lot of times they are ignored. And they are vitally important, and their breakdown can interrupt everything we are talking about. I will go down the list.

NEW PROCUREMENT SYSTEM

Procurement, I think we will see—we are projecting real savings beginning next year because of a new procurement process that we think will cover 80 percent, that is $20 million of goods and services in the District. So we are seeing real traction in the procurement area.

NEW PERSONNEL SYSTEM

We are seeing real traction in the personnel area. I inherited a CAPPS system, a term for our personnel system, that languished for some time. We put time and effort into it. It came on this year, and we are going to finally have for the first time real position control in the District, a fancy way of saying we will know the number of people who work in the place, what they are doing and what they are paid. We won't be paying people that died. That is important.

NEW FINANCIAL SYSTEM

The new financial system is very, very important because the new system allows putting—people, instead of spending time sorting out personnel and nonpersonnel—and drudgery—can spend time on cost of service information, which is the real business analysis for our agencies. That is very, very important.

YEAR 2K STATUS

Finally, Year 2K—Suzanne Peck, our Chief Technology Officer—we are very, very proud of her; she comes from the private sector—embarked on an effort to not only remediate our Y2K problems but at the same time we are doing that to congregate all of our data management in the District in the most productive way. It is an ambitious task, and to the extent we have not made it in certain areas we are making a major effort to do contingency planning to cover us in that bridge period between January 1 and when the relevant system is on-line.

Mr. SUNUNU. I think that is to your credit. A lot of people who are out and about investing in new technology or trying to become compliant forget about the contingency planning portion.

REVENUE COLLECTION SYSTEM PROGRESS

A final question. Revenue collection, is your system fairly modern and is it integrated with your budget system and also your payment system? Has that been modernized and is that integrated with the budget system at all?

Mayor WILLIAMS. No.

Mr. SUNUNU. Is that the weakest area, in collection and payments?

Mayor WILLIAMS. Everyone who follows the District—the revenue situation is really a staged situation.

Stage 1, we had manual processes with no system backup, millions of tax returns on the floor. That is what we are talking about.

Stage 2, tax returns have been pulled up off the floor. We have a new customer service element. We are returning tax refunds as

fast as anyone in the country and manually integrating financial information overall with the particular revenue information.

The third stage on that, Natwar Gandhi, our Director of Tax and Revenue, with support of the Financial Authority, are incorporating an integrated tax system; and the goal is to enhance tax collection, integrate all the financial information with the revenue information. And very, very importantly for customer service, we are hoping that, beginning with business taxes, proceeding to sales and then going to property—I may have it a little off—someone will be able to call 24 hours a day and get their tax work done by the District.

Just to imagine where we have gone in 4 or 5 years, you had to be there when we started.

Mr. SUNUNU. Congratulations on the success so far, and good luck with the final phases of that revenue implementation.

Thank you.

Mr. ISTOOK. I hope everyone's taxes are done by now.

We are blessed to have a former Chairman of the Subcommittee. Mr. Dixon, it is your time.

REMARKS OF FORMER CHAIRMAN JULIAN C. DIXON

Mr. DIXON. Thank you very much, Mr. Chairman.

I don't have anything to add to what you or Mr. Moran have said except to thank him and say I look forward to working with this distinguished group of elected officials in the District of Columbia. Mr. Moran did trigger one thing, though, that the blame and the credit can be spread around to a lot of people.

RECOGNITION OF AMERICO MICONI, PHIL DEARBORN AND DAVID VISE

There are three people in particular I would like to thank for their work over the years. That is the gentlemen to my right and to your left, Mr. Americo Miconi, who has been a very, very objective person. He gets beat up on by Republicans and Democrats because he's faced with questions such as where did you get that crazy idea? Why did you tell the Chairman this or that?

The second person that I have not had a lot of direct contact with but I was telling Mr. Mollohan that he is a particular resource, and that is Phil Dearborn sitting over to the right in the audience.

At times, the press plays a negative role in society, but I think the press has played a very constructive role in identifying problems and shaping the new District of Columbia; and whereas I would be in trouble to single out any one person I would single out David Vise from The Washington Post who took a GAO report that Pete Stark and I commissioned, understood it and investigated it.

That is all I want to do, is thank those people for their participation in it.

Mr. ISTOOK. Thank you. Maybe we should recognize The Washington Post.

Mr. MORAN. They just got recognized.

Mr. ISTOOK. I agree.

Let me mention, with the vote on, my intention was—Mr. Cunningham should be back—was to have him take the chair while I go vote. He is not back at this point. I don't know if any other

member wanted to take any time now as opposed to heading over to vote and coming right back.

Mr. MOLLOHAN. We only have a few minutes.

Mr. ISTOOK. I know. That is why I am checking on that.

Let's do this. Mr. Cunningham will be back momentarily. Let's recess until his return, and he will reconvene the hearing and recognize people accordingly.

We will stand at ease for a moment.

Thank you.

[Recess.]

Mr. CUNNINGHAM [presiding]. We will reconvene. I am sorry, the elevator was slow in getting me back.

Ms. Emerson was here before me, so I will have to yield to the gentlelady.

HEALTH CARE RESTRUCTURING—DSH PAYMENTS

Mrs. EMERSON. Thanks, Mr. Chairman.

The budget includes about $85.12 million for the health restructuring within the Department of Health and, according to CBO, the fund will be fully offset in fiscal year 2000 by reallocation of current spending on health care programs and services and subsidies.

Do you know in order to achieve that balance what health care initiatives might have been adversely impacted by the reallocation? In other words, did you have to shift funds and do you know specifically what they might have been?

Mayor WILLIAMS. I can get you the specifics, but it was a shift—generally, the shift was from DSH disproportionate share approach into increased Medicaid insurance. There was some shift from the traditional—I will put it that way—subsidy for the D.C. General Hospital into a new support mechanism for the Hospital that I believe gives our patients a choice. Those were two shifts. I know there were others, but they escape me.

Mrs. EMERSON. If you can get that information to me, I would be very grateful.

[The information follows:]

FINANCE THE COSTS OF NEW INSURANCE COVERAGE—REALLOCATING EXISTING RESOURCES

In FY 2000, the costs of the proposal can be funded by pooling and reallocating a portion of existing health resources. This is justified by the reduced need for direct subsidies since service and reimbursement will be paid for under the insurance system. The specific reallocations in local funds included: DSH ($6.6 million), PBC Hospital and Clinic Subsidy ($46.8 million), Addiction Prevention and Recovery Administration ($4.1 million), the Medical Charities Program ($.7 million), Medicaid ($1 million), and the Commission on Mental Health Services ($1.9 million). In addition all federal DSH funds ($23 million) would be used to fund the new insurance coverage. One million dollars in additional funds for program administration have been included in this proposal.

NEW HEALTH PROPOSAL—FEDERAL/LOCAL ALLOCATION

Mrs. EMERSON. My next question is also health care related. The proposed sanction of Medicaid and the CHIP, Children's Health Insurance Program, is estimated to cost approximately $83 million by the time it is fully implemented in 2001. How much of this $83 mil-

lion will the District government be responsible for and how much will the Federal government cover? We couldn't find an allocation for that?

Mayor WILLIAMS. I could get you that. But, again, the general approach—one of the general principles in our health care strategy is that we are spending, I think, $80 or $90 million now without a Federal match, and we can better leverage that by doing it in a different way.

[The information follows:]

Question. How much of this $83 million will the District government be responsible for and how much will the Federal Government Cover?

Answer. In FY 2000, the actual number is $85.1 million. The District will be responsible for $61.1 million and the Federal government will be responsible for $24 million. Of this $24 million, $23 million would be from reallocating Disproportionate Share Payments (DSH).

Mrs. EMERSON. Coming from a very rural District in which 21 out of 26 of my counties have 20 percent or higher of its population in poverty we have some of the same challenges, even though we are rural. That is why I am really interested in how you are doing it; and if you have creative ways that will help give more people access to health care I would sure like to figure how to do it in rural America, too.

So, thank you.

Mayor WILLIAMS. I have yet to learn why people take a measured approach to health care strategy. It is not an easy thing to do. It is really complicated.

Mrs. EMERSON. Indeed.

Thank you, Mr. Chairman. That is all I have right now.

Mr. CUNNINGHAM. Mr. Tiahrt.

SOUTHWEST WATERFRONT

Mr. TIAHRT. Thank you, Mr. Chairman.

I want to put in a plug for the southwest side of the District of Columbia in behalf of our presiding member because he lives there and he is worried about the waterfront. I want you to know about that for background.

I think in my limited time in Washington and on this Committee I haven't seen at any time more optimism about the District. We all think it should be a shining jewel for this Nation which is the leader of the free world.

I want to welcome all of you—Chairman Cropp, Mayor Williams, Secretary Rivlin, Delegate Holmes Norton. I am personally very optimistic, and I want to thank you for the work you are doing and hope for the best and hope we can help rather than hinder. Sometimes we get in each other's way, so we want to be sure we work together.

Mr. Mayor, I looked over your statement and the initiatives you are taking. I want to commend you. I think you are heading in the right direction.

DEVELOPMENT PROCESS OF FY 2000 BUDGET

I wanted to talk a little about how you develop the fiscal year 2000 budget. I don't know all the basis for your ground up approach.

I have had a chance to meet with some people in your cabinet, and start looking at basic things. I met with Richard Fite, the procurement chief, to discuss the way your task force is procuring goods for the city. I think he is really on the right track, and I will try to stay out of his way when I should and help if I can.

When you develop the budgets—and in talking with him it is difficult to start from the ground up—but at the agency level, are you using last year as the baseline or are you looking at current needs? Do the agencies have written charters? Do they know why they exist? Are they working to ward some milestones? When you develop this budget, are you taking fiscal 1999 and projecting or do you really go down and do a grass-roots look at what the true needs are for the District and its people, what purpose the agencies fulfill, what milestones they hope to achieve along the way and use that as a basis for building the budget you are sending to us? What is the basis of your FY 2000 budget?

PROBLEMS IN BUILDING BUDGET

Mayor WILLIAMS. Well, we have a couple of problems in building our budget, and one problem is the timing. When we do revenue projection in the budget we have to make that projection over a long, long period just because of the way our budget is staged. We don't have an opportunity or advantage that other jurisdictions have to get really relevant information and factor that immediately into the budget. That is an issue.

Another issue in any—of the beginning of an administration is you are only in your administration 2 or 3 months when you have the budget upon you so there isn't time to do the long-term planning, ground-up assessment and build the budget in that way.

[CLERK'S NOTE.—It should be noted that for three years before becoming mayor, Mayor Williams was the District's Chief Financial Officer in charge of all financial activities including "building" the budget and scrubbing the numbers.]

AGENCIES USE PRIOR YEAR AS BASELINE

So what I relied on was our budget office which was acting on a set of instructions of the agencies to have the agencies establish, yes, a baseline for the Year 2000 budget based on previous years' experience and then making adjustments to that baseline based on certain requirements, inflation estimates, things like that in a consensus way. As a matter of fact, once the budget was submitted, we had a working group established between the Mayor's staff, Council staff and revised the assumptions again.

Implicit in your question I think is, is this baseline a base baseline or is it a baseline? Are we looking at the ground or towards the ceiling in that baseline?

I would argue and a lot of us believe there is still improvement that has to be made. As Dr. Rivlin was saying, there still are some efficiencies to be realized. And in that respect, and I know this is backwards, but timing is a large part of this, we are asking our agencies, as they begin strategic planning beginning this week, to go back into their agencies, reach into their tool kit and come back to me as part of their planning and show me where they can realize additional economies. And we will use that in the consensus

process and, more importantly, use that information to build the long-term performance planning that I am talking about.

FINANCIAL CUSHIONS IN GOVERNMENT BUDGETS

Mr. TIAHRT. In a past life I used to build proposals for government work, and it is a budgeting process when you develop a proposal. As I went down to these grass-roots level organizations it is a lot like going to an agency. My experience was they would put in a little cushion and after you go through a couple layers of cushion you soon have twice as much as you need. Part of it is making sure that this extra padding doesn't go into the agencies, and I am not at that level, and I don't expect in this short amount of time you have been here that you have been able to go through all this process, but it is going to take a while.

LAYERS OF MANAGEMENT PADDING IN BUDGETS

But my concern is that you don't have multi-layers of management padding worked into the budgeting process. I know you have past expenditures to gauge yourselves on, but they were based on inefficiencies that you are working out of the system. If you can go at the agency level—as long as they know why they exist and what the goals are—and get a realistic budget of what they need to perform that function, I think that can be granted with a little oversight and a little discipline.

I would like to be able to pick out a certain section of the budget and go all the way down to the agency level and have confidence that they know why they exist and what it is they hope to accomplish and what resources they will need to accomplish that task. As part of our oversight function what we will try to do is take a snapshot or two and see how——

Mayor WILLIAMS. Right now, you won't have that information with you, I am absolutely confident, because we are beginning this process now. We will have done it to the unit level, a sense of purpose, a sense of measures of performance and the costs. It is a lot of work, but the major measures of the performance and costs identified to them is our goal. Absolutely.

Mr. TIAHRT. A last thing, I have a lot of confidence that you are headed in the right direction. I want you to know that.

CITY HAS IGNORED LAWS AND GUIDELINES

Occasionally, it comes to light through The Washington Post or other places that there are parts of the District government that have operated outside the law or outside the guidelines that Congress has laid out, whether those laws or guidelines are in force for a long time or not.

ABORTION MONEY SPENT ILLEGALLY

In the Department of Health they paid illegally for some 800 plus abortions—it is against the wishes of the American people to use tax dollars for abortions. I think you are familiar with that. Almost a quarter million dollars was spent there.

COMPLYING WITH APPROPRIATIONS LAW?

Is there any plan to oversee that you are complying with the law? How do you know you are complying with the law? We assume you are. But this is something that existed for some period of time anyway, and a quarter million dollars was expended against the law. What is your oversight that you have for complying with the law as you go through this process?

Mayor WILLIAMS. I think the major compliance review is the responsibility of the independent Inspector General who was set up as a permanent feature of the District government to look at these compliance issues.

Mr. TIAHRT. You go through the IG office?

Mayor WILLIAMS. The IG, as part of the IG auditor plan, should go out and do routine compliance to see that the rules and regulations are complied with.

Ms. RIVLIN. We have had a vigorous IG who found a lot of stuff.

Mr. TIAHRT. I think he is doing a good job.

Ms. RIVLIN. He hasn't found everything.

ANTI-DEFICIENCY REPORT ON ABORTION SPENDING

[CLERK'S NOTE.—The following material concerning illegal spending for abortions includes a copy of a letter from Congressman Tiahrt and Congressman Aderholt to the U.S. Attorney for the District of Columbia bringing the violation to her attention and a copy of the District government's Anti-Deficiency Report required by 31 U.S.C. 1351:]

Congress of the United States
House of Representatives
Washington, DC 20515

November 13, 1998

The Honorable Wilma A. Lewis
United States Attorney
District of Columbia
Judiciary Center Building
555 4th St. NW
Washington, D.C. 20001

Dear Ms. Lewis:

We are writing to express our concern about violations of federal law that have been occurring in the District of Columbia. We appreciate your prompt attention being directed to this important matter.

Enclosed you will find an article from Saturday's *Washington Post* revealing that the District of Columbia has been paying for abortions, in violation of federal law, for the last three years. As members of the House Committee on Appropriations Subcommittee on the District of Columbia, we are outraged that officials and employees of the District of Columbia government have feigned ignorance to justify their blatant violation of federal law. Disregard for federal law is a disturbing pattern of behavior that seems to occur whenever the District of Columbia government disagrees with the statutes enacted by Congress to govern the District. We feel strongly that swift action must be taken regarding the District's violation of federal abortion funding laws in order to send a strong message that this type of flagrant noncompliance with the law will not be tolerated.

We request that you begin an investigation into this situation to determine why the District of Columbia government has been violating federal law for the last three years. Please inform us of any action you plan to take. We are confident you will agree that this egregious violation of federal law should be addressed immediately.

Thank you for your attention to this important matter. If you have any further questions, please do not hesitate to contact us.

Best regards,

Todd Tiahrt
Member of Congress

Robert Aderholt
Member of Congress

Enclosure

cc: Mayor Marion Barry, Jr.
Mayor-Elect Anthony Williams
Mr. Earl Cabbell, Interim Chief Financial Officer, District of Columbia
Ms. Alice Rivlin, Chair, D.C. Financial Responsibility and Management Assistance Authority



ANTHONY A. WILLIAMS
MAYOR

OCT 14 1999

Speaker Dennis Hastert
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Hastert:

This letter is to report a violation of the Anti-Deficiency Act, as required by section 1351 of Title 31, United States Code.

The nature of the violation is that the Medical Charities Program ("MCP") operated by the District's Department of Health reimbursed health care providers for abortions when the Appropriations Acts for the District of Columbia for fiscal years 1996, 1997, and 1998 prohibited the expenditure of any appropriated funds for abortions. The D.C. Inspector General conducted an investigation of the following issues: (1) whether any federal or District statutes governing the funding of abortions in the District of Columbia were violated; and (2) whether or not any District officials intentionally violated a congressional ban on abortion funding.

During FY 1992 and FY 1993, the Appropriations Acts for the District of Columbia provided that

> [n]one of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

The Inspector General observed that this language has been interpreted as prohibition against the use of any funds, Federal or local, for abortions. See enclosed the Inspector General's Report, dated March 17, 1999 ("Report"), p.2. However, for FY 1994 and FY 1995, the prohibition was relaxed to prohibit only the expenditure of Federal funds for abortions:

> [n]one of the funds appropriated under this act shall be expended for any abortion except when it is made known to the entity or official to

> which funds are appropriated under this Act that such procedures is necessary to save the life of the mother or that the pregnancy is the result of rape or incest.

In the Appropriations Acts for FY 1996 through FY 1999, the prohibition on abortion funding was tightened to again apply to any appropriated funds. However, the MCP continued to use local funds for abortions, and paid for 41 abortions under the FY 1996 Appropriations Act (May-September) at a cost of $12,457[1]; 430 abortions in FY 1997 for $117,545; and 325 abortions in FY 1998 (October – January) for $85,133.[2] Based on this information, the Inspector General concluded that the Appropriations Acts for FY 1996 through FY 1998 were violated.

The Inspector General interviewed Paul Offner, Deputy Director, Department of Health, who is primarily responsible for managing the operations and budge of the $800 million District Medicaid program, and the Medical Charities Program, which uses local District funds to reimburse health care providers for medical services provided to District residents who meet certain income requirements. According to the Inspector General's report, Mr. Offner stated that 'when he became Director in 1995, non-Medicaid abortions were being funded routinely by the MCP, and this continued into FY1996 without the change in the law being called to his attention." Report, p.3. Mr. Offner further indicated that there are no effective mechanisms in place in the District management structure to ensure that congressionally mandated changes in budgetary legislation, such as those for abortion funding, are communicated to appropriate agency managers in a timely fashion." Report, pp. 3-4. Mr. Offner stated that, after he learned of the FY 1999 prohibition, "he immediately issued a notice to all participants in the MCP advising them that the abortion component had been abolished." Report, p.3.

The Inspector General also interviewed Sandra Hagen, who is responsible for coordinating the day-to-day operations of the MCP abortion funding activities. Ms. Hagen stated that "she had not received any information regarding abortion legislation being changed by Congress to prohibit the funding of abortions with District funds." Report, p. 4. She also stated that, after Mr. Offner informed her about the congressional ban, she "immediately contacted all abortion providers...and informed them that funding would cease for all abortions except those provided under Medicaid," Report, p. 4. The Inspector General also interviewed then Deputy Chief Financial Officer Abdusalam Omer (now Chief of Staff) who "acknowledged...the difficulty in tracking all elements of such a large piece of legislation...." Report, p. 4. Based on the investigation, the

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[1] The FY 1996 Appropriations Act was not approved until April 26, 1996.

[2] The Inspector General's Report notes that funding ceased in January 1998 because of budgetary restrictions. Report, p.3.

Inspector General concluded that whether District officials intentionally violated the congressional ban on abortion funding was unsubstantiated.

To prevent a recurrence of this violation, Marlene N. Kelley, M.D., Interim Director, Department of Health, directed the Department's Office of the General Counsel to review all Appropriations Acts for pertinent provisions relating to Department programs and operations and to inform the Department of important provisions. The Department has published final rules clarifying that abortions cannot be paid for with public funds except where the life of the mother is endangered or where the pregnancy is the result of rape or incest. Dr. Kelley concluded that adverse personnel action was not warranted due to mitigating factors, which include that the Appropriations Acts for FY 1994 and FY 1995 allowed the District to spend its own local funds for abortions, that a system was not in place within the agency for reviewing and flagging changes to the Appropriations Acts on an annual basis, and that the individuals involved in approving the expenditures had no knowledge of the abortion funding ban and immediately implemented the ban upon learning of it.

Please be advised that I am submitting an identical report to the presiding officer of each House of Congress. If you have any questions concerning this matter, please contact me at 727-2980.

Respectfully,

Anthony A. Williams
Mayor

Enclosure

AAW/teb

REPORT OF INVESTIGATION INTO ALLEGATIONS OF ILLEGAL FUNDING OF ABORTIONS BY THE DEPARTMENT OF HEALTH

E. BARRETT PRETTYMAN, JR.
INSPECTOR GENERAL

THIS REPORT IS TO BE USED FOR OFFICIAL PURPOSES ONLY AND MAY NOT BE RELEASED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE INSPECTOR GENERAL OF THE DISTRICT OF COLUMBIA

OIG NO. 99-0086

MARCH 17, 1999

REPORT OF INVESTIGATION

99-0086

INVESTIGATION INTO ALLEGATIONS OF ILLEGAL FUNDING OF ABORTIONS BY THE DEPARTMENT OF HEALTH

TITLE: District of Columbia Department of Health Officials. Substantiated.

LOCATION OF OCCURRENCE: Department of Health, Medical Charities Program, 2100 Martin Luther King, Jr. Avenue S.E., Washington, D.C. 20020.

INVESTIGATED BY: Special Agent Alvin WRIGHT, JR.

STATUTES VIOLATED: District of Columbia Appropriations Acts, 1996-1998.

ACTION TAKEN: Recommended action pending.

INVESTIGATIVE SYNOPSIS

1.0 PREDICATION:

On Saturday, November 7, 1998, *The Washington Post* published an article in its Metro section by Staff Writer Avram GOLDSTEIN, alleging that District of Columbia funds were improperly spent to fund abortions for low income residents. According to the article, $202,000 was spent by the Department of Health's (DOH) Medical Charities Program (MCP) to pay for a total of 756 abortions in fiscal years 1997 and 1998. Such funding would be in violation of prohibitions on abortions included by Congress in the District of Columbia Appropriations Acts for fiscal years 1996, 1997, and 1998. D.C. Deputy Chief Financial Officer Abdusalam OMER was cited as saying that city employees who made the mistake could be disciplined, and was quoted as saying that "Those who did not comply with the law should be referred to the Corporation Counsel" (**Exhibit A**).

2.0 BACKGROUND:

In response to the *Post* article, Congressmen Todd TIAHRT and Robert ADERHOLT wrote to United States Attorney for the District of Columbia Wilma A. LEWIS to express their "concern about violations of federal law that have been occurring in the District of Columbia." TIAHRT and ADERHOLT requested that Lewis begin an investigation (**Exhibit B**). In response to the letter from TIAHRT and ADERHOLT, LEWIS referred the matter to the Inspector General on November 17, 1998 (**Exhibit C**).

Based on the allegations presented, the OIG accepted for investigation the following issues:

- Whether any federal or District statutes governing the funding of abortions in the District of Columbia were violated.

- Whether or not any District officials intentionally violated a congressional ban on abortion funding.

3.0 FINDINGS:

3.1. Each year the United States Congress passes an Appropriations Act for the District of Columbia providing funding for D.C. operations during a given fiscal year. This legislation typically provides detailed instructions on what the City can and cannot do with appropriated funds. Legislative approval or disapproval for funding abortions in D.C. has been governed by the content of fiscal year appropriations bills passed by Congress since 1992 **(Exhibit D)**. In 1992, the District of Columbia Appropriations Act provided, in Section 114, that:

> **None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. [Emphasis added.]**

The Appropriations Act for FY 1993 also included this language, which has been interpreted as a prohibition against the use of any funds, federal or local, for abortions. The language set forth in the FY 94 Appropriations Act, Section 142, covering abortions, was worded differently from the FY 92 and FY 93 language. Specifically, the language set forth in Section 142 provided that:

> **None of the Federal funds appropriated under this act shall be expended for any abortion except when it is made known to the entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest. [Emphasis added.]**

This same language, apparently limiting the prohibition on the use of funds for abortions to "Federal" funds, also was included in the FY 95 Appropriations Act. In the Appropriations Acts for FY 96, FY 97, FY 98 and FY 99, the word "Federal" was dropped and the prohibition on using *any* appropriated funds for abortions (other than those covered by Medicaid) was reinstated. When the congressional ban on any funds being expended for abortions went into effect with the FY 96 Appropriations Act, the funding of abortions for the medically indigent continued under the Department of Health's Medical Charities Program (DOH/MCP) as shown below.

Fiscal Year	Abortions	Cost
1996	89	$ 25,198
1997	430	117,545
1998 (Oct-Jan)	325	85,133
Totals	844	$227,876

In January 1998, funding ceased for all Medical Charities programs, including abortions, because of budgetary restrictions. The MCP contractor that pays medical claims paid for two abortions inadvertently, in FY 99, and those funds are being recovered (**Exhibit E**). Based on the evidence developed during the investigation, this issue was **substantiated.**

3.2. The Director of the Department of Human Services and his "duly authorized agents" (D.C. Code § 6-128) were granted the authority under D.C. Code § 32-125, and Mayor's Order 86-37 dated March 3, 1986 to authorize certain programs and activities affecting the indigent. These programs and activities were carried out by the MCP under the former Commission on Health Care Finance, and included programs that reimbursed health care providers for medical services such as abortions. The MCP was then and is now funded solely by District tax revenues and uses no Federal funds. In 1997, the Commission on Health Care Finance was abolished and the Department of Health (DOH) was established as an agency separate from the Department of Human Services. At that time, the MCP was placed under the DOH Medical Assistance Administration (MAA), where it resides today.

Paul OFFNER, Deputy Director, DOH, was interviewed on January 26, 1999. OFFNER is primarily responsible for managing the operations and budget of the $800 million District Medicaid program, which is funded with Federal money. He also oversees the MCP, which uses only local District funds for non-life threatening abortions such as described above. OFFNER stated that when he became Director in 1995, non-Medicaid abortions were being funded routinely by the MCP, and this continued into FY 1996 without the change in the law being called to his attention and, consequentially, that of his staff. Apparently, no one in subsequent fiscal years noticed that the prohibition had been reinstated, and therefore funding continued unabated. OFFNER stated that the FY 1999 prohibition against using District funds for abortions was called to his attention by Doneg MCDONOUGH. MCDONOUGH is a budget analyst for the Financial Control Board who happened upon the language while reviewing the legislation. OFFNER immediately issued a notice to all participants in the MCP advising them that the abortion component had been abolished and explaining the congressional prohibition (**Exhibit F**).

After investigating what had gone wrong, OFFNER reported to Deputy Chief Financial Officer Abdusalam OMER and Director of Health Marlene KELLEY that the funding of abortions had, in fact, continued after being prohibited by Congress. He noted that neither he nor other staff members involved with abortion funding were aware that the language of the law had changed in 1996 (**Exhibit G**). OFFNER observed that there are no effective mechanisms in place in the District management structure to ensure

that congressionally mandated changes in budgetary legislation, such as those for abortion funding, are communicated to appropriate agency managers in a timely fashion.

Sandra HAGEN is the Medical Charities Coordinator of the MCP and coordinates the day-to-day operations of MCP abortion funding activities for the District. HAGEN communicates directly with health care providers and works closely with First Health Services Corporation, the contractor that manages, on behalf of the District Government, services rendered to indigent District residents. HAGEN was interviewed on January 26, 1999, and stated that she had not received any information regarding abortion legislation being changed, by Congress, to prohibit the funding of abortions with District funds. She never saw any external or internal correspondence on the subject. HAGEN stated that sometime in October, OFFNER called her into his office to inform her that he had just been told about the congressional ban and that all abortion funding had to cease. HAGEN immediately contacted all abortion providers and First Health and informed them that funding would cease for all abortions except those provided under Medicaid.

OMER, was interviewed on January 19, 1999, and stated that his comments to a *Post* reporter concerning possible disciplinary action against District Doctors and other employees were, in retrospect, ill-advised. OMER stated that he did not intend to point a finger at anyone, but was reacting to the basic issue raised by the reporter as to what might happen if the law had been broken. OMER stated that copies of the Appropriations Acts are disseminated to the various District agencies, and agency heads are responsible for being aware of what elements might impact their operations. OMER acknowledged, however, the difficulty in tracking all elements of such a large piece of legislation, and there is no system to review and analyze new legislation so that agency heads can receive a clear understanding about what they can and cannot do. OMER stated that he was satisfied with the explanation that he had received from OFFNER that the continued abortion funding was a communications oversight and there was no intentional thwarting of congressional intent. Based on the information developed during the investigation, this issue was determined to be **unsubstantiated.**

4.0 RECOMMENDATIONS:

Based on the findings and conclusions of this investigation, the Inspector General recommends the following:

4.1 That the Director of the Department of Health and the Director of the Medical Assistance Administration assign an attorney the specific responsibility of tracking relevant federal abortion legislation and ensuring that agency management is kept appraised of changes in a timely manner.

4.2 That the Mayor consider directing the heads of all District agencies to task a staff attorney with the specific responsibility for tracking and reporting Federal legislation and communicating pertinent information to agency officials and staff in a timely manner.

4.3 That the Mayor consider the establishment of a formal government-wide process for routinely reviewing, analyzing, and disseminating to all District agencies those elements of new federal legislation that may impact the overall mission and specific programs of those agencies. The Inspector General notes that the Office of Budget and Planning and the Office of Intergovernmental Relations are both involved in such efforts, but their work appears to be done informally rather than on a systematic basis.

5.0 EXHIBITS ATTACHED:

A. *Washington Post* Article dated November 7, 1998

B. Letter to US Attorney Lewis from Congressmen TIAHRT and ADERHOLT

C. Letter to Inspector General from US Attorney Lewis

D. District of Columbia Appropriations Acts fiscal years 1992-1999

E. Abortions funded 1996-1998

F. Paul Offner letter to Medical Charities Program participants regarding cessation of abortion funding.

G. Paul Offner letter to Deputy Chief Financial Officer Abdusalam OMER and Director, Department of Health Marlene KELLEY

Report Approved by:

David M.BOWIE
Assistant Inspector General for
Investigations

Date

REPORT ON ANTI-DEFICIENCY ACT VIOLATION OCCURRING IN THE MEDICAL CHARTIES PROGRAM, MEDICAL ASSISTANCE ADMINISTRATION, DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

On Saturday, November 7, 1998, *The Washington Post* published an article alleging that District of Columbia funds were improperly spent to fund abortions for low income residents. The article alleged that $202,000 was spent by the Department of Health's Medical Charities Program to pay for a total of 756 abortions in fiscal years 1997 and 1998. Such expenditures would be in violation of prohibitions on abortions contained in the District of Columbia Appropriations Acts for fiscal years 1996, 1997, and 1998. Due to the seriousness of the allegation, the Department of Health conducted an inquiry into the accuracy of the allegations.

The Medical Assistance Administration of the Department of Health, under the direction and control of Paul Offner, Deputy Director for the Department of Health (DOH), operates the Medical Charities Program. Mr. Offner was requested to provide an explanation to the Interim Director of DOH and the Deputy Chief Financial Officer of the District Government. On January 13, 1999, Mr. Offner provided written information regarding the abortion expenditures. According to Mr. Offner, Congress first prohibited the District from spending local funds for abortions in Fiscal Year 1992. The prohibition was maintained in the Fiscal Year 1993 appropriation, but was not continued during Fiscal Years 1994 and 1995. The ban against such expenditures was then included in the appropriations act for Fiscal Years 1996 through 1999. Below is a chart provided by the Medical Assistance Administration showing the history of the ban on the use of local funds to pay for abortions.

1992: District prohibited from spending local funds;
1993: Prohibition continued;
1994: No prohibition on abortion expenditures;
1995: No prohibition on abortion expenditures;
1996: Prohibition against abortion expenditures restored;
1997: Prohibition continued;
1998: Prohibition continued;
1999: Prohibition continued.

Mr. Offner stated that in Fiscal Year 1994, when there was no prohibition on the use of funds to pay for abortions, the District began using local money to finance abortions for low-income women. He further stated that this practice continued until November 1998 when he became aware of the language contained in the Fiscal Year 1999 appropriation.

Mr. Offner also provided information regarding the number of abortions paid for by the Medical Charities Program (MCP) as follows:

Fiscal Year	No. of abortions paid for by MCP
1994	77
1995	32
1996	90[1]
1997	431
1998	325

According to Mr. Offner, MCP continued to pay for abortions because program staff were unaware that the prohibition had been restored. In mitigation of the prohibited payments, Mr. Offner offered two factors that may have contributed to the funding of abortions. First, he stated that during the periods in question, the District did not have an effective method of communicating Congressional mandates to the agencies. Secondly, he stated that when he assumed leadership of the Health Care Finance Administration within the Department of Human Services[2], he reported directly to the Mayor and City Administrator rather than the Director of the Department.

Mr. Offner stated that he spoke to all employees involved with the abortion program and none were aware of the ban on abortion expenditures. He further represented that he had found no indication of any efforts by anyone involved in the abortion program to circumvent the Congressional prohibition.

A further investigation was conducted by the District of Columbia's Office of the Inspector General. In a report dated March 17, 1999, a copy of which is attached, the Inspector General (IG) concluded that there was no knowing or willful violation by any District employee. The IG recommended that any decision regarding administrative sanctions against individual employees should consider mitigating factors, including the fact that:

- The appropriation acts for Fiscal Years 1994 and 1995 did not prohibit the District from spending its own funds on abortions;
- A system for reviewing and flagging changes in appropriation acts was not in place;
- Individuals involved in approving expenditures had no knowledge of the ban on abortions; and
- Once responsible individuals learned of the prohibition, immediate action was taken to cease funding abortions.

[1] There is some question as to the actual number of abortions, paid for by MCP, that violated the prohibition because Congress did not pass the FY 1996 budget until April 1997. A memorandum from the Office of the Corporation Counsel to the Mayor dated July 27, 1999 states that 41 of these abortions violated the prohibition.

[2] The Health Care Finance Administration was the predecessor to the Medical Assistance Administration, and was located within the Department of Human Services. Pursuant to Reorganization Plan No. 4 of 1996, the Medical Assistance Administration is a part of the Department of Health.

The Interim Director determined that no administrative sanctions would be lodged against any Department employees due to the mitigating circumstances identified in the IG's report. Additionally, the Office of the U.S. Attorney for the District of Columbia has declined to prosecute anyone in this matter. Nevertheless, the Department of Health has taken affirmative steps to implement internal controls to prevent future violations of Congressional mandates. The Interim Director has tasked the Department's Office of the General Counsel to review all appropriation acts and provide prompt notice to all affected Department programs and operations regarding Congressional mandates and/or prohibitions. Further, the Department published in the *D.C. Register* on September 17, 1999, a Notice of Final Rulemaking concerning the Medical Charities Program in order to make the rules consistent with federal law.

Attachments:

OIG Report No. 99-0086, Investigation into Allegations of Illegal Funding of Abortions by the Department of Health

Memorandum dated January 13, 1999 from Paul Offner to Dr. Marlene Kelley and Dr. Abdusalem Omer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

OFFICE OF DIRECTOR
(202) 442-5999

MAILING ADDRESS:
825 NORTH CAPITOL STREET, N.E.
4TH FLOOR
WASHINGTON, D.C. 20002-4210

Memorandum

TO: Abdusalem Omer
Chief of Staff

FROM: Marlene N. Kelley, M.D.
Interim Director

DATE: SEP 1 0 1999

SUBJECT: Report of Anti-Deficiency Act Violation Occurring in the Department of Health

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In accordance with your memorandum dated August 31, 1999, attached please find a draft report on the referenced subject matter. We have also attached draft transmittal letters to the President (through the Office of Management and Budget), the Senate, and the House of Representatives. The draft report and draft transmittal letters are also being provided on computer disk to facilitate any changes. Attached to the draft report is the report of the Inspector General addressing this matter as well as a memorandum from Paul Offner regarding his review of the circumstances surrounding abortion expenditures. Please let me know if you have any questions.

Attachments

cc: Dr. Ivan Walks
Valerie Holt, CFO

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

MAILING ADDRESS

TO: Dr. Abdusalam Omer
Deputy Chief Financial Officer

THRU: Dr. Marlene Kelley
Director, Department of Health

FROM: Paul Offner
Medicaid Director

DATE: January 13

SUBJ: Medical Charities Abortion Funding

You have asked me why this agency continued to pay for abortions out of local funds in recent years notwithstanding Congress' prohibition on such funding. Herewith my response.

In researching the record, we have found that Congress first prohibited the District from spending local funds for abortions in FY 1992. The prohibition was repeated in FY 1993. In the next two years, the ban was lifted, after which it was restored again in FY 1996-1999.

1992: District prohibited from spending local funds on abortions
1993: ban continued
1994: ban is lifted.
1995: no ban
1996: ban is restored
1997: ban continued
1998: ban continued
1999: ban continued

In 1994, at a time when the federal ban on local abortion funding had been lifted, the District started using local money to finance abortions for low income women. We continued doing this until two months ago when we were told about the language in the FY 1999 appropriations bill. The problem, of course, is that the congressional prohibition on local abortion funding was re-instated in FY 1996. We paid for 77 abortions in FY 1994, 32 in FY 1995, 90 in FY 1996 (how many of these violated the federal prohibition is unclear because Congress did not pass the FY 1996 budget until April, almost half way through the fiscal year), 431 abortions in 1997, and 325 in 1998.

Exhibit
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This agency continued to pay for abortions out of local funds because we were never told that the federal prohibition on such funding had been re-instituted. Some of the factors that may have contributed to this were the following:

1. during this period, the District did not have an effective method of communicating congressional mandates to its agencies. Within the Department of Human Services (the Medical Assistance Administration's parent agency during most of this period), there may also have been a failure to pass down information about congressional actions.

2. when I took over the Medical Assistance Administration in August 1995, I worked out a special arrangement whereby I reported directly to the City Manager and the Mayor (the agency continued to be part of the Department of Human Services for administrative purposes). This arrangement may have contributed to the failure of the information concerning the federal abortion funding prohibition from reaching us.

In any event, I can state categorically that there was no effort in this agency to thwart Congress' will. I have checked with the employees who were involved with the abortion program at the time and who are still here, and none of them were aware of the funding cut-off. My sense is that Congress' action on this matter received little press notice in recent years – as compared to the Medicaid cut-off (the Hyde Amendment), which received lots of attention.

On November 7, 1998, the Washington Post ran a story under the headline "City Broke Law by paying for Abortions, Officials Say". This story resulted from a conversation I had with Av Goldstein, the Post Reporter. Goldstein had called me to ask about the language in the FY 1999 Appropriations bill renewing the abortion funding cut-off. Unaware that the prohibition had been in effect since 1996, I volunteered that our agency had paid for 756 abortions in the preceding two years. The next day, Goldstein called me back to give me the bad news. I certainly would not have volunteered the abortion numbers if I had known that the District was violating federal law by funding them.

Obviously, what happened here represents an extremely serious breach of federal law, and I still have trouble believing that these abortions could have been funded for two and a half years without anyone realizing that they should not have been. Having myself spent several years as the individual responsible for Medicaid policy on the staff of the Senate Finance Committee, I have little sympathy for local efforts to circumvent congressional intent. But I have also not found any indication that anyone within District government has tried to do that.

If you have questions about any of this, I can be reached at 727-0735.

Mr. TIAHRT. I want to thank the Chairman for getting a little more space. I think it is not fair to all of us where we have half the people waiting outside the door but rather we can all get in and not see half the audience waiting outside.

Mr. ISTOOK. [Presiding.] And we will send you a bill for your share of the rent.

Mr. TIAHRT. I yield back.

Mr. ISTOOK. I am not sure where we are since I was not here. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you. I did adhere to your policy. I didn't cheat and go first.

CONGRESSMAN JIM WALSH'S ROLE IN CITY'S RECOVERY

There may be some that try to rewrite history of who is responsible for the balanced budget, welfare reform, Medicare and those kinds of things. But I would like to remind my colleagues that you stated yourselves there was a disaster and now you are on the road to recovery.

Jim Walsh was the Ranking Minority Member, and he absolutely demanded that the District's fiscal 1995 budget be reduced by $150 million, and my colleagues on the other side of the aisle opposed the cut, but they didn't have the votes to support not making that reduction. That was the start. If you look at your dates, the District's fiscal 1995 budget was signed by the President on September 30, 1994; the Financial oversight law was signed April 17, 1995. And so when you look at who said "stop, we are going to change this place, we are going to make improvements to its operations", I don't want history to be rewritten. The Republican Congress and the people of the District have turned this city around.

BUSINESS BACKGROUND IMPORTANT FOR MAYORS

First of all, Mayor Williams, we have had a couple meetings, and I want to tell you I am excited. I wouldn't say that about your predecessor. I think there ought to be a requirement for elected executive, to be from a background, whether they are a mayor or city official. You can't have some liberal lifelong politician that goes in and knows nothing about business or how to run a government in my opinion. I think that is why there is a breath of fresh air. You have a good mixture of both and know how to get along with people, but you have a good business background, too.

CONGRESSMAN CUNNINGHAM—FOCUS ON EDUCATION

Instead of asking questions, I want to tell you where I want to help you. I have a proposal and an invitation for you.

I didn't have to stay on this Committee. It would have been much better for my district to get on Transportation or Energy, but I volunteered for this subcommittee. If I was going to take over a squadron, whether Top Gun or one of the worst in the Navy today, I would take one of the worst in the Navy because it is where you can really make positive change. I stayed on this Committee because I think I can make some changes in areas here and especially help children. I want you to know that. It doesn't do a bit of good. I don't even get a crawdad from the guys at the fish mar-

ket. They make me pay for my french fries and seafood and everything. But it's right to improve America Capital City.

You have made some dramatic changes, I think, in the number one area I focus on. It is education. My wife's a teacher, I was a teacher, my sister-in-law is a special ed teacher under San Diego Superintendent Alan Bersin. When my committee wanted to reduce the money for public education I dug in my heels, and I said no. I don't penalize my daughters when they do good. I reward them.

D.C. CHARTER SCHOOLS

Charter schools are very, very good in California. I would like a report from the board on how the charter schools are doing. I think they are an important part of choice in education. But if they are doing bad we need to be able to help you with it. I say that sincerely.

Or the education system, especially special education, you talk to Alan Bersin. I was Education Man of the Year. It's because I am trying to get the resources down to the classrooms and my colleagues, Gray Davis is our new Democratic Governor, Delaine Eastin Superintendent of Public Education in California—very liberal Democrats, but they know I am trying to help education. It is an area I want to work with you in and do a lot of things.

D.C. WATERFRONT NEEDS IMPROVEMENT

Another thing is the waterfront, which we have talked about. I worked with Bob Jones in the back there. We think we are moving forward—I need your oversight on that, Mr. Mayor. You can't give them a 1-year lease and expect them to make capital investment and recoup that investment in one year. You give them a 30-year lease, and they make the investment, and you make money for your treasury. I want for the city develop it like San Diego, like San Francisco and some of the nicer waterfronts instead of drawing bums and broken glass down there. I want to help that.

The pier down there that I fell through, the electrical wires, creosote running in the water, jagged chips there, I want to take that out of there.

ANACOSTIA RIVER NEEDS CLEANING

The other is the Anacostia River. I have a little jet boat. I went all the way up the river past RFK Stadium. You know, the parts per fecal are 500 times what the EPA allows. I don't care if it's the Navy Yard, residences, whatever, we have to clean up that river, and it should be a priority. You look at the recreation and revenue we could bring in and just improvements in public health—I said three, I got four, I am a cancer survivor.

CONGRESSMAN CUNNINGHAM—A HEALTH CARE VOLUNTEER

I also want NIH to help this city. I held town hall meetings on health in my district, and I am offering to you and to the gentlelady (Ms. Norton)—I had one such meeting in my district on diabetes. African Americans suffer higher diabetes rates than Caucasians. I am a prostate cancer survivor. African Americans have a much higher incidence.

We had the diabetes test, and it was marvelous. People got information about health care. NCI Director Dr. Klausner will do one on cancer at the university for me. I would like to do that in D.C. Have the town hall meetings where the information can get out to your residents about health care and children and basic things. By fighting diabetes, we can save two-thirds of the blindness, kidney removals, amputations by letting children know early, because the families don't know it.

I want to volunteer to help with that in the schools and to be part of your city.

I yield back.

Mayor WILLIAMS. Thank you, I appreciate that, Congressman. I know in the Anacostia River we have been allowed to work with you. We made a major commitment to restore the river using modern technology, and we would love to talk to you about it.

WATERFRONT AND WASHINGTON MARINA FOLLOW-UP

Mr. CUNNINGHAM. If I could have you follow up on the waterfront with the Washington Marina and the different things we talked about before. I know bureaucracy and I know how things get hung up, but if you can stay on that, Bob Jones is trying to help on that, and I think we can get that done.

Mr. ISTOOK. Thank you, Mr. Cunningham.

I have to confess, you hurt my feelings. You told us you wanted to stay on the District Subcommittee to help kids and the community, and that sounds noble. But you have got to understand Mr. Cunningham and I are on all three of the same subcommittees, and I thought you were here just because you wanted us to be together. I am hurt and distressed by learning the sad truth.

Mr. CUNNINGHAM. Be tough.

Mr. ISTOOK. Mr. Aderholt.

Mr. ADERHOLT. Thank you, Mr. Chairman.

ENHANCED POLICE SERVICES

Thank you for being here today. I am going to be brief.

Mayor Williams, thank you for being here. In your handout of your testimony there is a chart about achieving your goals. You mentioned that enhanced police service in each District, promised by April 15, was delivered on time.

I would like for you to take a minute and talk about some specific things on what you are looking at doing, and how to improve on that. Enhanced law enforcement is an interest I have had while I have been here in Washington. I was looking at the ideas you have, and I want to see what has been implemented.

Mayor WILLIAMS. In the comparable way we have made an investment in our police equipment and facilities to begin modernizing and to improve facilities across the city we have made a commitment to work with the Chief this summer beginning a strategy where we take down the drug markets and come immediately in with a comprehensive set of services, not only from the government, and return abandoned property and underused property up to productive use. Experience has shown in other cities that can be an important tool in bringing neighborhoods back; and, obviously, community policing can be a big, major component.

Another term is Weed and Seed. That is the inspiration behind it. We have an effort, working with what is called the Criminal Justice Coordinating Committee, memorandum of understanding partners, I think it is, when the Police Department was in acute distress—we like to see a real community planning process for police in the neighborhoods so all the different parts of the neighborhood are working on that policing exercise. It takes not only what we are doing in the Police Department and prosecution and corrections but what, for example, the faith community can do with children to help this effort, if you are talking about gangs, for example. General thoughts on the topics and what we are doing.

Mr. ADERHOLT. Thank you very much. That is all I have.

QUESTIONS FOR THE RECORD—CONGRESSMAN ADERHOLT

[CLERK'S NOTE.—The following material consists of questions for the record submitted by Congressman Aderholt and responses supplied by District officials:]

1) **In recent years, it has been reported that the Metropolitan Police Department has had trouble keeping enough officers.**
a. Are the trends still showing that the District is having trouble keeping an adequate number of officers?

During the last 3 months of 1998 the average rate of attrition was 20 officers per month. Thus far in 1999, that has dropped to 15 officers per month. Most of this attrition is attributed to optional retirements. As of May 17, 1999, the Department's overall strength is only 87 officers below authorized.

b. If so, what plans do you have to keep officers in the District and better compete with surrounding jurisdictions for their services?

The Department is currently involved in formulating legislation that would allow officers from other jurisdictions to laterally enter the MPD. This would increase the pool of qualified applicants from which the Department can recruit new personnel.

Additionally, the intensified recruiting efforts over the past several months has yielded an average applicant pool of over 800 per month. After the testing and hiring process, this yields approximately 20 hires a month.

Lastly, the Department is seeking legislation to develop a Police Cadet program. It is felt that once this new program is in place, it will significantly increase the pool of qualified applicants for the position of police officer.

2) **You say you are "on target" to reduce response times for fire and emergency services.**
a. Please provide further information on your progress in this area.

1. On May 3, 1999, 12 new Emergency Medical Technicians (EMT) graduated from the Training Academy. Beginning May 15, 1999, at 7:00 a.m., these 12 EMTs will be used to transition two Basic Life Support (BLS) units (Ambulance No. 2 and Ambulance No. 15) from 12-hour "Power Shift" units to 24-hour units. This will increase the number of around-the-clock units to 24. These two units will help to reduce the backlog of calls for EMS assistance and should have, if only to a small degree, some positive impact on EMS response times.

2. The agency has received Management Reform funds to place five additional EMS units (four Basic Life Support and one Advanced Life Support) in service. Sixty new EMS recruits have been scheduled for entry level physical examinations on June 1, 1999. Seven new EMS units will be delivered to the agency by the end of July. It is anticipated that these units will be placed in service before the end of the fiscal year. These five units will help to reduce the backlog of calls for EMS assistance and it is anticipated that these units will help to reduce EMS response times.

3. The agency is developing a pilot "Paramedic Engine Program". When implemented, this initiative will reduce the response time for ALS providers to the scene of critical medical emergencies. It is anticipated that this program will begin in early FY 2000.

4. It is anticipated that a new Computer Aided Dispatch system (CAD) will be fully operational by the end of FY 2000. This system will include an Automatic Vehicle Location (AVL) component that will ensure that the closest available EMS unit is sent on each emergency incident. Additionally, the AVL will assist in directing units to the proper location.

5. The response times for suppression units to structure fires are well below the national average of 6 minutes. Currently, our response time for suppression units to structure fires is 4:23 minutes.

3) **You have begun to implement a plan to abate six open-air drug markets in the District.**
a. What exactly do you plan to have accomplished by your stated date of August 31? In other words, do you plan to have these open-air drug markets completely shut down by that date? Please explain.

Aggressive enforcement of laws against drug dealing and associated crimes is ongoing in open-air drug markets in these six areas and citywide. Many of these markets have been in existence for years and will not be abated through a single-sided, short-term law enforcement approach.

The goal of this open-air drug market initiative is to pilot a new approach based on partnerships and problem-solving in the six targeted markets.

While this aggressive enforcement continues, the Metropolitan Police Department will engage to keep and maintain those areas free of drug dealing. Enforcement can only take these areas back; it is the partnership between police, the community and the city that can keep them free.

By August 31, 1999, community-based plans and strategies to eliminate the problem of illegal drug dealing and to restore community control over the neighborhood will be developed and documented by police community teams in all six of the targeted open-air drug markets. These plans will guide the activities of the police as they work together to address this serious problem.

The approach involves the development of partnerships at the community level between the police, residents, grass-roots organizations and other city agencies. It also involves joint training in problem solving for police, community members, and other agency representatives, as well as ongoing technical assistance. Problem-solving is a collaborative process for the identification and analysis of crime and disorder problems and the development of effective strategies to have lasting impact on these problems.

4) **To solidify the tax base in the District, a number of reforms have been proposed. Many have supported the idea of a flat tax for District residents and/or a four-year freeze on property tax assessments to give people an incentive to live in the District and, therefore, expand the District's tax base. Others have proposed taxing suburban residents who work in the District.**
a. Please expand on your tax plan for the District and which of these methods, if any, you would prefer.

Mayor Williams continues to support the flat tax proposal introduced by Congresswoman Norton on behalf of the District of Columbia, believing this tax would both benefit the District's lower income taxpayers and help attract new residents. Within the District, the Mayor gives priority to tax relief for small businesses. Many of these entities are mobile, dynamic, growing and could readily respond to tax advantages at comparatively small expense to the District.

Mr. ISTOOK. Thank you, Mr. Aderholt.

CHAIRMAN ISTOOK'S CLOSING REMARKS

Let me mention, in closing the hearing now, I am extremely impressed by the spirit that seems to prevail among the elements here. I joked about legislative, executive, judiciary, but I am very impressed by the spirit of cooperation and teamwork that I have witnessed. And I think that is not only important I think it is absolutely necessary both in the election of Mayor Williams and in things involving the Council members. There is a very broad consensus that there is a need to do something that is difficult but important with the tax cuts that are proposed.

I don't know what the ultimate form might be. I don't know what the ultimate scope might be. But people often think it is easy to do, but it is not, because you have entrenched interests that are also competing for that money.

CHALLENGING TIMES—MUCH STILL TO BE DONE

I agree with Dr. Rivlin. The difficult, challenging times are not all over because there is still much to be overcome. And one of the things that often is a barrier to success is when people quit too soon, if they think, we have already done the tough part, now it is downhill from here on out.

Certainly as a person that has always enjoyed backpacking and done it in the mountains there is nothing like coming over a crest and you think you reached the crest of the mountain and when you get to the top you find another and another and another one. You have to keep going and push yourself.

That is why I made the remarks I have, because I think there is some more biting of the bullets that is necessary to finish turning things around. That is the tough news.

But the good news is the city seems to have people in place who recognize that and are willing to undertake tough decisions. That means the tools to do the job—maybe it's the Mayor's Services Improvement Act, maybe it's some other things as well. To give people tools to combat the accumulated management practices, waste, inefficiency, bloated agencies, whatever it may be and having the tools to be able to take those on is vital. I don't know to what extent the Council will be able to do those, to what extent you will need us to be a partner with you in that effort, but I know there seems to be a commitment to do it.

I want to applaud each and every one of you and the other people that have engaged in this effort for that spirit, purpose and teamwork and cooperation. I very much appreciate that.

PRESIDENT THEODORE ROOSEVELT "THE MAN IN THE ARENA"

Mr. Mayor, I told you when we talked yesterday this situation reminded me of a particular poem or saying. I found a copy of that and I want to leave it with you. This is from Theodore Roosevelt, called, "The Man in the Arena". It is not—of course this applies, ladies, to you as well, as we all know.

"The Man in the Arena. It is not the critic who counts, not the one who points out how the strong man stumbled or how the doer

of deeds might have done them better. The credit belongs to the man who, actually in the arena, whose face is marked with sweat and dust and blood, who strives valiantly, who errs and comes short again and again, who knows the great enthusiasms, great devotions and spends himself in a worthy cause. Who, if he wins, knows the triumph of high achievement and who, if he fails, at least fails while daring greatly so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

So I will leave a copy of that with each of you. I think it encapsulates a lot of things.

Is there anything final that you wish to raise?

MAYOR WILLIAMS' CLOSING REMARKS

Mayor WILLIAMS. Mr. Chairman, we appreciate the opportunity to testify before the Committee and look forward to a strong working relationship with you, and thank you for the quotation from Teddy Roosevelt. I am not sure he was good on consultation, but I know he achieved a lot.

Mr. ISTOOK. I know we have plenty of time for consultation. This was an overview for starters.

Mrs. EMERSON. I just want to make a comment, Mr. Chairman.

Mr. ISTOOK. Mrs. Emerson.

COMMENDING MAYOR FOR EXPEDITED TAX REFUNDS

Mrs. EMERSON. Mayor, my staff was very, very happy, as District residents to get their D.C. tax refunds back in 11 days as opposed to the 6 months they have waited for them in the past. I just want to commend you for your efficiency of services. That means a lot.

Mayor WILLIAMS. Thank you very much, Congresswoman.

Mr. ISTOOK. Teddy Roosevelt had an important thing to say about consultation. It was, speak softly and carry a big Rolodex.

We are adjourned.

COMMITTEE'S QUESTIONS FOR THE RECORD

[CLERK'S NOTE.—The following material consists of the Committee's questions for the record and responses supplied by District officials:]

1. **Historically, the District has not drawn down its total Federal grants. The District has over $350 million available for highway work and after a full 6 months of this fiscal year, the D. C. Department of Public Works has awarded 6 contracts totaling $4.9 million or slightly over 1.3 percent of the total available. NONE of the awards used FY 1999 funds. Not only that, but only 5 percent of the funds available for local streets is projected for expenditure in FY 1999, and no obligations have been made to date.**

   a. Please explain in detail why more funds have not been obligated and what plans you have to address the issue of better planning, more timely contract awards, and more timely drawdowns of funds available for highway work.

   The District cannot draw down its total Federal grants in a given year because there is a limit (obligation ceiling defined by Federal regulation) on the amount that can be obligated for each fiscal year. The obligation ceiling varies from year to year. It has ranged from a low of $77.3 million in Fiscal Year 1998 to a high of $154 million in Fiscal Year 1991 (includes additional authority for discretionary grant awards). All available obligation authority provided to the District over the last ten years has been obligated with the exception of Fiscal Year 1994. In fact, in several years the District requested and received additional obligation authority during the August redistribution period. The District did not receive all of the additional authority requested, but all additional authority received was obligated. In Fiscal Year 1994 because of the District's financial crisis, the District was $2 million under the obligation ceiling. ($82 million obligation ceiling--Obligations totaled $80 million).

   The $350 million available for highway work includes $173 million for the Barney Circle Substitution project. Of the $173 million, $60 million has been assigned for the D.C. National Highway System Asset Preservation Demonstration project that is expected to be under contract by fall of Fiscal Year 1999. Roadway construction contracts valued at approximately $20 million are expected to be under construction later in Fiscal Year 1999. Roadway improvements in the amount of $26.8 million are currently under development and are expected to be under construction in Fiscal Year 2000. The remaining contracts are under design development and are expected to be under construction in Fiscal Years 2000 and 2001. All funds associated with the Barney Circle Substitution project must be under contract by mid-2002 to comply with the law. By subtracting the $173 million from the $350 million this will leave $177 million of projects to be obligated with authority provided in Fiscal Years 1999 and 2000.

   In respect to improving the planning process, the department is currently working with representatives and consultants of the World Bank in an effort to both streamline and correct deficiencies in the overall planning and budget process.

This is an on-going initiative within the department with fruitful recommendations expected by Oct. 1999. This is also an area highlighted as a major management reform initiative for the department.

Even with the Federally imposed constraints on the level of obligation of our transportation improvements program, the District has been very successful in moving contracts to construction. Since August, 1995, when the District's Transportation Improvements Program started up after two years of inactivity due to the city's financial crisis, the Department of Public Works has started and completed construction valued at $169 million ($165 million on Federally-funded projects; $5 million on Locally-funded projects). In addition, there is currently under construction contracts valued at $138 million ($123 million in Federally funded projects; $15 million in Locally funded projects).

There are contracts nearing execution (by June 1999) valued at $29 million ($26 million in Federally funded contracts; $3 million in Locally funded contracts). An additional $65 million in construction will start before the end of Fiscal Year 1999 ($62.5 million in Federally funded contracts and $3 million in Locally funded contracts).

Since the start of Fiscal Year 1999, the District has executed 40 construction contracts valued at $67 million (27 Federally funded contracts valued at $58 million; 13 Locally funded contracts valued at $9 million).

Over the last year, the Department of Public Works has reengineered its workflow in order to achieve 45-day award of contracts. The streamlined contract flow process became fully operational in February of this year. Of the 6 contracts opened and awarded since these new work rules went into effect, 5 contracts were awarded in 45 days or less with only one contract awarded after the 45day target. This contract was awarded in 46 days and the additional time can be attributed to the fact that the low bidder was a new contractor. Award of these 6 contracts took a total of 224 days for an average time of 37 days per contract.

F. A. Contracts Opened	Processed	Reengineered	
Contract No./Name	**Bid Opening Date**	**Award Date Executed**	**Days Elapsed**
98-0210-AA-2-0KA	4/27/99	5/13/99	16
Reconstruction of Franklin St.			
97-0090-AA-2-0-KA	3/01/99	4/16/99	46
Center Median Rehab. Of 16th St., N.W.			
98-0126-AA-2-0-KA	3/24/99	5/07/99	45
Federal Aid Resurfacing Contract			
98-0116-AA-2-0-KA	3/29/99	5/05/99	37
2nd F.A. Citywide Pavement			
98-0117-AA-2-0-KA	4/01/99	5/07/99	37
3rd F.A. Citywide Pavement			
98-0214-AA-2-0-KA	1/28/99	3/11/99	43
4th F.A. Citywide Resurfacing			
TOTAL	**6 Contracts**	**224 Days**	**37 Days Average**

b. It's my understanding that METRO's completion of Green Line construction frees up considerable resources with a wealth of construction experience and a procurement process that complies with Federal regulations. Why don't you go to METRO officials and see if they will assume responsibility for your highway construction work?

The Department of Public Works (DPW) and the Washington Metropolitan Area Transit Authority (WMATA) are actively engaged in developing a Memorandum of Agreement for architectural and engineering technical staffing support to provide technical services to the DPW, which will best utilize the strengths of both agencies. While WMATA will soon have technical personnel available, there are major differences in the type of construction managed by WMATA and that utilized by DPW. Our staff has an intimate knowledge of the District's streets and bridges, federally approved construction standards and familiarity with local procurement requirements. DPW and WMATA are actively engaged in developing a Memorandum of Agreement for architectural and engineering technical staffing support to provide technical services to the DPW. There are mutual benefits to both DPW and WMATA associated with such an agreement. DPW has a need for additional technical expertise and does not have an adequate level of human resources for current and planned work volumes. WMATA would like to avoid or minimize a Reduction-In-Force as the 103-Mile Program nears completion and currently has the technical capability and limited staff availability to respond to the District's needs in this area.

WMATA technical staff support will be assigned to DPW transportation projects that are currently funded, are part of a mutually agreed upon Incremental Work Plan, and Management Plan. The final steps in completing the agreement include: obtaining the endorsement of the Federal Highway Administration, U.S. Department of Transportation; investigating Union and Non-Union implications; review and approval by the District's Corporation Counsel, Mayor, Control Authority, and WMATA Board of Directors. The target date for the Memorandum of Agreement execution is early June, 1999.

The District believes that with the addition of private consultant management services, coupled with WMATA technical staffing support the District's transportation infrastructure program will continue to be effectively managed on an accelerated rate.

2. Is anything being done to determine whether improvements are necessary in various work rules to improve operations in the District government? In other words, are the work rules being reviewed to determine whether they are overly generous at the expense of taxpayers and therefore need to be modified? Please explain.

Yes. In fact, this was the primary impetus behind the development of the Omnibus Personnel Reform Amendment Act of 1998 (OPRA), which became law June 11, 1998. For instance, the OPRA reduced expenses to taxpayers by cutting in half the maximum amount of severance pay provided to employees in a reduction in force. This legislation also provided for the statutory elimination of special overtime compensation provisions that had provided an additional benefit for employees. (This provision of the OPRA is awaiting congressional amendment of the Fair Labor Standards Act in order to become applicable). Also, as part of a Management Reform project, the Office of Personnel is reviewing all personnel rules and procedures to identify any that are cumbersome, ineffective, costly, etc. Further, a draft compensation philosophy has been developed and the performance evaluation, position classification, and compensation systems are in he process of being modified, and the work rules governing them are being reviewed. This review will look closely at the areas of overtime pay, premium pay, hazardous duty pay, etc.

Deliotte & Touche are doing the review of the classification, compensation and performance evaluation systems and recommendations for new systems. The scheduled date of completion is September 30, 1999.

3. **The Mayor's proposed FY 2000 budget includes a proposal to create a new Children and Youth Investment Fund, with $33 million in local funds, to provide the Children and Youth Investment Trust Corporation with funds that will be disbursed to community-based organizations for services to children, youth, and families.**

   a. **Please provide information on the establishment of the Trust, how members are appointed, its functions, and any other information concerning the Trust's operations.**

While the District of Columbia government's charter precludes the Mayor and City Council from establishing private and/or non-profit entities, the Mayor, in his official capacity, may facilitate the creation of such an entity, and may appoint members to the board of directors. In the case of the Children and Youth Investment Partnership Trust Corp. ("Trust"), the Mayor has requested one of the partners of the Partnership to undertake the incorporation of the Trust as a private nonprofit, non-service provider organization. The Trust will serve as the official fiscal and administrative intermediary of the Children and Youth Investment Partnership. It will be the recipient of all government, foundation, and business funding, and will disburse such funding as grants to community-based organizations in support for children, youth and their families.

The Trust will comprise seven members -- three appointed by the Mayor, two appointed by the City Council, and two appointed by the board of directors of the Trust. The directors will be chosen based on skills and expertise in grant-making and contracting, financial management, information management, and performance-based management. The Trust will be incorporated the week of May 17, 1999, by four incorporating officers who will transition from the board at the first meeting of the Trust on or about June 15, 1999 when the seven-member board is officially installed. The official bylaws of the Trust will be adopted at the first meeting of the Trust.

An executive director, hired and supervised by the board of directors will manage the Trust. The executive director will recruit and hire staff to support the work of the Trust. The executive director will establish a grant proposal review board, separate from the Board of Directors, to review proposals. This review panel will be comprised of professionals from outside of District government who do not possess a conflict of interest in relation to the foundations and nonprofit associations providing youth and children services in the District. These professionals will be responsible for ranking and commenting on applications for financial support.

The executive director to the board of directors for action will forward their recommendations under sealed cover. The board of directors will make the final determinations on categories of services to be funded.

b. **Please provide information on how the District intends to monitor the contracts and establish and monitor performance measures to ensure that tax dollars are being spent effectively and efficiently.**

In its grant-making capacity, the Trust will issue requests for proposals (RFPs,) receive and review proposal and issue grants in accordance with performance and accountability standards that are linked to the City's desired outcomes for children and youth in six critical areas: readiness for school, success in school, acquisition of skills that lead to productive adulthood, reduced youth-on-youth violence at the neighborhood level, and overall improved quality of neighborhood life for children and youth. Each grantee's contract will be tied to specific performance requirements linked to overall desired outcomes and benchmarks established for those outcomes. Monitoring of grants will be done by the executive director and staff of the Trust through on-site visits of grantees and through a management information system designed to capture performance data on a quarterly basis.

Over the next two months, the District, working with the Urban Institute, Georgetown University, and the University of the District of Columbia will establish the benchmarks for child and youth success in the District. In this process, target communities with poor school performance, high school dropout rates among teens and adolescents, high teen pregnancy rates, violence, etc. will be identified. The Trust's RFP solicitations will target initiatives in these communities that are collaboratively designed, and investment-focused on programming designed to influence the behavior of young people. One of the primary principles of the initiative is its intent to invest in opportunities for young people as a means to divert them from options that are counter productive to their overall development. Each contract issued will possess quantifiable performance requirements tied to the specific needs of children and youth in the community in which the contractor is intended to provide services.

The Urban Institute, under a grant from the LaSalle Adams Foundation, is currently working with the partnership to design an evaluation instrument. It is expected that information from this work will allow the City to arrive at better baseline data on critical indicators of child and youth development. This work is expected to be completed during FY2000.

The Trust will prepare an annual report reflecting the contract outcomes of each provider, and achievements of children and youth participating in the programs. The report will be released to the Mayor, City Council and the community-at-large.

WEDNESDAY, APRIL 28, 1999.

CORRECTIONS; COURT SYSTEMS AND OFFENDER SUPERVISION; AND PUBLIC DEFENDER

WITNESSES

JOHN L. CLARK, TRUSTEE, DISTRICT OF COLUMBIA CORRECTIONS

JOHN A. CARVER, TRUSTEE, COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

JO-ANN WALLACE, DIRECTOR, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

Mr. ISTOOK. The Committee will come to order. I appreciate everyone being here this afternoon. We are here, of course, to conduct a public hearing about corrections and related matters concerning parts of the criminal justice system.

We have three witnesses on the panel. John Clark, the Trustee for District of Columbia Corrections; Jay Carver, Trustee for Court Services and Offender Supervision; and Jo-Ann Wallace, Director of the Public Defender Service.

WITNESSES SWORN

We welcome you all. I always tell people this so they don't take what we are about to do personal—we follow the standard procedure under the House Rules of swearing in all witnesses. So I would like each of you to stand and raise your right hand and I will administer the oath.

[Witnesses sworn.]

CHAIRMAN ISTOOK'S OPENING REMARKS

Mr. ISTOOK. Thank you. I appreciate it. And if it's okay with all members of the subcommittee, I do want to hold questions until after each of the witnesses has presented their statement and then follow the 5-minute rule.

My only opening comment, of course, is to note that we have kind of a curious circumstance here. As the Federal Government has assumed funding responsibility for some portions of local operations, appropriations in some cases are going up and in other cases are going down. For example, as responsibility for felons is transferred to the Bureau of Prisons, the Corrrections Trustee's budget will go down. And, of course, Mr. Clark, the Correction's Trustee, is in the position of working himself out of a job, while Mr. Carver and Ms. Wallace have a very different circumstance, because they have different responsibilities.

Let me ask Mr. Moran, is there anything you want to say before we hear from the witnesses?

REPRESENTATIVE MORAN'S OPENING REMARKS

Mr. MORAN. Thank you, Mr. Chairman. I appreciate your having the hearing today on this very important subject, and it is nice to see Mr. Clark and Mr. Carver and Ms. Wallace.

IN 20 DISTRICT RESIDENTS UNDER CRIMINAL JUSTICE SUPERVISION

This is one that has gained a great deal of public attention. There was a remark last year, I think that Mr. Carver made it before this subcommittee, that the District has been unable to supervise the 30,000 adult offenders, and the term that was used, theoretically under nonincarcerative supervision. I think that was an admission that there really has been a revolving door for career criminals. And too often they are getting back on the streets, committing crimes while awaiting prosecutions, sentencing or on parole.

Now, that may mean that the public defender's office is doing just a bang-up job that—you know, but I don't know that's in anyone's interest that you consistently overpower the prosecutors, if that's what is happening.

My suspicion is that it's a system that's in need of repair. And The Washington Post particularly, and I think the Washington Times as well, have done any number of articles about this very subject area. When 1 out of every 20 District residents is under some form of conditional criminal justice supervision, a very high percentage of the crimes that are being committed in the District of Columbia are being committed by criminals under court supervision, and improving the supervision of these offenders is in everyone's interest. And so I think that might need to be the focus of this hearing.

And, again, let me go back to where I started, Mr. Chairman. Thank you for having the hearing on such an important subject for every resident not only of the District of Columbia, but the entire Washington region. Thank you.

Mr. ISTOOK. Thank you.

In line with Mr. Moran's comments, of course, Ms. Wallace's job is to make sure that justice is being done as the justice is being done. And, gentlemen, you have responsibilities to make sure that once judgments are made, that they are actually enforced and the population is properly protected from the offenders and what they conceivably could do next.

If we can proceed then, I would like to tell each of you, of course, your full statements will be put in to the record. As far as your comments, please don't feel that you are bound to cling to your written statements. In fact, sometimes it's best if you depart from them. We learn a lot more that way.

So with that in mind, Mr. Clark, we will hear from you first.

OPENING STATEMENT OF CORRECTIONS TRUSTEE

Mr. CLARK. Good afternoon. Thank you, Mr. Chairman, Mr. Moran, members of the Committee. It's a pleasure to appear before you today to discuss the fiscal year 2000 budget request for the Office of the Corrections Trustee and report on the progress that has

occurred in carrying out the correctional portions of the mandates of the 1997 Revitalization Act.

And I will take your instructions to heart and just comment on a few of the areas of my written testimony. For fiscal year 2000, the Corrections Trustee requested 176 million dollars to meet the challenges that will face our office and the Department of Corrections. This 176 million dollars will fund the total adult felon population estimated to be under the care and custody of the Department of Corrections. Of this amount, an estimated 84 million dollars is requested to fund 3,800 contract bed spaces.

CORRECTIONS COSTS AND INMATE COUNT INCREASE

Although a significant savings will be achieved with the planned closure of the Youth Facility in the year 2000, there will also be some increased costs that partially offset these savings.

As I will mention in a minute, over the past 15 months, the overall inmate count in the Department of Corrections has risen. And in particular, this increase has occurred in the last 8 months since August of '98. Currently the population is already about 500 inmates above the January 1999 levels, significantly exceeding predictions and showing at this point particularly no signs of leveling off. Therefore, an additional 9.2 million dollars has been requested within our overall total to account for this increase in the population. And I should point out that a continuance of this pattern may put a severe strain on the ability of this office to provide adequate resources to the District government to manage the felony population.

STATUS OF LORTON PRISON CLOSURE

Let me mention a little bit about the progress on the Lorton closure plan, which I know Mr. Moran has an abiding interest in. Our office submitted, as was required in the 1999 Appropriation Act, a transition plan in February to the Congress. This plan provides details for the closure of the Lorton facilities and the transfer of the inmates. If there may be any significant changes that occur in this plan or in any of the underlying assumptions, we will be sure to let you and the staff of the committee know.

CONDITIONS OUTSIDE TRUSTEE'S CONTROL MAY IMPACT LORTON CLOSURE DATES

In that regard, I would note that in adhering to the schedule, the closure dates for the various facilities at Lorton can be impacted by certain conditions that are outside the control of our office or outside the control of the DOC, such as the growth of the population that I mentioned, or the ability of the Federal Bureau of Prisons to provide adequate bed space at the planned intervals and at the appropriate security levels, either through their own BOP-operated facilities or through contract facilities. We are also pursuing a variety of approaches to assure that the timely closure of the Lorton complex occurs.

I might note that during FY '98 last year, the overall inmate count at Lorton was reduced from about 6,500 to 4,500. Likewise

during the current year there has been progress, and the count is down to about 3,500. In fact, I think today it's actually about 3,400.

In addition to those at Lorton, there are about 3,800 inmates out on contract and another 1,000 that have been transferred to Federal facilities. So at this point, the majority of the D.C. felons are not housed at Lorton or in D.C.-run facilities. They are either in contract or Federal facilities.

So we are generally on schedule with the closure plan and, in particular, with the closing of the Occoquan facility, which is currently in its final phase. It should close next week. It's down from about 1,700 to about, I think, 300 today, and hopefully they will all be moved next week.

In furtherance of the closure plan, our office is also instrumental in helping the Department of Corrections secure new contract bed space in the State of Virginia to assist with transferring the inmates out. And this is also with the assistance of Mr. Moran, Mr. Davis and some of the other folks in Virginia. In August there was a contract that was signed with the State of Virginia for about 1,350 inmates, mostly of medium and higher security, and that transfer is almost complete at this point.

UPSURGE IN INMATE COUNT COMPLICATING EFFORTS TO CLOSE LORTON

Let me go back to this issue of—this problematic issue, really, on the upsurge of the D.C. Department of Corrections count, which is really complicating our efforts, as I have mentioned to you and the staff, to keep pace with the closure plan in an orderly fashion. Over the past 8 months, there has been a sharp and really rather unexpected rise in population, breaking what was an 8-year pattern of decline. Indeed I think in 1990, there were about 12,300 inmates. By 1997, that had fallen to about 9,300. It's up at this point to about 10,500, much of which was not anticipated.

So I'm not saying we are not going to keep the schedule. I'm just saying this is complicating the difficulties in getting things closed at this point.

Mr. MORAN. Mr. Chairman, could I make sure I understand it? These are 10,500 at Lorton?

Mr. CLARK. No, this is the entire jurisdiction of the system that includes the 1,000 that are in the Federal systems.

Mr. MORAN. You are saying this is an increase. I'm sorry to interrupt, I just wanted to make sure.

Mr. ISTOOK. No problem.

INMATE INCREASE DUE TO SENTENCED INMATES, NOT PRETRIAL

Mr. CLARK. I might say this increase appears to be primarily among the sentenced inmates, not among the inmates that are the responsibility of the District, which would be the pretrial and misdemeanor cases. And our office is continuing to try to get to the bottom of what is occurring here, because as we've all seen, the crime rates and arrest rates in the District are down. So it does not appear that the increase is due to new arrests primarily, but due to other factors, such as a significant increase, it looks like, in parole violations, or at least those who have been brought back to

prison on parole violations, and some other factors in the release—in the processes of releasing felons, especially the parole process.

REVOLVING DOOR PHENOMENON OF RELEASED FELONS

Kind of in relation to what had been mentioned previously, one related factor it seems to me is becoming more and more evident to me is this revolving door phenomenon in the District, which seems to be an extremely high number of released felons, who return to prison either directly or indirectly related to substance abuse or some form of drug abuse, coming back either on new criminal charges or on administrative technical parole violations.

NEED BETTER DRUG TREATMENT IN THE COMMUNITY

It's evident to me that the public safety and the size of the D.C. inmate population is being affected by this—well, I would say by the inability of the criminal justice system to break this cycle and to effectively deal with the drug abuse problems and the felons in the community. And I know this is an issue that is at the top of Mr. Carver's agenda. And until we have better drug treatment in the community and better methods for being able to intervene in this pattern of abuse, the count on the correctional side is going to continue to be high, and the use of resources for the correctional population is going to be more than it should be.

THREE SUCCESSFUL CHANGES TO CORRECTIONS DEPARTMENT

Let me conclude by mentioning three other areas briefly. The first is I'm pleased to report that an initiative that I asked the committee to fund last year is working out very well, and that is an initiative to help the Department of Corrections implement a system of internal auditing and internal control, something that was never there in any form in the past.

Secondly, we've been pleased with the response of the employees to our initiatives to help them cope with the downsizing of the agency and in many cases the loss of employment, although the true test of this program of this interagency task force as set up will come in the next week or two when about 200 employees are RIFed from the work force at Lorton.

CLASSIFICATION OF DC INMATES

And, finally, let me mention in regards to the classification, which is critical to good correctional management, in the past year, our office worked with the Department of Corrections to affect a major change so that the Department of Corrections has now adopted and fully implemented the Federal Bureau of Prisons classification model. They have reviewed all of the inmates, using the Federal Bureau of Prisons model, have graded them out, so to speak, using that model, and this will help not only in managing the population, but also will facilitate the long-term objectivity of the transfer of the felons to the Federal Bureau of Prisons.

So, Mr. Chairman, this concludes my statement. I will be glad to take any questions.

Mr. ISTOOK. We will get to that after the other witnesses. Thank you, Mr. Clark.

PREPARED STATEMENT OF CORRECTIONS TRUSTEE

[The prepared statement referred to follows:]

DISTRICT OF COLUMBIA CORRECTIONS TRUSTEE
STATEMENT OF THE TRUSTEE

JOHN L. CLARK
BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA
APRIL 28, 1999

Mr. Chairman, Ranking Minority Member Moran, and Members of the Subcommittee:

I am pleased to appear before you today to discuss the fiscal year 2000 budget request for the Office of the Corrections Trustee and to report the progress that has occurred in carrying out the mandates of the National Capital Revitalization and Self-Government Improvement Act of 1997 relating to the Corrections Trustee for the District of Columbia. I wish to thank you, Chairman Istook, Congressman Moran, and other Members of this Subcommittee, for the opportunity to share with you the challenges and issues facing my office.

Significant changes have transpired since I last appeared before this Subcommittee. The role of the Corrections Trustee in overseeing the transition of the District of Columbia adult sentenced felons to the Federal Bureau of Prisons is multifaceted, but events of the past year have involved us in a number of areas that came to the forefront. Unanticipated events have added to the Corrections Trustee's responsibilities, such as the gradual increase of the number of District of Columbia inmates over the past year, raising population levels by about 1,000 inmates to approximately 10,500 inmates while we attempt to coordinate the availability of bedspace with the Federal Bureau of Prisons in order to close the prison facilities at Lorton, Virginia. Another example of the expanded role of the Trustee relates to a series of

problems, including two murders and the escape of six D.C. prisoners, in the spring of 1998 at the private correctional facility at Youngstown, Ohio, and the assessment by my office of the situation and identification of corrective actions. A third example is the recent problem with escapes from halfway houses managed or contracted for by the District of Columbia Department of Corrections that has also required immediate attention and a plan for remedy.

I am pleased to report, however, that real progress has also been accomplished in the past year, and that we are currently on schedule with the closure plan of the Lorton Correctional Complex that we developed and shared with you in February, and in particular with the closing of the Occoquan facility that is currently in its final phase. We also are pleased that Department of Corrections staff has been very receptive to our efforts to help employees find new employment through a priority consideration program established by this office in coordination with the Federal Prison System, the Department of Corrections, the D.C. Office of Personnel, and the U.S. Office of Personnel Management. The true test of the program will soon occur, as the first major reduction in workforce will release over 200 staff with the closure of the Occoquan facility. I also am proud to report that my office is experiencing considerable results with the fiscal year 1999 initiative for assisting the Department of Corrections to become more efficient and accountable through development of a system of internal controls and audits.

For fiscal year 2000, the Corrections Trustee requests $176 million to meet the challenges that face our office and the Department of Corrections. Of this amount, an estimated $84 million is requested to fund 3,800 contract bed spaces. This request also includes $8.7 million for separated employees, and $2.6 million for the administrative expenses of the Corrections Trustee's office.

Current Status of the Closure Plan and the Department of Corrections

We are pursuing a variety of approaches to assure the timely closure of the Lorton Complex. During fiscal year 1998, DOC reduced the inmate population at the Lorton facilities from its operating capacity of 6,490 inmates to under 4,500 inmates. This was largely as a result of closing the Medium Security Facility during September 1997, and the transfer of 1,700 inmates to the contract facility at Youngstown, Ohio. This permitted downsizing the Minimum Security Facility significantly, reducing its inmate population by half, from 800 inmates to 400 inmates. Furthermore, during fiscal year 1998, BOP received approximately 430 D.C. felony inmates into its permanent custody, in addition to the 500 D.C. inmates that had been accepted by BOP prior to passage of the Revitalization Act.

The 1998 escapes and murders raised questions about the suitability of housing 1,700 inmates at the Youngstown contract facility. In response to a request in August, 1998, from the Governor of Ohio as well as to concerns raised by members of Congress, the Attorney General requested that the Corrections Trustee's office perform an independent review and develop recommendations for improvement in the Youngstown facility and to assess whether it would be premature to return the more than 1,600 D.C. felon inmates from Ohio to the District of Columbia. This 300 page report was provided to the Attorney General on November 25, 1998. One of the many recommendations was to reduce the inmate population from 1,700 to 1,000 until some necessary changes were made. The population at the Youngstown facility was reduced to below 1,000 inmates and is now slowly being increased after a careful reclassification of the security level of the inmates and a transfer out of high security inmates to assure maximum safety.

Proper classification of inmates is critical to good correctional management. In that regard, the Trustee's Office worked with the DOC to effect a major change in the past year, as the DOC fully adopted the Federal Bureau of Prisons' classification system for all its inmates. Along with the reclassification of the security levels assigned to inmates at the Youngstown facility, the Federal Bureau of Prisons trained DOC staff on the BOP system. By late 1998, DOC essentially completed the reclassification of the D.C. inmate population in all DOC-operated and contract facilities using the BOP classification instrument. This classification system is not only a key population management tool, but it also facilitates the long-term objective of transfer of the adult sentenced felon population to the Federal Bureau of Prisons.

My office was instrumental in helping the DOC locate new bedspace to shift inmates out of the Lorton Complex during fiscal year 1999. In August 1998, we successfully helped coordinate a contract between the Department of Corrections and the Commonwealth of Virginia for 1,267 medium- and high-security bedspaces at a new Virginia facility in Sussex County. In addition, another 83 maximum security bedspaces were contracted for by DOC at Virginia's Red Onion Facility. The maximum security beds were made available immediately, but the remaining 1,267 bedspaces became available January 19, 1999. This expanded bedspace was crucial to permit the closure of the troubled Occoquan facility before the Federal Bureau of Prisons had acquired the available bedspace.

The Minimum Security Facility will close September 30, 1999. This will be accomplished through inmate transfers within the DOC system, double bunking selectively at a few locations housing lower custody-level inmates, and the use of space at the Central Facility's Modular 400 unit, and the transfers of additional female and minimum security inmates to BOP.

Rapid Inmate Population Growth

Over the past 8 months, there has been a sharp, rather unexpected increase in the overall DOC inmate population, breaking a five year pattern of decline followed by relative stability. Indeed, the 1990 count of over 12,300 was reduced to about 9,300 by the end of 1997. In the past 15 months, the count has grown from 9,300 to over 10,500 this week, with no sign of abating.

This growth is not primarily the result of increased arrests or convictions, as the rates of crime and arrests have steadily declined in the District over the past 3 years. Likewise, there is no indication of an upswing of pre-trial or misdemeanor cases, which are the direct responsibility of the local government. Rather, the increase appears to be tied to two primary factors: an increase in the number of parole violators and changes in certain processes of releasing felons from the system.

1. Parole Violators: There appears to be a steady increase in the number of paroled felons cited for criminal or serious administrative violations under the scrutiny of the new Court Services and Offender Supervision Agency who then frequently have their parole revoked by the United States Parole Commission which took over jurisdiction of these violation cases in August 1998.

2. Delays and changes in release processes: For many felons nearing completion of their terms in the DOC system, the first portion of the increase is related to the significant changes in the computation of sentence length as a result of a recent federal court decision referred to as the "Noble decision." This decision disallowed credit for time spent on community supervision for most parole violators, a group making up a large portion of the DOC population.

Additionally, since the U.S. Parole Commission took over from the local parole board the responsibility for release decisions for most DOC cases as mandated in the Revitalization Act, there is a strong indication that the Commission's new, more stringent decision-making procedures have altered the pace of releases on parole, adding to the count. Also, the requirement that all parolees be placed in a halfway house to assist in the transition prior to release, while a sensible and important improvement in the system, has also had the effect of delaying many releases and adding to the count.

While my office is continuing to investigate the factors contributing to the increases, the population has indisputably grown by well over 10 percent in a relatively short time. Most or all of the growth appears to have taken place in the felon population for which the federal government has assumed the responsibility of funding through my office, rather than among the pre-trial and misdemeanor populations, which are the financial responsibility of the local, District government.

One related factor which bears comment is the revolving door phenomenon in the District, which sees an extremely high number of released felons being returned to prison due directly or indirectly to substance abuse, whether on new criminal charges or on administrative parole violation charges. It is evident to this office that public safety and the size of the D.C. prison population is being severely affected by the inability of the local criminal justice system to effectively deal with the drug problems of felons being released into the community under supervision. There is both a lack of adequate drug treatment and frequently an inability to provide swift and certain intervention when there is evidence of return to drug usage.

It appears to this office that the size of the prison population and the resources needed to house that population will remain higher than necessary until programs and resources are in place to slow down this revolving door phenomenon.

The BOP Contracts for Bedspace and the Closing of the Youth Facility

Consistent with the Closure Plan submitted to Congress in February, this request is predicated on the assumption that the Federal Bureau of Prisons will be able to transfer 2,000 prisoners into contract facilities under its jurisdiction by December 31, 1999, consistent with the Revitalization Act. It is anticipated that the transfer of these inmates would assist the DOC in its plan to close the Minimum Security Facility in the coming months, to close the Youth Facility in the spring of 2000, and to reduce the number of felons housed in DOC contract facilities.

If the BOP receives funding for DOC inmates, including funding for BOP-contracted bedspace, and BOP experiences delays that interfere with DOC transferring inmates that would occupy that bedspace, it is understood that BOP will reimburse DOC through the Corrections Trustee's Office. In this way, the DOC could provide for the unanticipated expenditures for housing prisoners at the Youth Facility beyond March 2000 and in contract facilities.

Halfway Houses

Considerable media attention in the past months has been devoted to problems of offenders absconding from halfway houses run by or under contract to the Department of Corrections. Although it must be acknowledged that there has been a pattern for some

time of a significant number of offenders absconding, most of this problem does not involve the population of convicted felons in these facilities. The primary problem is with the pre-trial defendants ordered by the court into work release status but housed in these community facilities. In general, the work release orders allow these defendants to leave the facility to work, seek employment or participate in other community activities during the day, while returning to the facility in the evening. Many fail to return from these excused absences.

At the request of a Member of Congress, the Department of Justice has convened an interagency task force over the recent weeks to assess the nature of the problems and to make recommendations for improvement. The National Institute of Corrections, a component of the Justice Department, is also providing assistance. A number of immediate, short-term steps have resulted and other more long-range changes are being reviewed for implementation. Both this office and the Department of Corrections are fully involved, as are the leadership of the Superior Court and a number of other District agencies.

Fiscal Year 2000 Budget

The Corrections Trustee's request of $176 million will fund the total adult felony inmate population estimated to be under the care and custody of the Department of Corrections during fiscal year 2000. Although significant savings will be achieved with the closure of the Youth Facility, there are increased costs that partially offset these savings.

As explained above, over the past 15 months, the overall inmate population of the District of Columbia has begun to increase, and in particular, there has been a large

increase since August 1998. Currently, the population is about 500 inmates above the January 1999 levels. A portion of this growth was anticipated at the time this request was prepared, but the growth has already been about 500 more than predicted and shows no sign of leveling off. An additional $9.2 million is requested within the overall total for this increase in inmate population. It is also noted, that a continuance of this pattern will put a severe strain on the ability of the Trustee's Office to provide adequate resources to the District government to manage the felony population

Also included in this request is $8.7 million for terminated employees for severance pay ($6.7 million) and reimbursement for sick leave balances that was authorized by the last Congress to provide a reward for those terminated employees who have accumulated these sick leave balances ($2.0 million).

Planning for fiscal year 2000 for the D.C. Department of Corrections presents many unusual challenges due to the radical transition now underway, including planned institution closures and consequent reductions in the workforce. For example, separate funding has been provided to the Federal Bureau of Prisons for D.C. inmates to be housed in privatized correctional facilities contracted for by the Bureau of Prisons and have been transferred permanently into the Federal system. To the extent the transfer of inmates does not occur according to schedule due to unanticipated events, the Federal Prison System will reimburse the Department of Corrections for those inmates for which the Federal Prison System has been funded. Conversely, if the flow of inmates is at a faster pace than estimated in the budget request, the Corrections Trustee will reimburse the Federal Prison System for those inmates. A transition plan was provided to Congress in February 1999 to provide details on the closure of the Lorton facilities and the transfer of inmates. As changes to this plan or any of the underlying assumptions on the growth of inmate population occur, I will immediately inform you and your staff.

Summary

This concludes my statement on the Trustee's budget request for fiscal year 2000 and issues being addressed by this office. I appreciate the opportunity to share these remarks with you, and look forward to working with you as we continue to implement the corrections portion of the Revitalization Act. I would like to thank you, Mr. Chairman, and the Members of the Subcommittee, and I would be pleased to answer any questions you or your colleagues may have. Thank you.

February 18, 1999

Report on the Projected Closure of the Lorton Correctional Complex

Introduction and Summary

The National Capital Revitalization and Self-Government Improvement Act of 1997 ("the Revitalization Act") requires that the adult felon population of the District of Columbia be transferred to the Federal Prison System over the next several years and mandates that the Lorton Correctional Complex be closed. Specifically, section 11201(b) of the Revitalization Act states in pertinent part:

> "Felons sentenced pursuant to the D.C. Code. – Notwithstanding any other provision of law, not later than December 31, 2001, the Lorton Correctional Complex shall be closed and the felony population sentenced pursuant to the District of Columbia Code residing at the Lorton Correctional Complex shall be transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons."

Section 11201(c)(1) stipulates further:

> "Transition of inmates from Lorton. – The Bureau of Prisons shall house, in private contract facilities –
>
> (A) at least 2000 District of Columbia sentenced felons by December 31,1999; and
>
> (B) at least 50 percent of the District of Columbia felony population by September 30, 2003."

The first Lorton facility phase-out plan was presented in the *Management Reform Plan for the District of Columbia Department of Corrections*, dated November 25, 1997. This report provides an update of the phase-out plan, as required by the conference report for the District of Columbia Appropriations Act for 1999. This report was prepared by the Office of the Corrections Trustee for the District of Columbia in partnership with the District of Columbia Department of Corrections (DOC). The information in this report was also coordinated with the Federal Bureau of Prisons (BOP).

The Revitalization Act transfers the adult felony population of the District of Columbia to the BOP over the period through December 31, 2001. Although the transition period will allow BOP to acquire the bedspace necessary to house the D.C. inmate population who will ultimately be under Federal custody, the financial responsibility was assumed for this population starting in fiscal year 1998.

The FY 1998 budget for the District of Columbia Department of Corrections was $254 million. Of this amount, the Federal government contributed $165 million for the adult

felony population housed in DOC-operated facilities and DOC contract facilities.[1] The District of Columbia provided funding of $89 million for DOC operations associated with the pretrial population, misdemeneants, and felons awaiting final adjudication on all charges in the D.C. court system.

The following table summarizes the projected closing schedule and an estimated budget level for DOC in FY 2003 after the transfer of D.C. adult felons from the Lorton Correctional Complex and contract bedspace to the custody of the Federal Bureau of Prisons.

Table 1. Summary of Reductions from the Downsizing of the Department of Corrections
(Dollars in thousands, in current 1999 dollars)

Benchmark: 1999 Budget			
		FTE's 2,990	Budget Level $250,734
Reductions from downsizing			
Lorton Facility:	Closure Date	FTE Reductions	DOC Budget Reductions
Occoquan Facility	April 30, 1999	490	$36,650
Minimum Security Facility	September 30, 1999	101	$4,918
Youth Facility	March 31, 2000	363	$22,873
Central Facility	December 31, 2001	716	$45,293
Maximum Security Facility	December 31, 2001	379	$24,016
Total, Lorton facilities		2,049	$133,750
Other Closures: CCA Youngstown		N/A	$34,642
Vacancies abolished		75	
Total Reductions		**2,124**	**$168,392**
Estimated Post FY 2002 Budget Level			
		FTE's 866[2]	Budget Level $82,342[2]

[1]The total FY 1998 appropriation was $169 million, of which $1.5 million was used for the administrative expenses of the Office of the Corrections Trustee and $2.4 million was used to reimburse BOP for D.C. inmates transferred after the effective date of the Revitalization Act.

[2] These estimates are preliminary and subject to revision.

This schedule is contingent upon the Bureau of Prisons' ability to expand bedspace capacity and procure contract bedspaces according to the timing requirements specified in law. It also is contingent upon adequate funding for this transition, since in certain cases short-term costs will be incurred for such items as overlap in funding of bedspaces during the transfer out of one facility into a new, contract facility and for severance pay.

The estimated budget levels are based on the best available information at this time. The Office of the Corrections Trustee is currently conducting a detailed staffing analysis that will provide better information on staffing requirements for the post-FY 2002 Department of Corrections. The projected closure information will be revised as this study and other factors bearing on this schedule change the assumptions underlying this report.

Closure Schedule Assumptions and Policies

The closure plan is predicated on the availability of suitable bedspace and adequate funding. Therefore it is dependent on the following critical assumptions.

- BOP is able to meet its statutory obligations to provide 2,000 contract bedspaces by December 31, 1999. If BOP is not able to have the contract awards for the 2,000 bedspaces in place by that time, it may be necessary to house inmates in various contract facilities at greater than desirable distance from D.C. for an interim period.

- BOP has the additional capacity to absorb the remainder of the D.C. felons by no later than December 31, 2001.

- DOC does not experience any significant increase in inmate population above the current levels.

- DOC does not experience significant increases in uncontrollable costs, such as growth in medical costs, that cannot be absorbed.

The following policies are set forth to clarify responsibilities, and in particular with respect to funding.

- If BOP has bedspace available and DOC has suitable inmates available for transfer, DOC must transfer the inmates in a timely fashion. If this does not occur, DOC will bear the exclusive financial responsibility for those inmates (i.e., DOC will not receive any Federal funding contribution for those inmates).

- If BOP receives funding for DOC inmates, including funding for BOP-contracted bedspace, and BOP experiences delays that interfere with DOC transferring inmates that would occupy that bedspace, BOP will reimburse DOC through the Corrections Trustee's Office. The rate will be negotiated between the two parties to represent

both the original funding received by BOP and the funding shortfall experienced by DOC due to the delay.

- If the DOC receives funding for inmates who are transferred to BOP, and BOP has not received funding for this population for that period of time, the Corrections Trustee will reimburse BOP at a rate to be negotiated by both BOP and the Corrections Trustee.

- The Corrections Trustee has the responsibility of allocating funds made available to that Office as enacted in law. The Trustee, however, may not reimburse DOC for expenditures that may occur due to any deliberate delay by DOC in closing facilities.

Schedule for the Closure of the Lorton Facilities

The Lorton Correctional Complex originally contained seven facilities, of which two were closed prior to October 1, 1997. These two facilities were the Modular Facility and the Medium Security Facility. The remaining five facilities are projected to close according to the schedule set forth in this report.

Two key dates are included in the schedule (April 30, 1999 and December 31, 1999) to identify when a significant number of bedspaces become available to move inmates out of the Lorton facilities prior to its final closing no later than December 31, 2001. The attachments to this report provide detailed information on staffing and dollar savings associated with each of the five facilities.

Table 2. Schedule for the Closure of the Lorton Facilities and the Transfer of Inmates to the Bureau of Prisons

Fiscal Year 1999	
January 19, 1999 through April 30, 1999	Virginia contract for 1,267 bedspaces begins; transfer of DOC inmates phased in over 14 weeks.
April 30, 1999	Occoquan Facility at Lorton is closed.
September 30,1999	Minimum Security Facility at Lorton is closed.
-	
Fiscal Year 2000	
December 31, 1999	BOP places 2,000 D.C. felony inmates in privately-owned and operated prison facilities.
March 31, 2000	Youth Facility at Lorton is closed.

Fiscal Year 2001	
July 18, 2001	Sussex and Red Onion contract with Virginia expires; 1,267 D.C. felony inmates require housing provided by DOC or BOP.
Fiscal Year 2002	
December 31, 2001	BOP assumes responsibility for the remaining D.C. felony inmate population.
December 31, 2001	Lorton closed: The two remaining facilities at Lorton, Central and Maximum Security, are closed.

Summary of events relating to the closure plan for fiscal years 1998-2002

Fiscal Year 1998

- During fiscal year 1998, DOC reduced the inmate population at the Lorton facilities from its operating capacity of 6,490 inmates to under 4,500 inmates. This was largely as a result of closing the Medium Security Facility during September 1997, and the transfer of 1,700 inmates to the contract facility at Youngstown, Ohio.

- The closed Medium Security Facility at Lorton was transferred to Virginia authorities during fiscal year 1998.

- The Minimum Security Facility was downsized significantly, with its inmate population reduced by half, from 800 inmates to 400 inmates.

- In August 1998, DOC successfully contracted with the Commonwealth of Virginia for 1,267 medium- and high-security bedspaces at a new Virginia facility in Sussex County. In addition, another 83 maximum security bedspaces were contracted for by DOC at Virginia's Red Onion Facility. The maximum security beds were made available immediately, but the remaining 1,267 bedspaces would not become available until January 19, 1999.

- BOP trained DOC staff on the BOP inmate classification system. By late August 1998, DOC essentially completed the reclassification of the D.C. inmate population in all DOC-operated and contract facilities using the BOP classification instrument.

- During fiscal year 1998, BOP received approximately 429 D.C. felony inmates into its permanent custody, in addition to the 500 D.C. inmates that had been accepted by BOP prior to passage of the Revitalization Act. Of the 429 inmates, BOP received approximately 159 female inmates, 200 low-security inmates, 40 minimum-security inmates, and 30 special management (e.g., protective) cases.

- Incidents occurring during the spring of 1998 at the Youngstown, Ohio, contract facility forced the reduction of the number of inmates from 1,700 to 1,500, and resulted in a requirement to transfer about 500 high security inmates out of Youngstown by April 1, 1999.

Fiscal Year 1999

- The Occoquan Facility at Lorton, housing 1,250 inmates, will close April 30, 1999.

- To accomplish the Occoquan Facility closing, 1,267 inmates will be transferred during the period January 19, 1999 through April 30, 1999, to the Virginia state facility at Sussex, Virginia (Sussex II).

- The Minimum Security Facility will close September 30, 1999.

- This will be accomplished through inmate transfers within the DOC system and the transfers of approximately 400 additional female, low, minimum, and protective custody inmates to BOP. (BOP total count increases to approximately 1,300).

Fiscal Year 2000

- BOP will accept the transfer of the remaining inmates to meet the Revitalization Act requirements that 2,000 D.C. felons be in BOP contract facilities by December 31, 1999.

- The Youth Facility at Lorton will close March 31, 2000. The Youth Rehabilitation Act inmates are transferred to BOP contract facilities.

- Total population at Lorton will now be reduced to 2000, all of whom will be housed within the Central Facility and Maximum Security Facility common perimeter. Many inmates will require relocation within the DOC system so that Correctional Treatment Facility, D.C. Jail and local halfway houses can reabsorb those misdemeanant and pretrial inmates previously incarcerated at the Youth and Minimum facilities.

Fiscal Year 2001

- Beginning January 1, 2001, BOP will accept approximately 40 inmates per week from Lorton, in order of lowest to highest security levels.

- March through July 2001, BOP will transfer inmates from the Virginia state facilities at the rate of 80 inmates per week.

- The Virginia contract for bedspace will expire on July 18, 2001.

- August through December 2001, BOP will transfer 80 inmates per week from other DOC contract facilities in order of lowest to highest security levels.

Fiscal Year 2002

- Pursuant to the Revitalization Act , the Central and Maximum Security Facilities at Lorton will close on December 31, 2001.

- By statute, the Lorton prison complex will be permanently closed on December 31, 2001. If BOP facilities are not available to accept all the remaining D.C. felons sufficiently in advance of December 31, 2001, BOP will need to plan alternate arrangements well ahead of time to contract out for and fund the detention of all the remaining felons. As a practical matter, the D.C. Department of Corrections will already have been drastically downsized by that time.

Attachments

A – DOC Savings from Lorton Closure
B – DOC Staffing Reductions from Lorton Closure
C – Staffing Requirements for DOC Facilities
D – January 4,
1999 Update of DOC Inmate Population Using BOP Classification Instrument

Attachment A

DOC Budget Reductions from Lorton Closure

(Fiscal years; dollars in thousands)

	DOC Budget	Reductions from Closures			
	1999	1999	2000	2001	2002
REDUCTIONS					
Lorton Operations:					
Occoquan Facility	28,031	9,387	28,031	28,031	28,031
Minimum Security Facility	4,418	0	4,418	4,418	4,418
Youth Facility	15,542	0	7,721	15,542	15,542
Central Facility	27,345	0	0	0	20,509
Maximum Security Facility	15,043	0	0	0	11,282
Subtotal	90,379	9,387	40,170	47,991	79,782
Additional Reductions:					
Medical		1,479	6,257	6,257	10,014
Administrative Costs		1,682	7,331	15,291	29,461
Overtime		4,241	0	0	0
Youngstown		0	0	0	34,642
Subtotal		7,402	13,588	21,548	74,117
TOTAL REDUCTIONS		16,789	53,758	69,539	153,899[1]
INCREASES					
Virginia Sussex II Contract		-16,000	-30,479	-25,298	0
Severance Pay		-3,867	-4,551	0	-11,175
Sick Leave Buyout		-1,075	-1,336	0	-3,634
TOTAL INCEASES		-20,942	-36,366	-25,298	-14,809
TOTAL REDUCTIONS / INCREASES (-)		-4,153	17,392	44,241	139,090[2]

[1] These reductions are estimated at $168,392,000 when annualized for FY 2003, as illustrated in Table 1.

Attachment B

DOC Staffing Reductions from Lorton Closure

(Fiscal years; based on funded positions for FY 1999)

	DOC Budget	Staff Reductions per Year			
	1999	1999	2000	2001	2002
STAFF REDUCTIONS					
Lorton Operations:					
Occoquan Facility	561	485[2]	0	0	0
Minimum Security Facility	101	0	101	0	0
Youth Facility	294	0	294	0	0
Central Facility	519	0	0	0	519
Maximum Security Facility	279	0	0	0	279
Subtotal	1,754	485	395	0	798
Additional Staff Reductions:					
Medical	142	34	23	0	80
Administrative Overhead	386	46	46	0	217
Subtotal	2,282	80	69	0	297
TOTAL STAFF REDUCTIONS		565[3]	464	0	1,095
CUMULATIVE STAFF REDUCTIONS					
Facilities		485	880	880	1,678
Medical		34	57	57	137
Administrative Overhead		46	92	92	309
TOTAL CUMULATIVE STAFF REDUCTIONS		565	1,029	1,029	2,124
END-OF-YEAR STAFFING LEVELS		2,425	1,961	1,961	866

[2] Reflects net reduction after redeployment to fill vacancies at all facilities but includes 75 additional vacancies to be eliminated.

Attachment C

Staffing Requirements for DOC Facilities

The following chart summarizes staffing requirements and the current on-board strength at each DOC-operated facility. Currently, the unfilled positions are covered by staff on overtime, resulting in exorbitant overtime expenditures

The Occoquan Facility will be the first of these institutions to close. At that time, the uniform and civilian staff at Occoquan will be redeployed to fill the vacant posts at other institutions. The remainder of the staff will be released from employment by DOC. Accordingly, the savings from closing the Occoquan facility will not be the full staffing complement at that facility, but rather savings in overtime within the entire DOC system along with the reduction-in-force of 325 staff[3]. All subsequent facility closings will result in a direct reduction-in-force of the entire staff.

Staffing Requirements for DOC Facilities,
Including Court-Ordered Staffing as of January 1, 1999

Facility	Uniform Staff			Civilian Staff			Total		
	Positions	FTE	+/-	Positions	FTE	+/-	Positions	FTE	+/-
Lorton:									
Minimum	84	84	0	17	17	0	101	101	0
Occoquan	503	486	-17	58	58	0	561	544	-17
Youth	233	165	-68	61	42	-19	294	207	-87
Maximum	244	237	-7	35	32	-3	279	269	-10
Central	451	451	0	68	57	-11	519	508	-11
Lorton, Subtotal:	1,515	1,423	-92	239	206	-33	1,754	1,629	-125
D.C. Jail:	612	477	-135	96	80	-16	708	557	-151
TOTAL	2,127	1,900	-227	335	286	-49	2,422*	2,186	-276

* These positions represent only the staff at DOC-operated facilities. The total staffing level is 2,990 FTE's, which includes medical staff, facilities maintenance staff, transportation staff, and other administrative positions.

[3] Of the 276 vacancies, 17 are at the Occoquan facility, leaving at 259 vacancies excluding Occoquan. The 544 Occoquan staff will be used to fill these 259 vacancies, resulting in 285 RIF's.

Attachment D

January 4, 1999 Update by DOC of DOC Inmate Population Using BOP Classification Instrument

	Minimum	Low	Medium	High	Not Classified	Total
CTF:						
Males	73	176	191	32	36	508
Females	87	42	6	10	0	145
Central Facility	67	194	671	417	0	1,349
Maximum Facility	46	71	230	252	25	624
Minimum Facility	208	179	31	3	0	421
Occoquan Facility	175	369	624	28	0	1,196
Youth Center:						
Felons	161	135	53	27	0	376
YRA's	126	104	76	18	0	324
D.C. Jail:						
Males	50	48	69	50	0	217
Females	2	3	1	1	0	7
CCA:						
Youngstown	99	120	692	338	0	1,249
West Tennessee	0	0	0	1	0	1
New Mexico	0	0	15	69	0	84
Arizona	0	0	0	132	0	132
Virginia Contracts:						
Sussex II	0	0	4	7	0	11
Red Onion	0	0	0	73	0	73
ICC	0	2	9	9	0	20
WITSEC	3	2	10	7	0	22
BOP: Temporary Placement	0	0	0	163	0	163
TOTAL	1,097	1,445	2,682	1,637	61	6,922
Inmate Distributions:						
Males	1,008[1]	1,400	2,675	1,626	61	6,770
Females	89	45	7	11	0	152
DOC-Operated Facilities	838	1,105	1,765	803	25	4,529
Contract & BOP Facilities	259	340	917	834	36	2,393

[1]BOP will conduct a further review of the eligible inmates to determine who are suitable for Federal camp placement

COMMITTEE'S QUESTIONS FOR THE RECORD
(Hearing Wednesday, April 28, 1999)

1. Has the position of Director of the DC Department of Corrections been filled? What is the situation?

Answer: Odie Washington has been selected as the new Director of the Department of Corrections. He most recently was the Director of the Illinois Department of Corrections, and commands much respect for his abilities and accomplishments from his peers.

PROFESSIONAL BIOGRAPHY
ODIE WASHINGTON



EDUCATION
1979-1981
Roosevelt University
Chicago, Illinois
Master's Degree - Public Administration

1972-1973
Eastern Kentucky University
Richmond, Kentucky
Master's Degree Program - 24 hours completed
Area of concentration - Criminal Justice Education

1968-1972
Aurora College
Aurora, Illinois
Bachelor of Arts Degree - Criminology/Corrections
1998
Harvard University
John F. Kennedy School of Government
Executive Education Program

EXPERIENCE

March 1999 – Present ***Director***
District of Columbia Department of Corrections
Washington, DC 20001

Nominated by the Mayor of the District of Columbia to lead a workforce of nearly 2,700 uniform and civilian employees, and oversee operations at a central detention facility, a community correctional center and a 3,000-acre prison site consisting of five facilities housing nearly 9,500 pre-trial, misdemeanant and felony offenders classified at minimum, medium and maximum custody levels.

January 1995 – December 1998 ***Director***
Illinois Department of Corrections
Springfield, Illinois

As Director of the Illinois Department of Corrections, oversaw operations at 27 adult prisons, 10 work camps and 3 impact incarceration programs (boot camps), 7 juvenile facilities, 1 juvenile boot camp, 11 community correctional centers, and supervision of adult and juvenile parolees.

April 1991 - December 1995 *Warden*
Dixon Correctional Center
(Medium Security Co-Correctional)
Dixon, Illinois

Responsible for administering and directing overall operations and activities of the Dixon Correctional Center; formulating rules and regulations for Correctional Center employees and inmates; fostering community and civic relations.

August 1986 - April 1991 *Warden*
East Moline Correctional Center
(Minimum Security)
East Moline, Illinois

Responsibilities included administering and directing overall operations and activities of the East Moline Correctional Center; formulating rules and regulations for Correctional Center employees and inmates, and fostering community and civic relations.

July 1982 - August 1986 *Assistant Warden of Programs*
(Maximum Security)
Pontiac Correctional Center
Pontiac, Illinois

Responsible for planing, organizing and directing all program services (i.e. Academic, Medical, Recreation, Chaplaincy, Library, Record Office) for the rehabilitation and re-socialization of inmates at the Pontiac Correctional Center. Supervised Segregation Unit, Condemned Unit, and Protective Custody Units. Served as Accreditation Manager.

July 1981 - July 1982 *Superintendent*
(Medium Security)
Stateville Correctional Center
Joliet, Illinois

Served as Unit Superintendent and supervised all activities (programs and operations) of a cell house as well as supervision of Department Heads and major administrative functions at the Stateville Correctional Center. Served as Accreditation Manager.

June 1981 - July 1981 *Executive II*
(Medium Security – Juvenile)
IYC St. Charles
St. Charles, Illinois

Responsible for the overall development, administration and implementation of a Staff Development and Training Program for all employees at IYC-ST Charles. Additionally, served as Employee Review Officer, Internal Investigator, Program Auditor, and serving on the Accreditation Team.

February 1980 - February 1981 ***Residential Director***
(Minimum Security – Juvenile)
Morris Residential Center
Morris, Illinois

Administered and delegated responsibility for all major functions of the Morris Residential Center, including program development and implementation, education, custody, security, safety, physical plant, business and fiscal operations, community relations, etc. Assured adherence to and compliance with all appropriate policies and procedures. Kept abreast of correctional trends, general law enforcement practices, and new program techniques. Additional duty included serving as Special Employee Review Officer for Juvenile Residential Centers. Served as Accreditation Manager.

June 1976 - February 1980 ***Assistant Residential Director***
(Minimum Security – Juvenile)
Morris Residential Center
Morris, Illinois

Developed and administered the Residential Center's treatment program, including educational and counseling programs. Directly responsible for administering and implementing volunteer and leisure time services programs. Served as Staff Trainer, Officer of the Day, and Employee Review Officer. Initially coordinated the Group Life Program (Security and Supervision) for one year.

December 1973 - June 1976 ***Correctional Counselor***
(Medium Security)
IYC Valley View
St. Charles, Illinois

Served a caseload of youths in the Institution- Based Counseling Continuum Program. These responsibilities included the administration of case work procedure relative to each youth's treatment plan, development and implementation of community related services, direct involvement in general supervision.

1992 - 1995 **Part-time Instructor**
Sauk Valley Community College
Dixon, Illinois

Preparation of curriculum and teaching a class in the Criminal Justice field.

January 1991 – Present **Accreditation Consultant**
American Correctional Association
Laurel, Marvland

Serve as Consultant and participate in the inspection and accreditation process of state and Federal correctional facilities.

PROFESSIONAL AFFILIATIONS

Commissioner, American Correctional Association Commission on Accreditation for Corrections – 1998-2002
Advisory Board Member, National Institute of Corrections- 1997-2000
Member, Standards and Accreditation Committee, American Correctional Association
President, Boys & Girls Clubs of Springfield, 1998-1999
Chair, Standards and Accreditation Committee, Association of Correctional Administrators

MEMBERSHIPS

American Correctional Association
Association of State Correctional Administrators
Toastmasters International
National Association of Blacks in Criminal Justice
Rotary International
National Association of Sports Officials (NASO)
Correctional Accreditation Managers Association
National Organization of Black Law Enforcement Executives

Odie Washington

Director, Illinois Department of Corrections
January 1995 to December 1998
Challenges and Accomplishments

The Illinois Department of Corrections was created in 1970 out of a public safety agency that also included State Police and other law enforcement duties prior to that date. The first prison in Illinois was opened at Alton in 1833. In 1983, the prison system consisted of 15,000 inmates. Currently, the Adult Division, with 42,000 inmates incarcerated at 27 facilities, represents one of the largest prison systems in the nation. Additionally, more than 2,100 juveniles are confined to seven youth centers designed to accommodate 1,260.

Governor Jim Edgar appointed Odie Washington, chief administrator of the Illinois Department of Corrections on December 30, 1994. With a department budget of more than $1 billion, Washington led a 15,000 and oversaw operations at 27 adult prisons, 10 work camps, 3 boot camps, 7 juvenile facilities, a new juvenile boot camp, 11 community correctional centers, and community supervision of both adults and juveniles who recently completed terms of incarceration. Director Washington also administered a $50 million fund to put inmates to work in Illinois Correctional Industries programs.

Odie Washington's tenure as the Director of the Illinois Department of Corrections was marked by significant challenges and equally substantial accomplishments. Washington took on some of the most difficult, long-standing issues in the Illinois prison system, and implemented policies that will have a positive impact upon the operation of the state correctional system for years to come.

Odie Washington's accomplishments included:

- Increased security at the state's antiquated maximum-security institutions through heightened control of inmate movement, removal of cell coverings, limitations on inmate property and other initiatives.
- Converted the Pontiac Correctional Center to a disciplinary segregation facility, stabilizing one of the most volatile prisons in the state while providing much needed additional segregation capacity for the entire prison system. This initiative in conjunction with modifications at other facilities increased the Department's segregation capacity by over I 00%,
- Conducted the longest, most intensive shakedown of the state's maximum-security institutions in the Department's history,
- Supervised the construction and initial operation of the new super-max prison at Tamms. This state-of-the art facility provides the Department with a highly effective means to discipline and control those inmates that present the greatest threat to the security of the prison system,
- Established a "gang-free" correctional facility at Taylorville to allow offenders not affiliated with gangs to serve their sentences without harassment from street gangs in the correctional system,
- Initiated a program of intensive security sweeps of selected prisons in the state with K-9 teams, high-tech equipment, and Tactical Units to clean these institutions of any contraband and drugs,

- Pioneered a model program, emphasizing interdiction, testing, discipline and treatment, to respond to the problem of drugs in prison,
- Opened the nation's only prison completely dedicated to the treatment of substance abuse in therapeutic communities,
- Instituted a policy of non-contact visiting for inmates in all institutions confined to disciplinary segregation,
- Ended the practice of allowing family picnics in prisons,
- Closed the antiquated Menard Psych facility, and established a new mental health treatment unit at the Dixon Correctional Center,
- Established the state's first Day Reporting Center to provide treatment and services for recently released offenders,
- Established a residential treatment program for incarcerated mothers and their newborn children,
- Initiating post-release treatment and monitoring programs for released sex offenders,
- Opened the state's first juvenile boot camp at Murphysboro,
- Doubled the number of juveniles placed in approved community-based treatment settings,
- Established a program for the secure care of juvenile offenders below the age of thirteen,
- Formulated a master plan to guide future development of Juvenile Division programs and facilities,
- Offered public access to the Department's inmate database through the Internet,
- Established an Office of Victims Advocacy within the Department of Corrections,
- Installed a video-conferencing system linking state correctional institutions with the courts, reducing the cost and public safety concerns with inmate court writs,
- Developed a program of mandatory HIV-testing, counseling and follow-up treatment for inmates exiting prison,
- Maintained one of the lowest inmate per capita operating costs of any major state. Illinois allocates a substantially lower percentage of the state budget to corrections than other major states. Effective financial and operational management enabled the Department to control its spending needs despite rapid growth in the size of the prison system,

- Developed an alternative means to finance and manage the construction of two works camps, four cellhouses and the Pickneyville Correctional Center adding nearly 4,800 beds to the prison system despite an absence of a state bond authorization,

- Restored Correctional Industries to a profitable enterprise after several years of incurring financial losses. A rigorous review of industry operations resulted in closure or downsizing of some operations and improved efficiency in the administration of Industry programs. Despite this restructuring, inmate assignments in industry programs have grown by 61%,

- Maintained accreditation by the American Correctional Association for all Department facilities. Illinois is one of only a few states to have achieved accreditation for all of its institutions, and

- Added over 1 1,200 new prison beds to the state's correctional system, increasing the state's prison capacity by approximately 50%.

2. On February 18, 1999, you provided a report to Congress on a closure plan for the Lorton Complex. Is this plan on schedule? What issues may impact the closure dates specified in the plan?

Answer: The plan for the closure of Lorton is on schedule. The Occoquan Facility at Lorton closed on May 6, 1999. The next facility scheduled to be closed is the Minimum Security Facility, which we believe will be closed on or before September 30, 1999. However, it is more difficult to state with assurance that the facility closings projected beyond that point will conform precisely with the schedule. The determining factors include the timeliness of the Federal Bureau of Prisons'(BOP) ability to secure bedspace at the appropriate security level to permit the transfer of additional District of Columbia felony inmates into the Federal Prison System. This could be as a result of construction delays or delays in awarding contracts for private contractual bedspace. Another concern is the rise in the District's inmate population over the past year, increasing from a total inmate population of about 9,500 to about 10,500. This is the result, in large measure, of the more stringent release procedures that are lengthening the stay of inmates in secure facilities. Had the population remained constant, for example, the Minimum Security Facility with 400 inmates could have closed sooner. I will apprise the Subcommittee of any delays that may occur for these or other reasons as soon as the Trustee's office becomes aware of changing circumstances.

3. You have addressed the issue of the inmate population increase over the past 18 months. Do you believe this trend will continue? What actions might reverse this trend?

Answer: It is difficult to predict whether the trend will continue. Our sense is it will continue in the short run and then level off. As I stated, the increase is not as a result of an increase in arrests or convictions as the rates of crime and arrests have steadily declined in the District over the past 3 years. Rather, the increase appears to a be a result of an increase in the number of parole violators and changes in certain processes of releasing felons from the system. For parole violators, there appears to be a steady increase in the number of paroled felons cited for criminal or serious administrative violations who then frequently have their parole revoked by the United States Parole Commission which took over jurisdiction of these violation cases in August 1998. For many felons nearing completion of their terms in the DOC system, the increase in the time spent in secure facilities is related to the significant changes in the computation of

sentence length as a result of a recent federal court decision referred to as the "Noble decision." This decision disallowed credit for time spent on community supervision for most parole violators, a group making up a large portion of the DOC population.

Another contributing factor is the extremely high number of released felons being returned to prison due directly or indirectly to substance abuse, whether on new criminal charges or on administrative parole violation charges. The public safety and the size of the D.C. prison population is being severely affected by the inability of the local criminal justice system to deal effectively with the drug problems of felons being released into the community under supervision. There is both a lack of adequate drug treatment and frequently an inability to provide swift and certain intervention when there is evidence of return to drug usage. Finally, the requirement that all parolees be placed in a halfway house to assist in the transition prior to release, while a sensible and important improvement in the system, has also had the affect of delaying many releases and adding to the count.

While it is difficult to predict when this trend will subside or be reversed, the Corrections Trustee's office is trying to assist the outflow by increasing the number of beds in halfway houses for inmates exiting the system to provide a better transition back to the community and to stem the return of these inmates back into the prison system.

4. Could you provide the Committee with some specific areas where your office has reduced the costs at the DC Department of Corrections or where you are currently working toward reducing costs?

Answer: We are actively trying to reduce costs in several areas. Perhaps the most important area is the reduction of overtime. Numerous court orders specify staffing levels which are onerous and, with attrition at the Department of Corrections, many posts have been filled with staff working overtime. With the closing of the Occoquan Facility, we filled all uniformed staff vacancies at the other Department of Corrections facilities before we released the excess staff. This is designed to reduce overtime significantly.

We also were instrumental in securing bedspace with the Virginia Department of Corrections that is significantly less expensive than the District-operated prison facilities. The Virginia rate is approximately $62.00 a day for higher security inmates, compared to almost $80.00 a day for Department of Corrections-operated facilities.

In the medical receiver area, the costs of operations has been reduced from $16 million to $13 million a year, due greatly to questions and scrutiny from this office. We still judge there can be considerable additional savings.

Other areas where we are achieving savings include the discontinuance of the use of contractors and consultants by the Department of Corrections, and assisting the Department to use fewer staff more effectively to operate its facilities through staffing plans and roster management at the prison facilities.

The Jail Study will result in better use of funds targeting areas for repair. In addition, we are currently examining computer systems to maintain inventory in facilities to reduce waste. We have also assisted in making revisions to the food service contract which will now include penalty features. We are also working toward closing down all excess offices at the Lorton complex and redistributing resources from closed sites.

5. Has your office investigated ways to save costs in the medical area? How much was spent on medical costs in FY 1997 and FY 1998? What are the medical costs running? How do these costs and services compare with those provided by the Federal Bureau of Prisons? Is this a service that is under court order?

Answer: The medical costs continue to be very high at the Department of Corrections. The costs for fiscal year 1998 was about $30.4 million, and is estimated to be about $32 million for fiscal year 1999. The medical services at the D.C. Jail, which is under a court order, are provided by a medical receiver at an annual cost of about $13 million, which is included in the estimates for 1998 and 1999.

The medical services provide in-house care and hospital care for about 5,200 D.C. inmates in District-operated facilities. The cost per inmate at the Jail is about $21 per day, and about $14.80 per day for inmates at the Lorton facilities. This is much higher than the Federal costs of about $9.22 per day for 1998.

Recognizing the high costs of the D.C. system, we have recently received a cost evaluation initiated by this office of the medical receivers budget. We are currently reviewing the study, and are hopeful that costs reductions may be realized without a loss of quality medical services.

On-site Dialysis has been reviewed with an eye to renting beds in Virginia. A new ambulance contract will soon eliminate EMT's thereby saving one million dollars in salaries.

COMMITTEE'S QUESTIONS FOR THE RECORD
(Hearing Wednesday, April 28, 1999)
ADDENDUM

5a. The daily cost per inmate for medical services at the DC Jail is $21 compared to $14.80 for inmates at the Lorton facilities, a difference of $6.20 or 42 percent per inmate higher at the DC Jail.

- Please explain in detail why the cost per inmate at the DC Jail is $6.20 or 42 percent higher than at Lorton facilities.
- Please provide a breakdown of all costs by object class and a list of all administrative/overhead personnel with their annual costs and a list of all other personnel with their costs.
- Please provide an object class or other cost category comparison between the DC Jail and Lorton facilities' medical costs.

The cost per inmate for medical care at the Jail is considerably higher than the costs at Lorton, due primarily to the high level of staffing and the related costs of salaries and benefits. Also, the costs likely represent a higher level of service at the Jail. I have attached material detailing the staffing levels and costs. The current staffing level for medical services at the Jail, which has an average population of 1650, is approximately 108 FTE's, who are supplemented by certain outside contract services, out of a total of 133 positions used by the medical Receiver. The balance of the 133 positions are for the mental health service. For the entire Lorton complex with over 3,500 inmates, the medical staff, including all centralized departmental administrators, is approximately 107 FTE's, supplemented by certain contract services.

I have also attached (Attachment 1) a one page comparative analysis by jurisdiction of staffing and cost data, comparing the DC Jail with certain other local and federal facilities. As that chart shows, the national average of all prison systems for medical care for 1997 was $6.60 per day. We have since received newly released data that the national average for 1998 is $6.97, about one third of the costs at the Jail.

To be clear, medical and mental health services at the Jail are provided by a court-appointed Receiver and the level of spending there for the past four years has been mandated by the U.S. District Court. Over those years, the level of expenditure has been approximately as follows:

1996	$7,000,000	1998	$14,000,000
1997	$16,000,000	1999	$12,000,000

A major recent development is the issuance in mid-June by the Receiver of a competitive RFP for the provision of medical services at the Jail for the next five years by a contract vendor. The Receiver's 5 year term of appointment as previously stipulated by the court is due to expire in September 2000, unless extended by the court. This contract vendor would then provide services.

in place of the Receiver's operation, first under contract to the Receiver, then under contract to the District. This office had some input to the Special Officer of the Court and the Receiver during the preparation of the RFP and a number of our suggestions were incorporated.

While I am pleased with the prospect of the District having returned to it the responsibility for the management of the Jail medical services, nevertheless I have had a strong disagreement with those representatives of the court on a fundamental issue on which I did not prevail. I am concerned that because of the structure of the bid process, something close to the extremely high level of staffing which the Receiver implemented during the quasi-emergency period after his takeover will be continued in the long-term contract, at an unnecessary added cost of millions of dollars to the District. I expressed this concern and others regarding the ongoing high costs of the operation to the Special Officer of the Court during a series of conversations and meetings, culminating in a letter dated June 9, 1999, outlining those concerns. (Attachment 2.)

The level of expenditure at the Lorton facilities is also considerably higher than average, also due to a great extent to separate court orders in other cases which impact the operations of those facilities. However, those services are provided by DOC employees and contract staff, and the DOC is able to have more control over the some aspects of the level of spending.

Attachment 3 details the FY1999 budget and staffing levels of the Jail Receiver, while Attachment 4 provides similar information on the Lorton facilities. One complicating factor at Lorton on this data has been the closure of the Occoquan facility after half the fiscal year.

Attachment 1

June 4, 1999

COMPARATIVE ANALYSIS BY JURISDICTION
STAFF AND COST SUMMARY

Summarized by the Office of Corrections Trustee from Data in the Report by Jacqueline Moore and Associates, dated 5/5/99

Jurisdiction	Inmates	FTE's	Staff/Inmate Ratios	* FTE's Per 1670 inmates	** Daily Per Capita Cost
Central Detention Facility (CDF)	**1670**	**108 *****	**15 to 1**	**108**	**$ 19.03**
Hampden County, MA	1800	48	38 to 1	45	N/A
Prince Georges County, MD	1400	18	78 to 1	22	$ 7.65
Salt Lake County, UT	1410	29	49 to 1	35	$ 6.63
Correctional Treatment Center (CTF)	833	25	33 to 1	50	N/A
Baltimore City Detention Center (BCDC)	3100	125	25 to 1	68	$ 5.18
Federal Detention Center Miami, FL (BOP)	1508	25	60 to 1	28	$ 6.28

*** Equivalent number of medical FTE's required at each facility to care for the CDF's 1670 inmate population.**

**** Average daily per capita medical cost. The national average is approximately $ 6.60, as reflected in The Corrections Yearbook (1997).**

***** Does not include data for mental health services.**

Attachment 2

District of Columbia
Office of the Corrections Trustee

John L. Clark
Corrections Trustee

800 K Street, NW, Suite 450
Washington, D.C. 20001

June 9, 1999

Ms. Karen M. Schneider
Special Officer
U.S. District Court
for the District of Columbia
1130 17th Street, N.W., Suite 400
Washington, D.C. 20036

Dear Ms. Schneider:

In follow up to my comments at our meeting on June 4, 1999, regarding the proposed Request for Proposals (RFP) for medical services at the D.C. Jail, I want to reiterate several concerns, particularly with respect to the issues of fiscal responsibility and good government.

I recognize the medical receiver, Dr. Ronald Shansky, has developed a draft RFP which has many excellent qualities and in many ways will form the basis for a good procurement. Also, I do not wish to significantly hold up the release of the RFP and the progress of the procurement process since there is a lot to accomplish prior to the end of the Receiver's court mandated tenure next September. I continue to believe that we can accomplish this process in a collaborative fashion.

However, as I mentioned in our meeting, I have some fundamental concerns. Primarily, I want to reiterate my concern that, as crafted, the RFP's requirement that a standardized "comparative" bid be submitted seems to require a level of staffing that is exceedingly high by any standard. It sends a message about the basic level of services expected of all bidders and will lead to bids that are much more expensive to the District and its taxpayers than is currently necessary or warranted. Additionally, the RFP does not give adequate proportion to pricing in the evaluation factors, which are only proposed to give a weight of 26 percent to cost versus 74 percent to quality of services. These factors should be in roughly equal proportions.

As I reiterated on June 4, the enormous past expenditure of resources deemed necessary by the Federal court appointed medical receiver to bring the previously substandard D.C. Jail medical system up to acceptable community standards, i.e., at least three times the national average per inmate medical cost per day, should not be set out in the RFP as the paradigm staffing arrangement in the "comparative" proposal which every bidder is required to replicate. That kind of strategy in the proposed RFP, as I said on June 4, will unduly memorialize a system that was brought in to ameliorate an emergency, and, despite a disclaimer, sends the

unmistakable message to the potential bidders that it is the preferred course, or at least the minimum required level of services necessary to the winning bid, and an acceptable status quo for the foreseeable future. I acknowledge that, after my repeated urging, the Court appointed medical receiver has reduced his expenditures -- from approximately $15 million per year to approximately $12 million per year. However, $12 million per year is not an acceptable non-emergency ongoing level of expenditure for this size inmate population for the foreseeable future.

Over the past four fiscal years ending this year, the Receiver's total expenditures will have been over $46 million, whereas the national average for state correctional systems for a population of 1,670 would have been about $16 million over the same period, a difference of about $30 million. While the Constitution and good correctional management require services at a level which I might characterize as a well tuned compact car, the current operation has been funded, pursuant to court order, at a luxury car level. I am concerned that the draft RFP, particularly by seeming to set up the current operation as a comparative baseline or as the expected standard, gives bidders the impression that a luxury sedan operation, or something close to it, is what is expected in the proposals.

The recent study completed by Moore and Associates, which your office and the parties to the case agreed to have conducted, found that the level of staffing and the cost of medical services at the Jail are almost unprecedented in the country and are far beyond those of the comparative localities in the study, including the neighboring jurisdictions of Baltimore and Prince Georges County, both of which are accredited by the National Commission on Correctional Health Care.

For instance, the report found that whereas the national average daily cost for health care for 1997 was $6.60 per inmate day, the cost at the Jail this year is $19.03. The cost in Baltimore where the correctional medical program was under Federal court supervision, is $5.18 per inmate per day, and in Prince Georges County, $7.65. The report found similar disparities in the levels of staffing, i.e., approximately15 M.D.'s in D.C. (with responsibility for 1,670 inmates)versus five in Baltimore (with responsibility for 3,100 inmates) and one in P.G. County (with responsibility for 1,400 inmates).

I have urged repeatedly that the RFP be based on proposals being able to perform at a specified level of medical service. Instead, you seem ready to reject that common practice and promulgate a very high set of norms to emulate. Although my position was not created by Congress until 1997 and I am not a party to this case, review of such expenditures in the District's correctional system is my Congressionally mandated statutory responsibility and is within the direct scope of my official duties. I may be wrong, but it appears to me that the structure of this RFP not only will elicit unrealistically expensive proposals, but it will also lead inexorably to the rejection, by comparison, of good and much less expensive alternative proposals which offer very acceptable, but nonetheless lesser, standards of service and levels of staffing. The proof of whether or not the RFP approach has worked well will ultimately be reflected in the quality of services and the reasonableness of the price of the proposals elicited by this procurement process.

The Federal courts in this District never mandated, and there is no Federal controlling precedent that requires, that the prisoners in the District of Columbia are entitled to more than three times more expensive medical care than another Federal court found sufficient for prisoners in the Baltimore jail. Indeed, as constructed, the "comparative" proposal requires bids on a medical standard that far exceeds on average both what is being made available at public expense to, and what is being purchased privately by, law abiding citizens of the District, or in any state for that matter. The national average for all citizens, $10.75 per person per day, is only about half (56 percent) of the "comparative" proposal that this RFP requires bidders to bid on.

If the parties take the proposed course of action over my clear objection, it will be no surprise to me if the result of this RFP process is that the District receives not a single acceptable bid within the range of costs paid by any of the surrounding jurisdictions or, for that matter, other comparable jurisdictions in the nation. Again, as I cautioned at the June 4 meeting, this is an unacceptable way to obligate or expend such an enormous quantity of public resources. Consequently, I again urge all the parties to drop completely the requirement for bidders to submit two proposals. There is nothing pre-ordained or, as far as I can tell, particularly useful about the requirement for a bid on the "comparative" proposal. If bidders wish to submit a bid based on what is now in place, that should be their option. But to require every bidder to bid on replicating the current status quo, whether or not they think that is the best way to deliver the required services, is most likely to skew the bidding process and be counterproductive.

Let me be clear. I am committed to having medical services provided to Jail prisoners at a level of quality which meets community standards and which will give the courts and the public confidence that there will be no return to the troubles of the past. However, those goals can be reached while at the same time maintaining fiscal responsibility, as is done in many other systems all over the country. I am concerned that the current process and discussions leading to the imminent issuance of an RFP seem to give very little, if any, priority to the issue of the commitment of the District's financial resources over the five year course of the proposed contract. Good government requires a balancing of legitimate concerns for the quality of services with the realities of limited fiscal resources.

We are now at a critical juncture. The Federal Court's current five year role in the correction of the much improved medical situation at the D.C. Jail is set to lapse in September 2000. Since the District's and my role overseeing these and related functions of the D.C. Department of Corrections will continue for quite some time thereafter, the executive branch of the District of Columbia government must, by necessity, occupy a central place in the evaluation, selection and monitoring process for this RFP. As I expect you will agree, this is necessary both to facilitate the timely and orderly transfer of responsibility from the Court to the regular custodians of those duties, and to obtain the formal approval and assumption of this contract responsibility by the Financial Control Board, the City Council, and the Mayor. At our last meeting, we raised but did not have time to reach a meeting of the minds on this issue.

Since the draft RFP is being promulgated as a judicially backed request, I have no official power to dictate its terms. Nevertheless, I question whether the serious flaws now present in it can be overcome, and I believe that this RFP will consume unnecessary time and money.

It is my hope that without delaying the issuance of this RFP, we can quickly find common ground on these critical issues.

Sincerely,

John L. Clark
Corrections Trustee

cc: U.S.D.J. William B. Bryant
Monty Wilkinson, Special Assistant, Mayor's Office
Valerie Holt, Chief Financial Officer
Director Odie Washington, Department of Corrections
Eric Lotke
J. Patrick Hickey
Richard S. Love

Attachment 3

1.12 FY 1998 vs FY 1999 RECEIVERSHIP STAFFING

POSITION	FY 1998 FTEs	FY 1999 FTEs	VARIANCE
Physicians[1]	18.35	14.1	-4.25
Physician Assistant	4	4	0
Health Educator	1	1	0
Intake Coordinator	1	1	0
Dietitian	1	1	0
Director of Nursing	1	1	0
Clinical Manager (1)			Included in RNs
Infection Control Coordinator	1	1	0
TB Coordinator	0	0	0
Hospital Liaison	1	1	0
RNs and LPNs	49	44	-5
Dental Director	1	1	0
Staff Dentists	3	2.6	-0.4
Dental Hygienist	0.5	0.5	0
Dental Assistant	4	4	0
Pharmacy Director	1	1	0
Pharmacy Supervisor	1	0	-1
Pharmacists	4	3	-1
Pharmacy Technicians	5	4	-1
Health Services Administrator	1	1	0
Quality Improvement Coord	1	1	0
Quality Improvement Assistant	2	2	0
Computer Analyst	1	1	0
Procurement Officer	1	1	0
Procurement Assistant	1	0	-1

Materiels Handler	1	1	0
Secretary	4	4	0
Nursing Assistant/ Appointment Clerk	4	4	0
Staff Assistant	0.5	0.5	0
Registered Records Admin.	1	1	0
Medical Records Technician	11	8.5	-2.5
Radiology Director	1	1	0
Radiology Technologist	4.5	4.05	-0.45
Mental Health Director	1	1	0
Mental Health Unit Directors	3	3	0
Mental Health Clinicians	9	9	0
Psychiatrists	2.6	2.6	0
Executive Assistant	1	1	0
Clerk Typists	2	2	0
TOTAL	149.45	132.85	-16.6

[1] Includes one (1) Medical Director, one (1) Senior staff physician and 12.1 staff physicians.

BUDGET FISCAL YEAR 1999 FOR THE RECEIVER MEDICAL AND MENTAL HEALTH SERVICES

BUDGET FISCAL YEAR 1999

Object Class	Object	Account Name	Receiver's Office	Administration	Medical	Dental	Mental Health	Nursing	Total	Footnotes
Subsid O C Full Time Labor	11 00	Continuous Full Time Employees (8)	$0	$100,123	$51,261	$0	$0	$0	$241,484	1
			$0	$100,123	$51,261	$0	$0	$0	$241,484	
Subsid O C Supplemental Pay	13 00		$0	$13,309	$3,560	$0	$0	$0	$16,869	1
Subsid O C Fringe Benefits	14 00		$0	$36,123	$9,743	$0	$0	$0	$45,867	1
Supplies and Materials	20 00	Misc Supplies		$18,000	$18,000				$36,000	2
	20 00	Medical Supplies		$600,000	$200,000	$34,000		$9,500	$1,103,500	3
	20 00	Educational		$6,860	$3,500		$9,500		$19,975	4
	20 00	Food/Kitchen		$1,815					$1,815	
	20 00	General							$0	
	20 00	Cleaning Supplies			$20,000	$4,032		$9,500	$33,532	5
Subsidiz Supplies and Materials	20 00		$0	$646,735	$240,500	$38,032	$9,500	$9,500	$1,172,787	
Other Services and Charges	40 00	Other Services Charges		$22,440					$22,440	6
	40 00	Travel Local			$20,000				$20,000	7
	40 00	Maintenance and Repair Machines		$33,000	$50,000	$10,000			$85,000	8
	40 00	Electricity, Piped and Mailbox							$0	
	40 00	Maintenance and Repair Other							$0	
	40 00	Professional Service Fees		$203,076					$203,076	9
	40 00	Contracting Services Other		$130,000	$36,800				$166,800	10
	40 00	Printing Duplicating, Etc		$12,000					$12,000	11
	40 00	Postage		$3,000					$3,000	12
Subsidiz Other Services and Charges	40 00		$0	$403,516	$106,800	$10,000	$0	$0	$520,316	
	50 00	Subsidies and Transfers							$0	
	50 00	Maintenance of Personnel							$0	
	50 00	Medical Vendors	$166,000	$1,776,800	$3,554,510	$557,301	$1,606,200	$3,119,551	$10,780,362	13
	50 00	Rehabilitation Vendors							$0	
Subsidiz Subsidies and Transfers	50 00		$166,000	$1,776,800	$3,554,510	$557,301	$1,606,200	$3,119,551	$10,780,362	
Subsidiz Equipment	70 00	Equipment Rentals							$0	14
	70 00	Furniture Fixtures							$0	
	70 00	Purchase of Equipment			$60,500	$8,500			$69,000	15
	70 00	Small Equipment		$20,000					$20,000	
	70 00	Resale of machinery							$0	
	70 00	Misc Other							$0	
Subsidiz Equipment Totals Footnotes	70 00		$0	$20,000	$60,500	$8,500	$0	$0	$89,000	16
			$166,000	$3,036,846	$4,115,500	$641,833	$1,615,700	$3,131,551	$12,707,430	
			17	19	20	21	22	23		

[illegible] BUDGET [illegible] FOR THE REDELIER MED DAL AND MENTAL [illegible]

POSITION TITLE	REMEDIAL PLAN		BUDGET	Fiscal Year 99
	FTE	PAGE #	EMPLOYEES	EMPLOYEES (With Benefits
MEDICAL				
Physicians (including Medical Director)	16.5	59	14.1	$2,027,518
Physician Assistants	17	59	4	$292,739
Health Educator	1	61	1	$50,720
Hospital Liaison			1	$55,228
Infection Control Nurse			1	$77,206
Intake Coordinator			1	$87,914
TB Coordinator	1	61		
Medical Quality Assurance Monitor/Coordinator	1	61	1	$78,897
Quality Assurance Assistant	1	61	2	$104,031
Clinical Manager			1	$78,897
Nursing-RN	18	60	16	$1,028,444
Nursing-LPN	10	60	10	$516,212
Nursing Assistants (2)			2	$39,854
Subtotal Medical:	65.5		54.1	$4,437,660
DENTAL				
Chief Dentist	1	60	1	$118,345
Dentists	3	60	2.6	$234,392
Dental Assistants	4	60	4	$144,247
Dental Hygenists	0	61	0.5	$25,319
Subtotal Dental:	8		8.1	$522,304
PHARMACY				
Chief Pharmacist	1	58&61	1	$92,986
Pharmacists	5	61	3	$205,297
Pharmacy Technicians	5	61	4	$137,485
Subtotal Pharmacy:	11		8	$435,767
ADMINISTRATION				
Health Services Administrator	1	60	1	$98,058
Director of Nursing	0	58	1	$107,075
Radiology Director			1	$75,516
Radiology Technician			4.05	$163,758
Staff Assistant	1	60	0.5	$22,271
Procurement Officer	1	60	1	$47,113
Procurement Clerks	2	60	0	$0
Secretaries	4	60	4	$153,545
Computer Analyst	1	60	1	$90,168
Registered Records Administrator			1	$73,262
Medical Records Librarian-Chief Medical Records	1	60	0	$0
Medical Records Technicians	10	60	7.5	$208,210
Medical Records Technician-Mental Health	1	14	1	$28,178
Dietitian	1	66	1	$59,736
Materials Handler	0		1	$39,060
Appointment Clerks	4	61	4	$117,553
Subtotal Administration:	27		29.05	$1,283,502
MENTAL HEALTH				
Director, Mental Health	1	10	1	$133,629
Executive Assistant (Office Assistant)	1	14	1	$34,940
Clerk Typist	2	14	2	$56,355

BUDGET - FISCAL YEAR 1999 FOR THE REMEDIAL MEDICAL AND MENTAL HEALTH PLANS

POSITION TITLE	REMEDIAL PLAN		BUDGET	FISCAL YEAR 99 EMPLOYEES (With Benefits
	FTE	PAGE #	EMPLOYEES	
Psychiatrist	2.5	12	2.6	$459,271
Psychiatrist-On Call		13	0	$35,729
Unit Directors	3	10	3	$259,233
Clinicians	13	12	9	$686,404
Quality Assurance Monitor/Coordinator	1	13	included in admin	included in admin
Clinical Manager			0	$0
Head Nurses	3	11	0	$0
Nursing-RN	10	11	13	$817,147
Nursing-LPN	4.4	11	2	$93,549
Subtotal Mental Health:	40.9		33.6	$2,576,258
Totals: Remedial and Fiscal Year 1999 Plans	152.4		132.85	$9,255,491
ADDITIONAL COURT ORDER COST TO ESTABLISH RECEIVERSHIP				
Receiver			1	$198,000
Total Additional Court Order Cost To Establish Receivership			1	$198,000

Name	Title	Non-DOC Annual Salary	Fringe Rate 12.71%	Total Salary & Benefits	REMARKS
MEDICAL DEPARTMENT					
HARPER, STAN	Medical Director	$185,000	$23,514	$208,514	
VACANT	Staff Physician	$120,000	$15,252	$135,252	
AIGBEDION, ERIC	Staff Physician	$120,000	$15,252	$135,252	
APEWORK, ESKINDER	Staff Physician	$120,000	$15,252	$135,252	
MAMBALAM, MOHAM	Staff Physician	$120,000	$15,252	$135,252	
ABDULAWAHAB, F	Staff Physician	$120,000	$15,252	$135,252	
TINUBU, SIKIRA (PART-TIME_4)	Staff Physician	$49,920	$6,345	$56,265	
ABDULAWAHAB,MOHAMMED	Staff Physician	$120,000	$15,252	$135,252	
EDUSEI, KWAME	Staff Physician	$120,000	$15,252	$135,252	
MURRAY, GLADWYN (PART-TIME_6)	Staff Physician	$74,880	$9,517	$84,397	
BASTIEN, JOSEPH (PART-TIME_5)	Staff Physician	$64,800	$8,236	$73,036	
BONAR, ADOLPHUS (PART-TIME_4)	Staff Physician	$49,920	$6,345	$56,265	
LISSANU, ZEWDU (PART-TIME_2)	Staff Physician	$24,960	$3,172	$28,132	
BEY, PATRICIA (PART-TIME_2)	Staff Physician	$24,960	$3,172	$28,132	
ROSARIO, AMANUEL (PART-TIME_5)	Staff Physician	$64,800	$8,236	$73,036	
DOH, FIDELIS (PART-TIME_4)	Staff Physician	$49,920	$6,345	$56,265	
SETON, PHILLIP (PART-TIME_5)	Staff Physician	$64,800	$8,236	$73,036	
IMEZUE, H	Senior Staff Physician	$135,000	$17,159	$152,159	
JAGDEO, CAROL (PART-TIME_4)	Staff Physician	$49,920	$6,345	$56,265	
TOTAL PHYSICIANS		$1,678,680	$213,386	$1,892,066	
DAVIS, C	Supervisory Physician Asst.	$51,261	$13,333	$64,614	DOC Empl 26% F
ZABIHIAN, VALI	Intake Coordinator	$78,000	$9,914	$87,914	
FITZGERALD, GLORIA (PART-TIME_5)	Physician Assistant	$31,200	$3,966	$35,166	
JONAS, GUYFORD	Physician Assistant	$70,000	$8,897	$78,897	
MORGAN, CHARLENE	Physician Assistant	$70,000	$8,897	$78,897	
PERRIER-TAYLOR (PART-TIME_5)	Physician Assistant	$31,200	$3,966	$35,166	
TOTAL PHYSICIANS ASSISTANTS		$331,661	$48,972	$380,653	
HOLMES, ANGEL	Infection Control Nurse	$68,500	$8,706	$77,206	
WILLIAMS, EARNEST	Health Educator	$45,000	$5,720	$50,720	
Assigned at DC General Hospital:					
ROBERTSON, GLORIA	Hospital Liason	$49,000	$6,228	$55,228	
TELELE, JIMA	Staff Physician	$120,000	$15,252	$135,252	
SUBTOTAL MEDICAL		$2,293,061	$298,263	$2,591,324	
MEDICAL NURSING STAFFING					
GERALD, KERRI	Clinical Manager	$70,000	$8,897	$78,897	
JOHNSON, ROBERT	Evening Supervisor-RN	$67,000	$8,516	$75,516	
OGUNTOYINBO, MOJIROLA	Nurse - RN	$52,530	$6,677	$59,206	
HOLT, JANICE	Nurse - RN	$63,440	$8,063	$71,503	
FRIDIA, MARIAN	Nurse - RN	$61,000	$7,753	$68,753	
FREEMAN, GEORGIA	Nurse - RN	$60,000	$7,626	$67,626	
HAWKINS, SALAMATU	Nurse - RN	$55,000	$6,991	$61,991	
HILLIARD, BEVERLY	Nurse - RN	$55,000	$6,990	$61,990	
JOHNSON, LEO	Nurse - RN	$51,000	$6,482	$57,482	
PEACE, BARBARA	Nurse - RN	$61,000	$7,753	$68,753	
PRADIER, MARK	Nurse - RN	$46,000	$6,101	$54,101	
WATTS, BRENDA	Nurse - RN	$60,000	$7,626	$67,626	
MARFO, JULIANNA	Nurse - RN	$55,000	$6,990	$61,990	
CHUKA, PATIENCE	Nurse - RN	$51,500	$6,546	$58,046	
SHIPMAN, PHILLIS	Nurse - RN	$61,000	$7,753	$68,753	
KING, MARJORI	Nurse - RN	$53,000	$6,736	$59,736	
OKALAWON, ADEDIWURA	Nurse - RN	$58,000	$7,372	$65,372	
BARNES, JOYCE	Nurse - LPN	$49,000	$6,228	$55,228	
ANYANWU, PENINNAH	Nurse - LPN	$41,500	$5,275	$46,775	
GIBSON, GWENDOLYN	Nurse - LPN	$49,000	$6,228	$55,228	
HAWTHORNE, LYNDA	Nurse - LPN	$49,000	$6,228	$55,228	
MANSARAY, AMINATA	Nurse - LPN	$42,000	$5,338	$47,338	

...L YEAR 1999 FOR THE FEDERAL MEDICAL AND MENTAL ...

...STAFFING SCHEDULE FOR FISCAL YEAR 1999 ...

Name	Title	Non-DOC Annual Salary	Fringe Rate 12.71%	Total Salary & Benefits	REMARKS
NWAOBILOR, OBIOMA	Nurse - LPN	$41,000	$5,211	$46,211	
PRESTON, YVONNE	Nurse - LPN	$49,000	$6,228	$55,228	
SIMMONS, VEDA	Nurse - LPN	$44,000	$5,592	$49,592	
WHITE, DARLINE	Nurse - LPN	$49,000	$6,228	$55,228	
BROWN, EMMETT	Nurse - LPN	$44,500	$5,656	$50,156	
SUBTOTAL RN'S		$982,469	$124,872	$1,107,341	
SUBTOTAL LPN'S		$458,000	$58,212	$516,212	
BENLOSS, OPAL	Nursing Assistant	$17,680	$2,247	$19,927	
JONES, KATHY	Nursing Assistant	$17,680	$2,247	$19,927	
SUBTOTAL MEDICAL NURSING		$1,475,830	$187,578	$1,663,408	
MENTAL HEALTH NURSING:					
TADEE, PAUL	Psych Nurse RN	$58,000	$7,372	$65,372	
LEWIS, HENRY	Psych Nurse RN	$51,500	$6,546	$58,046	
WEAVER, MARGO	Psych Nurse RN	$61,000	$7,753	$68,753	
WATSON, EDITH	Psych Nurse RN	$61,000	$7,753	$68,753	
NELSON, SUSAN	Psych Nurse RN	$54,000	$6,863	$60,863	
KYLAR, LILLIAN	Psych Nurse RN	$51,500	$6,546	$58,046	
WARNER, CLEOPHUS	Psych Nurse RN	$61,000	$7,753	$68,753	
ARUNA, THERESA	Psych Nurse RN	$55,000	$6,990	$61,990	
AHAIWE, BERNADETTE	Psych Nurse RN	$49,000	$6,228	$55,228	
ONYE, PHILO	Psych Nurse RN	$58,000	$7,372	$65,372	
AHAGHOTU, GEORGINA	Psych Nurse RN	$59,000	$7,499	$66,499	
NGATI, CHRISTOPHER	Psych Nurse RN	$45,000	$5,720	$50,720	
YAYAH, MUDASIRU	Psych Nurse RN	$61,000	$7,753	$68,753	
ADEBIYI, GRACE	Psych Nurse LPN	$41,500	$5,275	$46,775	
ATEMEKENG, FERDINAND	Psych Nurse LPN	$41,500	$5,275	$46,775	
SUBTOT MENTAL HEALTH NURSING:		$807,998	$102,697	$910,696	
DENTAL DEPARTMENT:					
BURKE, BRIAN	Chief Dentist	$105,000	$13,345	$118,345	
LISTER, SHARON	Dentist	$80,000	$10,168	$90,168	
HAMMOND, CLARENCE	Dentist	$80,000	$10,168	$90,168	
HILL, GREGARY (PART-TIME .6)	Dentist	$47,961	$6,096	$54,056	
LIPSCOMB, HATTIE	Dental Assistant	$31,990	$4,066	$36,056	
WRIGHT, PAMELA	Dental Assistant	$31,990	$4,066	$36,056	
KITTRELL, CYNTHIA	Dental Assistant	$32,000	$4,067	$36,067	
VACANT	Dental Assistant	$32,000	$4,067	$36,067	
LLOYD, ALICE	Dental Hygenist (Part-Time .5)	$22,464	$2,855	$25,319	
SUBTOTAL DENTAL:		$463,405	$58,899	$522,304	
PHARMACY DEPARTMENT:					
SINCLAIR, G.	Chief Pharmacist	$82,500	$10,486	$92,986	
GINYARD, B.	Pharmacist	$46,646	$12,128	$58,774	DOC Empl .26% Fr
MENGESHA, ZELALEM	Pharmacist	$65,000	$8,262	$73,262	
UZOWIHE, MARCEL	Pharmacist	$65,000	$8,262	$73,262	
WRIGHT, M	Pharmacy Technician	$30,000	$3,813	$33,813	
SIMS, M.	Pharmacy Technician	$24,135	$6,275	$30,410	DOC Empl .26% Fr
MCLEAN, ELAINE	Pharmacy Technician	$30,000	$3,813	$33,813	
BASSEY, EFFIONG	Pharmacy Technician	$35,000	$4,448	$39,448	
SUBTOTAL PHARMACY:		$378,281	$57,486	$435,767	
ADMINISTRATIVE DEPARTMENT:					
HILL, BEVERLY	Health Services Administrator	$87,000	$11,058	$98,058	
HAMILTON, VENIDA	Director of Nursing (Chief Nurse)	$95,000	$12,075	$107,075	

...AL YEAR 1999 FOR THE BEST MEDICAL AND MENTAL HEALTH ...

...PAID NON-CORE SCHEDULE FOR FISCAL YEAR 1999

Name	Title	Non-DOC Annual Salary	Fringe Rate 12.71%	Total Salary & Benefits	REMARKS
FULTON, CAROL	Radiology Director	$67,000	$8,516	$75,516	
DUKES, ANTHONY	Radiologic Technician	$38,583	$4,901	$43,485	
RODGERS, DOROTHY (PART-TIME .7)	Radiologic Technician	$26,208	$3,331	$29,539	
COOPER, JARWOLO (PART-TIME.75)	Radiologic Technician	$28,080	$3,569	$31,649	
DUNCAN-CHISOLM, R. (PART-TIME.3)	Radiologic Technician	$11,232	$1,428	$12,660	
NOBLE, GARY (PART-TIME .6)	Radiologic Aide	$15,000	$1,907	$16,907	
PHILLIPS, AUSTIN(PART-TIME .7)	Radiologic Technician	$26,208	$3,331	$29,539	
NEAL, FLORICE (PART-TIME .5)	Staff Assistant	$19,760	$2,511	$22,271	
SCHIER, DANA	Procurement Officer	$41,800	$5,313	$47,113	
SPEIGHT, YOTUNYA	Secretary	$35,000	$4,449	$39,449	
KELLEY, CATRINA	Secretary	$19,868	$5,170	$25,056	DOC Empl 26% Fr
MCGHEE, SHARON	Secretary	$45,000	$5,720	$50,720	
RANDOLPH, C	Secretary	$34,000	$4,321	$38,321	
FULLINGTON, PHILLIP	Computer Analyst	$80,000	$10,168	$90,168	
CLANCY, JACKIE	Registered Records Administrator	$65,000	$8,262	$73,262	
HOLLEY, TONYA	Medical Records Technician	$25,000	$3,178	$28,178	
CARROLL, PHYLLIS	Medical Records Technician	$19,886	$5,170	$25,056	DOC Empl 26% Fr
ALEXANDER, BARBARA	Medical Records Technician	$25,000	$3,178	$28,178	
THOMAS, FRANCIS (PART TIME .5)	Medical Records Technician	$12,500	$1,589	$14,089	
ASHFORD, STEPHANIE	Medical Records Technician	$25,000	$3,178	$28,178	
ENCINAS, LOURDES	Medical Records Technician	$25,000	$3,178	$28,178	
FOREMAN, BARBARA	Medical Records Technician	$25,000	$3,178	$28,178	
WOOD, MARIA	Medical Records Technician	$25,000	$3,178	$28,178	
OGLESBY, PATRICIA	Medical Records Technician-MH	$25,000	$3,178	$28,178	
HUNTER, ESTELLE	Quality Assurance Monitor/Coordi	$70,000	$8,897	$78,897	
PITTS, KHALID	Quality Assurance Assistant	$47,300	$6,012	$53,312	
VACANT	Quality Assurance Assistant	$45,000	$5,720	$50,720	
NERIA, GRACE	Dietitian	$53,000	$6,736	$59,736	
ALEXANDER, CALVIN	Materiels Handler	$31,000	$8,060	$39,060	DOC Empl 26% Fr
THORPE, LATRICE	Clerk Typist	$25,000	$3,178	$28,178	
CLINKSCALE, T	Clerk Typist	$25,000	$3,178	$28,178	
HALL, VASTI	Unit Clerk	$25,000	$3,178	$28,178	
MCDANIEL, LENORA	Unit Clerk	$25,000	$3,178	$28,178	
LAWSON, LORRAINE	Appointment Clerk	$20,064	$5,217	$25,281	DOC Empl 26% Fr
STEWART, ANNA	Appointment Clerk	$28,506	$7,412	$35,918	DOC Empl 26% Fr
SUBTOTAL ADMINISTRATION		$1,336,993	$185,792	$1,522,786	
MENTAL HEALTH DEPARTMENT					
WEISMAN, ANDREA	Mental Health Director	$118,560	$15,069	$133,629	
LEWIS, TERESA	Executive Assistant (Office Assist	$31,000	$3,940	$34,940	
	Secretary				
PRASAD, C (PART TIME .5)	Staff Psychiatrist	$65,000	$8,262	$73,262	
VACANT	Staff Psychiatrist	$135,200	$17,184	$152,384	
MEBANE, W (PART-TIME .6)	Staff Psychiatrist	$137,280	$17,448	$154,728	
YAYCO, ODITA (PART-TIME .5)	Staff Psychiatrist	$70,000	$8,897	$78,897	
VARIOUS	On Call Psychiatrist	$31,700	$4,029	$35,729	
FRANCIS, AMELIA	Unit Director	$75,000	$9,533	$84,533	
VACANT	Unit Director	$75,000	$9,533	$84,533	
HENDRICKS, MICHAEL	Unit Director	$80,000	$10,168	$90,168	
JONES, CLARK (PART-TIME .5)	Clinicians	$40,000	$5,084	$45,084	
DAVAGE, JOAN	Clinicians	$70,000	$8,897	$78,897	
REID, BRUCE	Clinicians	$68,500	$8,706	$77,206	
GUZMAN, NILFA	Clinicians	$63,500	$8,071	$71,571	
HUTCHENSON, C (PART TIME .5)	Clinicians	$35,000	$4,449	$39,449	
VACANT (PART TIME .5)	Clinicians	$35,000	$4,449	$39,449	
BLACKWOOD, GRACE	Clinicians	$63,500	$8,071	$71,571	
CARLOS, OCTAVIA (PART TIME .5)	Clinicians	$35,000	$4,449	$39,449	
MCCARGO, JANNA	Clinicians	$63,500	$8,071	$71,571	
FARMER, JACKIE	Clinicians	$65,000	$8,262	$73,262	
SIMMS, LAVERNA	Clinicians	$70,000	$8,897	$78,897	
SUBTOTAL MENTAL HEALTH		$1,427,741	$181,466	$1,609,206	
TOTALS		$8,183,310	$1,072,181	$9,255,491	

Health Services Spending Analysis
(Non-Personal Services)

Description	Estimated FY 99 Cost
Nurses	2,094,489
Physician's Assistants	719,500
Rehabilitative Services	453,390
Dialysis (thru 7/7)	508,000
Dialysis (7/8-9/30)	140,000
Dialysis additonal inmates	77,910
Lab Corporation of America	512,103
WD & Associates, X-Ray Technicians	133,440
DC General	1,500,000
Other Inpatient/outpatient Services (estimated)	1,934,000
Misc.	
Dermatology	52,500
Radiology-A	39,630
Radiology-B	11,550
Ambulance	42,000
Nephrology-A	51,800
Nephrology-B	11,550
Orthopedic-A	47,505
X-ray	25,000
Dental Prosthesis	25,000
Bio Hards	19,126
Hearing	15,000
Eye Prosthesis	15,000
Oxygen	9,500
Eye Glasses	35,000
Dental Equipment Repair	25,000
Edwards (Court ordered consultant)	8,000
Zeichner (Court ordered consultant)	130,000
Pharmaceuticals Supplies	1,600,000
Misc Supplies (identified)	158,219
Misc Supplies (un-identified)	75,000
Printing (Industrial Division purchase)	15,000
Dental X-ray film (& other equipment)	15,569
TOTAL	10,499,780

MedSrv by OBJ.CLass worksheet

DC Department of Corrections
Listing of Health Services Personnel

				MEDICAL OFCR GEN
ALBANO,DONALD M	03	05	103,570	PRAC
				MEDICAL OFFICER
ALI,HUMAIRA R	03	08	108,182	GEN. PRAC
ALSTON,GLADYS M	08	10	35,019	CLINICAL NURSE
AMES,SHIRLEY M	03	10	54,128	CLINICAL NURSE
AMINI,FATEMEH H	03	03	42,543	CLINICAL NURSE
ANDREWS,IRIS J	05	08	58,165	PSYCHIATRIC NURSE
BALLESTEROS,CORAZON L	03	05	45,574	CLINICAL NURSE
BARNETT,HELEN J	08	10	35,019	PRACTICAL NURSE
BARROW,LETHA C	08	05	31,040	PRACTICAL NURSE
BEEMAN,CAROL L	12	07	56,482	SUPVY CLINICAL NURSE
				MEDICAL OFCR
BERRY,MARC L	04	04	104,868	OPHTHALMOLOG
BRANSON,HERMAN E	15	07	93,053	MEDICAL OFFICER ADMIN
BRINDISI,JOAN M	12	08	54,913	SUPVY. PHYSICIAN ASST
				MED. RECORDS TECH
CAMPBELL,SONIA	05	08	32,137	(Bil)
CAPERS,THERESA	05	02	27,138	OFF AUTOMATION ASST
CARSON JR,EDWARD W	12	05	53,343	PHARMACIST
CLAYTON,ANITA K	03	02	92,911	MED OFFICER GEN PRAC
COOLEY,NAOMI C	12	08	56,051	SUPVY PHYSICIAN ASST
DAGBE,AGNES N	03	10	54,128	CLINICAL NURSE
				MEDICAL OFCR GEN
DANIEL,EMMETH A	03	08	108,182	PRAC
DAVIS,SHEILA A	05	05	29,279	MEDICAL RECORDS TECH
DECOHEN,PHILIP H	08	08	38,199	MENTAL HEALTH TECH
DESTA, GENET	03	01	88,581	MED OFCR GEN PRAC
				OFFICE ASSISTANT
DRAPER,SHELLEY N	07	08	34,487	TYPING
DUBOSE,MICHAEL J	11	04	43,197	PUBLIC HEALTH EDUCAT
EDWARDS,JULIE A	05	05	29,279	PHARMACY TECH
ENJETTI,ELEANOR	11	10	50,393	PHYSICIANS ASSISTANT
EVANS,CASSANDRA J	08	07	32,632	DENTAL ASSISTANT
				MEDICAL OFCR GEN
FERNANDES,FRANCIS B	03	05	103,570	PRAC
FORTENBERRY,DEWITT	02	05	87,974	DENTAL OFFICER
GARNER,KATHY L	05	04	28,565	OFFICE CLERK TYPING

DC Department of Corrections
Listing of Health Services Personnel

				MEDICAL OFCR
GHAEMI,KAMAL	04	06	110,739	NEUROLO
GORDON,WARREN P	12	07	56,482	PHARMACIST
GRANT,LEROY	12	07	56,482	SUPVY. PHYSICIAN ASST
GREEN,GUILLERMINA C	05	05	29,279	MEDICAL RECORDS TECH HEALTH SVCES PROG
HACKETT,LEROY H	12	04	51,774	SPE
HALIBURTON,BRUCE E	09	04	36,786	HEALTH CARE REP
HALL,LEROY H	03	05	103,570	MED OFCR GEN PRAC
HARRISON,KAREN D	01	03	73,201	PODIATRIST
HASSAN,NAWEEL K	11	05	44,688	PHYSICIANS ASSISTANT
HEATH,ELEANOR A	12	09	59,621	SUPVY PSYCH NURSE
HILL,ARLETHA L	03	06	47,189	CLINICAL NURSE
HOBBS,NANCY C	06	06	31,836	DENTAL ASSISTANT
HOLMES,ANNIE R	12	09	59,621	SUPVY CLINICAL NURSE HEALTH SRVCS PRO
HOUSTON,JENNIFER E	12	05	53,343	SPEC
INADAGBO,VERONICA	12	06	54,913	PHARMACIST
JOHNSON,CATHERINE V	08	06	38,240	MENTAL HEALTH TECH
JOHNSON,LOLITA L	05	10	32,851	MEDICAL RECORDS TECH
JOHNSON,ODESSA	06	06	31,838	DENTAL ASSISTANT HEALTH SCVS PROG
JOHNSON,PAULETTE S	12	06	54,913	SPEC
KEITH,IRVIN E	05	10	32,851	MEDICAL RECORDS TECH
KELLY,VERRITA L	07	08	36,255	OFFICE ASST TYPING MEDICAL OFCR GEN
KIDANE,PAULOS	03	04	100,319	PRAC
KIM,LYNETTE S	05	10	62,329	PSYCHIATRIC NURSE
KING,DWIGHT F	04	01	92,578	MEDICAL OFFICER-PSY
LIGHTFOOT,FRANKIE D	07	06	34,487	OFFICE ASSIST. TYPING
LINK,DAVID E	14	03	70,547	HEALTH SYSTEMS ADMIN MEDICAL OFCR GEN
LLOYD,RAYMOND A	04	06	110,739	PRAC
MARSHALL,THERESA C	07	04	32,719	OFFICE ASSIST. TYPING
MARTIN,CAROLINE M	03	08	50,528	CLINICAL NURSE

DC Department of Corrections
Listing of Health Services Personnel

MARZBAN,NADER	15	07	103,003	MEDICAL OFFICER ADMIN
MATTHEWS,SYLVIA D	09	04	39,788	HEALTH CARE REP
MCCAUGHEY,MARIA K	05	10	62,329	PSYCHIATRIC NURSE
MCELHANEY,BEVERLEY F	08	04	34,281	Mental Health Tech
MCNAIR,BARBARA A	11	10	91,049	SOCIAL WORKER
MITCHELL JR,WILLIAM P	02	06	91,199	DENTAL OFFICER
MONPEROUS,MIREILLE E	03	04	44,033	CLINICAL NURSE
NMEZI,CHIKA G	12	05	53,343	PHARMACIST
NNADIKE,JOSEPH D	03	03	95,640	Med Offr (Gen Prac) Bd MEDICAL OFCR GEN.
NWOSU,CHUKWUEMEKA G	03	01	88,581	PRAC MED RECORDS
OLDS,PATSY M	09	05	37,859	LIBRARIAN
ORUDIAKUMO,CELINA ENO	12	05	53,343	PHARMACIST MEDICAL OFFICER
PARK,DO SUN	03	05	103,570	GEN. PRAC MEDICAL OFFICER
PHELPS,CARLTON I	03	04	100,319	GEN. PRAC MENTAL HEALTH
RICHARDSON,TILITHIA M	08	08	36,240	TECH
RINEHART,PEARL D	08	09	34,223	PRACTICAL NURSE MEDICAL OFFICER
ROEMER,PETER A	04	05	108,402	PSYCH
SCRIVER,GWEN	05	08	31,423	MEDICAL RECORDS TECH MEDICAL OFCR GEN
SEIPEL,JOHN H	03	06	108,182	PRAC
SEYOUM,SELAMAWIT M	11	10	50,393	PHYSICIANS ASSISTANT
SHARPE,ALICIA B	05	06	29,279	MEDICAL REC. TECH
SLOAN,GALE R	08	05	35,281	MENTAL HEALTH TECH
SMALLS,AMANDA L	05	08	98,169	PSYCHIATRIC NURSE
SOREM,KEVIN R	12	08	58,051	SUPVY. PHYSICIAN ASST
STEWARD,LAVERNE	09	09	33,427	PRACTICAL NURSE
TAH,F AUGUSTUS	12	04	51,774	SUPVY PHYSICIAN ASST
TAIT,NOEL	02	06	91,199	Dental Officer (Bd)
TALBERT,JANICE D	08	08	33,427	DENTAL ASSISTANT MEDICAL OFFICER
TAYLOR,ELIZA J	16	07	119,846	ADMIN
THEOBALDS,JOHN B	03	06	108,182	MED OFCR GEN PRAC

DC Department of Corrections
Listing of Health Services Personnel

				MEDICAL OFFICER
UDEBIUWA,OPARANGO I	04	03	99,960	PSYCH
UDUJE,ESTHER I	11	05	44,688	PHYSICIANS ASSISTANT
UMOREN,ENOH	12	06	54,913	PHARMACIST
VANHOOSE,BENNIE A	13	02	57,835	SUPVY PHARMACIST
VIVEROS,MARY J	12	07	56,482	SUPVY PHYSICIAN ASST
WALKER,MICHAEL W	02	06	91,199	DENTAL OFFICER
WARD,ANTOINETTE K	05	08	58,185	PSYCHIATRIC NURSE
				MEDICAL OFCR GEN
WASIMUDDIN,KHALID	03	04	100,319	PRAC
WEBBER,SHERRILL M	03	10	54,128	CLINICAL NURSE
WEBSTER,CHARLES	02	06	91,199	DENTAL OFFICER
WILLIAMS,ENID L	05	08	31,423	MEDICAL RECORDS TECH
WILLIS,LORELLA	14	05	74,956	HEALTH SYSTEMS ADMIN
WILSON,ADRIAN G	02	06	91,199	DENTAL OFFICER
WILSON,PRISCILLA A	06	07	32,632	DENTAL ASSISTANT
WITHERSPOON,GOLDINE W	12	08	54,913	SUPVY. CLINICAL NURSE
WRIGHT,MARGARET I	03	07	48,820	CLINICAL NURSE
ZUNG,MAX MING KWAI	03	08	108,182	MED OFCR GEN PRAC
Total (107 employes)			6,560,987	

6. Are you having any success in assisting the DC Department of Corrections to improve its operations and management systems?

Answer: It is difficult to reinvent an agency, but my staff has made considerable progress in helping the Department of Corrections reevaluate and improve its operations. One of the notable successes is the development of a system of internal controls and policy guidelines to provide a firm foundation for day-to-day operations. We are conducting regular full week seminars for key staff in each functional area, followed by an on-site, hands-on opportunity to participate in a BOP audit. This has been exceptionally well received by the DOC staff. We are on the way to building a functioning internal auditing system.

This office has also played a major role in filling some key vacancies. We have assisted in the hiring of a new health services administrator, a new facilities manager, and a new general counsel . My office loaned the Department of Corrections two staff members to fill vacancies for several months in the positions of interim Director of the Department of Corrections and of interim warden at the Lorton Central Facility. Both of these positions have now been permanently filled. We also played an active role in the recruitment of the new DOC Director, Odie Washington.

Finally, we have taken an active role in working with the Special Officers of the Court to reduce the burden placed on the Department of Corrections through court orders. Our most recent success is the negotiation of the opening of some additional bedspace at the Central Facility to permit the vacating of some less desirable bedspace elsewhere at the Central Facility, and to house the remaining inmates from the Occoquan Facility in order to close the facility.

Mr. ISTOOK. Mr. Carver.

PREPARED STATEMENT OF COURT SERVICES TRUSTEE

Mr. CARVER. Thank you, Mr. Chairman. Mr. Moran, members of the Committee, it's a pleasure to be here, once again. You have my statement for the record.

[The prepared statement referred to follows:]

STATEMENT

OF

JOHN A. CARVER, III
TRUSTEE

COURT SERVICES AND OFFENDER SUPERVISION AGENCY
FOR THE DISTRICT OF COLUMBIA

BEFORE THE

HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

APRIL 28, 1999

62-688 2000 - 6

Statement by John A. Carver, III
Trustee
Court Services and Offender Supervision Agency
for the District of Columbia
before the House Committee on Appropriations
Subcommittee on the District of Columbia
April 28, 1999

On behalf of all of us in the Court Services and Offender Supervision Agency (CSOSA) I would like to thank the subcommittee for the opportunity to testify today about our FY 2000 budget request. The Attorney General appointed me Trustee under the National Capital Revitalization and Self-Government Improvement Act of 1997 to carry out the reorganization and transition of functions relating to pretrial services, parole, adult probation and offender supervision in the District of Columbia as a Federal Executive Branch agency. It is my responsibility to certify to the Attorney General and obtain her concurrence that the Agency meets all relevant Federal standards and is ready to assume these functions as a Federal agency on or before August 5, 2000.

In short, my job over the next year is to transform the inadequate and fragmented existing adult supervision programs of the District into a system that at minimum meets Federal criminal justice standards and will hopefully serve as a model for the Nation. In order to reduce crime in the District, we must be able to provide adequate supervision and intervene effectively any time an individual comes to the attention of the justice system, be it as a criminal defendant or as the subject of a civil protection order. Criminal justice experts know what works to combat drug abuse and associated crime. We know how to change offender behavior and deter re-offending. However, closing the revolving door

and ending the cycle of recidivism, crime and violence is an immense challenge in a city where more than one of every twenty residents is under some form of criminal justice supervision, and the basic supervision "infrastructure" has been neglected for so long.

Moreover, at least two-thirds of the offenders we supervise are currently drug users or have histories of substance abuse. Citywide, 36% of adult residents say that the problems caused by drug sellers and users in their neighborhoods have changed the way their families live. Nationally, a disproportionate number of more than twelve million property crimes and almost two million violent crimes that occur each year are committed by drug users or traffickers. At CSOSA, we are committed to breaking the cycle of drug use and associated crime and making a measurable difference in the quality of life in the District.

We are moving toward a "community-based" and "sanctions-based" system of offender supervision. Offenders will be subject to sanctions for failing to comply with the conditions of their release. For too long, the D.C. criminal justice system has allowed offenders multiple chances before imposing consequences for unacceptable behavior. As a result, individuals often cycle through the system, warranting its full attention only after they have become repeat offenders.

CSOSA's mission is to change all that. By implementing a community-oriented approach to supervision, we will move our supervision officers out of their downtown offices and into neighborhoods around the city. We intend to provide careful monitoring,

accessible services, and immediate responses to violations. We plan to locate our supervision services where the individuals live and work, and where we hope they will become productive, law-abiding, taxpaying members of the community. Moreover, adopting a community-based approach will allow us to leverage community resources to increase public safety. Law enforcement and criminal justice agencies by themselves cannot marshal the crime prevention resources an entire community can.

The Promise of Revitalization

The provisions of the Revitalization Act creating this agency were enacted to fix serious public safety problems stemming from years of neglect and to relieve D.C. of "state-level" financial responsibilities.

We are building CSOSA from the ground up, starting with the most basic elements of organizational structure: acquiring office space; introducing office automation; hiring new staff; setting performance standards; and instituting staff accountability. As Trustee, I am responsible for establishing agency infrastructure, strategies, initiatives, policies and procedures to significantly improve public safety. The challenge is compounded by the constant and immediate need to closely monitor several thousand high-risk offenders in the community.

The Revitalization Act mandated that CSOSA develop and operate intermediate sanctions programs for sentenced offenders. Currently, the agency has a number of

excellent programs and strategies on which to build. Unless CSOSA is adequately funded, however, we cannot implement these models system-wide.

Last year, $38.3 million was requested in a FY 1999 budget amendment, but only $5 million was provided through the COPS grant program. Lack of funding has resulted in a serious Y2K compliance issue; supervision caseloads have only marginally been reduced; drug testing of offenders is inadequate; and limited treatment availability prevents the majority of offenders who are referred for treatment from receiving services.

An adequate and timely federal investment will produce significant dividends by reducing the part of the budget that represents our dependence on the most expensive correctional resource – namely, prison beds. Moreover, our success or failure in improving public safety in our community clearly will influence broader economic development in the District.

Progress to Date

When I was sworn in as Trustee 18 months ago, I set forth several goals in building the agency. First and foremost was the goal to improve public safety by establishing better accountability in the supervision of criminal offenders in the community. This goal necessarily includes better performance of the staff providing that supervision. I realized then that the basic "infrastructure" of offender supervision had been neglected for years. Staff simply lacked basic tools to do their work, and a substantial investment would be needed if their efforts were to yield results.

Improving Accountability

It was clear to me from the beginning that while the system was starved for funding, not every problem within the system of offender supervision was caused by lack of resources. From my years working in the District's criminal justice system, I knew that at least some problems could be quickly remedied by streamlining antiquated procedures and improving information flow. One example that had been burned into my memory was the well-publicized case of Leo Wright, a convicted murderer and drug abuser on parole who murdered Bettina Pruckmayr in December of 1996. I remembered that he had twice been picked up on new charges, but that the Parole Board had not acted on what should have been a red flag.

Within weeks of my appointment, I undertook a quick review of parolees arrested on new charges to learn whether the practice was continuing. To quote from a report I wrote dated October 31, 1997 (one month after I assumed this post): "The review yielded the following picture: Since October 1, there have been eight cases in which 5-day holds were ordered in parole cases and the hold period had lapsed. In three of those cases, the defendants were all charged with new felony offenses and were on parole from sentences imposed after conviction of: (1) second degree murder, (2) armed robbery, and (3) second degree murder. Despite the seriousness of both the prior conviction and the new charge, in each of these cases, no parole warrants have been issued." In other words, the same practices that had led to the re-release of Leo Wright a year and a half earlier were continuing in the fall of 1997.

Based on this quick review, I issued "Directive 001," a policy designed to close the "revolving door" by cutting out a number of steps in a long, overly complicated process. Prior to Directive 001, the Parole Board conducted its own probable cause determinations when parolees were charged with new offenses. These procedures were time-consuming, and sometimes completed too late to hold the parolee prior to release in the new case. Directive 001 was a simple remedy: directing the Parole Board to adopt the judicial finding of probable cause (rather than duplicating the process just completed in Court) and then issuing a parole warrant to ensure that the parolee would be held pending a parole revocation hearing.

This particular accomplishment required no new resources, and closed a very serious "loophole" that had plagued the community both before and after the case of Leo Wright. As expected, there were many legal challenges to my authority in enacting these changes. However, given the strong public safety imperative coupled with the intent of the Revitalization Act, the procedural changes incorporated in Directive 001 have withstood those challenges.

Building a Community Corrections System that Works

Increasing public safety is central to the mission of this agency, and the most important objective of the Revitalization Act. Since a disproportionate share of all crime is committed by known, previous criminal offenders, and since there are proven techniques that work to reduce crime and recidivism, there is great potential to improve

public safety by utilizing these techniques in the supervision of offenders. Yet the system often seems almost designed to produce failures.

A case in point is the way the criminal justice system dealt with pre-parole felons returning to the community after a period of institutionalization. For a number of years, there was no system of transitional housing to re-integrate felons back into the community. Prior to June 1998, parolees from Lorton were generally bussed to the District and simply released, with instructions to report to a parole officer and stay out of trouble. Without a system of community supports and supervision, many returned to their old associates and their old ways, and it was not long before the cycle of drug use and crime was resumed.

The practice of transitioning all parolees through halfway houses was re-instituted after a several-year hiatus through a Memorandum of Understanding executed in May, 1998 between myself, the Corrections Trustee, the United States Parole Commission and the Department of Corrections. Since June of 1998, the presumption has been that inmates granted parole will be transitioned to the community for a period of approximately 120 days in a halfway house, during which time they are provided services and supervision by both halfway house staff and CSOSA. Residents may not leave the facility during the first two weeks. Community Supervision Officers from CSOSA have been deployed to the halfway house, ensuring close supervision beginning at orientation. Final release on parole is contingent upon successful completion of this transitional program. Violations of program rules – the most frequent being drug use – result in immediate return to an institution.

During the past nine months, 567 inmates have been placed in halfway houses in pre-parole work release – virtually all in private facilities under contract to the Department of Corrections. Of those, 193 have successfully completed the program and transitioned to supervised release in the community. Over 100 violated the terms of their placement and were remanded directly from the halfway house to jail. Drug use is the most common reason for remand. After substance abuse assessments are conducted, releasees are eventually returned to the halfway house for continued supervision and treatment.

To summarize our experience with the pre-parole halfway house population, I believe that through close collaboration with the District of Columbia Department of Corrections, the Corrections Trustee and the U.S. Parole Commission, we have established a coordinated system to achieve CSOSA's primary public safety mission. While the outcomes could be better still, (and in fact, have improved over time) we have laid a foundation on which we can fulfill our primary objectives. We have established a true system of accountability and immediate sanctions in parole supervision. We have moved Community Supervision Officers into the halfway house to ensure strict supervision of this small, but high risk, segment of the parolee population. We work well with the Federal Fugitive Task Force to locate escapees. And we have reduced public safety risks, as evidenced by the immediate return of 98 program violators to jail, and by the fact that only six individuals have been charged with new offenses, mostly involving

drugs. Strong and effective case management of this special population has been the key to this success.

Community Justice Partnership with the Metropolitan Police Department

In November, 1998, the Court Services and Offender Supervision Agency launched the first of a planned series of partnerships among community police officers, Community Supervision Officers and residents. The basis for this partnership is a recognition that crime is a community problem, requiring community-based solutions. By teaming Community Supervision Officers (formerly known as probation and parole officers) and community police officers, we can increase accountability of those under criminal justice supervision and enhance the effectiveness of our efforts. By sharing information, we can ensure that quality of supervision will be better, the interventions will be quicker, and community concerns will be addressed. Historically, police and probation/parole agencies each have separately maintained information that could be useful to the other. If a police officer, for example, stops someone for drinking in public, yet does not know that the person is already on probation, an opportunity to intervene is lost and the value of the information is diminished. By the same token, if the probation officer does not know that a probationer has come into contact with a police officer, the perception is reinforced that there are no real consequences for violating the terms of release.

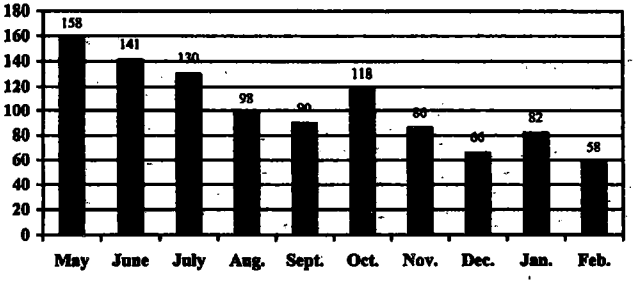
The first phase of this partnership involves a single "patrol service area" (or "police beat" as they are commonly known) in the 7th Police District. The pilot project is working well, and there are already plans to expand the concept to other police districts.

Eventually, the Agency plans to re-deploy almost all officers to District neighborhoods, and re-configure caseloads to match the boundaries of the patrol service areas.

Measuring the Impact of Change

As we work to increase public safety by improving supervision, we are committed to the process of regular program evaluation and measurement. To this end, we have just completed a study to gather basic data on the nature of supervision within all components of the new agency. With this data, we will be able to measure progress toward our public safety goals.

We do not yet have the ability to provide regular performance measures on a routine basis. That will come with the "roll out" of our new management information system. However, we have been tracking at least some measures of our success in improving accountability. We believe that the accomplishments described above – closing the "revolving door" with Directive 001, and establishing procedures for transitioning parolees back into community – have had a measurable effect. One measure is the number of parolees picked up on new offenses. That number has dropped steadily over the past 10 months, as the following chart indicates.



The number of parolees picked up on new charges has been dropping steadily from May, 1998 to February, 1999, by better coordination, increased accountability, and the establishment of a system for transitioning parolees to the community.

Despite the positive trends, we believe we have just begun to realize the potential for effective offender supervision. At this point in the development of the Agency, we have instituted obvious reforms, closing loopholes where possible and establishing the beginnings of a system of offender and staff accountability. We have assembled a team providing the basic functions of any new agency: personnel; procurement; facilities management; payroll; financial services; information technology; general management and administration.

We are now at the point where significant progress can only be accomplished with the infusion of new resources. Because the Administration's $38.3 million budget amendment for fiscal year was funded at only $5 million, we have yet to make a serious dent in the caseload ratios, which remain far too high. Critical elements of the offender supervision infrastructure are still missing. We do not yet have the capability to conduct the level of drug testing necessary, given the high rates of substance abuse among offenders. Drug treatment capacity is inadequate. We do not yet have a Sanctions Center, which would provide the ability to stabilize relapsing individuals in a secure setting where the public is not threatened. These initiatives make up the bulk of our funding request, and are described in greater detail below.

FY 2000 Request – The Task Ahead

The mission of the Court Services and Offender Supervision Agency for the District of Columbia is to increase public safety, prevent crime, reduce recidivism, and

support the fair administration of justice in close collaboration with the community. The Agency will enhance decision-making and provide effective community supervision, thereby ensuring public confidence in the justice system.

For Fiscal Year 2000, I am requesting $80,300,000, 834 permanent positions, and 814 FTE in direct appropriations for the Court Services and Offender Supervision Agency to address the requirements set forth by the Act. Of this amount, $17,400,000 is requested for the operations of the Public Defender Service, $15,800,000 is requested for the Pretrial Services Agency and $47,100,000 is requested for the Community Supervision Program which encompasses the former D.C. Board of Parole and Adult Probation. An additional $19,600,000, 250 positions, and 128 FTE, is requested from the 21st Century Policing Initiative grant program within the U.S. Department of Justice appropriation to address staffing requirements and related program activities. This will enhance supervision of all adult offenders, strengthen drug testing and sanctions programs, and provide for the strategic use of information.

This request level will enable the Agency to improve the quality of supervision provided to offenders on probation, parole, and supervised release pursuant to the District of Columbia Code on behalf of the court or agency having jurisdiction over the offender, and will assist the trial and appellate levels of both the Federal and local courts in determining eligibility for pretrial release by providing background information on arrestees and appropriate pretrial supervision, as well as recommend to the local trial courts appropriate sentences for criminal defendants.

Sanctions Center

One historic barrier to effective supervision has been the lack of intermediate sanctions short of revocation. There is reluctance to impose this "ultimate" sanction of revocation, and individuals are often given one more chance to shape up. This approach does not promote the level of accountability we are seeking. CSOSA's approach is to establish a series of intermediate responses, which will require a Sanctions Center. Designed along the lines of the Drug Court model, offenders and defendants will enter into "behavioral contracts" with the releasing authority (judge, U.S. Parole Commission), agreeing in advance to a series of specific responses to specific violations. One response must include secure residential placement – a "halfway back" option. Currently, there is no sanctions center option in the District of Columbia, and funding for halfway back contractual beds is almost non-existent.

The Sanctions Center will contribute to public safety as part of the graduated sanctions scheme. CSOSA will place offenders who repeatedly fail to comply with outpatient treatment in a closely supervised therapeutic setting where staff address offenders' addictive behavior. The center also will provide a secure setting for stabilization of drug-dependent individuals who relapse. It will be the focal point for a range of services available both to short-term "residents" and on an outpatient basis. Public health, education, and job training providers will be encouraged to co-locate in the Sanctions Center, making it a "one-stop" day reporting center. Appropriate referrals and

effective treatment improve public safety by altering the behaviors that contribute to criminality.

The Agency requests 43 positions, 22 FTE and $8,614,000 to fund renovations, repairs and operational expenses of a residential sanctions center. In FY 2000, $5,873,000 is requested in direct budget authority for the renovations and repair of the facility, and 43 positions, 22 FTE and $2,741,000 is requested from the 21st Century Policing Initiative grant program for operations.

Community Supervision

Community supervision is the basic building block of an effective offender management system. If we are to overcome the public perception, and often the reality, that no one is paying attention to enforcing criminal justice and community expectations, we must have a comprehensive and substantive level of offender supervision contact that changes the recidivism dynamic. Offenders must know that the system is serious and that there are swift and certain consequences for violations. This does not happen with current caseload ratios. With a few notable exceptions in each component, (the Drug Court, for example) caseloads are crushing. Prior to the Revitalization Act, caseload ratios ranged from 75 to 900 offenders for each officer – far in excess of those called for in nationally recognized standards or best practices of 35 to one. Caseload ratios of this magnitude make it impossible to provide proper supervision. As chronicled by Inspector General Prettyman in his investigation of the death of Bettina Pruckmayr, the result can be serious and sometimes tragic crime that could have been prevented.

There are approximately 9,500 defendants under pretrial supervision in the U.S. District Court and the D.C. Superior Court at any given time. The FY 2000 request will provide direct funding to annualize 21 Pretrial Service Officers from the FY 1999 COPS grant into the agency's base budget. In addition, funds are requested from the 21st Century Policing Initiative grant program to include the hiring of 24 new Pretrial Service Officers. With these resources, the average Pretrial Supervision caseload will be reduced to 200:1 by September 30, 2000.

In addition, there are about 18,700 probation and parole offenders in the District at the present time. The FY 2000 request will provide direct funding to annualize 32 Community Supervision Officers from the FY 1999 COPS grant into the agency's base budget. Additionally, funding is requested from the 21st Century Policing Initiative grant program to include 85 new Community Supervision Officer positions. The annualization of the positions hired under the FY 1999 COPS grant combined with the FY 2000 request will reduce the average Community Supervision caseload from 90:1 at the close of FY 1999 to 61:1 by September 30, 2000.

In year one of a two-year staffing plan, the Agency requests 175 positions, 88 FTE, and $10,874,000 to improve the level of supervision for adults under probation, parole, pretrial or other court-ordered supervision by enhancing staff and related program support. For FY 2000, funding is being requested from the 21st Century Policing Initiative grant program.

Drug Testing

A positive drug test is a clear early warning indicator requiring an immediate response by the criminal justice system. Each time the system could intervene, but does not, another message is sent to the individual that there are no consequences. As a result, offenders often cycle repeatedly through the courts until their behavior escalates to the point where it can no longer be ignored. Then incarceration may result, but eventually the offender returns to the community.

Pretrial Services is providing the leadership for the entire Agency in the area of drug testing. Over the years, Pretrial Services has developed a highly-automated and reliable process for collecting urine samples, documenting chain-of-custody, performing tests and reporting results to case managers and judges in a "real time" basis. However, this technology is available only on a very limited basis to probation and parole supervision.

In the probation area, less than 4 percent of all probationers are subject to regular drug testing. In parole, an even smaller number – less than 100 to be exact – is being drug tested through the automated system. Historically, drug testing has been sporadic and unreliable, provided on a contractual basis through a city agency. The procedures used have not withstood legal challenges, thus undermining the integrity of parole supervision.

There is an urgent need to provide adequate drug testing (twice weekly, at a minimum) for the bulk of the post-conviction offender population. To be effective, and to avoid legal challenges, the testing process must be reliable and fast. It does no good whatsoever to conduct drug testing, and then fail to act promptly if a parolee or probationer begins to relapse. To bring the drug testing operation up to adequate and effective levels, there will need to be a major expansion of drug collection and laboratory capacity, establishment of various urine sample collection sites around the city, and computer connectivity to ensure prompt action at the first signs of relapse.

The Agency plans to routinely and randomly drug test all offenders and defendants under criminal justice supervision. Those with known histories of substance abuse – which includes upwards of two thirds of this population – will be tested on a twice-weekly basis. This is a fundamental element of the offender supervision infrastructure that must be built if we are to reach our crime-reduction goals.

The Agency requests funding to support the expansion of the Pretrial Services' Drug Lab capability, the hiring of additional staff for the Drug Court program and establishes community-based collections sites for substance abuse testing. The collection sites will make it easier for offenders to be tested frequently, reduce the time it takes to process drug tests at a new central lab and ensure that all offenders under supervision are tested. Of the additional 33 positions, 18 FTE, and $3,797,000 requested, 11 positions, 6 FTE and $1,119,000 is requested in direct appropriations and 22 positions, 12 FTE and $2,678,000 is requested from the 21st Century Policing Initiative grant program.

Information Technology

CSOSA is implementing a 3-Year Information Technology plan – a strategy to use modern technologies in support of CSOSA's supervision and treatment needs for today, and for the foreseeable future. The implementation of the IT plan is an absolutely essential component of the reforms in process for the new agency.

A. PRISM

The largest, most essential, and exciting components of this plan are PRISM and the state-of-the-art communications network over which PRISM data will travel. PRISM is our strategic supervision and treatment information system and is an essential tool in the transition to community supervision. Information is the life blood of any organization. In criminal justice, it is especially important to have a top-flight decision-support system. Incomplete information can lead to poor decisions, and poor decisions can have tragic consequences. That is why we have identified information technology as one of the highest priorities as we build our new agency

B. Y2K CRISIS

The agency is facing a serious Y2K problem. In addition to supporting critical information needs of the agency, PRISM was planned as the Y2K solution for several systems which are not under the control of the Trustee, yet are vital to the agency. The Trustee has submitted a request to OMB for $973,000 from the Y2K Emergency Fund to

complete the most critical components of PRISM and replace four legacy systems that are not Y2K compliant.

If FY 1999 supplemental Y2K funds are approved, in FY 2000, PRISM will be expanded to support modern communications technologies, including telephony (for example, automatic phone calls to offenders and menu systems allowing offenders to call in for court dates). Subsequent versions of PRISM will include document control and expanded integration with external criminal justice agencies and treatment providers and the dissemination of information to the public. Information technology will also be used to enhance the effectiveness of the drug testing lab.

C. TECHNOLOGY STRATEGY

Technologies, research data and laboratory advancements offer our best promise for achieving our desired goal. A technology strategy is a necessary component in the support of public safety. For FY 2000, the Agency requests 10 positions, 6 FTE, and $3,307,000 for state-of-the-art systems that will be shared by and improve communications among all components of the criminal justice system: supervision centers, the drug testing laboratory, the Courts, the U.S. Parole Commission and Agency offices. For FY 2000, funding is being requested from the 21st Century Policing Initiative grant program.

In closing, as members of this Committee know, my commitment to public safety in the District of Columbia goes back more than 20 years. I came to this position aware of many deficiencies and shortcomings in our system of offender supervision. I know that as currently structured and funded, the criminal justice system cannot deliver a consistent and credible message to more than a handful of the 30,000 individuals currently under "supervision." I also know from my experience in developing the Drug Court with Chief Judge Hamilton that when the criminal justice system *does* come together with both drug treatment support and clear, unambiguous expectations, people – even people with long histories of addiction – *do* decide to change. When drug treatment services can be delivered in an environment of real accountability, many people *do* begin to take steps toward recovery, sobriety and self-sufficiency. I know, both empirically and from personal observation, that a sanctions-based system of offender supervision yields significant reductions in crime.

Rather than set up programs here and there to serve the few who find themselves in them, we need to change the entire criminal justice system to make what works the norm, not the exception. We are in a unique position to bring about positive change in our Nation's Capital. I am convinced that we can transform our system of offender supervision into a model that makes our city a safer place for those who live here, work here, operate a business and those who come to visit. But we cannot do this alone, and it won't be done overnight.

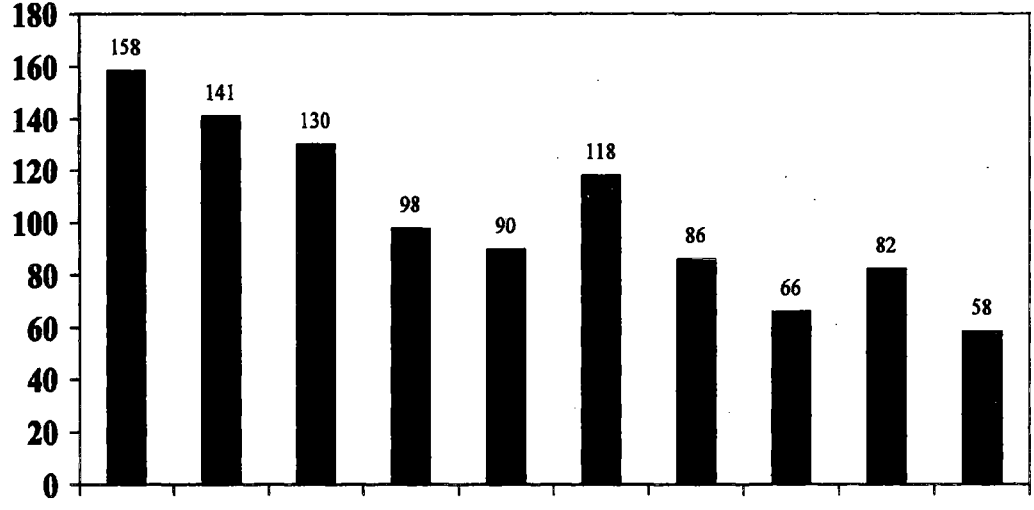
The first duty of government is to protect its citizens. In order for CSOSA to meet this mandate found in the Constitution, much work needs to be done. On August 5, 2000, we at CSOSA must be ready to be certified as a full partner in the Federal government. The time is short; there is much to be done.

Mr. Chairman, members of the Subcommittee, thank you again for the opportunity to highlight the budget request for CSOSA. We are confident that if this budget is fully funded we can make a difference. We acknowledge that tough choices have to be made. Should we choose not to act, the consequences for the future will be a replay of the status quo.

All of us at CSOSA appreciate the Subcommittee's bipartisan support of our efforts to create a Federal criminal justice system that will serve the District of Columbia and advance public safety concerns.

I would be pleased to take any questions you may have at this time.

The number of parolees picked up on new charges has been dropping steadily, with increased accountability, and the establishment of a system for transitioning of parolees to the community.



May, 1998 to February, 1999.

John A. Carver
Trustee, Court Services and Offender Supervision Agency
for the District of Columbia

John A. Carver was named "Trustee" of the new Court Services and Offender Supervision Agency for the District of Columbia by Attorney General Reno on September 25, 1997. The agency, established by the National Capital Revitalization and Self-Government Improvement Act of 1997, is comprised of the D.C. Pretrial Services Agency, Adult Probation, and the D.C. Board of Parole. As Trustee, he is responsible for carrying out the reorganization and transition of the functions of these agencies to a Federal Executive Branch agency. He must certify to the Attorney General that the Agency meets all relevant Federal standards and is ready to assume its functions on or before August 5, 2000. During the transition period, the Trustee has broad authority to effectuate the reorganization of the various components to enhance public safety.

Mr. Carver brings broad experience to this position. For thirteen years he served as Director of the Pretrial Services Agency, which earned a national reputation during his tenure as a leading agency in the use of computer technology, drug testing, and risk assessment and management, and now serves as a model for pretrial services agencies in other jurisdictions. With the D.C. Superior Court, Mr. Carver secured funding to establish and then expand a "Drug Court" demonstration project, which has proven highly effective in reducing drug use and criminality among drug defendants. Mr. Carver also acted as Pretrial's Deputy Director for ten years. He currently serves as an adjunct professor in the University of Maryland's Department of Criminology and Criminal Justice.

A 1967 graduate of the University of Wisconsin, Mr. Carver received his J.D. from Georgetown University Law Center in 1974. He is a member of the Bar Associations of the District of Columbia and Virginia, a member of the Criminal Justice Section of the American Bar Association, and a past president of the National Association of Pretrial Services Agencies. He has published and lectured widely on criminal justice topics.

OPENING REMARKS OF COURT SERVICES TRUSTEE

Mr. CARVER. I will quickly recap the main points in the statement and get to the questions.

As you know, my job as Trustee for the next year and a half is to transform an inadequate and fragmented system of offender supervision into one that meets full Federal standards and hopefully will serve as a model both for the District and the Nation. I think Mr. Moran's introductory remarks certainly indicate that this committee appreciates the dimensions of the challenge.

OFFENDER SUPERVISION NEGLECTED FOR MANY YEARS

We have more than two-thirds of everyone coming into the criminal justice system testing positive for drugs or with substance abuse histories. When you've got a brand new report from the Drug Strategies organization pointing out that the high rate of alcohol abuse in the District of Columbia is twice the national average, I think that gives some sense of the dimensions of the problems we are facing. In addition the whole system of offender supervision has been pretty much neglected for quite a number of years.

We really hope to change that neglect. It's our vision and our goal to be able to begin imposing real standards of accountability in the supervision of offenders. We are going to have to provide very careful monitoring, hopefully accessible public services, treatment services and immediate responses to violations. That is absolutely key.

We will be moving our supervision officers out of their downtown offices and into the community so that we can partner better with the police department and because there's a recognition that by community engagement, we can leverage resources in the community to assist us in our public safety mission.

IMPROVEMENTS IN OFFENDER SUPERVISION PROGRAM

As you know, the Revitalization Act in a number of areas speaks of the mandate for developing intermediate sanctions programs for offenders under supervision. We do have a number of programs operating in the District of Columbia which we feel will provide a base for expansion throughout the broader population of offenders. I'm specifically referring to the Drug Court treatment program that has been evaluated and has shown very remarkable success.

We believe that with the kind of Federal investment we are requesting today, we will be able to produce real dividends for the city, both in terms of cutting crime and in the long term. This gets to a point that Mr. Clark made. In the longer term we will begin to be able to reduce our reliance on what is really the most expensive resource available to the criminal justice system, and that is prison beds.

This requires the investment that we are here requesting. We can't do it with the kinds of systems we've had in place up to this point. It's been approximately a year since I was last here, and I think it's fair to ask what has been accomplished as this agency is coming into being, and as we have sought to build from the ground up a system of accountable offender supervision?

I would like to very quickly tick off some of the accomplishments that we've been able to realize. I should say at the beginning, that the approach was really to attack what appeared to be the most obvious problems within the system. And it was pretty clear to me from the beginning that not every problem facing the criminal justice was resource-related. There were plenty of areas where just by streamlining procedures, significant public safety gains could be made.

IMPROVED PROCEDURES TO PROCESS AND MONITOR PAROLEES

Within weeks of my appointment to this position, I decided to conduct a little review of a situation I was very familiar with. That situation was one in which parolees picked up on new criminal offenses were sometimes rereleased back to the community, not because anyone had made a decision that release to the community was appropriate, but simply because the procedures that the Parole Board was using were too lengthy. By the time the Parole Board acted, on many occasions the defendant in the new case was back out in the community.

I took a quick review, and learned that although it didn't happen all the time, there were enough cases where parolees on very serious criminal charges—such as murder, and armed robbery—were picking up new felony charges, and being detained for 5 days, but then released because the Parole Board hadn't acted.

It was one of those simple areas where that what was necessary was to enact a new procedure whereby the Parole Board would simply adopt the judicial finding of probable cause in the new case and on that basis issue a warrant to ensure that the defendant was not inadvertently released before the Parole Board had acted.

This was a big controversy at the time. There were many legal challenges, some of them brought by Ms. Wallace's very excellent attorneys, but in the final analysis, the change in procedures was upheld, and that really didn't cost us anything. In fact, the change actually saved time. And since I was last before this committee, there have been over 800 individual cases of parolees picked up on new charges that were held until the Parole Board could review the case.

PAROLEES NEED TO BE TRANSITIONED BACK TO THE COMMUNITY

Another procedure which we put in place last November wasn't quite as simple to enact, because it required the cooperation of Mr. Clark, the Department of Corrections and the U.S. Parole Commission. The procedure required individuals coming out of Lorton to transition through structured living arrangements, halfway houses, before being released to the community. This is a fairly commonsense approach. It happens in every jurisdiction in the country, but it had not happened here for 4 or 5 years. As a result, we had a situation where, in a sense, we were just setting parolees up for failure.

You had folks that had been institutionalized for 5, 6, 7, years and then all of a sudden released to the community with no transition time, with no support, and, for that matter, without even coming into contact with the parole officer that was going to be responsible for the supervision for the next however many years.

STRUCTURED ENVIRONMENT, CERTAIN CONSEQUENCES REQUIRED

It took quite a bit of teamwork on the part of the Corrections Trustee and Department of Corrections, but in the final analysis, we were able to change the practice, create a presumption that parolees coming out of institutions would go into a very structured environment where there would be very tight supervision, certain consequences and quick responses when people violated it.

Since that time, we've transitioned almost 600 individuals out of Lorton through this program. I think about two-thirds of them have successfully transitioned into the community. Not everybody does, and with the tight supervision, about 100 of them have gone back to Lorton. I'm sure this is at least a contributing factor to the situation that Mr. Clark just mentioned. But I think it's a model for what we are trying to do on a systemwide scale, and it certainly incorporates the elements of an effective supervision program.

STATUS OF PAROLEE RECIDIVISM

I think it's very important that we measure what we were doing. Since we are basically here to ask for public investment in supervision, you have a right to ask us how we are doing with your investment. One of the things that we have been able to track—although this is still fairly rudimentary because we don't have our management information system fully deployed—relates directly to the recidivism of parolees and specifically to the number of parolees picked up on new offenses. This is in the statement.

I will just pass out these charts, which, again, are just one measure of the kind of progress that I think we've made so far, and you can see that there's been a fairly substantial reduction in the number of parolees picked up month by month on new offenses.

I am satisfied with the trends. I'm not satisfied with the ultimate result. I think we can do a lot better, but we are not yet to the point where we are able to——

Mr. ISTOOK. Quick question.

Mr. CARVER. Yes, sir.

Mr. ISTOOK. Would this include those who are picked up on what would be considered a parole violation, or in your separation here do you distinguish that from new charges?

RECIDIVISM STATISTICS ARE FOR NEW CRIMES ONLY, NOT PAROLE VIOLATIONS

Mr. CARVER. No, these are individuals picked up on new criminal charges processed through the court.

Mr. ISTOOK. So something that might be a parole violation, or probation violation, but would not have a separate new offense filed, would not be reflected in these particular numbers?

Mr. CARVER. That is correct. This is really a measure of new crimes, and I'm sure that when you looked at parole revocations, you would probably see a very different trend, because you are trying to respond much more quickly based on the supervision history. Again, this gets to the kind of the infrastructure that we are trying to create.

NEW INITIATIVE TO EXPAND DRUG TESTING

The fact of the matter is that for an awful long time, the system of offender supervision has not even had the ability to detect many violations, let alone respond in a timely manner. Specifically, you will see in the budget one of the initiatives that we have put forward is an initiative to expand our drug testing capability. Right now there are only a fairly small percentage of probationers and parolees in this city that are subject to regular drug testing coupled with immediate sanctions. So if you are only seeing an individual on, say, a monthly basis because the caseloads are so high, and you are only doing a once-a-month drug test, if that. There are plenty of missed opportunities for intervention just because you don't yet have the infrastructure in place to provide adequate monitoring for those under criminal justice supervision.

MUST DEAL QUICKLY WITH SUBSTANCE ABUSERS

And, again, I made this point last year, and we had quite a discussion about it, when you look at what is known in criminal justice with respect to the rates of criminal offenders associated with high rates of drug abuse, it just seems to me that probably the most effective crime control strategy that could be devised is one which deals very quickly and decisively with individuals with substance abuse problems as soon as they begin to relapse; in the system we've had for a number of years, the relapse goes unchecked, and eventually you get to the situation where crimes are being committed, you are looking at perhaps years of incarceration based on backup time for the charge the parolee was on release for.

So what we are trying to accomplish here is both a commonsense approach and one that is backed up with a very significant body of empirical knowledge with respect to what works. Criminal justice practitioners know what works. Treatment professionals knows what works. When you can combine criminal justice practitioners with treatment professionals, it is a combination that is much more effective than any of the interventions separately.

REQUESTS FOR $80 MILLION AND $19 MILLION FOR COPS INITIATIVE

Just to quickly wind up my summary, we are basically asking for $80 million in appropriated funding and an additional $19 million in funding through the Department of Justice's 21st Century Cops Initiative, although that segment of the request is not before this committee.

I would just like to tick off the initiatives that are incorporated in the overall request. They involve, first of all, the enhancement and the building of drug testing capacity.

SANCTIONS CENTER NEEDED

Secondly—and this was an item that we discussed extensively, Congressman Moran, at last year's hearing—and that is the need to bring on-line a Sanctions Center, a facility where when individuals first begin to relapse, they can be stabilized not in the community, but in a safe environment where they will not pose a threat to the community, but begin to receive the relapse prevention and detoxification services that may be warranted.

NEED MIS CONNECTED TO COMMUNITY

The third initiative is a continuation of our efforts to develop a management information system with full connectivity throughout the community.

NEED MORE PEOPLE TO DO THE WORK

And the final one, is really the most important one, Mr. Chairman, I indicated earlier that up to now we've been able to accomplish quite a bit by attacking what has been most obvious and to a certain extent what has been most easy to fix, but now we are getting to the very hard part, and the hard part is that we can't provide effective supervision of offenders if we don't have people to do it. We have very large caseloads right now, and even assuming we had a management information infrastructure and the drug testing infrastructure and a treatment infrastructure—all of which we don't have, but even assuming that we have that—you still need individuals that can provide the day-to-day case management for individuals in the community.

Now, almost all of that request is incorporated in the $19 million 21st Century Policing initiative, which, again, unfortunately, is not before this committee. But those are the four elements of which we are seeking support. I think we are to the point now, Mr. Chairman and Members, where we really do need the support to get us to where we need to be to establish the level of accountability that will yield very significant gains in safety in this city.

Mr. ISTOOK. Thank you, Mr. Carver.

Ms. Wallace.

PREPARED STATEMENT OF PUBLIC DEFENDER

Ms. WALLACE. Thank you, Mr. Chairman, Mr. Moran, members of the subcommittee. We appreciate the opportunity to be present today and to provide some information on our FY 2000 budget request. I will follow suit with the other witnesses and just touch on some of the points that we have included in the statement that has been provided for the record.

[The prepared statement referred to follows:]

PUBLIC DEFENDER SERVICE
for the
District of Columbia

Statement of Jo-Ann Wallace

before the United States House of Representatives
Committee on Appropriations
Subcommittee on the District of Columbia

FY 2000 Operating Budget Request

Jo-Ann Wallace
Director

April 28, 1998

Mr. Chairman and Members of the Subcommittee, I am pleased to have this opportunity to submit testimony on the Public Defender Service's FY 2000 budget request. Before providing key elements of the FY 2000 request, I would like to take the opportunity to briefly review the mission of the agency and the recent gains made possible under provisions of the District of Columbia Revitalization Act.

The Public Defender Service ("the Service") is a Congressionally created agency that provides constitutionally and statutorily mandated services to indigent persons charged with criminal offenses in the District of Columbia. Congress enacted legislation establishing the Service in 1970 to increase the efficiency in the provision of defender services and to handle the growing number and complexity of criminal cases that exceeded the resources available through the private bar. Congress created the Service so there would be a cadre of criminal law "specialists" who, in addition to providing representation to indigent individuals, especially in the most serious cases, would provide on-going training and other support services to members of the private bar engaged in the practice of criminal law and who would be available to assist the Court's administration of the appointment of counsel system.[1]

Mr. Chairman, I am pleased to report that since its creation in 1970, the Public Defender Service has, time and time again, demonstrated the wisdom of Congress' decision. Both the

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[1] "Too often inexperienced lawyers who are appointed to represent indigent defendants complicate and delay the trial process by their unfamiliarity with the law and criminal practice. Experience has shown that professional public defenders, on the other hand not only better safeguard the rights of defendants, but also speed the process of justice...I believe the time has come to convert this project into a full-fledged Public Defender program."

President Nixon's message on Crime in the District of Columbia, January 31, 1969.

mission and operations of the Service and the dual system of representation established by Congress have been acknowledged as successes and have been seen as providing a model for the delivery of indigent defense services.

Before addressing the FY 2000 request, I would like to take a moment to describe recent gains made possible as a result of the FY 1999 appropriation. The criminal justice system is an "'eco-system' wherein all the elements, law enforcement, prosecution, defense, the courts and corrections are inextricably tied together.[2] Funding decisions which do not take into account the impact on other elements of the criminal justice system, can result [not only] in overburdened public defenders, [but also in] the incarceration of innocent individuals, court docket delays, prison overcrowding, and the release of violent offenders into the community." Initiatives implemented in any one part of the system will spillover to impact the other system components. For example, many of the increased arrests likely to accompany announced police initiatives to reduce crime – e.g., increased officers on patrol and crackdown on open air drug markets – will, if supported, impact defense responsibilities. Despite this symbiotic relationship, the District's past fiscal crisis meant that virtually none of the criminal justice initiatives implemented during this decade funded the defender component. For example, it became clear that the successful Superior Court Drug Courts could not operate effectively without significant Service resources. Accordingly, the agency provided attorneys who represented individuals in close to two thousand hearings last year without the benefit of any additional staff resources. Like other defender agencies which do not have resource parity with their prosecutorial counterparts, the

[2] A recent report published by the Justice Department, which chronicles criminal justice system collaboratives, underscores this point. See Bureau of Justice Assistance, Improving State and Local Criminal Justice Systems. (Indigent Defense Series Monograph, 1998.

Service managed to stretch its resources as far as possible through a dedicated and talented staff. However, constant, unfunded but required expansion of services, combined with cuts to support personnel and outdated technology ultimately is not cost effective.[3]

The District's budget deficits impacted nonpersonal services also. With no ability to pay rent, Service staff worked in a building which, in the past few years had become virtually uninhabitable. The failing mechanical infrastructure and falling plaster adversely impacted operations and morale. These conditions were exacerbated by a twenty year old computer network which had become all but dysfunctional. Quite honestly, conditions were such that those moving the office claimed never to have seen such poor governmental office conditions.

Mr. Chairman, it is my pleasure to report today that, with the passage of the District of Columbia Revitalization Act, and the FY 1999 budget approved by this Committee, the Service has been able to take steps to reverse nearly a decade of responding to criminal justice initiatives without corresponding increases in personnel or other resources and to respond to infrastructural neglect. The current authorization of 154 FTEs returns the service to the number of staff authorized in its FY 1990 budget when due to the District's fiscal crises, across-the-board budget cuts required unwise and uneconomical reductions in force in some of the District's most basic functions and priority areas, for example Public Safety.

[3] As I summarized in a report on the agency's condition to the Service's Board of Trustees: "already underfunded, particularly in comparison to the rest of the justice system, the ...fiscal crisis in the District of Columbia has exacted a significant toll on the agency. The appropriations battles during this decade have been focused on maintaining the status quo and have had little to do with securing additional resources...[t]he funds available to provide services have actually been decreasing throughout this decade.

We have now located to the building occupied by the other entities appearing before you today: the Court Services and Offender Supervision Agency (CSOSA), and the Pre-Trial Services Agency. The move has made possible the ability to develop more effective and efficient operational practices. Equally important is the implementation of an updated information technology system that now provides staff with resources to operate more efficiently. Additional space in the new office will allow us to add the staff that is necessary for the Service to respond to the changing criminal justice environment. In sum, we have begun to make improvements that will enable us to continue to support the efficient administration of justice.

Our FY 2000 request seeks to complete initiatives begun this year, including rectifying impediments to efficiency in the delivery of core services, and to strengthen our ability to respond efficiently to the various criminal justice initiatives begun by others. The proposed FY 2000 request previously submitted provides a detailed explanation of the initiatives contained in the request. For the sake of brevity, I highlight the rationale and will touch on elements of each.

Trial and Appellate Initiative

This initiative will permit an increase in capacity by providing, among other things, one transcriber (to respond to the capacity of the U.S. Attorney's Office transcribing division) and one additional legal secretary. The added secretary will result in an attorney to secretary ratio in the trial division of one to twelve. Although this is still higher than the generally recommended norm for defender agencies of one to four, the agency will rely upon technology enhancements to make the one to twelve ratio work efficiently.

Two employment development specialists will permit the development of job placement opportunities that provide critical sentencing resources that have been increasingly recognized as a key to reducing recidivism. One additional training coordinator will increase services to the private bar to respond to new training requirements. Additional investigators will permit the Service to return to providing significant investigative services to the private bar.

Criminal Justice Systemic Response Initiative

This initiative will address staff shortages and expand case capacity through modest growth in attorney staff (10 attorneys and corresponding support personnel). The additional attorneys would be based in the community, providing the Service with an ability to respond appropriately to community based initiatives. This particular initiative would also provide funds to meet the anticipated relocation of the Mental Health Division from the west campus of the St. Elizabeth's facility.

Juvenile Justice System Initiative

This funding would complete the initiative started this year to create a small specialized juvenile unit. The unit would have a total of eight people, with five new positions funded in FY 2000. The addition of 3 attorneys to this unit would expand the agency's capacity to respond to new juvenile justice legislation and prosecutorial policies of handling more juveniles in adult court and would increase the agency's capacity to handle serious felonies.

In sum, the deficiencies in the defender delivery system which were created by the District's fiscal crises – and which were meant to be remedied by the Revitalization Act – are beginning to be addressed. We are grateful for the support this Committee has shown in providing past support that is ameliorating these deficiencies. The Service's FY 2000 request will build on these gains by addressing remaining obstacles and increasing organizational and operational capacity. I am confident, that with the Committee's support, the Service will continue to provide the service and leadership within the justice system locally and nationally upon which many have come to rely.

Thank you for this opportunity to appear before you this afternoon.

OPENING REMARKS OF PUBLIC DEFENDER

Ms. WALLACE. The Public Defender Service's $17.4 million budget request will allow us to further the goals of the Revitalization Act, the goals of remedying compromises to public safety, and the administration of justice caused, in effect, by years of neglect. I think that, Mr. Chairman, you said it very, very well. If you don't mind, I may quote you in the future: Our job is to make sure that justice is done, as justice is being done.

The criminal justice system really is like an ecosystem. All of the elements are intertwined. When any action or inaction on one part of the system has a ripple effect, that impacts on all other portions of the system, including, of course, defense services. Not only are defense services not adequately funded, not only does it compromise efficiency in the administration of justice, but also, of course, innocent people can be convicted, and guilty people go free.

IMPACT OF OFFENDER SUPERVISION ACTIONS

You've heard Mr. Carver talk about his initiatives and his progress in implementing what we think is a very sound criminal justice system in terms of having the system—having a system that is accountable and the very quick and rapid response that his staff will employ dealing with parole violators. But for every action he takes, it has a corresponding impact on our agency.

Yes, he has been much more effective, and we are already seeing that effect in terms of dealing with alleged violations, and, therefore, requiring a response on our part to be present to represent individuals in the hearings as he brings them into the system.

SERVICES PROVIDED BY PUBLIC DEFENDER

The Public Defender Service was really established through the foundation of the indigent defense delivery system in the District, and we are responsible; what we do impacts the efficiency not only in the cases where we provide direct representation, but in the system as a whole.

In addition to providing direct services by representing individuals largely in the most serious cases, we also provide training materials and other support services to the private bar and assist the court in the administration of the Assigned Counsel Program, as well as provide the system with the ability to address any gaps that arise in the delivery of indigent defense services as a result of new criminal justice initiatives.

FY 2000 BUDGET REQUEST

As has been the theme of many of the statements that you have, the underlying theme, of course, is that the Revitalization Act is designed to address many of the years of neglect and gaps that arose as a result of the District's past fiscal crisis. We believe that our 2000 request, if fully funded, will do that and provide us with the ability to maximize efficiencies so that we can maximize service delivery and the impact that we have on the justice system's administration.

And we are looking to do that really in just several key ways. One is to achieve staffing levels that allow lawyers to lawyer, to

provide legal services, instead of providing interpreting services, instead of acting as secretaries or transcribers, we will be able to maximize the time they spend on what they are really designated to do, to provide legal services.

We have also increased efficiencies through technology. And we've already begun—e-mail has just recently come into my life and the lives of my staff, and it really does—it really has increased productivity and efficiency. It really is a marvelous thing. Instead of having to——

Mr. ISTOOK. Wait 'til you get to the saturation point.

Ms. WALLACE. I can imagine.

Mr. ISTOOK. I've been through that, yes.

UNFUNDED MANDATES—PREVENTIVE DETENTION

Ms. WALLACE. Secondly, our request will allow us to remedy staff shortages that were created in the past by initiatives in the criminal justice arena that actually for us have the effect of acting like an unfunded mandate.

For example, to describe one example of what I mean by that, the Council passed a few years ago legislation, zero tolerance for guns. Legislation permitted for the first time individuals to be locked up pretrial, pending trial, without bond for weapons offenses; even if an individual is licensed in another jurisdiction like Virginia, but if there was no D.C. license, that person could be held for the entire time before trial.

Now, The council recognized that, in fact, preventive detention cases really do impact defense services. We have to get ready for trial in a much more condensed period of time. We have to, therefore, do everything much more quickly than in cases where there isn't preventive detention and there are other ways in which those resources become drained.

In response to that, we were given the Council's budget for that year's recommendation, including an additional two attorneys and one staff investigator. However, that is the only initiative that has been funded on the defense side in basically the last decade.

That was just one example where preventive detention has grown. In D.C. and in most of the cases where we represent individuals, they are incarcerated pretrial without bond. So as an initiative, as a whole, that initiative has never really been addressed in terms of resources.

DRUG COURT

Drug court is another example. The very successful D.C. Drug Court required a response on our part in order for the hearings to go forward. It was impossible for the system to work efficiently if it had to require notification of each private individual every time there was—a private attorney every time there was going to be a sanctions hearing. So Public Defender Service attorneys now provide an attorney daily, at least one attorney and sometimes more, to respond simply to drug court.

OTHER MANDATES AND INITIATIVES

Megan's law, domestic violence initiatives, the list goes on and on. And in addition, our request will allow us to respond efficiently to the new initiatives that are being proposed that will require both more rapid response in certain matters like parole and a community-based response.

TRAINING FOR CJA ATTORNEYS

Finally, our use of—we will use the real technology that we have for the first time to be able to more efficiently provide training and resources to the attorneys appointed under the Criminal Justice Act, who we must by statute provide support services for. For example, we will be able to have an electronic brief bank or a motions bank.

SOCIAL SERVICES DATABASE

Our social services database, which will ultimately—which we were able to put together with grant funding, is in phase 2—will be available not only to attorneys appointed under the Criminal Justice Act, but to the court and judges so they will be able to plug in a query about appropriate sentencing alternatives and through our database that we will maintain will be able to come up with appropriate facilities for treatment or confinement.

USE OF TECHNOLOGY

In addition, our new technology will enhance our ability to be able to clearly, accurately capture and fully capture the work that is performed and the services that are performed in these areas.

CONCLUSION—PUBLIC DEFENDER'S REMARKS

In conclusion, I would just say that I think it was one of the goals of the Revitalization Act to help D.C. become the model city that the capital of this Nation should be, and if fully funded, we are confident that we will be able to strengthen our ability to positively impact the delivery of justice services and to perform as an important partner in the District's public safety cluster.

I thank you. That concludes my remarks, and we will be happy, of course, to answer questions.

Mr. ISTOOK. Thank you, Ms. Wallace.

QUESTIONS FOR THE RECORD—PUBLIC DEFENDER

Before posing some questions that I have, let me mention I do have some for the record, and especially Ms. Wallace, since we haven't had a chance to visit, probably more of that will be coming your way. And you've not met John Albaugh and Steve Monteiro behind me, as well as Migo Miconi, the committee's chief clerk, who will probably be in touch with you and helping you develop some further information.

[The questions referred to and the Public Defender's response follow:]

Question 1. Please provide for the record a summary of the Public Defender Service operations including funding and staffing levels for FY 1997 through FY 2000 and disposition of cases by category.

Answer. Mission overview. The Public Defender Service is governed by an 11-member Board of Trustees appointed by a panel consisting of the Chief Judge of the United States District Court and the Mayor. The Board of Trustees appoints the Director and Deputy Director of the Service.

The Agency's mission is accomplished through the Legal Services program and the Criminal Justice Act ("CJA") office. Legal representation serves as the nucleus of all operating programs (except the CJA program, discussed below). Consistent with Congressional design, PBS attorneys handle a significant number of the cases charging the most serious offenses. PBS attorneys are trained to be criminal law "experts," who are forbidden by statute from practicing outside of the agency. As required by statute, PBS provides support in the form of training, consultation and legal reference services to members of the local bar appointed as counsel in criminal, juveniles, and mental health cases involving indigent individuals. *See* D.C. Code § 2702–05.

PDS Professional (non-legal) staff and administrative functions support the court and legal work of both PBS attorneys and attorneys appointed pursuant to the Criminal Justice Act.

Criminal Justice Act Office.—The Public Defender Service Criminal Justice Act ("CJA") Office assists the Superior Court in appointing counsel in Superior Court in criminal and delinquency matters. The number of persons locked up in the District of Columbia averages between 100 and 150 persons per day. CJA staff must interview every arrestee to determine financial eligibility for appointed counsel, compile daily lists of attorneys available for appointment and submit other documents for the court's consideration. Cases cannot go forward until the work of the CJA office is completed.

Investigations Division.—Proper investigation is a required part of the Constitutional guarantee of effective assistance of counsel. *Strickland* v. *Washington,* 466 U.S. 668 (1984); *Smith* v. *United States,* 608 A. 2d (D.C. 1992). It is also essential to a lawyer's compliance with the D.C. Rules of Professional Conduct. For cost efficiency, staff investigator services are supplemented by volunteer college student interns.

Offender Rehabilitation Division.—A lawyer's function in a criminal case includes providing information to the court to assist in sentencing determinations. Staff of the Offender Rehabilitation Division (ORD) work with agency and CJA lawyers to find placements, and provide other information upon which judges rely to structure appropriate sentences.

Budget Overview

Fiscal Year	Appropriated Funding	FTEs
1997	7,797,000	142
1998	9,000,000	142
1999	14,486,000	154
2000	17,400,000	193

FY 1998 Legal Services Statistical Overview [1]

Types of Dispositions	Number of Dispositions
Superior Court Felonies	1,890
Superior Court Misdemeanors	812
Family Division—Juvenile Brash	357
Family Division—Mental Health Branch	510
Appellate Division	125
Miscellaneous Hearings and Proceedings (e.g., probation and parole revocations; contempt citations; habeas corpus; conditional and unconditional release petitions, special education diversion hearings; drug court, Megan's law proceedings)	2,872
Special Services Program	3,084
Juvenile Service Program	791
Total Legal Service Dispositions	10,441

[1] These figures do not include statistics for the Offender Rehabilitation and Investigations Divisions or the Criminal Justice Act Office.

Mr. ISTOOK. The last public hearing we had, of course, was with the Mayor, control board and Council, and we emphasized economic

development, growth in the city, discussion of tax cuts and so forth, as well as general efforts to help the city to make itself function better.

NEED TO MAKE D.C. SAFE BEFORE IT EVER GETS BETTER

I think it's worth noting that in the efforts to help Washington, D.C., to become a better place for those who live here, who visit here, who work here, all the economic development efforts in the world will be meaningless if people don't feel safe when they are here. And all of you are involved in that.

So all of the economic development's successes in the world would be meaningless if there's failure in making this a safer city. So I just think that needs to be kept in mind as we look at our priorities as a subcommittee and what we want to help Washington to accomplish.

UNDERSTAND SPIKES IN CRIME STATISTICS

I also think it's worth noting, and several of you made references to it, that this is a dynamic process, especially because you have an accumulation of offenders in the city. First you said you thought there about 10,000 people—I guess that's OMB's estimate or somebody's—that were on some sort of probationary status.

Now, Mr. Carver, of course, you've counted 30,000, which means there's an impact on spending. But also it's been my experience when you have efforts to increase accountability and enforcement, you often create spikes that sometimes people will look at and say, "oh, you are going in the wrong direction." Well, actually you just started enforcing things more; you are measuring things that were not measured previously. So you show an increase, but it's not an increase in occurrences, it's an increase in the measurement of how many are being measured, rather than being ignored.

And I suspect, especially with what you are trying to do with making drug testing universal for those on probation and being more intimately involved with those, we will probably see some spikes, which doesn't mean there is more criminal or probationary status-violating behavior. It means now we are measuring things that have been ignored previously. And I want you to know I understand that process, and I hope that neither I nor anyone else will jump to false conclusions about what's going on.

INCREASED COSTS FOR INCREASED INMATES IN CORRECTIONS BUDGET

But getting to the questions, I better start the clock running on myself or it won't be fair to everyone else. I wanted to ask especially—let me start first with Mr. Clark. When you have more persons incarcerated than you originally were anticipating, as you do in your phaseout, and if I understand correctly, your budget preparation process began before you knew of some of these, is your requested budget fully adequate to cover all the expenses that you expect you will have with the number of people that you now can anticipate having?

Mr. CLARK. Well, the upsurge had begun before we submitted our request, so we accounted for some of it in there and, indeed,

requested an additional $9 million, which is included in our proposal.

Mr. ISTOOK. I caught that word, you accounted for some of it.

Mr. CLARK. Exactly. Things have continued to go up, so it's going to be more difficult, and we're going to search for economies in the system.

INCREASED COSTS WILL FALL ON D.C. GOVERNMENT

Mr. ISTOOK. And your budget has a shortfall in that area. Upon whom does the expense fall? Does it fall on the Bureau of Prisons, does it fall back on D.C.?

Mr. CLARK. No, it would fall back on the District government.

Mr. ISTOOK. It would fall back on the District government. Can you elaborate for everyone's benefit how that would work?

Mr. CLARK. Essentially my budget request is for about $176 million, most of which goes to reimburse the Department of Corrections for their cost of either directly housing felons or contracting out. The total budget of the Department of Corrections is about $250 million, so if they had to do additional contracting out or could not close facilities at quite the pace we had planned and had to hold onto staff, then their corresponding expenditures would probably exceed $250 million. But at that point I only have what I have, which would have been what's transmitted through the Treasury, about $175 million.

Mr. ISTOOK. Okay. I would appreciate in written form, so we can review it closely, you know, an update for those figures.

Mr. CLARK. Okay.

Mr. ISTOOK. And maybe report—in maybe matrix form or whatever is best. We really need to look at that closely.

Mr. CLARK. Okay. We were hoping that it levels off, but we've been hoping that for some months.

Mr. ISTOOK. Maybe this ought to go, you know, contingency-based; if this happens, if that happens.

Mr. CLARK. Exactly. We thought it might be kind of a spike you were speaking of a few minutes ago. Maybe the spike has just continued to surge.

Mr. ISTOOK. Yes.

[The information requested follows:]

Corrections Trustee Funding of DOC's FY 2000 Budget

Facility Location	Projected ADP	Projected Sentenced Felons	DOC Direct Costs	DOC Indirect Costs	DOC Total Costs	DOC Costs per Day	Sentenced Felons: DOC Costs
BOP	2,125	2,125	$0	$0	$0	$61.85	$0
U.S.Marshals	50	50	NA	NA	$0	NA	
ICC	20	20	NA	NA	$0	NA	
CTF	800	350	$22,359,504	$1,035,927	$23,395,431	$80.12	$10,235,501
CCA Youngstown	1,700	1,700	$36,551,020	$1,116,344	$37,667,364	$60.70	$37,667,364
Virginia Contract	1,355	1,355	$30,812,076	$387,729	$31,199,805	$63.08	$31,199,805
Halfway Houses	300	200	$6,208,432	$0	$6,208,432	$56.70	$4,138,955
		3,605					
DOC-Operated Facilites:							
Central	2,000	1,900	$31,398,916	$22,100,143	$53,499,059	$73.29	$50,824,106
Maximum	625	625	$15,746,125	$6,906,295	$22,652,420	$99.30	$22,652,420
Minimum	0	0	$0	$0	$0	$0.00	$0
Youth Center	250	190	$5,113,475	$2,762,518	$7,875,993	$86.31	$5,985,755
Occoquan	0	0	$0	$0	$0	$0.00	$0
Detention	1,674	300	$37,235,023	$18,497,819	$55,732,842	$91.21	$9,987,965
Comm. Centers	200	0	$4,987,779	$2,210,014	$7,197,793	$98.60	$0
		3,015					
Subtotal, DOC-Operated Facilites:	4,749	3,015	94,481,318	52,476,789	146,958,107	$84.78	$89,450,245
Subtotal, Facilities	11,099	12,420	$190,412,350	$52,476,789	$242,889,139	$59.96	$172,691,869
CTF Leaseback				$2,792,500	$2,792,500		
Corrections Trustee Admin. Costs							$2,675,000
Total	**11,099**	**8,745**	**$190,412,350**	**$55,269,289**	**$245,681,639**		**$175,366,869**

EMPLOYMENT OPPORTUNITIES FOR OFFENDERS IF SOBER

Mr. ISTOOK. Let me ask Mr. Carver. It's hard to know how you measure success in what you're doing. Obviously what you're doing kind of relates to the police department. You can't just say, well, changes in the incidence of crimes is just attributable to your efforts, or just attributable to theirs, since there's so much recidivism that is involved.

But I wanted to ask a couple of things on that. One is how does—and this falls back into some of the economic development patterns, too. What are the employment opportunities for those that are under your supervision, and how does that fit into the overall equation?

Mr. CARVER. I would answer that question, Mr. Chairman, by citing the experience in the Drug Court. Basically, the biggest impediment in my experience to employment for many offenders is the fact that they're often so strung out, they can't get themselves together to even apply for a job. In our experience with the Drug Court, once they're involved in a regimen of treatment, coupled with the criminal justice pressure over a period of sometimes 3 or 4 months, sometimes longer, once the recovery really starts to kick in, and then all of a sudden you've got, a number of things you did not have but for that intervention——

Mr. ISTOOK. Are you saying the job opportunities are there if they're sober?

Mr. CARVER. My experience has been there are job opportunities there, and the first step to realizing those opportunities is to make sure that individuals are in a condition to take advantage of it.

Mr. CLARK. Mr. Chairman, if I could just pick up on that and use a minute of your time.

Mr. ISTOOK. Sure, that's fine.

OFFENDER EMPLOYMENT—A BIG SUCCESS FACTOR

Mr. CLARK. It's my experience—previously I worked in the Federal Bureau of Prisons for years and had a major role in returning felons to the community—that being employed is one of the biggest factors in the successful return to the community. One of the things that we did in the program that Mr. Carver mentioned earlier, which we've initiated in the last year for the returning felons from Lorton, where they have to go through a halfway house before they make parole. While they're there, they cannot be released from the halfway house until they're successfully employed for a period of time. Previously they were being paroled with no employment.

I've spoken to many of them, and continually they are pleased with themselves that they've been able to find employment beyond the type of job and pay scale that they thought they were capable of. Many of them hadn't even been employed for years. But when they were under the gun, when it was required to gain their freedom to be employed for a while, they have done it. And I think this is a program that's going to be helpful and maybe cut into some of this recidivism.

Mr. ISTOOK. Okay. I have to call time on myself for now.

Mr. Moran.

COUNT AND CAP ON PRISON POPULATION CONFUSING AND COMPLEX

Mr. MORAN. Thank you very much, Mr. Chairman.

I would like to get back to the comments that were made about the increase in the prison population. One point at the beginning of this decade, it was 12,300. Then you have gone all the way down by 3,000 inmates; it's a 25 percent reduction approximately, but now it's back up to 10,500. And you made the point that's not because of increased arrests or crime, it's because of changes in the parole system.

This is obviously what we wanted. It's because it directly addresses the revolving door phenomenon. Are those people going to D.C.—are they going to the Virginia State prison, are they going to Youngstown? They're not going to—I asked, and you said they're not going to Lorton. There's no increase in the population at Lorton.

I know we're closing down the facilities, but apparently not only are we closing down minimum security at Occoquan and eventually each facility, but we're not accepting new prisoners. Is there basically a cap on the prison population there?

Mr. CLARK. Well, there's a cap. There's a court-ordered cap on most of the D.C. facilities. What's happening with these parole violators who come back, most of them are on administrative technical charges, is that they are being—their cases are being heard here locally, and if there is a determination made that their parole is revoked, and they're going to be in the system for a while, frequently they are being transferred out to Ohio or Virginia.

Mr. MORAN. So they're going out. If they go out to Ohio—at Ohio, we have a congressionally-ordered reduction, I think. You are going to follow the recommendation of the GAO to cut it from, what, 1,700 approximately. I think you were supposed to send 1,600, but the recommendation was to cut it from 1,700 down to 1,000 so you can reclassify, and then you could build back up again somewhat.

But if you're going to cut from 1,700 to 1,000, it seems to me you've got a constraint there. And Virginia, I thought, was pretty well full, unless that's where these parole violators are going.

Mr. CLARK. Some of them are going there. The report on Ohio was a report that our office prepared, and it was my recommendation that the count be cut from 1,700 to 1,000 and that the serious inmates be removed. All of that has been done. There have been a number of other changes made, and we are starting to gradually raise the count. I think it was around 1,300. Now I don't think for the foreseeable future it needs to get up to 1,700, but there has been a lot of redistribution of the inmates around the system to try to get people in the right classification of institution.

DISTRIBUTION OF 1200 ADDITIONAL INMATES

Mr. MORAN. I'm just trying to figure out where this additional 1,200 have gone.

Mr. CLARK. Some have gone to the Federal Bureau of Prisons. That count has gone up by about 500 in the last year. The new 1,300 in Virginia has helped us. The minimal security facility, we had hoped to be closed by this time, but because of the increase in count, even though our official plan calls for it to close in Sep-

tember, we had hoped to close it earlier. We're not able to do that. There are still, I think, 450 out there. And we are at the point where we're going to have to. We're going back to the court to hopefully be able to do some double bunking at the central facility.

Mr. MORAN. We had legislative language to say that you had to transfer a certain number of prisoners to privately-run corrections facilities. Would we have been better off just saying other correctional facilities, rather than requiring that they be privately operated?

Mr. CLARK. Well, that requirement is a requirement of the Bureau of Prisons, not of the District. That's quite a discussion to get into that whole comparison.

Mr. MORAN. Then I won't get into it, but it seems to me it is affecting this situation somewhat.

VIRGINIA PRISON SYSTEM BENEFICIAL TO DISTRICT

Mr. CLARK. I will say we're very happy to have the Virginia contract and have an experienced system there be able to take these high-level security prisoners into it. It's calmed everything down.

PAYMENT FOR PUBLIC DEFENDER LAWYERS

Mr. MORAN. Well, I'm running out of time here. I wanted to ask the Public Defender—we had a lot of problems in terms of pay for the public defender lawyers. We wanted them paid, obviously. I've got more macrotype problems in terms of the number of people who are getting back on the street and so on, but I understand that's your responsibility.

Mr. ISTOOK. Mr. Moran, why don't you take extra time while I run upstairs and vote, and I will be right back.

Mr. MORAN. Okay.

Mr. ISTOOK. Go ahead. You go until I get back, and then we will let Mrs. Emerson question the witnesses.

Mr. MORAN. [Presiding.] Okay. Thank you, Mr. Chairman.

But there were problems in terms of making sure that the attorneys were paid, and there was obviously an issue within the supervision of the court system. Were those the people under your office?

CJA ATTORNEYS ARE COURT APPOINTED

Ms. WALLACE. No. Actually those are the attorneys that I referred to who are appointed under the Criminal Justice Act.

Mr. MORAN. They're appointed by the judges?

Ms. WALLACE. Yes, appointed by the judges.

Mr. MORAN. They're private lawyers?

Ms. WALLACE. Appointed by the court.

Mr. MORAN. Your public defenders are always getting paid?

Ms. WALLACE. Yes.

REQUIREMENTS IMPOSED ON CJA ATTORNEYS

Mr. MORAN. Was there any decision—so you give a preference to people who are working within the organization who are full-time public defenders over the private lawyers who are given a certain number of cases. What requirement does D.C. impose on lawyers that agree to take public defender cases?

Ms. WALLACE. In terms of qualifications for service?

Mr. MORAN. Do they have to take a certain number? Is there an agreement that they take a certain number of public defender cases?

Ms. WALLACE. No, there is no set number that they have to take.

Mr. MORAN. Just basically some are new lawyers, and others have just decided to do this——

Ms. WALLACE. Yes.

Mr. MORAN [continuing]. As a career?

Ms. WALLACE. That's right.

COURTS RESPONSIBLE FOR CJA PAYMENTS

Mr. MORAN. Do you happen to know if they've all been compensated right now? It seems to me if not, then more pressure falls in your office, doesn't it?

Ms. WALLACE. That's true. The system does work that way. There could be corresponding impacts. But the issue of payment for the CJA attorneys is really one that the court would have to address.

Mr. MORAN. All right. I won't get into that. It just seems there are ramifications——

Ms. WALLACE. Yes.

Mr. MORAN [continuing]. Because if they are not getting paid, I would think most people would decide to do something else. And if they didn't get paid for many months, some years, then I would think that would be a disincentive to continue public defense practice, and then you would have to pick that slack up. Is that a phenomena that has occurred?

Ms. WALLACE. That is exactly right. We haven't seen that happen yet. I think the period was a short enough time that, you know, people have hung in there.

Mr. MORAN. I see. So there hasn't been any profound change in that——

Ms. WALLACE. In that, no.

Mr. MORAN [continuing]. The number or the ability of private lawyers who are performing public defender services?

Ms. WALLACE. That's correct. Certainly if that continued for any prolonged—if it had continued for any prolonged period of time, the impact would be exactly as you said.

Mr. MORAN. Yes.

I did want to get questions specifically in.

50 HALFWAY HOUSE ESCAPEES NOT RECAPTURED

For the record, out of the 1,125 inmates that were sent to D.C. halfway houses between last October and this January, when The Washington Post looked into it, 1 out of 3 escaped, 250 were still on the loose, and 60 of those were charged with violent crimes.

Now, have those folks been caught? I mean, is it dramatically a different situation now? Can anybody tell us that? Mr. Clark or Mr. Carver? Is the scandalous situation that we read about in The Washington Post significantly improved?

Mr. CLARK. There are about 50 of those the last information that I had. And I know Mr. Carver's office has kept real close track of that group of 300 and some absconders, about 50 were still in the

community. Of the 80 who were said to have been charged with new crimes, once we got looking into it, the crimes for which 60 of them had been charged was the escapers or absconders. There were only about 20 who had been charged with new crimes, and most of those were not violent.

That is not to say that there aren't some significant issues here, especially with this whole pattern of——

Mr. MORAN. Let me just ask one final question. It was 1 out of 3 were escaping from halfway houses. What is it now, do we know? Do we have any updated figures?

Mr. CLARK. It's not much better right now.

Mr. MORAN. Not much better.

Do we know how many people are still out there who had been assigned to a halfway house and have escaped and have still not been arrested again?

Mr. CLARK. Well, as I say, out of that sample there, as of about a week ago there were 50 out of the 380 escapees who were still out. And one of the first things that we did was to form an interagency task force aimed at apprehension. We didn't want to just aim at long-term fixes, we want to get people off the street, and so a greater number than in the past are being apprehended. But I'm not going to tell you that there's been a significant overall improvement at this point.

Mr. ISTOOK [presiding]. Yes. And if you want to go further, we will probably have a second round.

Mr. MORAN. I understand. I better go up and vote myself.

Mr. ISTOOK. Mrs. Emerson.

NO DRUG TESTING LINE ITEM IN FY 2000 BUDGET—WHY?

Mrs. EMERSON. Mr. Carver, my questions are addressed to you. In your budget you've requested about $20 million more than you did last year, I believe, not including the grants which are mostly concentrated on drug testing, the need for more supervisory staff, sanction centers, et cetera. And yet throughout your testimony and throughout everything I read, you talked about the importance of drug treatment. I didn't see a line item for any kind of drug treatment programs. Can you explain why, please?

Mr. CARVER. There's a short answer and a longer answer, and the short answer is that the Administration did not support funding for drug treatment.

Mrs. EMERSON. You mean the OMB?

Mr. CARVER. Yes.

Mrs. EMERSON. Can you tell me why?

Mr. CARVER. This gets to a longer answer. The longer answer is that we are a criminal justice agency, and in an ideal world, we would be working hand in hand with the treatment community and the treatment agency to provide the framework of accountability for treatment services to be delivered more effectively than on a voluntary and referral basis.

CORRECTIONS NOT IN DRUG TREATMENT BUSINESS

We have never been in the treatment business. To a very large extent, we have relied on city-funded treatment capacity for years,

and it has been a major shortcoming. And we have been able to scrape together some money over the years to enter into our own contracts, because when you have people coming out of prison, and you have assessments that indicate that they need, residential care, and they can't be released unless they have it, that puts us in a very difficult situation.

It has become worse and worse over the last 4 or 5 years. You may be familiar with the trends in funding for the Addiction Prevention and Recovery Administration, where I think it has gone from something like $23 million a year down to $19 million a year.

INCREASING DRUG TREATMENT CAPACITY A PRIORITY IN THE CITY

I know that the Mayor and the Drug Strategies report which was released last week indicated that beefing up the drug treatment capacity in the city would be a major priority of the city. And I think he even pledged to do a couple of things; one, increase the budget up to something like $26 million; and, secondly, to reconfigure delivery of the treatment services to be able to take advantage of Medicaid eligibility, which I know is a mechanism for funding treatment to many jurisdictions, and for some reason we haven't.

Mrs. EMERSON. Except that the type of waiver he's asking for in order to make that happen is something that's a little bit out of the ordinary. But, I mean, given the fact that you say here currently 4,600 offenders have been assessed, only 17 percent actually received treatment, that somehow you might have been able to carve a little bit of money other than that which you might have pieced together, I would think, put perhaps a little bit more money into treatment if, in fact, it is such a problem.

APPROXIMATELY $800,000 ALLOCATED TO DRUG TREATMENT LAST YEAR

Mr. CARVER. We did last year and to a certain extent this year, but it was really a drop in the bucket. It was approximately $700,000 to $800,000 for each fiscal year. But, as I say, that satisfies certain needs, but it is far, far short of what is really needed if we're going to be effective.

OMB TURNED DOWN $5 MILLION REQUEST

Mrs. EMERSON. Can you tell me what the original request was that you made that was turned down by the OMB, please?

Mr. CARVER. Yes. I believe the original suggestion was in the area of $5 million for treatment services.

DRUG TESTING NO SUBSTITUTE FOR DRUG TREATMENT

Mrs. EMERSON. Okay. So it's your idea to try to use as much drug testing in the sanctions program to try to make up for the fact that you don't have the money to do treatment?

Mr. CARVER. I would not characterize drug testing as a substitute for treatment by any stretch of the imagination. We are really relying on the city to come through with the treatment capacity that we need at this point. And you have put your finger on a very big dilemma that we're facing.

Mrs. EMERSON. Do you think the amount that the city has asked for is adequate, because I'm looking at their budget—and it's kind

of hard to figure this out, but if you really look at, for example, inpatient services, they've improved—they've proposed an increase, but in outpatient services they proposed a gigantic decrease.

But I think the way they've got it has to do with them crossing their fingers hoping that the section 1115 waivers on Medicaid will come through so that they can fund them, in fact, privately. Is that your perception? I guess that's your hope.

Mr. CARVER. That's what it appears to me. But I will confess I haven't really analyzed what the city's plans are, although I'm aware of the commitment that the Mayor has made to make this a priority.

Mrs. EMERSON. And I know how important it is, because you can't have a three-legged stool and only have two of the legs and forget probably the thing that's most important for the long term.

I guess I better go vote. I would like to pursue this with you at another time, maybe outside the committee structure.

INVITATION TO DRUG COURT GRADUATION

Mr. CARVER. Before you go, I wanted to throw out an invitation to the Members and staff. Every 2 weeks we have a Drug Court graduation, and we have one tomorrow in the Courthouse. For those of you who can make it, it's always quite an interesting process. Be at the Court at 11:15. The procedure starts at about 11:30. And I think there you will be able to really see firsthand all of the elements on which we were trying to base our model of prevention.

Mrs. EMERSON. Hopefully I can come next time.

One last question: In your professional opinion, if you can have any amount of money that you needed for the drug treatment program, what would be adequate to put in the budget to resolve the problems that exist with recidivism—the regression back to drug habits and/or alcohol abuse?

Mr. CARVER. I suspect that it will be substantially higher.

Mrs. EMERSON. Five million.

Mr. CARVER. It will definitely be higher than the $5 million but, we're not a drug treatment agency.

Mrs. EMERSON. The $5 million will help you?

Mr. CARVER. Yes.

Mrs. EMERSON. Thank you very much.

Mr. ISTOOK. Let me just interpose this on the questions here, because I know drug treatments are a combination of public programs and private programs, and there's a multitude. I'm sure you have a long referral list, whether your agency is offering drug treatment programs or not.

LIST OF DIFFERENT DRUG TREATMENT PROGRAMS IN D.C.

Do you know how many different drug treatment programs are available within D.C. to which you referred?

Mr. CARVER. I don't offhand, but I can get you that information by the end of the day.

[The information follows:]

Drug Treatment Referral Programs Available to District of Columbia Offenders

- Since August 1998, the Court Services and Offender Supervision Agency (CSOSA) has funded 275 placements for probation and parole offenders, and pretrial defendants in treatment programs. The display below provides the number of CSOSA clients placed by treatment modality and contract program provider.

Treatment Modality	Placements	Total Placed
Drug Residential		53
Second Genesis, Inc.	53	
Alcohol Residential		49
Second Genesis, Inc.	20	
RAP, Inc.	29	
Women with Children		17
Vanguard Services Unlimited	17	
Drug Transitional		12
Vanguard Services Unlimited	12	
Drug Outpatient		53
The Next Step Foundation	30	
Family & Medical Counseling	23	
Alcohol Outpatient		51
The Next Step Foundation	39	
Family & Medical Counseling	12	
Sex Offender Outpatient		40
National Center on Institutions And Alternatives	40	
TOTAL		**275**

- In addition to CSOSA contracted programs, the Agency refers offenders to High Intensity Drug Trafficking Area (HIDTA) grant-funded programs, as well as to the District of Columbia Addiction Prevention and Recovery Administration (APRA) program for treatment services. For the period October 1, 1998, through May 14, 1999, CSOSA has placed 64 probation offenders and 70 parole offenders in treatment programs funded by HIDTA. Additionally, according to APRA, from October 1, 1998, through April 22, 1999, 558 probation offenders and 349 parole offenders were placed in APRA treatment programs.

- Generally, CSOSA offenders are referred to one of the program resources described above; however, exceptions are made if the offender is able to pay for treatment through the use of person medical insurance. In such cases, CSOSA parole and probation officers facilitate placing an offender in a program that is acceptable for use under individual insurance plans.

Mr. ISTOOK. Sure. I know there's a multitude of them and a lot of money that is spent, whether it comes directly out of District funds or out of other funds for the multitude of programs, so I just want to keep that in mind.

Thank you, Mrs. Emerson.

Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

MODEL OFFENDERS PROGRAM

Mr. Carver, in the court services and offender supervision category, you, as I understand it, are proposing a model program. You would like to increase drug testing capacity, open a sanction center to deal with the recidivism, develop an information system, and increase case managers. That really does sound like a model program. I would certainly be inclined to support it.

Is this an ongoing program, or is it a new initiative?

Mr. CARVER. Well, the agency is new as a Federal agency, but it is made up of three formerly D.C. government agencies, Pretrial Services, supervising individuals between the point of arrest and the point of sentence; Probation, which had been part of the Superior Court, and came out of the court and as part of the agency; and then D.C. Board of Parole.

CHANGING PAROLE SYSTEM CONTRIBUTING TO LORTON INMATE INCREASE

Now, the whole parole system is in a state of change. In fact, this may be one of the factors that perhaps is contributing to the upsurge in the count at Lorton. The decisionmakers with respect to parole changed last August. Now the United States Parole Commission exercises parole decisionmaking authority, rather than the D.C. Board of Parole. So we're very much in a situation of change and the D.C. Board of Parole will cease to exist on August 5th of 2000. The U.S. Parole Commission will take over all decisionmaking functions, and the parole supervision staff will be part of the new agency we are building from the three formerly D.C. government-funded agencies.

Does that answer your question?

Mr. MOLLOHAN. I don't think so, but maybe I didn't ask it correctly. My question is, pertaining to what sounded like at least a broader initiative to go out there and deal with what I understood was probably part of the recidivism problem. The initiative also sounded like it would include drug users being judged by the parole officers in different ways. For example, drug users being sent back to jail rather than back to the street.

$19 MILLION BEING REQUESTED FROM JUSTICE DEPARTMENT

It sounded to me like you were proposing a program which you were seeking $19 million dollars from the Justice Department to fund. My question was, addressing that request. Is that a new initiative?

Mr. CARVER. I guess the best way I can respond is that the approach is new to the extent that it is much broader than anything we've ever been able to do before. But by the same token, it is

based on what is happening now at a very small level. I mentioned the drug court, for example. That's very effective, but it only reaches several hundred individuals at any given time. So basically what we're trying to do is take what works on a small scale and make that the norm across the board.

DRUG USE PROBLEM DRIVING RECIDIVISM

And since two-thirds of the individuals under our supervision have histories of substance abuse, that does tend to be the focus of our efforts.

Mr. MOLLOHAN. So you're testifying that you're dealing with that part of the issue? The way you're dealing with the drug use part of the problem, relates to part of the problem that's not being adequately dealt with. The drug use problem is at least in part or maybe it is a significant part of what is driving this recidivism problem. Is that correct?

Mr. CARVER. That is absolutely correct.

Mr. MOLLOHAN. You are proposing this. I call it an initiative. I'm trying to find out, to what extent is it new. Is it different either in terms of qualitatively or quantitatively? Is it different from your approach in the past. If so, then you can call it a new initiative, and that is what you're requesting the $19 million for.

Mr. CARVER. It is, because in the past we've had caseloads that are extremely high; parole caseloads have been 185, almost 200 to 1. There has not been regular drug testing for known substance abusers, and there has been no mechanism for responding quickly when people violate conditions.

Mr. MOLLOHAN. Okay. I can look forward to understanding a little bit more about that, the substantive part of this initiative.

EARMARK REQUESTED IN JUSTICE APPROPRIATIONS

Are you asking the Commerce, Justice Appropriations Subcommittee for an earmark to fund this program, or are you applying for a Justice grant?

Mr. CARVER. We're asking for an earmark.

Mr. MOLLOHAN. In Commerce, Justice, and have you testified before that subcommittee?

Mr. CARVER. No, we have not, we've met with staff only. But we're in a bit of a unique situation in that we are becoming a Federal agency, but providing what would be State functions if this were a State. The initiatives are consistent with the program objectives within the Department of Justice programs. If we were a State, we would qualify under grant guidelines to receive the funds.

Mr. MOLLOHAN. You don't qualify as a grantee because you're not a State. Is that what you're saying?

Mr. CARVER. We're going into Federal agency status, and those programs were set up for State and local governments. That, coupled with the fact that there are spending caps and allocations among the committees made this the best strategy for seeking funding, although this was a strategy that went forward last year.

The President submitted a budget amendment in the amount of $38 million, again, using earmarks from a variety of Justice Department programs, but only $5 million of the $38 million was ap-

proved. So this was, in effect, a renewal of a request that came up here last summer.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Mollohan.

UNIVERSAL DRUG TESTING

Let me ask Mr. Carver. Mr. Mollohan was asking about qualitative and so forth. You have 30,000 people in the system. If we go by the number of tests per year, if you have 30,000 people that on average would be tested, I don't know how many times compared to how many tests. What I'm trying to get to is how many drug tests per year, drug screening tests per year, are you doing now compared to how many you expect to be doing when it becomes universal?

Mr. CARVER. I will turn to my colleague Susan Shaffer, who is director of Pretrial Services.

150,000 DRUG TESTS PER YEAR NOW

Ms. SHAFFER. We do about 150,000 samples per year right now.

Mr. ISTOOK. That's current? And that's of how many different people that are covered in the 150,000 samples?

Ms. SHAFFER. The bulk of those are pretrial. Probably between 30,000 and 40,000 are probation samples. Literally only about 200 to 300 are parole samples. The rest are juvenile samples and adults charged with abuse and neglect.

Mr. ISTOOK. Okay. And under the new regime of making this universal for those that are on a probationary or parole status, how many drug tests per year do you expect to administer?

Mr. CARVER. The last time we calculated this out, we projected a fivefold or a sixfold increase.

900,000 DRUG TESTS PER YEAR TO BE ADMINISTERED

Mr. ISTOOK. Which would mean in the neighborhood of 750,000 to 900,000 tests per year, in that range?

Mr. CARVER. You're quicker on the math than I am, yes.

Mr. ISTOOK. Right. So I wanted to get that in perspective. That you are now supervising 30,000 people. That includes your juveniles, too. How many people currently are not receiving drug screening tests that will receive drug screening tests under the new regime?

20,000 PERSONS NOT BEING TESTED FOR DRUGS

Mr. CARVER. Under the new regime, we laid out in our budget request that virtually everyone would at a minimum get randomly tested. Those with known substance abuse problems, which we estimate to be approximately two-thirds of the population, would be tested on a twice-weekly basis.

Mr. ISTOOK. So you're talking about 20,000 people, or what number is it approximately?

Mr. CARVER. It's approximately 20,000.

Mr. ISTOOK. Okay. So you have approximately 20,000 people that were offenders who currently are not being screened for drugs that you intend to begin screening for drugs.

FAILED DRUG TESTS MAY RESULT IN MORE INMATES

Now, here's what I'm trying to lead up to. You know you will have people who will fall out of compliance with their probation because of this. And I'm not going to get into, you know, one bad screen, two bad screens, exactly what those standards are. But there will be some number of these people, who will, therefore, be subjected to a revocation hearing. That means calling on the resources of Ms. Wallace, that means calling upon the resources of Mr. Clark, if these people are indeed reincarcerated. I'm trying to get a handle on what kind of demand might this generate upon their resources, and you've given some raw numbers. Maybe can you extrapolate a little bit further, and I would like to ask them what they foresee.

PLAN TO BRING PEOPLE INTO COMPLIANCE WITH DRUG LAWS

Mr. CARVER. There's another part of this model that I would like to describe, and I think this goes to Congressman Mollohan's questions about what is different about this regime. One of the things that is different is that we're not going to rely as a first resort on revocation, which is the ultimate penalty for these kinds of violations. The system we're trying to move toward is a system of quick, graduated and measured responses. A system that we see every day in the Drug Court.

Mr. ISTOOK. You want to bring these people into compliance with the drug laws, which will minimize not only the impediments to their employment, but also reduce their recidivism and their tendency to go out and commit more crimes?

SANCTIONS CENTER

Mr. CARVER. Right. But to make that work, we have to have real sanctions, not just pieces of paper, not just scoldings, not just warnings. And this is where the Sanctions Center comes in. The idea of the Sanctions Center would be that when people begin to relapse, they are moved quickly in for maybe a short period of time, 3 days, 5 days, in which the detoxification services can be provided, relapse interventions can be provided, and then they can be rereleased.

PROCESS TO BRING PEOPLE INTO COMPLIANCE WITH DRUG LAWS

Mr. ISTOOK. Can you project how many of those would potentially go to revocation hearing, which would then bring demand upon Ms. Wallace or Mr. Clark potentially for their services?

Mr. CARVER. Yes, I can. And, again, I'm basing this on experience in the Drug Court.

Mr. ISTOOK. Sure.

Mr. CARVER. I can describe a process, and I can work out the numbers, but let me describe the process first.

Our experience in the Drug Court has been that most people violate the drug testing conviction at the first instance and have to be sanctioned. But at each subsequent sanction level, the number violating those conditions of release is pretty much cut in half, so that by the time you get to third- and fourth- and fifth-level sanctions, you're dealing with a much smaller number of individuals. In

fact, we've got some fairly sophisticated data on that precise question.

I would be happy to run out some of these projections, but it's probably in the area of from 15 to 20 percent who might ultimately need to be revoked.

Mr. ISTOOK. So that would be 15 to 20 percent of this base number of I believe it was approximately 20,000?

Mr. CARVER. Perhaps.

POTENTIALLY 4,000 PEOPLE, SUBJECT TO PAROLE REVOCATION

Mr. ISTOOK. Okay. So we're talking about potentially revocation hearings of 3,000 to 4,000 people, and that's a 1-year figure? Is that approximately right? I mean, it's not a trick question. I want to talk about round figures. I just want to make sure they have a basis from which to try to work on doing their rough calculations.

Mr. CARVER. Right.

Mr. ISTOOK. So that would be the approximate number?

Mr. CARVER. Yes. The goal would be to avoid the need for revocations.

Mr. ISTOOK. Of course. I understand that perfectly. That's the goal. And hopefully, once you have an enforcement mechanism in place and people realize what they're facing year by year, you would hope that would diminish?

Mr. CARVER. Right.

Mr. ISTOOK. But I'm trying to locate a potential first-year impact, which, if I understand you correctly, you're talking about 3,000 to 4,000 revocation hearings on top of the number that are currently conducted. That's why I wanted to ask the public defender and Corrections what is the potential impact, therefore, upon their workload.

Ms. WALLACE. That would mean——

Mr. ISTOOK. By the way, let's not underestimate the impact, hopefully, on public safety, which we think will be positive, but——

Mr. CARVER. Let me say I don't think we're really talking about a process that would be superimposed on top of what is going on now.

Mr. ISTOOK. Okay.

Mr. CARVER. I think if this process can be put into place, these would be preliminary steps prior to revocation hearings and revocation hearings going on right now.

Mr. ISTOOK. That's why I wanted to ask the number of those that would be progressed to a point of revocation, which is the 3,000 to 4,000 projection.

ADDITIONAL REVOCATION WILL BE A STRAIN ON PRESENT RESOURCES

Mr. CLARK. I'm told there were about 2,400 revocation hearings in the District last year.

Mr. ISTOOK. So it doubled, more than doubled?

Mr. CLARK. Well, I mean—again, I would assume that the 3,000 to 4,000——

Mr. CARVER. That's just in parole?

Mr. CLARK. That's just in parole.

Mr. CARVER. And those 3,000 we're talking about is the entire universe of parolees and probationers.

Mr. ISTOOK. Yes. But like I said, do you have responses on what that produces as far as the resources that each of you would need?

Mr. CLARK. Well, if that happened, if that kind of a short-term spike, that would definitely be a problem for the Department of Corrections and for the resources that we would have to assist them with. In the short term, again, what's happening now is, you know, I mentioned a 2,400, 2,500 figure that were sent back on revocation of parole last year. These guys are coming back after they've had 10 or 20 dirty urines because there was no intervention earlier.

I think here that many of them wouldn't come back if there was an earlier intervention, but they get so strung out after this long pattern that they finally wind up back on our doorstep and a real mess at that point. So I'm hopeful in the long run this would cut into this whole problem.

The issue you raise is a valid one in the short run, what is this going to do to our resources. If it were another couple of thousand, then we would have to go back to the drawing board to find a whole lot more prison beds.

Mr. ISTOOK. Ms. Wallace.

OTHER INNOVATIVE MECHANISMS BY PUBLIC DEFENDER

Ms. WALLACE. I think that at least initially Mr. Carver's initiatives are having an impact or will have an impact on the numbers. It may not be that total amount, which is over what we currently do, but I believe their attentiveness is raising the numbers so there is some number over. And those kinds of numbers would certainly impact our operations, but we are looking to increase our ability to respond quickly through other innovative mechanisms.

For instance, in fact, just today, I got a phone call from one of the professors at the University of the District of Columbia, and they're interested in starting a clinical program whereby their students would be supervised by one of our lawyers so that we can have—and we've talked with Mr. Carver about this—ways to fully address the increases that might be caused by his initiatives without using simply lawyers. So that's one thing that we're looking at.

OBJECTIVE: TO IMPROVE PUBLIC SAFETY

Mr. ISTOOK. Very good. I appreciate that. And as we all know, what we're trying to do here is dramatically improve public safety and the safety of people that live in the District. But I think your testimony just points out that going through that process means going through some significant adjustments, but the end result of greater public safety is something that people in Washington have been wanting for a long, long time.

Mr. Mollohan.

COST DIFFERENCE BETWEEN TREATMENT AND INCARCERATION

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. Carver, if I might, I have to follow up just a little bit. I am interested in the differential between the costs of treating one of your cases through this new proposal versus an incarceration. What is the cost difference between the methods? Have you pro-

jected the figures, and have you found any kind of a cost savings in treating the overall population?

Mr. CARVER. I can give you some general national figures with respect to the way correctional budgets are being used in this country. Right now those individuals that our agency is responsible for are three-fourths of all individuals under some form of correctional supervision, with one-fourth being in in institutions.

But when you look at the expenditure nationally, the institutions are using 90 percent of the money with 25 percent of the population. So this is kind of the macrolevel mix between the institutional side and the community side. I do not have a good analysis, projecting the ultimate savings in correctional costs in this jurisdiction.

And it's very difficult to do that kind of analysis, because I think as a number of Members mentioned, it's a very dynamic system. We have many factors changing simultaneously. One has been the decisionmaking authority with respect to parole. We are also in a transition to a different kind of a sentencing structure, which would be much more analogous to what is going on in many States that have adopted—as we have adopted—a truth in sentencing structure where parole will be abolished, and 85 percent of the sentence will be required to be served in institutions.

Right now we do not have guidelines, although there is a Sentencing Advisory Commission that's addressing this question. It's very hard to make very valid projections given changes in decisionmaking and changes in sentencing structure. It's really for that reason that, I just don't have a good statistically-based way to respond to your question.

COST/BENEFIT—DRUG TREATMENT VERSUS INCARCERATION

Ms. WALLACE. Might I jump in there for a minute just in response to your question? Nationally the best study and the most comprehensive study that I have seen so far estimates that for every $1 spent on the drug treatment that Mr. Carver is talking about, taxpayers save $7 in less incarceration costs, in health costs, in public safety administration costs. That study was done by the Rand Corporation. And while it has to be tailored, I think, for jurisdictional differences, it provides a good model, and I would recommend it.

Mr. MOLLOHAN. I don't know how mandatory sentencing might factor into this, but I can imagine if you can generate those numbers and they were real as relating to the District's situation, you could help yourself on both sides. Those of us who may be inclined to a more intervention treatment approach, the approach would appeal to us, and those of us in the body who were more inclined to be responsive to a reduction in costs, might be equally attracted. If you can generate those numbers and it showed savings in costs, it might be a good argument.

Mr. CARVER. I can throw out one number that came out of an Urban Institute evaluation of the Drug Court, and part of that evaluation consisted of a very careful cost-benefit analysis of the costs of the sanctions track of the Drug Court, the model that we're trying to implement systemwide.

$8.60 PER DAY SPENT ON DRUG SANCTIONS VERSUS $62 PER DAY ON INCARCERATION

Those figures showed that the costs per day for defendants in the sanctions track was $8.60. And I think the figure the Department of Corrections uses as the cost per day for locking someone up, and correct me if I'm wrong, John, is $62. At least in terms of the magnitude, I think it's probably a pretty good basis for comparing the day-to-day costs of the two approaches.

FUNDS REQUESTED FOR SANCTIONS CENTER

Mr. MOLLOHAN. I asked you what you were doing with the Commerce, Justice Appropriations Committee. Are you asking this subcommittee for any money for this initiative that you testified you were going to seek in 1999?

Mr. CARVER. Yes. For FY 2000, we are requesting $5.9 million from the D.C. subcommittee for the Sanctions Center initiative, and an additional $2.7 million from the Commerce, Justice Subcommittee. We requested funding for the Sanctions Center as part of the FY 1999 Budget Amendment from a Department of Justice grant.

Mr. ISTOOK. You have part of your staff behind you, Mr. Carver, trying to nod yes, saying, please do.

Mr. MOLLOHAN. Am I out of time?

Mr. ISTOOK. Go ahead, take some more, that's fine, if you wish.

INCARCERATION COSTS—BUREAU OF PRISONS VERSUS PRIVATIZATION

Mr. MOLLOHAN. I would like to ask Mr. Clark. The D.C. Revitalization Act requires that 2,000 D.C. sentenced felons be placed in private facilities by December of 1999. I understand we have two contracts out on that. One contract has already been awarded; the other is pending. The contract for the 1,000 inmates will cost $353 million over 10 years.

I just want to get a relative cost between private and public incarceration. If you do the math, that works out to about $34,000 per inmate annually. My understanding, from the Bureau of Prisons, is that their cost is $22,000 per year per inmate.

While I understand that this contract is between the Bureau of Prisons and the private corrections firm, I'm asking, in your opinion and based on your corrections background, what accounts for the per inmate cost differential between the Bureau of Prisons and the costs of housing these inmates in a privately-run facility? It's a significant difference.

Mr. CLARK. First of all, let me go back and mention that the cost in the District is not $62 a day, it's actually closer to $80 a day. Sir, as you indicated, this is not something that is in my direct line of responsibility, but I do have some knowledge of it. I think that the differential here—first of all, one thing is they are including the capital building costs in that $340 million, whereas the Bureau of Prisons' cost is amortizing in a different fashion. It's budgeted in a totally different fashion.

Mr. MOLLOHAN. Is it included in there, even if it's amortized differently?

Mr. CLARK. No.

Mr. MOLLOHAN. The capital costs are not included in the Bureau of Prisons cost?

Mr. CLARK. To my understanding, it is not.

Mr. MOLLOHAN. You're saying that it is just operational costs?

Mr. CLARK. Yes.

Mr. MOLLOHAN. If you were right, I think that would make the Bureau of Prisons costs substantially higher than the private sector.

Mr. CLARK. You're talking—the difference between $22,000 and $34,000 a year is a big gap. Some of the other factors there—I think that's a relatively specialized contract where there are three separate institutions on one site, one for youth, one for minimum-security males and one for females, so that you don't get the economy of scale that you get with one larger facility. But that is a fairly expensive contract.

Mr. MOLLOHAN. Okay. Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Mollohan.

Let me just finish up a couple of things on this, because I know the goal is not to put any further strain on other resources. The goal is safer streets, safer schools, safer neighborhoods, because we know how dramatically drug use is linked to crime, especially involving repeat offenders, and that's, of course, what we're dealing with.

OTHER JURISDICTIONS WITH UNIVERSAL DRUG TESTING

But is there any other jurisdiction in the country that has successfully sought to and gone to a policy of universal drug testing for those on a probationary status who have some history of drug use; is that being done anyplace else?

Mr. CARVER. I think most jurisdictions are attempting to move to that model. I think some are farther along than others. But the simple answer to your question is no, it's not. Again, all States are doing some drug testing of probation and parole populations, but in terms of a comprehensive approach, there is no jurisdiction.

Mr. ISTOOK. This would mean that Washington would be taking the lead——

Mr. CARVER. Yes.

Mr. ISTOOK [continuing]. In combating drug use among known offenders, trying to reduce repeat offenses that way?

MARYLAND DRUG TESTING PROGRAM

Mr. CARVER. Maryland is probably as close as any State. They have a Breaking-the-Cycle initiative, which I understand is not completely universal across the State, but involves exactly the same elements of regular drug testing, coupled with immediate sanctions for drug use.

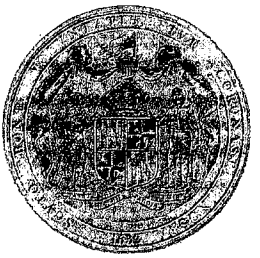
Mr. ISTOOK. Do you know how pervasive Maryland is, how, you know—what percentage of the——

Mr. CARVER. I could certainly find out, because I'm in regular touch with my Maryland counterparts.

[The information follows:]

Maryland Crime Control and Prevention Strategy

1998 EDITION



Cabinet Council on Criminal and Juvenile Justice

Governor Parris N. Glendening

Lt. Governor Kathleen Kennedy Townsend, Chair

62 688 460

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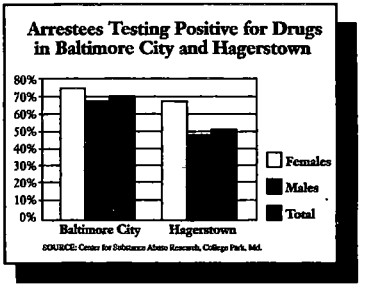
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Action 4. Break the Link Between Drugs and Crime

- Break the Cycle of Crime and Addiction
- Stop the Flow of Drugs into Our Communities
- Reduce Drunk and Drugged Driving

The link between drug use and crime is well established. Supporting a drug habit and acting under the influence of drugs are direct causes of criminal activity for many offenders, and the violence associated with drug markets accounts for many of the most heinous and destructive crimes in our communities.

Breaking the link between drugs and crime will spark a significant reduction in crime and violence. In addition, our Strategy continues our efforts to decrease the flow of drugs into our communities and prisons. Finally, we maintain our focus on reducing the devastating impact of drunk and drugged driving on Maryland's highways.



Break the Cycle of Crime and Addiction

A history of drug abuse has been found to be the best predictor of serious criminal activity.[1] In the nation's largest cities, regardless of the arrest charge, adult arrestees consistently test positive for an illicit drug between 50 and 80 percent of the time.[2]

In the nation's largest cities, regardless of the arrest charge, adult arrestees consistently test positive for an illicit drug between 50 and 80 percent of the time.

In Maryland, the findings are similar. Substance abuse and criminal activity go together in urban, suburban, and rural areas of our state. A recent study found that 67 percent of the adult male arrestees and 75 percent of the adult female arrestees in Baltimore City tested positive for an illicit drug (see chart). In Hagerstown, 48 percent of

1. Jan M. Chaiken and Marcia R. Chaiken (1982), *Varieties of Criminal Behavior*, Santa Monica, Calif.: RAND Corporation. Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth, and Christy A. Visher (eds.) (1986), *Criminal Careers and "Career Criminals,"* Washington, D.C.: National Academy Press.
2. National Institute of Justice (1997), *Drug Use Forecasting, 1996 Annual Report on Adult and Juvenile Arrestees*, Washington, D.C.

Break the Cycle Summit

The State of Maryland kicked off its Break the Cycle Initiative with a two-day conference on December 8-9, 1997. Teams from each of Maryland's counties and Baltimore City came together for a statewide Strategic Planning Workshop. The teams were made up of representatives from state and local corrections agencies, law enforcement, public and private treatment providers, parole and probation, public health agencies, prosecutors, defense counsel, and the judiciary. The workshop introduced the teams to the Break the Cycle model and their specific roles in it. It also provided the necessary information, tools, and insights to enable them to plan for implementation of the program in their respective jurisdictions.

The workshop was sponsored by the Correctional Program Office of the Office of Justice Programs (U.S. Department of Justice) and the Center for Substance Abuse Treatment (Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services). Featured speakers at the workshop were Governor Glendening; Lt. Governor Townsend; Gen. Barry McCaffrey, director of the Office of National Drug Control Policy; David J. Mactas, director of the Center for Substance Abuse Treatment; and Mitchell Rosenthal, president of the Phoenix House Foundation, the nation's largest drug treatment organization.

the adult male arrestees and 67 percent of adult female arrestees in the detention center tested positive for an illicit drug.[3] While the level of drug use by offenders was similar in both jurisdictions, the types of drugs used varied. For example, in Baltimore City, cocaine was the most prevalent drug used (79 percent of those testing positive), followed by opiates (59 percent) and marijuana (24 percent). In Hagerstown, cocaine was still the most prevalent drug used (63 percent), but it was followed by marijuana (46 percent), and none of the arrestees tested positive for opiates.

In Maryland at the end of 1997, 40 percent of the 39,300 probationers being supervised by the Division of Parole and Probation were required to undergo some form of substance abuse testing and/or treatment.[4] In addition, 53 percent of the 6,000 parolees were under similar conditions of release.

As these numbers suggest, substance-abusing offenders account for a startling proportion of our drug problem. It is estimated that as much as 60 percent of the heroin and cocaine consumed in the United States is consumed by offenders who are under criminal justice supervision.[5]

"This is a targeted approach that says we're not going to debate treatment and punishment. We're going to stop the revolving door."

— Lt. Governor Kathleen Kennedy Townsend
December 4, 1997

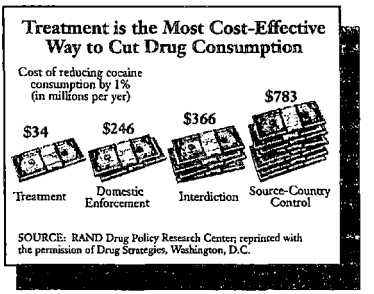
In December 1997, the Cabinet Council on Criminal and Juvenile Justice launched the Break the Cycle Initiative (see sidebar), a coordinated, statewide strategy to reduce drug use and recidivism among substance-abusing criminal offenders who are on probation and parole. This Initiative, which builds on the report and recommendations of the Cabinet Council's Task Force on Drug Addicted Offenders (see Appendix), makes Maryland a national leader in efforts to cut drug-related crime.

Break the Cycle integrates public safety and public health programs to create a "seamless system" of drug testing, sanctions, and treatment. By reducing crime and drug use among addicted offenders and increasing offender accountability, Break the Cycle can restore the public's confidence in our criminal justice and treatment systems.

3. In Baltimore City, 689 males and 356 females were tested; in Hagerstown, 56 males and 12 females. Both studies were conducted by Thomas A. Gray and Eric D. Wish of the Center for Substance Abuse Research (CESAR) as part of CESAR's Substance Abuse and Need for Treatment among Arrestees (SANTA) studies being conducted for the Alcohol and Drug Abuse Administration with funding from the Center for Substance Abuse Treatment.
4. Data provided by Division of Parole and Probation.
5. Based on calculations from Drug Use Forecasting (DUF) data and Office of National Drug Control Policy (1995), *What America's Users Spend on Illegal Drugs, 1988-1993*, Washington, D.C.

The system that the Break the Cycle Initiative replaces was fragmented. Treatment programs and criminal justice authorities had only rare and sporadic communication, with the result that resources, such as drug testing, and opportunities to intervene were often squandered and offenders could "play the system." These earlier, disjointed arrangements often placed few restrictions on sentenced offenders on release in the community, and the agencies involved frequently lacked the information and resources to ensure that released offenders did not continue to use drugs, commit new crimes, or drop out of treatment.

Building on the success of the Baltimore City Drug Court, the Break the Cycle Initiative institutionalizes the three-part model of testing, sanctions, and treatment across the state and will reach up to 25,000 offenders whose criminal behavior is driven by drugs.



Why Focus on Addicted Offenders?

Providing treatment services to individuals who have committed criminal offenses or delinquent acts is sometimes controversial. When resources for treatment are scarce, some argue, why spend them on people who have broken the law?

As much as 60 percent of the heroin and cocaine consumed in the United States is consumed by offenders who are under criminal justice supervision.

The Task Force on Drug Addicted Offenders identified three main reasons for treating substance-abusing offenders:[6]

- **Reducing substance abuse among offenders can produce substantial reductions in crime and violence.** A large portion of the offenses committed by drug addicted offenders are committed (1) to obtain money to purchase illicit drugs, (2) in connection with the illicit drug market, or (3) under the influence of addictive drugs. Reducing the demand for drugs among offenders would significantly decrease the total consumption of illicit drugs and the amount of crime committed by substance-abusing offenders, including shootings and other violent crimes related to the drug market.

6. *Report of the Task Force on Drug-Addicted Offenders*:5-6.

"Every day of treatment paid for itself ... on the day it was received, primarily through an avoidance of crime."

- **Treatment reduces substance abuse and its consequences.** If properly delivered, treatment works and is tremendously cost-effective. A 1995 analysis by the Center for Substance Abuse Research found that for every addict receiving treatment in Maryland, the State saved almost $20,000 in social costs (e.g., medical care, lost productivity due to illness, injury or death).[7] The CALDATA evaluation of publicly funded treatment programs in California found that every dollar spent on drug treatment saved taxpayers $7 in future costs "due mostly to reductions in crime."[8] Similarly, a RAND study found that treatment is more cost-effective in reducing cocaine consumption than domestic enforcement, interdiction, or source-country control.[9]
- **Using the leverage of the criminal justice system can substantially improve the outcomes of individuals in treatment.** Research demonstrates that the threat of criminal sanctions — particularly when carried out with swiftness and certainty — can be a powerful motivator for change. Length of stay in treatment is an important predictor of a successful outcome, and treatment under the order of the court, in conjunction with frequent drug testing and sanctions for positive drug tests, keeps addicted offenders in treatment longer.

HIDTA participants were six times less likely to drop out of treatment, almost eight times less likely to have a positive drug test while in treatment, and four times less likely to be arrested for a new offense.

7. Sharon Stout (1995), "Estimated Costs of Not Treating a Drug Abuser in Maryland," College Park, Center for Substance Research:1.
8. National Opinion Research Center and Lewin-VHI, Inc. (1994), *Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA) General Report*, Chicago: University of Chicago Press:iv.
9. C. Peter Rydell and Susan S. Everingham (1994), *Controlling Cocaine: Supply versus Demand Programs*, Santa Monica, Calif.: RAND:24.

In addition to the success of the Baltimore City Drug Treatment Court (see below), the Washington/Baltimore High Intensity Drug Trafficking Area (HIDTA) reports similar results. The HIDTA project has found major changes in the treatment outcomes of offenders since it instituted its seamless system of treatment and aftercare coupled with graduated sanctions for noncompliance. Compared with offenders receiving treatment in the 12 participating jurisdictions prior to the HIDTA initiative, HIDTA participants were six times less likely to drop out of treatment, almost eight times less likely to have a positive drug test while in treatment, and four times less likely to be arrested for a new offense.[10]

The Break the Cycle Model

Break the Cycle links public safety and public health agencies in every local jurisdiction through mutually defined policies and procedures designed to reduce recidivism. All participating agencies collaborate in decision making and service delivery, and information is shared across agencies as the offender passes from one stage of the process to the next.

Treatment is more cost-effective in reducing cocaine consumption than domestic enforcement, interdiction, or source-country control.

As part of Break the Cycle, all sentenced offenders are screened for drug abuse problems. Those with a positive drug test as well as drug court participants and others with court-imposed special conditions are eligible for the program if they will be under supervision long enough for treatment to be effective (at least six months).

The Break the Cycle model incorporates the following components:

- **Drug Testing:** All offenders in drug treatment undergo frequent, scheduled drug testing throughout their period of supervision to encourage commitment to the treatment program, to enforce the court's order of abstinence from drugs, and to break through the offender's denial that he has a substance abuse problem. Offenders pay for their drug tests on a sliding scale according to their ability to pay. Test results are used to monitor and adjust treatment and supervision levels, as well as the frequency of testing.

10. Data provided by Washington/Baltimore High Intensity Drug Trafficking Area.

- **Sanctions:** Swift, certain, and appropriate penalties are used to increase compliance. Sanctions are imposed for a failed drug test or other infraction, according to a standardized sanctions schedule developed by each local jurisdiction. They become more severe with each positive drug test or other infraction and can result in short-term incarceration for multiple infractions.

  Offenders also receive rewards that are proportionate to their compliance. These rewards include reducing some of the restrictions placed on the offender, decreasing the number of required counseling sessions, and decreasing the frequency of drug tests.

- **Treatment:** An individualized treatment program is developed for each offender to provide a continuum of care, including intensive therapeutic services and aftercare or monitoring. Placement in a treatment program is based on a formal assessment of the offender's treatment need and the risk he or she poses to community safety. Offenders participate in a continuum of care for at least six months, and movement between different phases of treatment is dependent on their progress in treatment.

"There is no other circumstance in our society where there exists such a high intersection between the presence of substance abuse and the power and leverage of an institution than presently exists when the substance abuser and the courts intersect."*

A court-ordered behavioral contract establishes the offender's treatment plan, drug-testing schedule, other court-imposed requirements (such as curfew or day reporting), and the schedule of sanctions for noncompliance. A designated probation agent from the Division of Parole and Probation monitors each offender's adherence to the behavioral contract. A positive urine test, failure to appear for treatment, and other supervision failures are reported to the probation agent within 24 hours.

*Join Together Policy Panel on Treatment and Recovery (1998), *Treatment for Addiction — Advancing the Common Good*, Boston:21.

Expected Outcomes

The overall goal of Break the Cycle is to make Maryland's neighborhoods safer by reducing recidivism among criminal offenders who are addicted to illicit drugs. Specifically, the following outcomes are expected:

- Reduced rearrest of substance-abusing offenders.
- Reduced drug use by offenders under criminal justice supervision.
- Increased effectiveness of treatment for public safety and public health.
- Enhanced integrity of court orders that mandate treatment and abstinence.
- Increased offender accountability.
- Increased equity in sanctions imposed for violations.

In addition, the following process outcomes are expected: increased length of stay in treatment, reduced pressure on court dockets, and decreased number of probation/parole violators returning to prison. This, in turn, will increase the availability of prison beds for violent and career offenders.

Implementation

The Break the Cycle model is consistent with and goes beyond new federal drug policy that requires states receiving federal prison grants to implement drug testing and sanctions for addicts in prison or on parole. The model has been implemented on a smaller scale in several jurisdictions, but Maryland is the first to implement the model statewide and to apply it to offenders on probation as well as parole.

Break the Cycle is to be implemented with enhanced funding in seven jurisdictions on October 1, 1998. In preparation for implementation, local teams from each jurisdiction have been meeting with staff of the Division of Parole and Probation, the Alcohol and Drug Abuse Administration, the Governor's Office of Crime Control & Prevention, and other State agencies to develop the standards, operational policy and procedures, and performance goals for the program. In addition, each local jurisdiction is drawing up a Memorandum of Understanding (MOU) that defines the relationship between State and local agencies and the roles and responsibilities of each agency involved in any facet of managing offenders receiving treatment in the community. Each MOU provides a foundation of core principles and understanding on which to build a seamless system of

Drug Court Makes A Difference

An independent evaluation of the Baltimore City Drug Treatment Court program examined the recidivism outcomes for 145 drug court probationers who were enrolled during the first year of the program. The evaluators found the program produced positive results:

- Seventy-five percent of the participants did not commit a new crime during the six-month follow-up period.
- Participants were 50 percent less likely to be rearrested for new crimes than they would have been without the program.*

Several studies of drug court graduates conducted by staff of the Correctional Options Program also revealed encouraging results. Of 54 offenders who had graduated from the program, none had been rearrested for new crimes, 92 percent had not had any subsequent drug or alcohol use, 83 percent had maintained a stable residence, and 50 percent were employed and enrolled in an aftercare program.**

* Denise C. Gottfredson, Kris Coblentz, and Michele A. Harmon (1996), *A Short-Term Outcome Evaluation of the Baltimore City Drug Treatment Court Program*, College Park: University of Maryland.

** Division of Parole and Probation(1997), "Correctional Options Program, Another Route to Correctional Options."

intervention for offenders that is tailored to local needs and capacities.

The Baltimore City Drug Treatment Court

Baltimore's Drug Treatment Court program, a component of the Correctional Options Program (see Action 1), provides an indication of how the Break the Cycle model works. The program began intervening with nonviolent offenders with drug abuse problems in March 1994. Eligible offenders participate in a drug treatment program under the jurisdiction of the Baltimore District Court or the Circuit Court of Baltimore. Intensive supervision and frequent drug testing are used to monitor each offender's progress, and sanctions or the threat of sanctions are used to keep the offender in treatment.

A short-term evaluation of the drug court program, conducted after the first year of operation, compared the status of 145 offenders assigned to the program and 529 offenders who met the eligibility requirements for the program but were assigned to traditional parole or probation. The study found that participation in the drug court was associated with a 50 percent reduction in the odds for an arrest resulting from a new offense during the six-month follow-up period even though the drug court participants had more serious criminal records than those in the comparison group (see sidebars).[11]

Baltimore City Juvenile Drug Court

In keeping with this Strategy's emphasis on early intervention, the State has developed an initiative to break the drug habits of juveniles before they give rise to a lengthy addiction and criminal career. A year before Break the Cycle was launched, the Department of Juvenile Justice, in conjunction with the Baltimore City Juvenile Court, began developing a coerced abstinence program for juvenile offenders with substance abuse problems. As with the Break the Cycle Initiative for adult offenders, the juvenile program is based on the recommendations of the Task Force on Drug Addicted Offenders and consists of three principal components: drug testing, sanctions, and treatment. It also involves the youth's parents and other family members when appropriate. The target population for the drug court is nonviolent offenders on probation who have committed a drug-related offense and have a substance abuse problem. The first juvenile drug court was opened in Baltimore City, and additional drug courts are planned for Wicomico County and other jurisdictions.

In Baltimore City, following case review by the State's Attorney's Office and the Office of the Public Defender, eligible youth are offered the drug court program as an alternative to commitment to the Department of Juvenile Justice. Juveniles who agree to participate in the drug

11. Denise C. Gottfredson, Kris Coblentz, and Michele A. Harmon (1996), *A Short-Term Outcome Evaluation of the Baltimore City Drug Treatment Court Program*, College Park: University of Maryland.

court receive community-based substance abuse treatment. The three components of the program, which has the capacity to serve 200 youth, work as follows:

- **Drug Testing:** Initially, youth are tested for drugs three times a week. Testing becomes less frequent as they successfully complete each phase of the program.
- **Sanctions:** Positive drug tests, noncompliance with the treatment plan, and new offenses are immediately met with one or more court-imposed penalties. The schedule of sanctions includes increasing levels of community service, more frequent addictions counseling, electronic monitoring, and increasing lengths of stay at a residential DJJ facility. If sanctions are imposed, a youth must complete the sanction and the remaining program requirements if he or she is to remain in the program and avoid longer term commitment to a residential facility.
- **Treatment:** The treatment program developed for each youth consists of individual and group sessions with an addictions counselor and individual and group sessions with the juvenile case manager to build social responsibility. As with drug testing, the frequency of the counseling sessions decreases as youth complete each phase of the program.

As youth move successfully through each phase of the drug court program, they graduate to less intensive supervision requirements. Being successful means a youth has negative drug tests, attends all required counseling sessions, meets the goals of the treatment plan, and has no further delinquency findings. A youth's progress is measured by a point system. One hundred points a week can be earned for meeting all the requirements of the program; a total of 900 to 1,200 points is required to move to the next program phase.

Drug Intervention in Prison and Jails

Incarcerating substance-abusing offenders removes them from the streets of our communities and separates them from their sources of supply, but by itself it does nothing to address their addiction. Recognizing this, in 1996 the General Assembly mandated that substance-abusing inmates in State correctional facilities be placed in an appropriate treatment program. Our Crime Control Strategy further recognizes that prison and jail inmates who receive treatment while incarcerated will require post-release drug testing, supervision, and aftercare if they are to stay off drugs once they are back in the community. Thus, substance-abusing offenders who receive drug treatment while incarcerated will be required to participate in Break the Cycle while they are under the supervision of the Division of Parole and Probation in the community.

Drug Court Success Stories

Needra and Lloyd are two "graduates" of the Baltimore City Drug Treatment Court. Needra, age 32, used to leave the care of her two children to others while she shoplifted meat, cashed stolen checks, sold drugs, or sold herself in order to get her "dope 'n' coke." After graduation she was living drug free in a walk-up apartment with another former addict; the two are helping each other in their recoveries. Needra is also building a new relationship with her children and working toward regaining custody of them.

Lloyd, age 29, entered the drug court program after 16 years of abusing cocaine, heroin, and alcohol and a number of arrests on drug and theft charges. After completing the program, he went to work at a Baltimore crab house and as the live-in manager of a recovery house.

Not everyone completes the drug court program successfully, and those who do face a lifetime of being in recovery. "There's a lot of days when the urge will come," Lloyd said, "but today I have some tools I can use to combat this thing."*

* Based on two articles in the *Baltimore Sun:* Jay Apperson, "For 7 Grads, Tears, Hugs and a New Life," March 20, 1995; Kate Shatzkin, "Study Lauds Drug Court," March 22, 1996.

A portion of the substance-abusing offenders in State correctional facilities currently receive drug treatment through the Residential Substance Abuse Treatment (RSAT) program, which is operated by the Department of Public Safety and Correctional Services with federal funds and State matching funds provided by the Department of Health and Mental Hygiene. In FY 1998, up to 550 prison inmates who are scheduled to be released within six months and who consent to be placed in a treatment program will receive six months of treatment in prison under the RSAT program and post-release supervision and aftercare through Break the Cycle. Another 550 inmates will be eligible for the program in both FY 1999 and FY 2000, and in FY 2001, 1,000 more inmates will be eligible, bringing the total to 2,650.

In addition, local jail substance abuse programs can submit applications for grant funding to the Governor's Office of Crime Control & Prevention. With the award of federal funds, and State/local matching funds, these programs provide drug treatment to inmates in local jails. Baltimore City and eight counties (Allegany, Baltimore, Carroll, Dorchester, Garrett, Montgomery, Somerset, and Wicomico) currently have such programs. The Alcohol and Drug Abuse Administration also funds facility- and community-based treatment in Washington County. As with the RSAT program, post-release supervision of substance-abusing jail inmates will be provided through Break the Cycle.

As noted above, the Washington/Baltimore HIDTA provides drug treatment services for offenders, including jail inmates, in its catchment area (in Maryland this includes Baltimore City and Anne Arundel, Baltimore, Charles, Howard, Montgomery, and Prince George's counties). Montgomery County has also operated a Jail Addiction Services program since 1990.

Another critical aspect of helping incarcerated offenders to break their addiction — and maintaining security — is keeping our prisons free of drugs. In 1998, the Division of Correction will increase its use of ion-scan machines and specially trained dogs to detect drugs and other contraband being brought onto prison property. Under a new policy adopted in 1997, visitors who attempt to bring in drugs or other contraband are permanently banned from further visits, and inmates lose their visiting privileges for a specified period if they attempt to obtain contraband during a visit. The Division also conducts drug tests of inmates at random and when there is reason to believe an inmate is using drugs. The Division's efforts to keep drugs out of its facilities are working. Of the 44,300 drug tests conducted in 1996, only 2 percent were positive; this compares with an average of 9 percent for state prisons across the nation.

Drug Early Warning System

To support the Break the Cycle Initiative, the State Heroin Action Plan (see below), and other antidrug efforts across the state, the Lt. Governor's Cabinet Council on Criminal and Juvenile Justice is establishing a Drug Early Warning System (DEWS). This multifaceted program will monitor substance abuse trends in Maryland's 24 jurisdictions. DEWS will have six major components, including drug testing and interviews of juvenile offenders. The program is being developed through a grant from the Governor's Office of Crime Control & Prevention to the Center for Substance Abuse Research (CESAR); it will be launched during 1998.

The information collected through DEWS is intended to create a faster response and deeper understanding of substance abuse problems in Maryland than has been possible before. An essential part of DEWS will be ensuring that the information is quickly disseminated to the appropriate officials. This will be accomplished through faxed communiques and special reports to the Cabinet Council on Criminal and Juvenile Justice, county administrators, program administrators, and community leaders, as well as a statewide annual meeting of all concerned parties.

Stop the Flow of Drugs into Our Communities

While our Strategy focuses on reducing the demand for drugs and related criminal activity, we are also boosting efforts to restrict the flow of drugs into Maryland. Increased supply encourages additional drug sellers to set up in our neighborhoods and makes drugs more readily available to potential users.

Maryland is a transportation point for drug trafficking. The Chesapeake Bay and Port of

State Heroin Action Plan

On April 15, 1998, Lt. Governor Kathleen Kennedy Townsend launched a 19-point State Heroin Action Plan to prevent the spread of heroin use in Maryland and increase the availability of treatment for heroin addiction. The elements of the Action Plan, outlined below, build on the foundation of activities in our Crime Control Strategy:

Enforcement

- Intensify enforcement against heroin trafficking
- Investigate heroin overdose cases to identify sources of supply
- Debrief juvenile offenders caught with heroin to identify sources of supply
- Place juvenile probation officers in schools in high-risk areas
- Seek probation orders that require drug offenders to stay out of known drug areas

Treatment

- Encourage hospitals to make more treatment referrals
- Increase access to methadone treatment
- Seek more federal funds for treatment
- Expand Break the Cycle drug testing, sanction, and treatment initiatives
- Expand Medicaid/Medicare coverage for juvenile substance abuse treatment

Prevention/Education

- Focus the Partnership for a Drug-Free Maryland media campaign on heroin
- Distribute heroin prevention materials to schools and HotSpot Communities
- Focus school-based prevention on heroin education
- Expand structured after school activities and peer leadership groups
- Expand early intervention and truancy programs for substance-involved youths
- Expand Character Education Initiative to support parents in teaching core values
- Convene statewide Safe Schools conference

Drug Use Monitoring

- Establish urine monitoring of juvenile arrestees to detect emerging drug use trends
- Develop Cabinet Council Drug Early Warning System (DEWS)

The lead agencies charged with implementing the Action Plan include the Alcohol and Drug Abuse Administration, the Center for Substance Abuse Research, the Department of Juvenile Justice, the Division of Parole and Probation, the Governor's Office of Crime Control & Prevention, the Maryland Department of Education, and the Maryland State Police.

Baltimore, visited by thousands of commercial ships each year from all parts of the world, offer an enticing entry point for drugs from source and transit countries. Several major cocaine seizures at the port attest to its use for this purpose.

Maryland is also directly served by Baltimore/ Washington International (BWI) Airport and indirectly by the Dulles International and Washington National airports. It is not uncommon for seizures to be made from flights coming from the southwestern United States, where drugs brought across the southwest border are then moved by air to their destination. Domestic seizures are also made from flights originating in Puerto Rico, which do not require Customs inspection for entry into the United States. Many international carriers also land at BWI and Dulles airports. Cocaine, marijuana, and heroin are the drugs most frequently seized from international carriers.

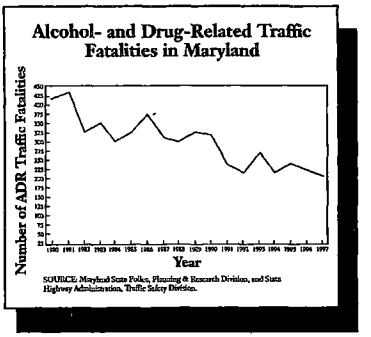
The rail system between New York City and Baltimore-Washington provides another means of getting drugs into and through Maryland, as does the interstate bus system. A multiagency drug task force concentrates its interdiction efforts on all of the interstate and international commercial transportation systems that go through Maryland. The state's modern highway system is also used to transport drugs. Much of the drugs seized on the state's highways are destined for the local drug market; but drugs also transit Maryland highways en route to other destinations.

Over 140 law enforcement agencies conduct drug control operations in the state. These agencies include local police departments, the Maryland National Guard, the Maryland State Police, the Washington/Baltimore High Intensity Drug Trafficking Area, and such federal agencies as the Coast Guard, Customs Service, Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, and the National Park Service. Thirteen multijurisdictional task forces also operate within the state. These task forces enable law enforcement to consolidate resources and personnel to attack every level of the drug distribution chain.

The Maryland State Police (MSP) plays a major role in stopping the flow of drugs into the state. This effort is conducted primarily through covert investigations by members of the Bureau of Drug and Criminal Enforcement (BDCE) and highway interdiction efforts by uniformed troopers in the Field Operations Bureau. In addition, BCDE's Marijuana Eradication Program assists federal, State, and local law enforcement agencies in detecting and eradicating illicit marijuana crops.

The MSP's highway drug interdiction efforts have received national recognition. In 1997 the El Paso

Intelligence Center, an agency of the Drug Enforcement Administration, presented the MSP with an award for recovering more crack cocaine during traffic stops in 1996 than any other police agency in the country. State troopers recovered more than 64 pounds of crack cocaine, as well as 220 pounds of powdered cocaine, 130 pounds of marijuana, 4 pounds of heroin, and more than $1.6 million in drug money.[12]



Reduce Drunk and Drugged Driving

The number of alcohol- and drug-related (ADR) traffic fatalities has been on the decline in Maryland, as well as nationally, since 1980.[13] In 1997, 191 people died in ADR traffic crashes on Maryland highways; this compares with 419 in 1980 and the previous low of 210 in 1992 and 1996. The reduction in the number of people killed annually by drinking/drugged drivers is due in large part to local and national campaigns against drinking and driving that began in 1981. In Maryland these campaigns resulted in police officers receiving additional training in identifying DUI/DWI offenders, increasing enforcement efforts, establishing sobriety checkpoints, and placing additional officers on patrol. As part of this campaign, Maryland's Impaired Driving Coalition, the state chapters of Mothers Against Drunk Driving and Students Against Drunk Driving, and other citizen activist groups worked to educate citizens about drinking and driving and to build public support for legislation to strengthen enforcement efforts.

A centerpiece of the fight to reduce drinking and driving has been lowering the legal limits on blood alcohol concentration (BAC) in determinations of driving under the influence (DUI) or the more serious charge of driving while intoxicated (DWI). As of October 1981, the BAC level that constituted evidence of driving while intoxicated was lowered from 0.15 to 0.13 grams of alcohol per 100 milliliters of blood, and in October 1988, that limit was lowered to 0.10 (DWI) and 0.07 (DUI). In addition, drivers under the age of 21 are in violation of the law if they have a BAC level of 0.02. In 1995 the General Assembly established a BAC level of 0.10 as sufficient (per se) evidence by itself for a conviction. Efforts to lower the DWI per se limit to 0.08 in the 1998 session of the General Assembly were unsuccessful.

Total ADR traffic crashes have recently started to decline — from 9,512 in 1993 to 8,806 in 1997. These numbers represent approximately 10 percent of the total number of traffic crashes each year since 1993. In terms of the number of miles driven on Maryland roads each year, the

12. Maryland State Police (1997), "News Release," October 17.

13. Data on ADR traffic fatalities and crashes were provided by the Maryland State Police, Planning & Research Division, and the State Highway Administration, Traffic Safety Division.

"Drawing the Line" on Under 21 Alcohol Use in Montgomery County

In Montgomery County, Drawing the Line, a multiagency, public-private partnership, is committed to creating community consensus that underage drinking is unhealthy and unacceptable. The program has six major components:

- Vigorous enforcement of state and county liquor laws.
- Increased attention by juvenile services agencies and the courts to alcohol-related offenses involving minors.
- Educational programs for adults and youth.
- Alcohol-free activities for youth.
- Programs to involve businesses (e.g., hotels) in preventing underage drinking.
- Advocacy for legislation to reduce underage drinking.

Drawing the Line reports some notable successes:

- No alcohol-related deaths have occurred during prom season since 1993.
- The rate of binge drinking by 8th and 12th graders in the county was down in the 1994 and the 1996 Maryland Adolescent Survey.
- Better than 99 percent of retailers now check the age of young purchasers; for hotels the compliance rate is 100 percent.
- House parties are down from 3 or 4 per weekend to 3 or 4 per month and most have 10-20 attendees rather than the 50-100 formerly common.
- Although police are issuing more citations for underage drinking, the proportion of citations being issued to youth ages 16 and under decreased from 22 percent in 1996 to 14 percent in 1997.

In addition, in 1997 the program was recognized by the National Alcohol Beverage Control Association and the National Highway Traffic Safety Administration (NHTSA) for having an exemplary, or "Best Practice," for retail-oriented programs aimed at reducing underage drinking and related drinking and driving. NHTSA has also cited the program as an example of a "successful community coalition."*

* National Alcohol Beverage Control Association and National Highway Traffic Safety Administration (1997), *Best Oriented Practices for Underage Drinking Prevention*, Washington, D.C.: National Highway Traffic Safety Administration:28; National Highway Traffic Safety Administration (1997), *"How-to" Guide to Coalition Building*, Washington, D.C.:4.

rate of ADR traffic crashes has declined from 220 per 100 million miles driven in 1993 to 187 per 100 million miles in 1997.

The Maryland State Police reports that in 1997, 24,227 arrests were made for drunk or drugged driving in Maryland, up slightly from 1996.[14] Many DUI/DWI offenders have a serious alcohol problem. Between fiscal years 1992 and 1996, for example, about 70 percent of the arrestees assessed as part of the State's Drinking Driver Monitor Program (DDMP) were found to be "problem drinkers," not "social drinkers" (see sidebar). In addition, during this same period, one-third of the arrestees assessed were repeat offenders.[15]

One indicator of the success of efforts to inform the public of the hazards of drinking and driving has been the reduction in the number of drivers under age 21 who were arrested on ADR charges. Between 1990 and 1994 that number fell from 2,674 to 1,303. Of concern, however, is the fact that the number has been rising since then and reached 2,110 in 1997. Some of the increase may be explained by intensified enforcement efforts, as well as increases in the number of licensed drivers on the roads and in the number of miles driven.

Statewide efforts to reduce drinking and drugged driving are coordinated through the Impaired Driving Coalition (IDC), which in turn is coordinated through the State Highway Administration's Office of Traffic & Safety. The IDC represents a vast network of partners involved in traffic safety, including state and local law enforcement agencies, the public health and medical communities, substance abuse prevention and treatment groups, colleges and universities, and advocacy groups and other private sector organizations. In addition, local Comprehensive Traffic Safety programs, funded with monies allocated to the State Highway Safety Office from the State Transportation Trust Fund, develop local solutions to the impaired driving problem in their communities.

Special DUI/DWI enforcement activities are coordinated throughout the year by State and local police and sheriff's departments through cooperative saturation patrols and sobriety checkpoints, which are often reinforced by public information and educational activities. One such effort conducted in December 1997 resulted in 3,700 citations and warnings, 135 arrests for drunk driving, 55 arrests for driving on a suspended or revoked license, and 84 criminal arrests.[16]

Through its Chemical Test for Alcohol Unit (CTAU), the Maryland State Police conducts three major training programs in support of State and local DUI/DWI enforcement efforts. The CTAU maintains all the infrared breath testing equipment used throughout the state and trains personnel from local police agencies in its operation.

14. As in previous years, almost all of the arrests were for driving after drinking alcohol — 399 arrests were for driving under the influence of drugs, usually in combination with alcohol.

15. Alcohol and Drug Abuse Administration (1997), *DWI Annual Report for FY 95 and FY 96*:Tables 5 and 6.

16. Maryland State Police (1997), "Press Release," December 20.

The CTAU also conducts a training program on the use of standardized Field Sobriety Testing (SFST), which involves use of advanced sobriety testing techniques in the field, as well as a program to prepare SFST instructors.

The State's Drug Recognition Expert (DRE) Program is also conducted by the CTAU. Following a suspect's arrest, a trained drug recognition expert conducts an extensive, standardized examination of an impaired driver and determines whether the impairment is due to drugs (including alcohol) and the types of drugs involved. This determination is based on careful observation of the suspect's appearance, behavior, eyes, vital signs, and performance of psychophysical tests. Following the evaluation, a blood test is obtained to detect the presence of drugs suspected by the DRE. Only DREs are permitted by State law to request blood samples from suspected drug-impaired drivers. During 1997, the CTAU certified 14 new DREs, which brought to 78 the total number of DREs at work in the state.

Efforts by the Maryland State Police to reduce the number of ADR traffic fatalities and crashes also include the following activities:

- Use of records of the Motor Vehicle Administration to track drivers who have had their Maryland license suspended for ADR offenses but continue to drive.
- Use of sobriety checkpoints, separately or in conjunction with other agencies, as a deterrent to drunk or drugged driving. In 1997, State troopers checked over 92,000 vehicles at 216 sobriety checkpoints.
- Enforcement efforts to identify people driving under the influence of alcohol and/or drugs. A focus of these efforts is identifying operators of commercial vehicles with a BAC of 0.04 percent or more and drivers under age 21 with a BAC of 0.02 percent or more.
- Community outreach programs in the area of health education and injury prevention to deter drunk and drugged driving.

The Drinking Driver Monitor Program

The Drinking Driver Monitor Program (DDMP) is a specialized probation program for drunk driving offenders operated by the Division of Parole and Probation. The program requires that drivers arrested on DUI/DWI charges actively participate in substance abuse education or treatment programs and refrain from further driving while under the influence of alcohol or any illicit drug. Since 1991 all drunk driving offenders placed on supervised probation are assigned to the DDMP.

Local health departments or their designated entities assess the severity of the offender's drinking problem and provide alcoholism treatment and education services under the supervision of the Alcohol and Drug Abuse Administration. Depending on the results of the assessment process, drinking drivers are placed in one of two categories: problem drinker or social drinker. Problem drinkers are referred to a certified DWI program for a minimum of six months of treatment. Social drinkers are required to participate in a DWI educational program. However, they may be referred to a treatment program at any time if, in the future, they appear to be problem drinkers.

In FY 1996, over 13,000 drinking drivers were assessed as part of the DDMP. Of those, 29 percent were assessed as social drinkers, 70 percent as problem drinkers, and 1 percent as drug involved.

300–500 CRIMES PER YEAR BY SUBSTANCE ABUSERS

Mr. ISTOOK. With this in place, when you increase enforcement, you have the temporary spike and demand upon resources, we've talked about that, with prison space and public defenders. But what are the benefits? Do you have any way of correlating this to the crime rate? How many crimes a year might be prevented by this?

Again, let's link this up with that goal of safer streets, safer schools and safer neighborhoods. How many crimes a year against the citizens might be prevented?

Mr. CARVER. There are some excellent studies that have been done over the years, one in Miami, one in Baltimore. These are long-term follow-up studies of high-rate substance abusers in those jurisdictions. And the findings have been that high-rate substance abusers and the populations they've studied are committing from 300 to 500 crimes per year while engaged in this higher rate of substance abuse.

Mr. ISTOOK. That's per person?

Mr. CARVER. Per person.

Mr. ISTOOK. Are we talking about that category of persons that is committing 300 to 500 crimes per year, or are you talking about potentially having revocation hearings of 3,000 to 4,000 such persons? You do the math and see how many crimes are committed.

Mr. CARVER. I'm not certain.

Mr. ISTOOK. I know that's a high end. Okay.

Mr. CARVER. Right, that's the high end. I would point out that these are crimes beyond the crime of purchasing drugs. And I would be happy to provide references to those studies, if you would like. But it's pretty accepted within academic circles that these studies have been very well conducted. And the other part of the studies——

Mr. ISTOOK. Do those tend to be violent crimes, crimes against property, crimes of theft, petty thefts——

Mr. CARVER. It's a lot.

Mr. ISTOOK [continuing]. Rapes, muggings, robberies?

Mr. CARVER. A lot of property crimes, certainly violent as well. That's the bad news. The good news is that criminal justice coercion can be effective in lowering substance abuse rates. And then when substance abuse goes down, the crime rate of these individuals goes down very, very substantially. These are like 20- and 30-year follow-up studies. California is another State where some very well-known researchers have followed the addiction careers of a number of individuals for literally decades.

Mr. ISTOOK. Okay. I just did the math, and I realize just because they are a drug offender doesn't mean they're a high-end drug offender.

Mr. CARVER. Right.

Mr. ISTOOK. But if you have 3,000 to 4,000 of these a year, even if they did only 100 crimes per year, only, per average, that's a lot of crime. But there are those who do crime that don't lead to arrests, I presume?

Mr. CARVER. Oh, yes.

Mr. ISTOOK. Petty larcenies and so forth.

Mr. CARVER. For any crime. You just see in the literature in criminology how it funnels down between the crimes that are committed and those that actually result in arrest and a conviction and incarceration. It really narrows down quite dramatically.

The other point is that if you don't have the basic measurements in place, namely drug testing, you don't know what's going on.

Mr. ISTOOK. Yes. I just want to distinguish that, because if someone compares the number of possibly preventable crimes here and the number of reported crimes, that's not using the same basis of comparison.

Mr. CARVER. Right.

Mr. ISTOOK. It's the total incidents of crimes, even if they're not reported ones, which obviously is a projection.

Well, I appreciate very much your testimony.

STUDIES RELATING SUBSTANCE ABUSE TO CRIMINAL ACTIVITY

[The following material was supplied for the record:]

U.S. Department of Justice
Office of Justice Programs

Offenders, Drugs, Crime and Treatment

Literature Review

Bureau of Justice Assistance

March 1990

Introduction

DRAFT

The existence of a relationship between substance abuse and crime is accepted by researchers in both the substance abuse and criminal justice fields. Treatment effectiveness, measured by reduced criminal activity and reduced use of alcohol and other substances of abuse, has been found to be directly related to the length of stay in the treatment programs. Research has shown that incarceration alone does not affect drug use or criminal involvement and that, in terms of effectiveness, compulsory treatment of addicted offenders is a policy worth pursuing.

This literature review has been assembled as a part of the Drug Testing Technology/Focused Offender Disposition (DTT/FOD) project sponsored by the Bureau of Justice Assistance. The goals of the FOD project are to provide practical assistance to local criminal justice decision-makers regarding the appropriate disposition of drug-using offenders by providing specific guidelines for assessing offenders and available monitoring and treatment programs. The literature review was compiled to provide a general overview of research on the treatment of drug dependent offenders.

This Program was developed as a result of research conducted and underway by the National Institute of Justice that continues to support a number of solid findings about drug abuse and offending (e.g., drug use is a reliable predictor of pretrial misconduct, self-reports are not reliable, reliable technology is available).

The same drug testing research which guides much of BJA's discretionary program has highlighted certain areas of uncertainty and disagreement. The apparent success of monitoring as a deterrent to pretrial misconduct has led some to conclude that monitoring is an appropriate, general substitute for drug treatment. Others hold the view that monitoring, while an appropriate part of a treatment program, can promise no long-term benefits. There is general agreement, however, regarding the dilemma faced by criminal justice decisionmakers who deal with drug-using offenders. In the simplest terms, most judges have great difficulty distinguishing among offenders to determine those in need of and proper candidates for treatment. Similarly, having decided on a treatment condition or referral, most judges have great difficulty distinguishing among treatment programs (i.e., which are credible in general; which one is right for the offender).

The Drug Testing Technology/Focused Offender Disposition Program is designed to address these questions directly. Over 100 decision-making instruments have been reviewed in light of recent and emerging research. From these sources a decision tool called the "offender profile index" has been developed for use at three competitively selected demonstration sites. These sites are now beginning to employ and assess the instrument.

The literature review is divided into five sections. Section 1 discusses the research which led to the acceptance of the drug-crime relationship. Section 2 presents issues surrounding identification and classification of drug dependent offenders. Section 3 explains the different treatment modalities, evaluates research on treatment effectiveness, and provides evidence supporting compulsory treatment programs for treating addicted offenders. Section 4 outlines guidelines for appropriate matching of the substance abusing offender to a treatment program. Finally, Section 5 explores the advantages and disadvantages of the use of urinalysis in assessing, treating, and monitoring addicted offenders.

Compiled by NASADAD under contract with the Bureau of Justice Assistance

Drugs and Crime

DRAFT

The extent and nature of the link between illicit drug use and crime have been the subjects of numerous manuscripts. An extensive literature review by Gandossy and his associates published in 1980 is a distillation of information from over 450 articles, books, and research reports dealing either directly or indirectly with the drugs-crime relationship. While acknowledging the existence of a relationship between drug use and crime, the authors of the review concluded that "the relationship is more complex than might first appear . . . while research to date has contributed significantly to the state of our knowledge, differences in research designs as well as other methodological problems have obscured our understanding of the linkages between drugs and crime."

Perhaps the most serious weakness of early studies was the use of official arrest data, or "rap" sheets, as indicators of the type and amount of criminal activity. Studies using self-report techniques in settings where confidentiality and immunity from prosecution were guaranteed have found that less than 1 percent of all crimes reported by narcotic abusers resulted in arrest. Other investigators have documented the essential reliability and validity of data obtained from narcotic abusing individuals under nonthreatening conditions.

Since 1980, research from numerous independent investigators has been less compromised by methodological problems and, as a consequence, has revealed a rather high consistency of findings across studies. Investigators in the field have approached the study of drugs and crime from two different perspectives. The first involves identifying known drug abusers outside of the criminal justice system (CJS) and obtaining detailed information on the type and extent of their crime. The second involves studying individuals within the CJS (e.g., arrestees, parolees, probationers, and incarcerated offenders) and ascertaining the type and extent of their substance abuse.

Studies of Narcotic Abusers

Most studies of known drug abusers have involved persons who are addicted to, or who are regular users of, narcotics, principally heroin. Results of recent large-scale, self-report studies of the criminality of narcotic addicts have demonstrated much concordance across studies. Among the major conclusions supported by these studies are: 1) there is a high prevalence and diversity of crime among narcotic users; 2) crime rates are much higher during periods of addiction, or regular use, as opposed to periods of nonaddiction, i.e., abstinence or lesser use; and 3) there is much individual variation in the type, amount, and severity of crime committed by narcotic addicts.

The results of several landmark studies attest to the prevalence of crime among addicts. In a recent study of 250 male narcotic addicts in Baltimore and New York City, Nurco et al. found that 237, or 95 percent, had participated in crime over an average 12-year period while "at risk" or at large in the community. Ball et al. found that 97 percent of 243 Baltimore addicts interviewed during 1973-78 reported involvement in crime over an average risk period of 11 years. Inciardi found that 99.7 percent of 387 male Miami heroin abusers interviewed during 1978-81 admitted participating in crime during the preceding 12-month period; the percentage for 187 female addicts being equally high, 98.9. Although these studies employed somewhat different sampling procedures and categories of crime, a common finding is evident: it is rare for an individual with a history of heavy narcotic use not to have been involved in crime.

Typical of results regarding the types and extent of crime committed by narcotic abusers are the findings of two studies by Inciardi. In the first of these studies, it was found that 356 male and female heroin users in Miami were responsible for 118,134 crimes (an average of 332 per user) during a 1-year period. Of these, 27,464 were classified as serious crimes, according to FBI categories. In the second study, it was reported that 573 Miami heroin users (both sexes) committed a total of 215,105 crimes over a preceding 12-month period, or an average of 375 per user. Included in this total were nearly 6,000 robberies and assaults and nearly 6,700 burglaries. The most frequent crime in both samples was drug sales. This crime accounted for approximately 44 percent of all crime in the former sample and about 38 percent of all crime in the latter.

A more direct relationship between the intensity of narcotic use and crime rates requires longitudinal, intrasubject information on narcotic-abusing individuals

with respect to frequency of use. In studies of "addict careers," the consistently high crime rates associated with addiction and the markedly lower rates found in periods of nonaddiction over such careers provide substantial support for a causal component in the relationship of narcotics use to crime.

Individual Variations in Crime by Narcotic Addicts: Many early studies of the addiction-crime relationship were preoccupied with the nagging question of the order of occurrence of drug abuse and crime and of the functional direction of the relationship between the two. Opposing views have typically been presented as mutually exclusive propositions—that is, addicts are criminals to begin with, addiction being merely one manifestation of a deviant life-style, versus addicts are not criminally inclined and only turn to crime as a result of a need to maintain their addiction.

Recent research involving a sample of 214 addicts indicates that the long-debated issue of whether or not criminal activity during addiction represents a continuation of an already deviant lifestyle or a marked change in behavior due to economic needs actually concerns phenomena which reflect different effects of addiction on different addict types. The findings of this research revealed that for those individuals involved in preaddiction crime, addiction status was associated with an increase in already established predispositions toward crime and deviance. In contrast, for those not involved in serious crime prior to addiction, addiction status was associated with uncharacteristic adaptations, including a dramatic increase in criminal behavior.

While addicts may not specialize in one crime, or class of crimes, exclusively, there is evidence of individual differences with respect to the commission of certain crimes and the avoidance of others. For example, Anglin and Speckart, and Nurco and his associates have independently identified an inverse relationship between theft and drug distribution crimes. While this does not imply that addicts become strictly "stealers" or "dealers," there is a pattern indicating that, for certain types of addicts, the higher their rate of crime is in one of these categories of crime, the lower it is in the other.

And, finally, age of onset of narcotic addiction has also been shown to be related to the severity of crime subsequently committed. In studies where addicts were classified according to type and amount of crime, the most serious offenders were comparatively young at first addiction. Observations relating high crime rates to comparatively early initiation into drug abuse are also found in studies of incarcerated criminals discussed in more detail in this section.

Nonnarcotic Drug Use and Crime: While it has been acknowledged that a substantial relationship exists between narcotic drug use and crime, the issue of a drug-crime relationship has been less clear with regard to nonnarcotic drugs. In their comprehensive review of the literature in 1980, Gandossy and associates found the evidence linking the use of various nonnarcotic drugs to crime to be inconclusive.

A phenomenon that confuses this issue is that narcotic and nonnarcotic drugs are often used in combination. Disentangling their joint relationship to criminal behavior, let alone resolving the issue of cause and effect, is problematic. Research endeavors in the past decade, however, have made several advances in addressing these difficulties.

One method of approaching the study of nonnarcotic drugs and crime has been to examine the crime rates of individuals during periods in which they are strictly nonnarcotic users, having never been previously addicted to narcotics. Inciardi interviewed a sample of 429 such individuals during 1978 to 1981. Reporting both a high prevalence and diversity of crimes, these individuals admitted to committing a total of 137,076 offenses, for an average of 320 crimes per user, over a 1-year period. This rate was slightly lower and the diversity of crimes somewhat less than that found for a sample of narcotic users interviewed during the same time. Of the crimes committed by the nonnarcotic users, drug sales accounted for 28 percent; prostitution, 18 percent; and shoplifting, 16 percent.

Another method of studying the nonnarcotic drug-crime relationship has been to correlate rates of various types of crime with the use of nonnarcotic drugs during periods of addiction and nonaddiction to narcotics. Several studies using this type of approach have consistently indicated that the use of certain nonnarcotic drugs by narcotic addicts is associated with the commission of certain types of crime, although this varies according to ethnic group and narcotic addiction status. In these studies, cocaine use was found to have a particularly high association with several types of crime, including theft, violent crimes, drug dealing, and confidence games. This association appeared to be stronger among black and Hispanic addicts than among white addicts.

Of all nonnarcotic drugs, the drug that has commanded the most attention of researchers in terms of its relationship with crime is cocaine. Several studies, in addition to those cited above, have documented the growing role of cocaine in street crime.

Alcohol and Crime: Although an extensive review will not be presented here, alcoholism research has also suggested a relationship between alcohol use and criminal activity. For example, survey data from 1979, analyzed by Kalish, indicated that almost one-third of State prison inmates had drank "very heavily" before committing the crime for which they were convicted. Approximately 16 percent of those who drank very heavily were previously enrolled in an alcohol treatment program. For many offenders, the study suggests, heavy drinking on a daily basis is typical.

Studies of Arrestees, Probationers, Parolees, and Incarcerated Offenders

The other major approach that has contributed to our current understanding of the drugs-crime relationship involves the study of drug use among individuals who have come into contact with the criminal justice system. Perhaps the first detailed study of this nature was that performed by the Law Enforcement Assistance Administration (LEAA) in 1974 and published by Barton. This study, in which 10,400 inmates from 190 State correctional facilities were interviewed regarding prior drug use, revealed that 61 percent of the inmates studied had at one time or another used an illicit drug for nonmedical reasons. Approximately 1 inmate in 4 reported the daily or near-daily use of an illicit drug. With regard to the latest conviction, a greater percentage of inmates convicted of property crimes (61 percent) had ever used drugs than had inmates convicted of violent crimes (56 percent). When robbery was excluded, the percentage of those in the violent category who had ever used drugs dropped to 46 percent. Interestingly, only 4 out of 10 inmates convicted of homicide had ever used drugs. This was the lowest rate of lifetime drug use among all offender groups studied.

A subsequent large-scale drug-use study of over 5,000 local jail inmates was conducted by LEAA and published by Barton in 1982. In this study, the proportion of inmates who had ever used illicit drugs for nonmedical reasons was slightly higher (68 percent) than had been reported in the 1974 study. As in the earlier study, a greater percentage of inmates convicted of a property crime (74 percent) had ever used drugs than had inmates in jail for a violent crime (67 percent). When robbery is excluded, the proportion of drug use for violent criminals dropped to 60 percent. Drug use among those convicted for homicide was 59 percent. Lifetime drug use among individuals incarcerated for property crime and for several types of violent crime had increased compared with the 1974 study. The percentage of inmates reporting daily use also increased—from an original 25 percent to 40 percent.

Results of a 1986 survey of 13,711 incarcerated offenders by the Bureau of Justice Statistics (BJS) revealed an even higher proportion of inmates who admitted to having used an illicit drug (80 percent). Almost two-thirds had admitted using an illegal drug regularly in the past, and over half reported regular drug use in the month before the current offense.

Contrary to reported findings in the 1960's and 1970's, recent research suggests that arrested narcotic users are just as violent as other arrestees, if not more so. One of the first studies to report this contrary evidence was that of Chaiken and Chaiken in their comprehensive survey of the self-reported drug use and criminal behavior of over 2,000 prison inmates in three States. The proportion of those admitting to drug use (65 percent) approximated that of Barton's studies. However, the relationship between drug use and severity of crime was stronger than had been reported earlier. Eighty-three percent of individuals classified as "violent predators" (those committing the most frequent and most serious offenses) reported drug use in the recent past.

Chaiken and Chaiken describe violent predators as having characteristic histories of drug use, most having used several types of hard drugs heavily as juveniles. The Chaikens emphasized that the violent predators' characteristic relationship with drugs deserved elaborative comment because their survey revealed new or little recognized facts about the nature of drug use and criminal activity. According to Chaiken and Chaiken, certain types of drug use was even more characteristic of the violent predator than their use of heroin. Although they were more likely than other offenders to have been addicted to heroin, their more distinctive characteristic was multiple drug use (e.g., heroin and amphetamines, heroin and barbiturates, amphetamines and barbiturates, or a combination of these). The Chaikens also concluded that the addictive use of heroin is associated more with property crimes than with violent crimes, and that this is attributable to the drug's cost rather than to its physiological effect. Results concerning the greater association of property crimes than violent crimes with heroin use are consistent with those of other researchers in studies of narcotic addicts.

A major conclusion of this landmark study by Chaiken and Chaiken was that information about a criminal's drug history was more likely to be related to the seriousness and extent of his criminal activity than was information

contained in the official arrest record. Similar to the findings of studies of narcotic addicts, arrest data for Chaiken and Chaiken's subjects grossly underestimated the type and extent of criminal activity. It is likely that the relationship between drug use and severity of crime in Barton's studies would have been different if self-report data had been used. At any rate, the Chaikens' results strongly indicate the need for criminal justice officials to consider illicit drug use history rather than prior arrest record as a major predictor of and contributor to future serious crime.

It is important to note that self-reports of drug use and criminal activity, while generally valid and reliable when obtained from individuals who are at large in the community, entering drug treatment programs, or already incarcerated, tend to be far less accurate when obtained from detainees in the criminal justice system, even when confidentiality of data is assured (for a detailed discussion of this, see Section 2). Therefore, urine testing has been used as a means of identifying recent drug users among arrestees as well as of providing some indication of the prevalence and trends of illicit drug use over time in offender populations. The National Institute of Justice (*NIJ*) has recently implemented a nationwide urine testing system, titled Drug Use Forecasting (DUF), for these purposes. Drugs tested for by DUF during 1988 were opiates, cocaine, marijuana, PCP, amphetamines, Darvon, Valium, methaqualone, methadone, and barbiturates. Data obtained from 14 U.S. cities participating in the DUF program revealed that approximately 63 percent of over 5,000 persons arrested during the last quarter of 1988 tested positive for recent use of any of the above drugs excluding marijuana. No city had a positive rate below 40 percent for these drugs. While far more males than females were arrested, the proportions of male and females testing positive for any drug other than marijuana were relatively equal.

Results from New York City and Washington, D.C., where urinalysis data have been collected for several years, indicate that drug use among arrestees is increasing. This increase is largely attributable to increases in cocaine use; among those arrested in New York City, cocaine use has almost doubled in the last 3 years, and it has more than tripled in the District of Columbia during this period. In addition, James K. Stewart, the director of NIJ, confirms a recent estimate by the National Institute on Drug Abuse (NIDA) that drug use rates among arrestees are from 2 to 9 times higher than in the general population. Stewart also noted that drug abuse, while leveling off in the general population, appears to be increasing among criminal defendants.

Study of the Drugs-Crime Relationship from Both Perspectives: A group of researchers at UCLA, originally headed by William McGlothlin and later by Douglas Anglin, has conducted a number of followup studies of narcotic addicts from both sources, i.e., corrections (civil commitment) and the community (methadone maintenance treatment). Civil commitment subjects, who were criminal justice system clients (parolees), were interviewed in 1975. Methadone maintenance clients (narcotic addicts seeking treatment) were interviewed for research purposes during the later 1970's and the 1980's. An "addict career" interview was used on subjects from both sources to document the relationship between crime rates and frequency of narcotic drug use. As with studies cited earlier, results obtained from both types of subjects showed that consistently high crime rates were associated with periods of regular narcotic use and markedly lower rates with periods of abstinence, or lesser use.

Major Theory Categories

Theories which attempt to describe the drug-crime relationship can be categorized as either drug-based, person-based, or environment-based. These categories attribute criminal behavior as primarily influenced by either the effect of drugs on the subject, the subject's psychological characteristics and behaviors, or the surrounding social and cultural conditions and influence. None of these three categories can be said to solely account for the complex interrelationship between drug use and criminal activity; rather, each is an attempt to form an underlying basis or structure from which the relationship proceeds. The following is a summary of the perspectives and theories under each category.

Drug-Based Theories: Early drug-based theories arose from the assumption that certain drugs inherently trigger criminal impulses and behaviors in the user. The "dangerous drug" theory, widely accepted in the late 1800's and early 1900's with no research to the contrary, viewed illicit drugs as implicit causes for criminal activity. While most researchers now reject this notion, its simplified logic and adaptability to anti-drug rhetoric has allowed it to continue to hold a place in contemporary rationale toward drug abuse policy and law, as well as some treatment philosophies.

More sophisticated drug-based theories seek to explain cause and effect relationships between drug use and crime. The pharmaeconomic theory, for example, examines the financial implications of drug use and motivation toward criminal acts. This theory applies effectively to drug use that is both habit-forming and

costly. Once addicted, the user is compelled to commit crimes in order to finance his/her ever-increasing need for the drug. The theory centers on the fact that drugs such as heroin and cocaine create physical dependencies whose costs exceed the financial means of the user. As indicated earlier, several studies of heroin users have shown that levels of crime activity are positively correlated with levels of heroin use. However, to say that all individuals using addictive drugs commit crimes to support their drug habit would be to overextend the pharmaeconomic theory. Evidence suggests that criminal activity as a means of financial support ranges from a low of about 30 percent for white addicts to a high of about 80 percent for black male addicts.

A third drug-based theory suggests that criminal behavior is an outcome of the chemically-initiated relaxing of an individual's normal inhibitions. This theory can be effectively applied to the effects of alcohol consumption. There is widespread recognition of alcohol's disinhibiting effects. A state of disinhibition can account for many abnormal behaviors that occur while an individual is drinking, and the idea of "diminished capacity" has been successfully applied to criminal cases involving alcohol and drugs.

A review of contemporary research suggests that drugs may act as a trigger or cofactor for certain behaviors in conjunction with other influences. A general drug-based behavior model, however, can divide drugs into two broad categories as they relate to criminal behavior—the costly, addictive drugs that are likely to result in instrumental crime and the highly impairing drugs that are most often linked to expressive behaviors. This by necessity must be a flexible model since there are other major variables effecting behavior.

Goldstein has recorded many ethnographic accounts of violent drug-related acts from both perpetrators and victims in New York City. Resulting from this research is his theory that violent crime and drugs can be related in three different ways. The psychopharmacological model of violence implies that individuals act violently because of the short- or long-term effects of the ingestion of certain substances. Crimes resulting from withdrawal effects of heroin or directly related to barbiturate or PCP use are examples of this. The economically compulsive model suggests that violent crime is committed to obtain money to purchase drugs. This applies primarily to expensive drugs such as heroin and cocaine. The systemic model purports that violence results from the traditionally aggressive patterns of interaction within the drug distribution system. Killing or assaulting someone for distributing "bad" drugs is an example of this.

A study of 578 homicides in Manhattan in 1981 found that 38 percent of the male victims and 14 percent of the female victims were murdered as result of drug-related activity. This report, published in 1986, stated that the observed proportion of homicides related to drug and other criminal activities was higher than had been reported previously in the United States. The authors concluded that rather than being related to pharmacological actions producing aggressive and homicidal behavior, the effects of drugs were probably indirect and related to drug-seeking activities.

Person-Based Theories: Person-based theories look to psychological characteristics of the individual as the root cause for the commonality between drug use and crime. An early and simplified model of this category is the "dangerous person" theory, which centers on the notion that criminal tendencies that are normally kept in check are unleashed when drugs are used. A refined version of the dangerous drug theory, this model views drug use as a catalyst rather than a cause of criminal activity. However, it goes no further than postulating a predisposition toward criminal behavior among certain individuals that is activated or exacerbated by drug use.

More recent person-based theories look to psychological similarities among drug-using criminals. The notion that "addictive personalities," characterized by dependent, manipulative, and self-destructive behaviors, are associated with both drug use and criminal activity has been advanced as one such psychological model. Research has found little empirical evidence to support this somewhat broad notion. However, there is evidence to suggest that individuals with sociopathic tendencies are more likely to abuse substances than those without these tendencies. Collins cites studies by Robins and Barnes indicating that individuals who have a history of sociopathy are more likely to develop heavy drinking patterns. In addition, both narcotic addicts and alcoholics tend to score high on the psychopathic deviate (PD) scale of the Minnesota Multiphasic Personality Inventory (MMPI). In general, Collins states, there appears to be a clear association between hostile and aggressive personality characteristics and problem drinking behaviors.

Person-based studies also focus on early developmental deficiencies/traumas that may lead to both drug use and crime. Prescott theorizes that early affectional deprivation leads to a need for "neural activation" that is satisfied by both violent behavior and substance use.

Another perspective is the notion that drug use is a natural byproduct or outcome of criminal activity. There is evidence to suggest that in many cases, criminal behavior precedes chronic drug use. It is worth noting that most individuals commit at least one delinquent act during adolescence without further incidence. Also, the most common pattern of both early drug use and delinquency for the general population is that there is a discontinuation of both behaviors after initial experimentation.

Environment-Based Theories: Environment-based theories look to existing social, cultural, and subcultural norms concerning drug use and crime in both the microcosm of the neighborhood and of the society at large. Peer pressure, financial hardship, role models, and numerous other environmental factors play a role in establishing such behaviors. Isolating and measuring environmental forces that encourage drug use and criminal activity has been the objective of many environment-based studies.

One environment-based model, the notion of group affiliation, examines the drug-crime relationship in terms of common illegality. The illegal stature of drug use forces drug users to associate with individuals involved in varying levels of criminal activities. Alternately, group affiliation encompasses drug use and crime as an intrinsic part of peer values and activities. A study of 388 adolescents in Philadelphia, for example, found that boys who belonged to gangs reported more extensive and greater use of all kinds of drugs.

A related model focuses on sociocultural shaping involving values and expectations that the prevailing culture places on the individual with regard to substance abuse and criminal behavior. A curious example of such sociocultural norms can be found in studies that describe differing "drunken comportment" norms in various subcultural climates. In addition, aggressive behavior and alcohol consumption have been observed in many instances to be cultural symbols of adulthood among young males.

The influence of environmental factors on the drug-crime relationship cannot be overstated. One startling aspect of this category is the "expectancy rule," in which some degree of an individual's drug-related behavior has been shown to be what he/she expects will occur. Collins cites a study by Lang, Goeckner, Adesso, and Marlatt which showed that individuals who believed they had consumed alcohol exhibited more aggressive behavior than that exhibited by a control group.

Clearly, no single model can claim to encompass the complex interrelationship between drug use and criminal activity. The ideal model would take into account all three of the above categories: the properties and effects of different drugs; the individual's psychological background; and the influences of his/her environment. Unfortunately, only by isolating each of these variables can researchers acquire meaningful data that can be applied elsewhere. However, by distilling the concrete data gathered by studies of each aspect of the drug-crime relationship, it is possible to look for patterns and similarities that may lead to a further understanding of the relationship between all three variables.

Drug Use Variables

Degree of Impairment: Studies of drug use and crime must consider the degree to which drug use influences the behavior of the user. All psychoactive drugs have some effect on the behavior of the user. The behavioral effects of a drug may be subtle, marked only by slight changes in concentration or thought patterns, or very dramatic, marked by gross impairment of mental and motor functioning.

Impairment can be seen as acute, resulting from a single use incident, or as chronic, resulting from prolonged use and dependency. Acute impairment is usually linked to the psychopharmacological actions of the drug. For example, depending on the dosage, stimulants are linked to a range of states varying from agitation to paranoia, which can lead to assaultive behavior. Depressant drugs such as alcohol and barbiturates are also linked to violent crime, even though they have very different pharmacological actions than stimulants.

Chronic impairment involves the long-term physical and psychological effects of drug dependency. Whether or not chronic drug users are able to control their addictions is one question raised concerning chronic drug use. Studies of street addicts refute the notion that drug use is necessarily irrevocable and continuous. In a study of 243 male opiate addicts, a majority (85 percent) reported significant periods of nonaddiction in the community.

There is, however, evidence indicating that the severity of the substance/drug abuse problem has little predictive value with regard to the other problems commonly associated with substance abuse. Studies have found that the social, economic, and psychological problems of alcoholic patients do not necessarily improve with abstinence, and in some instances, actually increase.

A model that is the reverse of most models of impairment is the idea that drugs or alcohol may actually prevent crime by disabling the potential perpetrator.

Finally, there is a "willful impairment" theory that states that many criminals will use a drug or alcohol in the belief that it will assist their criminal performance and at the same time reduce their accountability for behaviors that occurred while they were under the influence.

There are a number of other impairment theories that stem from the secondary effects of drug and/or alcohol abuse. For example, researchers have studied the effects of alcohol on sleep patterns and the effect of nutritional deficiencies associated with chronic addiction. Both of these secondary manifestations can lead to hypoglycemia, which has been linked to assaultive behavior.

Drug Craving as a Motivator: The intensity of the addiction to a given drug is another variable worth examining. The degree to which an individual desires a drug will directly influence his/her behavior in attempting to obtain it. Highly reinforcing drugs such as cocaine create more intense cravings than less addictive substances. The drug's cost and availability will also influence the individual's behavior. The desire for alcohol, for example, can be quickly and cheaply satisfied while the satisfaction of a craving for heroin requires more elaborate efforts.

Types of Addiction: There is some argument over the relative weights of physical and psychological addiction with regard to drug craving. Research on heroin addicts suggests that physical addiction is overrated compared to the intensity of psychological desire.

The use of costly and highly reinforcing drugs such as cocaine and heroin carry a high potential for criminal activity as a means of financing the addiction. The acute and chronic effects of a particular drug will influence the complexity of the resulting criminal behavior. Crimes which require high levels of mental and physical functioning will typically be beyond the capability of the chronic user of a drug which grossly impairs mental and motor functioning, or of the occasional user who is acutely affected by the drug.

One popular scenario of the criminal drug addict is that he/she is driven to commit crimes when suffering physical or psychological withdrawal. However, it has also been argued that an individual uses drugs to facilitate his/her criminal behavior and that he/she is more likely to commit crimes while under the influence.

Overview of Theories in Drugs and Crime

An overview of all the major theories suggests that the relationship between drugs and crime is a complex interaction of at least three variables: the drug, the individual, and the environment. By distilling the most credible features of each, it is possible to identify those areas of greatest risk and opportunity for intervention.

When examining the drug variable, it is important to take into account three types of drug impairment: acute intoxication, chronic impairment, and addiction. For the acute episode, impairment centers on the behavioral effects of the drug, such as disinhibition. Chronic impairment looks to the physical and psychological effects of continued use. Withdrawal from drug addiction creates its own set of acute psychological states.

It is equally important to take into account the type of drug, its behavioral and physical effects, and the degree to which the user is dependent. The availability and cost of the drug is an additional consideration.

The individual psychological profile is equally, if not more, important in predicting drug-related criminal activity. The individual's emotional stability or the manifestation of a psychological disorder plays a large role in determining the type of drug use and the existence and degree of criminal activity.

Finally, the influences of the environment cannot be underestimated. Peer pressure, affiliated behaviors, and the need for acceptance structure the individual's socio-cultural environment. When that environment is one that accepts or condones drug-use and criminal behaviors, the likelihood that they will develop in an individual increases greatly.

The most evident result of a review of studies concerning drug use and crime is that there is no single explanation for this complex problem. Rather than accept one theory and discard the others, all theories must be viewed as aspects of a larger whole. The emerging picture is one where drugs and crime occupy the same stage, but the nature of their relationship is obscured by a wide range of circumstances.

Summary of Research Findings on Drugs and Crime

The study of the drugs-crime connection from two major perspectives indicates that nearly all narcotic addicts

surveyed report having committed a serious crime and that most incarcerated criminals and arrestees have used an illicit drug. In both cases, prevalence rates are far higher than the corresponding prevalences of crime and illicit drug use for the general population.

A more convincing argument supporting a direct, functional drugs-crime relationship has been developed from studies of crime across narcotic addict careers. Data from numerous large-scale investigations indicate that crime increases during periods of narcotic addiction and decreases during periods of nonaddiction.

The relationship between nonnarcotic drug use and criminal behavior has been less clear because narcotic and nonnarcotic drugs are often used in combination. One study of individuals who were strictly nonnarcotic drug users revealed a high prevalence and diversity of criminal activity; however, the crimes committed were less frequent and somewhat less diverse than that associated with narcotic addiction. Other studies have indicated an especially strong association between rates of criminal behavior and cocaine use and between the frequency and severity of crime and multiple drug use.

It should be recognized that although drug abusers, particularly narcotic addicts, commit a great deal of crime as a group, there is much individual variation in the amount, type, and severity of crime committed. For most narcotic addicts, crime rates and types of crime committed are strongly influenced by current addiction status, as well as by a number of other variables, which will be discussed in more detail in Section 2.

The numerous studies cited so far in this report have produced convincing evidence that "drugs drive crime." In the coming sections of this review, we will focus on how the criminal justice system and the drug treatment network can integrate their resources in dealing with drug-offending criminals. As Nurco et al. have summarized, effective strategies for dealing with the problem will involve tailoring countermeasures, both therapeutic and judicial, to the individual case. This same viewpoint has promoted the present quest for a screening procedure to determine the most suitable candidates for interventions that are currently available. Varying in level of intensity and degree of restriction, these interventions need to be selected for any given individual on the basis of the type, frequency, and severity of crime committed as well as on therapeutic need.

TREATMENT AS CRIME CONTROL: IMPACT OF TREATMENT ON THE INDIVIDUAL OFFENDING RATES OF HARD-CORE SUBSTANCE ABUSING OFFENDERS

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Executive Summary

Over five million adults in the United States are under the control of the criminal justice system, either in prison, jail, probation, or parole. These five million Americans account for 50 to 60 percent of the cocaine and heroin consumed in the United States. Addressing the demand for drugs among this population is synonymous with addressing the drug problem in this country—by targeting the addiction problem of the majority of known consumers of drugs, we impact the marketplaces for selling drugs, the associated crime and violence, and improve the quality of life for many communities.

Coerced models of treatment for the offender population, although frequently discussed, have not been implemented within the larger domain of the criminal justice system. The involvement of the criminal justice system is an added bonus because coerced models of treatment engage offenders in behavior changing interventions and settings, control drug use and criminal behavior, and change drug consumption habits. The study shows that the involvement in quality treatment services with supervision of offenders reduces the probability of rearrest by 50 percent.

STUDY DESIGN

The Washington/Baltimore High Intensity Drug Trafficking Area (HIDTA) program implemented a coerced model of treatment featuring quality treatment services, drug testing, and sanctions. The study tracked 1,216 offenders participating in W/B HIDTA funded treatment in 1997. The offenders had to have been placed in a HIDTA funded treatment program during that period of time. All offenders were tracked for six months in the community.

FINDINGS

The W/B HIDTA model has four major components that reflect our scientific knowledge about effective interventions. The components are: 1) target offenders that are high risk and unlikely to receive treatment services; 2) use a continuum of care where offenders are involved in treatment services sufficient duration to change behavior including providing intensive services followed by less intensive services; 3) ensure that offenders are supervised by criminal justice agencies and the leverage of the criminal justice agencies are applied when the offender relapses or fails to meet the treatment program requirements; and 4) use case management to ensure that criminal justice and treatment agencies are focused on improved offender outcomes.

The study found that the average HIDTA client has 10 prior rearrests and 5 prior convictions with 43 percent reporting daily use of illicit drugs. The favored drugs are crack/cocaine and heroin. The likelihood that offenders would be arrested in a six month period of time prior to involvement in HIDTA treatment was 22 percent. After assignment to HIDTA treatment , 11 percent of the offenders were rearrested in a six month period which is a decrease by 50 percent of the probability of arrest. The following table illustrates the impact in each jurisdiction.

Comparison of Base Rate with Participation in the W/B HIDTA Protocol

SITE	BASE RATE (Prior to HIDTA TX)	HIDTA	% Difference
Alexandria City	.27	.08	-72%
Arlington County	.23	.03	-74%
Fairfax/Falls Church	.43	.17	-60%
Loudoun County	.24	.05	-79%
Prince William County	.49	.11	-78%
District of Columbia	.13	.09	-31%
Baltimore City	.22	.05	-77%
Baltimore County	.32	.03	-91%
Charles County	.41	.09	-78%
Howard County	.35	.11	-68%
Montgomery County	.19	0	-100%
Prince George's County	.19	.06	-68%
Overall	.22	.11	-50%

Besides the reduction in rearrest rates, the study found that retention in treatment was high among the participants. Over 80 percent of the offenders completed or were still active in the first phase of treatment with 65 percent being involved in at least two phases of treatment. The average length of stay in treatment as of Dec 31, 1998, was 166 days with most offenders still active in some part of the treatment continuum. This contrasts to the findings from DATOS where only 50 percent of the criminal justice referrals completed treatment. The systemic process assists clients in committing to changes in their life-style.

TWELVE STEPS TO ADOPTING THE HIDTA PRINCIPLES

The national strategy identifies treatment as a critical component of reducing drug consumption in our society. With offenders consuming half of the drugs, the HIDTA model provides a formula for achieving the goal of reducing drug consumption and crime in our most affected communities. Dealing with the offender population requires a systemic approach that includes the following components:

- Reducing crime needs to be the goal of the public health treatment and criminal justice agencies;
- Using policies focused on controlling behavior of offenders and addicts is critical to implementing seamless treatment and criminal justice systems;
- Functioning as a seamless team is needed to manage the risk of the addict offender;
- Using drug testing as a tool to manage offender behavior and measure progress in treatment and supervision;

Ensuring that offender populations served by the treatment system are "high risk" offenders with large daily addiction habits. By serving this population, the communities will benefit from the reduced harm posed by the hard core addict;

- Matching services with offender needs is critical to achieve the largest benefits in terms of crime and drug consumption problems;
- Extending the length of treatment through a continuum of care will yield better retention rates and longer term outcomes;
- Using behavioral contracts to bind the offender, treatment system, and criminal justice system to expectations is critical to achieving outcomes;
- Designating special supervision agents will ensure that the leverage of the criminal justice system is present;
- Addressing non-compliant behavior in a timely and responsive process through sanctions will ensure that the leverage of the system is used appropriately to achieve public safety and public health goals;
- Using rewards for compliant behavior will reinforce the system's commitment to treatment as a crime control strategy;
- Focusing on quality of services is critical to achieving long term outcomes. The tendency to provide less services to more addicts has diluted the impact of treatment and created serious concerns about treatment as an effective crime control tool. Quality testing, treatment, and sanctions will alleviate this perspective and demonstrate the value of community based health and safety programs.

Effective treatment services are synonymous with effective criminal justice services. The seamless system protocol provides a systemic process to address some of the inadequacies of the existing service offered by treatment and criminal justice agencies. It removes discretionary practices and institutionalizes operations to address the traditional barriers to treatment for offender populations. Many scholars, policy makers, and practitioners highlight how critical it is to provide good treatment services to ensure that the public has confidence in criminal justice policies. Through the seamless system approach it is feasible to ensure that these policies become operational.

Treatment as Crime Control: Impact of Treatment on the Individual Offending Rates of Hard-Core Substance Abusing Offenders

Research on drug treatment continues to affirm its impact on reducing criminal behavior among offenders (Office of National Drug Control Policy, 1998; Lipton, et al 1995; Anglin, et al, 1997; Simpson, et al, 1997). Providing substance abuse treatment to offenders serves to reduce the rearrest rate, to reduce risky behavior of offenders, and to reduce the use of drugs and alcohol. Three critical variables are the length of time in treatment (Hubbard, et al 1989; Condelli and Hubbard, 1994; Knight, et al., 1998), the use of theoretically sound treatment interventions (Sherman, et al, 1997), and the use of leverage as implemented by the criminal justice system (Anglin & Hser, 1990; Simpson, et al, 1997; Taxman, 1998). With offenders consuming nearly half of all illicit drugs, drug treatment, in conjunction with testing and sanctions, has been identified as one of the most "promising" tools to reduce criminal behavior (Sherman, et al., 1997; Taxman, 1998). (Refer to Appendix A for a recent report by the Texas Christian University's Institute for Behavioral Research.)

This report examines the impact of a coerced drug treatment model on rearrest rates for offenders. The coerced drug treatment model was implemented in 12 jurisdictions as part of the regional strategy to reduce drug consumption and crime in the Washington/Baltimore High Intensity Drug Trafficking Area (W/B HIDTA) project sponsored by the Office of National Drug Control Policy. Coerced treatment combines comprehensive treatment services, drug testing, and supervision with sanctions. This paper examines the impact of the intervention on rearrest rates by employing criminal career methodologies to estimate the pre-HIDTA treatment rate of offending. We begin with an overview of the W/B HIDTA coerced treatment model and a discussion of the seamless system protocol. Next, we present the methods used in this evaluation, followed by a presentation of the results from the six-month follow-up in the community. The results demonstrate that involvement in the treatment continuum reduces the criminal activity of participating offenders. Finally, we discuss the implications of these findings on treatment and supervision practices in the field.

I. Washington/Baltimore High Intensity Drug Trafficking Areas Project

In 1994, Congress created the Washington/Baltimore High Intensity Drug Trafficking Areas (W/B HIDTA) Project as part of a regional effort to reduce the demand for drugs. The W/B HIDTA project was unique in that it included a coerced treatment model for offenders as a strategy to reduce drug consumption and drug trafficking in the area. The coerced treatment model is based on the concepts of systemic case management which has defined the following components as part of the seamless system of care (Taxman, 1998; Taxman & Lockwood, 1996): 1) a continuum of care involving two consecutive treatment experiences; 2) quality supervision combined with graduated sanctions to address non-compliance issues; and 3) drug testing to monitor treatment progress. ONDCP provided grant funds to augment the treatment services in the participating jurisdictions to create the continuum of care of drug treatment services. That is, ONDCP provided funds for one level of care which most of the participating jurisdictions matched with their existing system (e.g., outpatient services, drug testing, etc.). The purpose of the continuum of care was to increase the length of time offenders were involved in treatment; this strategy was selected because of the importance of time in treatment on improving outcomes (Condelli & Hubbard, 1994). The seamless system of care involved the creation of systemic case management practices among public health and criminal justice agencies on key decision points in the process. These key decision points are assessment for services, placement in appropriate services, and transition from one level of care to another depending upon offender's progress in the treatment program. The overall goal of this process was the reduction of criminal and substance abusing behavior of the offender.

Each jurisdiction used the funds from ONDCP to develop a continuum of care that fits within existing and available services. The grant funds were used to augment and enhance the existing system in order to provide a more effective system of care. It was recognized from the onset that some offenders may be placed in a lower level of care with the potential to adjust the intensity of treatment according to their progress within the treatment continuum. For example, for relapsing offenders, the continuum allowed for the ability to move offenders from a lower level of care (e.g., intensive outpatient, outpatient, etc.) to more intensive services such as residential treatment, jail based treatment, etc. It also allowed for the use of less intensive services as offenders progress in their recovery.

Generally, there were four continuum of care models used to maintain offenders in two consecutive treatment episodes. These include the following:

Residential Care followed by Intensive Outpatient Services/Outpatient Services. The model focuses on long term residential treatment to stabilize the offender as he/she is achieving early stages of recovery. Residential treatment is critical in assisting the offender to achieve acceptance and responsibility for recovery. Residential treatment furnishes the offender with the necessary skills to achieve sobriety from drugs (and alcohol) while beginning to develop a community plan to continue that sobriety. Long term residential treatment usually lasts four to nine months, with most programs six months in duration. Offenders continue treatment in the community (e.g, intensive outpatient or outpatient services) upon release from the residential facility as they move through the different stages of recovery.

Intermediate Care followed by Outpatient Services. Under this treatment model, the offender is placed in a 28 day intermediate care treatment program and then in a six month outpatient program. Intermediate care usually focuses on treatment readiness and preparation for change in the community. The goal of this 28 day treatment program is to prepare the offender for change by using a variety of psychosocial educational modules and to begin preparation for return to the community. Part of the discharge planning involves the development of action plans that can guide the offender to change his/her behavior in the community. This model has several varieties that focus on the goal of short term residential care to stabilize the offender. For example, in Montgomery County, Maryland and Baltimore County, Maryland, the model focuses on a 28 day program of cognitive behavior therapy to assist the offender with developing self-diagnostic and self-management skills. In the District of Columbia, the Assessment Orientation Center (AOC) provides an intermediate care environment to emphasize development of the offender's motivation to change, focusing on pre-contemplation and contemplation phases of recovery. The AOC uses this period of time to assess and diagnosis the offender to determine the appropriate community placement (e.g., residential treatment, intensive outpatient, outpatient, etc.).

Intensive Outpatient Programming followed by Outpatient Services/Aftercare. In this model, the offender participates in intensive community programming for six to nine months followed by six months of outpatient programming. The intensive outpatient programming usually consists of 9 to 20 hours of clinical services per week augmented by

participation in self-help groups. The clinical services tend to use cognitive behavioral models that emphasize skill development, cognitive processing, and relapse prevention. The orientation emphasizes recovery in the community by focusing on prosaic values of employment, schooling, adherence to conditions of release, and community values. The intensive outpatient programming may be used in day reporting programs where the goal is to control the behavior of the offender while providing the offender with clinical intervention to change substance abusing and criminal behavior.

Jail Based Programming followed by Outpatient Services. Many offenders are in jail prior to release to the community. The jail provides ample opportunity to begin the recovery process with a focus on continued treatment after release from the facility. Jail based programming includes cognitive skill development and relapse prevention as the two treatment strategies to address the offender's commitment to recovery. Jail programming usually is three to six months in duration, with emphasis placed on moving the offender to treatment in the community after release. In some jail based programs, offenders are placed in work release programs after release from the jail where treatment services are continued. The work release program emphasizes work ethic and employment as part of the recovery process.

Table 1: Continuum of Care Models In the W/B HIDTA Sites

Continuum of Care Models	Sites
Residential/Outpatient	Fairfax-Falls Church Washington, DC Baltimore City, MD Arlington County, VA
Intensive Care Facility/Outpatient	Baltimore County, MD Washington DC Montgomery County, MD
Intensive Outpatient/Outpatient	Alexandria City, VA Prince William County, VA Loudoun County, VA Montgomery County, MD Baltimore City, MD
Jail Based Treatment/Outpatient	Howard County, MD Charles County, MD Arlington County, VA Fairfax-Falls Church , VA Prince George's County, MD

The seamless system also includes drug testing and sanctions to improve retention in treatment and reduce rearrest rates. Drug testing during the treatment and supervision

phase is critical in monitoring compliance with program and supervision requirements. Sanctions are used to address non-compliance with treatment and community supervision conditions. As part of the W/B HIDTA project, many jurisdictions accelerated the drug testing of offenders, as shown below, to ensure that the offender was being monitored in the community. That is, prior to HIDTA only a few jurisdictions had a policy to drug test offenders in treatment due to the lack of resources for drug testing in the treatment and criminal justice agencies. However, jurisdictions have acquired state or local funds to increase the rate of drug testing for the HIDTA offenders. Drug testing protocols vary by site depending on the available funds in that jurisdictions for the drug testing. (ONDCP grant funds provided minimal or no additional funds for drug testing, depending upon the jurisdiction.) Graduated sanctions were developed in each jurisdiction to standardize the supervision and treatment responses for failure to comply with the conditions of treatment and release. These were added to the supervision protocol as part of the systemic case management process to enhance offender compliance (Taxman, 1998). Table 2 shows the different testing and sanction protocols.

Table 2: Drug Testing and Sanctions Protocols

Protocols	Sites
Drug Testing Procedures	
2-3 Times A Month	Alexandria City, VA Howard County, VA Fairfax/Falls Church, VA
Weekly	Baltimore County, MD
Twice A Week	Prince George's, MD Charles County, MD Prince William County, VA Montgomery County, MD Baltimore City, MD Loudoun County, VA
Sanctions	
Administrative Sanctions 1st –Face to Face Contact/Increase Reporting/Increase Drug Testing 2nd-Supervisory Reprimand/Self-Help Groups/Report to Court 3rd-Increase Drug Testing/Intensify Treatment/	Alexandria City, VA Arlington County, VA Fairfax Falls Church, VA Loudoun County, VA Prince William County, VA Howard County, MD Charles County, MD Baltimore County, MD
Judicial Order Sanctions	Washington, DC Montgomery County, MD Prince George's County, MD

II. Evaluation Methods

A pre-post evaluation strategy was employed to determine the impact of the W/B HIDTA seamless system on rearrest rates.[1] The pre-post design allows for a comparison of the probability that the offender will be rearrested prior to involvement in the HIDTA protocol and after involvement in HIDTA. That is, the methodology uses criminal career techniques of individual rates of offending (λ) to assess the impact of the intervention.[2] As discussed by Blumstein and others, this technique is beneficial in determining whether the criminal justice and/or treatment interventions affect the rate of offending (Blumstein, et al 1988; Spellman, 1994). Below, we discuss the data collection, methods, and the technique used to test the underlying hypothesis.

Data Collection

Data for this study was collected from official records provided by the sites participating in the study. Program staff provided the data using forms created for the project. The forms were designed to standardize data collection across the 12 sites and to collect information that is not typically available in the case files of treatment and criminal justice agencies. Appendix B contains a copy of all of the HIDTA forms used in the study. The data collection protocol included the following:

- **Demographic and Criminal Justice History.** At intake into the program, the treatment and criminal justice staff are required to provide a cover sheet that contains demographic and background characteristics of the offenders selected for the HIDTA treatment. The criminal justice sheet contains information on the criminal history of the offender, legal status, and the nature of the instant arrest.

[1] A pre-post methodology was used in the process evaluation to examine the development of the seamless system components. Since the coerced treatment model required the reform of existing practices in the area of supervision and treatment, it was expected that different jurisdictions would develop at different paces. As recommended by ONDCP, the W/B HIDTA was designed to focus on building the infrastructure among treatment and criminal justice agencies. The process evaluation was designed around the integrity development model where the process evaluation was used to monitor progress and implementation of the coerced treatment protocols of drug testing, treatment, and sanctions. The researchers used a threshold gating technique to determine when the sites were ready to begin a randomized block experiment in order to test the underlying theory of procedural justice, systemic case management, and perceptions of coercion. The funding for the experiment is from a grant with the National Institute of Justice. Participation in the randomized experiment is based on the willingness of the site to randomize offenders to the HIDTA treatment or traditional supervision. At this stage, four sites are participating in the randomized study with three others being prepared for the study. The pre-post methodology allows the researchers to test the underlying hypothesis of whether the seamless system protocol effects changes in the individual frequency rates of offending. This report focuses on the pre-post study of event histories.

[2] Since we are using official data (arrest histories), we are employing Cohen's techniques (Cohen, 1986) to estimate the frequency rate of offending. Spellman (1994) also has a discussion about the technique which was used to estimate the distribution of the rate of arrests.

The treatment sheet contains information on the drug of choice, the modality of consumption of drugs, frequency of use of drugs, and treatment history of the offender.

- **Treatment Placement and Movement.** Each month, treatment staff provide information on treatment placement, discharge, and transition into other levels of care. This data is used to track the continuum of care and movement into different phases of care of the offender.

- **Criminal Justice Services and Movement.** Each month, the criminal justice staff provide information on the nature of contacts with the offender, new arrests, and technical violations. This data is used to track involvement in the criminal justice system, particularly any warrants for technical violations and new arrests.

- **Graduated Sanctions.** The graduated sanction form documents the nature of the behavior of the offender and the response by the criminal justice or treatment agency. The form is used to determine the types of sanctions used for particular behaviors. This form is also submitted monthly as a means to determine the offender's pattern of behavioral issues and the pattern of sanctions employed by the different agencies.

- **Drug Testing.** Each month, the criminal justice and treatment agencies provide drug test results for the offenders in the study. The form documents the use of drug testing, results, and types of drugs tested.

Data collection is verified through the data cleaning and editing process. The treatment movement form provides timely information on the status of the offender in treatment, while the criminal justice services and movement form provides legal status information.

Data on arrest histories are obtained from two sources. Criminal justice staff summarize the nature of the offender's arrest history from local arrest records. This is taken from the rap sheet that is available in the case files of the criminal justice agencies. Additionally, the researchers obtained the official arrest histories of the offenders through the National Criminal Information Center (NCIC) of the Federal Bureau of Investigations (FBI). The FBI record provides regional arrest information; in an area where offenders may commit crimes in different areas, local arrest records may not capture the arrest history of the offender in a different state.[3] Arrest histories were abstracted and entered into a data base

[3] In Maryland, Virginia, and the District of Columbia, the local arrest records only contain information in that state/jurisdiction. Criminal justice agencies tend to rely on the NCIC record for the criminal history particularly in this region where offenders can easily move across state boundaries.

to document the dates and types of arrests during adulthood. The researchers used this arrest history to determine rearrest after entrance into treatment.[4]

Follow-Up Period & Sample

This study uses rearrest as a dependent variable. The study methods allow the researchers to track offenders through their progress in treatment and in the criminal justice system. The study has a follow-up period of six-months which means that the offender had to be in the community for at least six months to be included in the study; offenders in jail or prison and offenders with less than six months in the community are excluded from the study. Additionally, offenders had to enter treatment to be included in the study. (In each jurisdiction, there are offenders that are screened for eligibility but do not enter the program because there are insufficient treatment slots. These offenders are placed on a waiting list.)[5] Based on this criteria, the study sample included 1,216 offenders of the 1,472 screened eligible for the HIDTA treatment program. The following reasons describe why the offenders were not included in the sample: the offender was still in jail (54.2 percent); the offender did not enter treatment but was screened (40.8 percent); and, the FBI did not have a rap sheet on the offender (5 percent).

Rearrest information was collected for all offenders in the sample. Any arrest that occurred while the offender was in the community was included in the study. That is, any arrest that occurred after involvement in the treatment program or any arrest that occurred after the offender left jail was included in the follow-up period. Therefore, the dependent variable includes any arrest after participation in the HIDTA treatment program.

Using Arrest Histories

One concern with using official records is that they are dependent on local police practices in the different jurisdictions. This study employed the use of arrest histories to

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[4] The researchers compared the local arrest and the FBI arrest report for each offender. The reliability among the records was at the 90 percent between the two sources of data. Reliability occurred both in the number of arrests in the rap sheet as well as the individual offending rate. The reliability factor is important because it ensures that the data used in this study reflects the likelihood of arrest. Differences in the records were attributable to the fact that the local record was available at time of intake to the treatment protocol and the FBI record was obtained after intake into the HIDTA protocol.

[5] During the process evaluation, the researchers found that on average 50 percent of the offenders that are referred to treatment as part of their court order do not enter the treatment program. Without the oversight of the criminal justice system, the offender is not likely to obtain the assessment or the offender does not go to the treatment program. Part of the seamless system process is to provide the adequate oversight to ensure that offenders referred to treatment actually enter the program.

examine any rearrests during 1997 or the early part of 1998. The researchers collected information on arrest trends in the participating jurisdictions and found that, except in one of the smaller jurisdictions, arrests have increased during this period of time of the follow-up study. While the overall rearrest rate for the HIDTA clients declined, arrests in most jurisdictions increased. Since the HIDTA offenders have a greater likelihood of arrest given their past patterns, they would be most susceptible to any significant changes in police practices that affect arrest patterns.[6]

INDIVIDUAL OFFENDING RATE (λ) & MEAN INDIVIDUAL ARREST FREQUENCIES (μ)

Studies in criminal careers provide the methodology to estimate patterns of individual offending and characterize the features of the arrest history. As noted by Cohen (1982:292):

> *The level of crime experienced in a society varies with both the participation by individual (b or d) in that society and the frequency of offending by active offenders (λ). Increases in crime may be due to the increases in either the participation rate or the frequency of offending....The characterization of criminal careers invoked here assumes that offending is not pervasive throughout a population, but rather is generally restricted to a subset of individuals who are actively committing crimes during some period of time.*

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[6] The following chart represents the arrest in 1996 and 1997 for all jurisdictions except Washington DC. Arrest statistics were not available from Washington DC. This shows that with exception of one county, Loudoun, arrest rates have remained steady or increased. For the target population, it suggests that the probability of arrest is the same or greater during the time period of the study.

Jurisdiction	1996 Adult Arrests	1997 Adult Arrests	% Change
Alexandria City	7,223	7,144	0
Arlington County	6,933	6,981	0
Fairfax/Falls Church	24,976	23,569	-5
Loudoun County	2,750	1,987	-27
Prince William	10,801	10,815	0
Baltimore City	45,684	63,014	+38
Baltimore County	27,636	30,090	+14
Charles County	5,067	6,076	+20
Howard County	7,210	7,141	-1
Montgomery County	16,143	16,849	+3
Prince George's County	32,891	35,023	+11

The concept of a criminal career is that active offenders are known to commit more crimes with findings that 20 percent of the offenders commit 80 percent of the crimes (Spellman, 1994). In the criminal career literature, individual frequency rates vary across offenders with some offenders having very high rates and others low rates of offending. The time period between events also varies as their criminal activity changes over time (Cohen, 1986). Drug abusing offenders are known to be four to six times more criminally active than other offenders (Simpson, et al, 1998; Nurco et al, 1988).

There are some general concepts in defining a criminal career. Individual offending frequencies, λ, define the criminal careers. Individual frequency rates apply only to active offenders; they do not speak to the participation of the general population in criminal behavior. Rather the estimates of λ "reflect the average frequency of offending for individuals who are actively committing crimes" (Cohen, 1986:295). This methodology is used on active offenders to calculate the frequency rates of offenders who are at risk of committing offenses while in the community. The method must exclude the periods of incapacitation through incarceration or long term hospitalization.

Two uses are typically ascribed to this method. First, the method is used to determine the effective offending rate during the prior history. This allows for a determination of whether an intervention had an impact on the individual's pattern of offending. Scholars use this to examine the impact of different policies such as incapacitation, rehabilitation, or deterrence (Cohen, 1986; Blumstein, et al., 1988; Spellman, 1994). Second, the method is used to compare the pattern of individual offending versus actual offending as a means to evaluate the efficiency of any particular program or intervention. For example, if the offending rate was initially 5 crimes per year that led to an arrest and, if, after participation in a drug treatment program, the offender had only one crime per year that led to an arrest. Possible to assume that the intervention lead to an 80 percent reduction in the criminal offending behavior of the offender.

Official arrest histories are one of two tools used to estimate the offending frequencies by calculating μ. Here, the individual arrest frequency is the mean arrest per offender annually for the offender cohort. The μ is based on an estimate of the street time (e.g., the offender is in the community and not incapacitated). Table 3 below illustrates the

differences among the participating jurisdictions.[7] As shown in Table 3, the average HIDTA offender was arrested 1.1 times per year and was criminally active for slightly over 9 years. In essence, the average HIDTA offender is being arrested an average of once every 9.2 months. There is variation across the region depending on the nature of the clients in the W/B HIDTA program ranging from a low of .76 arrests a year (Fairfax/Falls Church) to a high of 1.5 arrests a year (Washington, DC and Prince William County). The length of the criminal career also varies from 5 years to 11 years in this cohort of offenders.

Table 3: Sample Sizes for Cohorts of HIDTA Offenders used to Estimate Frequency and Mean Individual Arrest Frequencies Rates form Official Arrest Histories

Site	*Sample Size*	*Mean Arrests per Year (μ)*	*Avg No. Years Criminally Active*
Alexandria City	58	1.00	8.1
Arlington County	59	.81	9.6
Fairfax-Falls Church	36	.76	8.8
Loudoun County	22	1.10	7.1
Prince William County	28	1.50	10.0
Washington DC	276	1.50	11.4
Baltimore City	545	1.10	8.5
Baltimore County	29	.73	5.2
Charles County	44	.75	6.9
Howard County	37	1.10	10.0
Montgomery County	53	1.20	5.6
Prince George's County	66	1.30	9.7
Total	1,216	1.10	9.0

The calculation of the μ generates a distribution of the average rate of offending during different time frames on the street. From this, it is feasible to examine the event histories to ascertain the probability of being arrested during time periods or the base rate of arrests during a specific period of time. By using the μ estimates, we can examine the distributional properties of the length of time for arrest based on the offending frequency rate. The distribution is important because it allows us to estimate the mean arrest rate for the cohort during our follow-up period. This distribution is critical to testing our hypothesis about the impact of the intervention on individual offending rates. From Table 4, it is possible to examine the pattern of arrests for the cohort population in six month intervals. The table illustrates that the likelihood of arrest in six months is approximately 22 percent

[7] The estimate of μ is based on the sampling of the arrests prior to the instant offense that resulted in the offender coming into the W/B HIDTA treatment protocol. The procedure used estimates the mean arrest rate per offender based on the total number of arrests, the first adult arrest, and the instant offense that preceded involvement in the W/B HIDTA protocol. That is, official arrest records were used to estimate the mean arrests per offender annually.

whereas the likelihood of arrest in 7 to 12 months is 32 percent. That is, we can expect 22 percent of the cohort to be arrested in a six month period on the street. As shown below, there are varying trends across the region as to the pattern of arrest for this population ranging from a low of 13 percent to a high of 49 percent.

Table 4: Distributional Nature of the Likelihood of the Time Period to Individual Arrest (μ) from Official Arrest Histories

Site	% Arrested 6 Months	% Arrested 7-12 Months	% Arrested 12-18 Months
Alexandria City	.27	.31	.42
Arlington County	.23	.37	.39
Fairfax-Falls Church	.43	.33	.24
Loudoun County	.24	.53	.23
Prince William County	.49	.22	.30
Washington DC	.13	.26	.62
Baltimore City	.22	.35	.43
Baltimore County	.32	.36	.32
Charles County	.41	0	.58
Howard County	.35	.10	.55
Montgomery County	.19	.47	.36
Prince George's Co	.19	.37	.44
Total	.22	.32	.45

This analysis is important because it provides the expected base rate at which offenders will be arrested in the participating jurisdiction given local police practices. It should also be noted that the cohort of offenders was selected during a period of time in which changes in police practices enhanced enforcement of criminally active populations (e.g., hot spots, joining of police and probation officials, etc.) with the exception of two jurisdictions. (See footnote 5 for a review of the local police arrests.)

TESTING THE HYPOTHESIS

The pre-post method tests two hypotheses about offending frequency rates. The null hypothesis states that the W/B HIDTA treatment protocol did not change the rate of offending (λ), while the alternative hypothesis specifies that the W/B HIDTA protocol reduces λ. The stated hypotheses are as follows:

H_o: $\lambda_{pre} = \lambda_{post}$

H_1: $\lambda_{pre} < \lambda_{post}$

To test this hypothesis, the researchers used the following likelihood functions to calculate the likelihood under H_o. A similar function was developed for the alternative hypothesis.

$$L = \prod_{i=1}^{N} \left(\frac{\exp(-\lambda)\lambda^{y_{pre}}}{y_{pre}!} \right) x \prod_{i=1}^{N} \left(\frac{\exp(-\lambda)\lambda^{y_{post}}}{y_{post}!} \right)$$

CHARACTERISTICS OF THE SAMPLE

The HIDTA protocol was designed for hard-core substance abusing offenders who are likely to be in the community. The sample for this study consists of offenders that entered the HIDTA treatment protocol after January 1997. Each jurisdiction developed a different process for selecting offenders to participate in the project. Typically, a substance abuse clinician conducts an interview with the offender using the assessment instruments employed by the various jurisdictions. All offenders must meet the criteria of DSM-IV for a dependency to illicit drugs in order to be eligible for placement in HIDTA treatment. Further, each jurisdiction developed individual criteria defining a hard-core offender. The exact definitions vary by jurisdiction but typically, a hard-core offender has had a minimum of two prior convictions and an active substance abuse problem that contributes to criminal behavior. The following describes the characteristics of the offenders; jurisdiction-specific information can be found in Appendix C. A comparison of offender characteristics reveals a relatively homogenous population across the 12 jurisdictions, regardless of whether the offender resides in a rural or suburban jurisdiction in Maryland and/or Virginia, or the urban areas of Baltimore City, Washington, D.C. or Alexandria City, VA.

Demographic History. The typical offender is a male who is approximately 34 years of age. The age distribution for the HIDTA offenders is as follows: 27 percent are 18 to 27 years old; 12 percent are 28 to 30 years; 24 percent are 31 to 33 years; 14 percent are 34 to 37 years; the remaining offenders are over 38 years. The average age is the same for women and men in the sample. Slightly over 20 percent are employed at time of arrest. Approximately 70 percent are African-Americans.

Criminal History. The average HIDTA client has had 10 prior arrests and nearly five prior convictions. Some variation occurs across the region, with Montgomery County offenders having slightly fewer arrests/convictions and Fairfax/Falls Church having slightly more. Over 31 percent of the offenders had a drug charge for their first offense with half of these charges related to drug possession or drug paraphernalia. Another 12 percent had larceny charges for the first offense.

Table 5: Characteristics of the HIDTA Sample

Demographic Characteristics

Mean Age	33.8 Years
% Male	74
% African American	70
%Caucasian	16
% Employed At Time of Arrest	21.2

Criminal History Characteristics

Mean Number Of Adult Arrests	10
Mean Number Of Convictions	4.8
Instant Arrest Offense	
%Property Crime	15.8
%CDS Possession	18.7
%PWID CDS	15.1
%CDS Distribution	9.7
%VOP	9.3
%Assault/Battery	3.5
%Robbery	2.7

Substance Abuse Use of HIDTA Clients

Drugs Of Choice	
% Heroin	29.0
%Crack/Cocaine	48.2
%Marijuana	11.3
Frequency Of Use	
%Daily or More than Daily	42.7
% Any Prior Treatment Experience (including self-help groups and education)	47

Instant Offense. The majority of offenders are involved in the seamless system as a result of a drug charge. Nearly 45 percent had a drug charge, with half of the charges for possession with intent to distribute or distribution. Most of the offenders are low level dealers who support their addiction habit through some type of drug dealing. Some of the offenders are involved in HIDTA as a result of a prior failure on probation (nine percent for VOP).

Legal Status: In this sample, 54.2 percent of the sample are on probation status, 37.8 percent are on parole, and the remaining are involved in pretrial release. The District of Columbia is the only jurisdiction where the offenders are on pretrial status.

Substance Abuse. The primary drug of choice for the offender population is crack/cocaine, except in Baltimore City, Maryland where heroin is the predominate drug of choice. Most of the offenders smoke the drug with nearly 42 percent self-reporting daily or multiple times a day use of drugs. As expected, the using habits of these offenders reflect a dependency on drugs and an impairment in everyday functioning. Drug test results confirm that nearly all offenders are testing positive at the time of intake to the treatment program.

III. Findings

The evaluation was designed to answer two main questions: 1) what was the offender's experience in treatment? and, 2) what was the impact of treatment participation on the individual offending rate post-treatment? The purpose of these questions was to determine whether the seamless system approach resulted in increased retention in treatment and whether the services impacted the probability of rearrest for the hard-core offender. The latter question is particularly important because one of the stated benefits of treatment is to reduce the offender's involvement in crime and the probability of arrest.

Treatment Retention and Continuum of Care

The first question pertains to participation in treatment for the W/B HIDTA offenders. As part of the protocol, the goal was to increase the length of time in treatment through participation in a continuum of care. To achieve this desired effect, the programs had to work on retention during the first phase, usually the more intensive component of the treatment experience. However, it was also recognized that part of the process involved the transition of offenders that were having difficulty in stabilizing their behavior into a more appropriate treatment experience. Therefore, completion reflects two concepts: completion of the first phase or movement into another more appropriate treatment experience. The seamless system provides that protocol for the transition based on the offender's progress.

The treatment continuum is built on the notion that some clients need less intensive services in the second phase, some need more intensive services, and some can suffice with aftercare services such as self-help groups or vocational education.[6] That is, the system must function to move the offender into the appropriate level of care. The progress of the offender is critically important from a systemic perspective to gauge whether more treatment is warranted and the specific type of treatment that is necessary.

[6] Jurisdictions report that offenders have varying needs which can be fulfilled by a variety of different treatment interventions. Some require step-up to more intensive services, some require step-down, and others require a lateral transition to a more appropriate clinical intervention.

As shown in Table 6 below, the development of systemic features such as assessment and appropriate placement assist with retention in treatment and transition into a subsequent level of care. The completion rates for the first phase of treatment are higher than those reported in Drug Abuse Treatment Outcome Study (DATOS) where 40 percent of the clients completed similar types of treatment (Simpson, et al, 1997a). In most jurisdictions, the continuum of care rates reflect the movement of offenders along a continuum of services geared to the needs of the individual offenders. Further, the continuum documents the continued involvement in treatment as reflected by the average length of stay.

The experience of the two nine month intensive outpatient programs (Alexandria City and Prince William County) illustrate the ability of these treatment programs to make adjustments for the needs of the offenders. During the period of probation, many of the offenders obtained employment as a component of the conditions of supervision. However, often times, their treatment requirements led to conflicts with their jobs. In these instances, the jurisdictions made adjustments in the length of treatment for employed offenders and moved them into aftercare services with urinalysis as a means to tailor the treatment continuum to the offender's needs. Similarly, in other jurisdictions the type of program within the continuum of care must be suitable to the overall goals of increasing the social productivity of the offender in the community.

Table 6: Continuum of Care Rates and Mean Length of Stay in Treatment for W/B HIDTA Offenders

SITE	% Complete Phase 1 or Still Active	% Continuum of Care	Mean Length of Stay In Tx
Alexandria City	64	52	168
Arlington County	88	48	270
Fairfax/Falls Church	88	78	158
Loudoun	72	65	197
Prince William	64	67	315
District of Columbia	86	77	203
Baltimore City	80	55	122
Baltimore County	86	82	131
Charles	88	90	189
Howard	81	80	269
Montgomery	78	55	193
Prince George's	69	45	126
Overall	81	65	166

Regarding length of stay in treatment, nationally the DATOS study found that the average client spent 90 days in treatment (Simpson, 1997). With the HIDTA protocol, the average length of stay is 166 days which is nearly 1.5 times greater than the national average. The length of stay was impacted by continuum of care protocol used in the W/B HIDTA project. The retention in treatment and extension of the length of stay is an important component of the seamless system protocol.

REARREST PATTERNS

The evaluation strategy involved a comparison of the offending rates of individuals with prior offending patterns. Table 7 below shows the rearrest rates and technical violation rates after involvement in treatment for each jurisdiction. The technical violation rate refers to the decision by the judiciary to violate the offender due to a failure to comply with these conditions of release. The average rearrest rate for a new offense is 11.1 percent although there is significant variation across the region ranging from none to 16.7 percent of the offenders.

Table 7: Rearrest and Technical Violation Rates During the Follow-Up Period

SITE	Arrest for New Crime	Technical Violation
Alexandria City	7.8%	3.6%
Arlington County	3.4	0.0
Fairfax/Falls Church	16.7	8.3
Loudoun County	4.5	4.5
Prince William County	10.7	3.5
District of Columbia	9.5	11.9
Baltimore City	4.6	2.0
Baltimore County	3.4	3.4
Charles County	9.1	6.8
Howard County	10.8	8.1
Montgomery County	0.0	4.3
Prince George's County	6.1	1.5
Overall	11.1	4.6

Offenders who are rearrested tend to be arrested for drug offenses including possession (21.3%) and distribution or possession with intent to distribution (18.4%). Other common rearrest offenses are property crimes (28.4 %) such as theft, larceny, and shoplifting, robbery (6.4%), and assault (5.7%).

The evaluation is designed to examine the hypothesis regarding the impact of the W/B HIDTA treatment protocol on rearrest rates. The previous section has provided the base rearrest rate of 22.1 percent in a six month period (see Table 4 overall for all offenders based on the distribution of μ or the average rate of offending based on arrest records). That is, given the high rate of offending for this cohort of substance abusing offenders, the researchers would have expected to find 22 percent of offenders rearrested during the follow-up time period. Table 8 on the next page illustrates that the average rearrest rate was 11.1 percent or a 50 percent reduction from the base rate. This is critically important because it illustrates that the intervention affected the frequency of offending in the different jurisdictions after involvement in the treatment protocol. The reductions are due to the continued involvement of the offender in treatment.

Table 8: Comparison of Base Rate with Participation in the W/B HIDTA Protocol

SITE	BASE RATE (Prior to HIDTATX)	HIDTA	% Difference
Alexandria City*	.27	.08	-72%
Arlington County*	.23	.03	-74%
Fairfax/Falls Church*	.43	.17	-60%
Loudoun County*	.24	.05	-79%
Prince William County*	.49	.11	-78%
District of Columbia*	.13	.09	-31%
Baltimore City*	.22	.05	-77%
Baltimore County*	.32	.03	-91%
Charles County*	.41	.09	-78%
Howard County*	.35	.11	-68%
Montgomery County*	.19	0	-100%
Prince George's County*	.19	.06	-68%
Overall*	.22	.11	-50%

*p<.05

The protocol impacts the rate of offending and frequency of offending for offenders participating in the project. Since the HIDTA protocol is the only change in the events, the alternative hypothesis is accepted in that the protocol reduced the offending rate.

IV. Implications and Conclusions

This research has examined the impact of treatment on rearrest rates for a hard-core cohort of substance abusing offenders. The offenders participating in the HIDTA protocol have a high rate of offending with over 22 percent expected to be rearrested in a six month period. The average offender has had 10 prior arrests and nearly five prior convictions which is indicative of their substance abusing behavior. The majority of the offenders are arrested for drug related charges or property crimes, again attesting to their involvement in criminal activity to support their habits. Most of these offenders have been involved in crime for nearly a decade.

Does treatment reduce the rearrest rate among hard core offenders? Based on this research and those of others (Simpson, et al, 1997; Anglin & Hser, 1990; Lipton, 1995; Inciardi, et al, 1996), the research supports the use of treatment as a crime control and containment policy. By reducing the offending frequency rate by 50 percent, the current evaluation adds to a growing body of literature regarding the effectiveness of treatment. Treatment affects the rate of offending for the hard-core substance abusing population that participates in the W/B HIDTA treatment protocol.

These results are based on the implementation of systemic case management approaches in the various jurisdictions; this is the contribution of the W/B HIDTA project. Providing quality treatment is important, particularly using the more effective models such as cognitive behavior models, relapse prevention, and skill development. However, systemic processes are needed to ensure that the treatment is reinforced by the supporting systems such as supervision agencies, Judiciary, prosecutors, and defenders. The systemic case management model, referred to as seamless system, operationalizes the coerced treatment model. The ability to achieve these results is based on the nature of the treatment services provided and integration with the criminal justice system to achieve a coerced treatment model. The critical components include assessment, placement criteria designed to place the offender in the appropriate treatment program, transition to levels of care based on progress, drug testing, and the use of responses to non-compliance with supervision/treatment conditions.

The treatment retention and continuum of care rates illustrate the importance of systemic efforts to improve services for offenders. Each jurisdiction developed processes

and procedures that required both the public health and criminal justice agencies to work together in the transition process. Prior to HIDTA, with the exception of Fairfax/Falls Church, none of the jurisdictions had standard protocol that was used to move offenders along a continuum. Programs tended to be episodic instead of based on a continuous flow among services. The policy and procedural development, augmented by the grant funds to provide intensive services, contributed to the development of systemic processes used to move offenders along a continuum of care. Ultimately, the continuum contributed to extending the length of stay in treatment by anywhere from an average of 47 days to 100 days.

The seamless system model provides operationalization to the key functions of coordination and collaboration—instead of relying on the individual supervision agent, treatment provider or judge to determine where to work together, the seamless system process realigns responsibilities and functions to support a joint decision making process. The cornerstone of the seamless system process is that treatment and supervision are contiguous services among a service delivery process. In order to have joint decision making, the two systems must converge into a seamless process that is not open to manipulation by staff or offenders. That is, the roles are clear as to who is responsible for or contributes to a decision to place an offender in treatment, monitor his/her progress, and adjust treatment programming. Additionally, all systems must recognize and support treatment as a measure of crime control through the development of an understanding that treatment services, in conjunction with supervision services, contribute to reducing criminal behavior.

A seamless system requires formalizing the best practices in the field through interagency agreement. The system requires treatment, supervision, and often the Judiciary to determine the proper mix of decisions that need to be made to support the different phases of the continuum of care—assessment, placement, transition, discharge, and continued involvement in treatment. Effective systems often have staff from various agencies that physically work together in the same offices and staff that meet on a regular basis to address policy and procedural issues. For example, in seven of the HIDTA sites, the treatment staff are located at the probation offices/jail and participate in staff meetings to discuss treatment issues. In several sites, the criminal justice agencies have developed different screening and assessment procedures and share this information with the treatment provider at the time of intake to treatment; some treatment programs share drug

test results with the criminal justice agencies. Treatment and criminal justice staff work to address the complex problems surrounding non-compliance with treatment program requirements. Most of these were the result of formalized agreements such as memorandum of understandings or other agreements.

The W/B HIDTA project has provided a platform to institutionalize best practices and develop systemic responses. The movement away from individualized decision-making by one system is important because it provides the offender with a consistent message about the importance of treatment, the importance of abstinence, and the importance of adherence to the conditions of release. Even more importantly, it necessitates that participating agencies agree upon protocol that can be used to address common everyday problems that are likely to occur. The strides made during the past several years have significantly improved the existing criminal justice and treatment systems and services. However, funding necessary to expand the treatment continuum of care can not be overemphasized. With most local jurisdictions only providing drug treatment services to 10 to 15 percent of the offenders in need of assistance, funding to expand drug treatment is needed (Belenko, 1998). The HIDTA sites could not have built the continuum of care or the seamless system without the assistance of funds from the Office of National Drug Control Policy. The gains—in terms of reducing offending rates among hard-core, active offenders—are likely as long as the treatment services continue to exist.

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Appendix A: TCU Treatment for Offenders

INSTITUTE OF BEHAVIORAL RESEARCH AT TEXAS CHRISTIAN UNIVERSITY

Research Summary

Focus on Drug Treatment in Criminal Justice Settings

Special Issue | IBR Web Site: www.ibr.tcu.edu | January 1998

Facts About Legal Offenders!*

- 60-85% have used illicit drugs (based on UAs for arrestees and prison surveys)
- 45% of arrestees for violent or property crimes test positive for drugs
- 33% of state prison inmates have committed drug offenses
- Active drug use increases crime rates by a factor of 4 to 6 times

"A logical, cost-effective, and convenient point of intervention is the time they are in custody." (Lipton, 1995, pg. 5)

However, only about 1 of 10 U.S. prisoners receive any form of drug treatment.

---

*Lipton, D. S. (November, 1995). *The Effectiveness of Treatment for Drug Abusers under Criminal Justice Supervision.* National Institute of Justice.

*Lipton, D. S. (February, 1996). Prison-based therapeutic communities: Their success with drug-abusing offenders. *National Institute of Justice Journal*, 12-20.

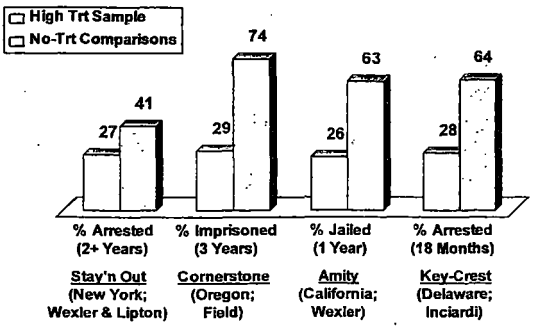
Research Focus of the IBR at TCU

For many years, research staff of the IBR have given special attention to evaluations of substance abuse and behavioral interventions provided by community-based programs, including prevention and treatment and to the study of long-term addiction careers. Research interests have broadened in recent years to include related areas of significant public concern, such as drug abuse treatment in criminal justice settings as well as the spread of AIDS among injecting drug users and methods for reducing these and other high-risk behaviors.

IBR Director: D. Dwayne Simpson, Ph.D., *Associate Director:* Lois R. Chatham, Ph.D., *Manager of Criminal Justice Studies:* Kevin Knight, Ph.D.

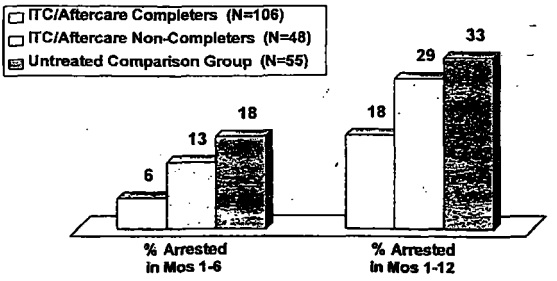
Outcome Studies of Prison-Based Treatment

(Lipton, 1996)



Texas In-Prison Therapeutic Community (ITC) Treatment: 12-Month Arrest Rates*

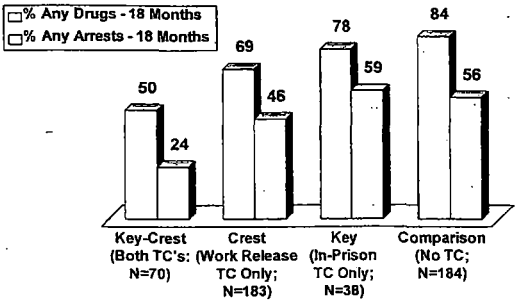
(D. Simpson & K. Knight, Texas Christian University)



[*Based on DPS and Parole Officers Records]

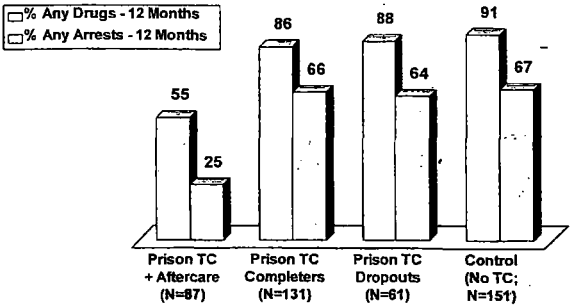
Delaware Therapeutic Continuum: 18-Month Outcomes

(J. Inciardi, U of Delaware, Jan 1998)



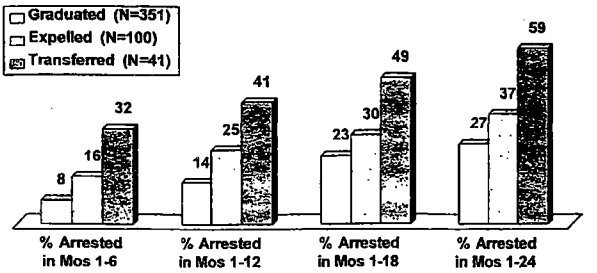
California/Amity Prison TC: 12-Month Outcomes

(H. Wexler, NDRI Inc., Jan 1998)



Dallas County Judicial Treatment Center (Wilmer): Treatment Follow-up Arrest Rates*

(K. Knight, M. Hiller, & D. Simpson, Texas Christian University)



[*Based on DPS Records]

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Treatment in criminal justice settings can be effective!

Recommendations

1. Require **6 months or longer** in treatment facility.
2. Use a **high-intensity** therapeutic approach.
3. Develop a **systematic screening and referral** system.
4. Require **community-based continuing care** after discharge.
5. Insure **assessment and evaluation** for accountability.

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Prepared by Dwayne Simpson, Kevin Knight, and Charlotte Povsto.

printed on recycled paper

Appendix B: Data Collection Forms

HIDTA/RSAT Monthly Treatment Tracking Form

Jurisdiction | Client ID | Gender M/F | Date of Birth M M / D D / Y Y | Last 4 digits of SSN | First 2 letters of last name

CSB Consumer ID | Counselor Number | Provider ID | SDU

1. Last Name | First Name

2. Person Filling Out Form Last Name | Person Filling Out Form First Name

3. Level of Treatment (mark one only)

- ☐ Detox
- ☐ Jail Based - OP
- ☐ Intensive Jail Based - IOP
- ☐ Intensive Jail Based - TC
- ☐ Int. Jail Based - dual diag. unit
- ☐ IOP
- ☐ OP
- ☐ Intermediate Care (28 day)
- ☐ Methadone Maintenance Help
- ☐ Residential
- ☐ Halfway House/Trans. Living
- ☐ Supported Living
- ☐ Supervision Reporting
- ☐ Day Reporting
- ☐ Drug Dealer Group
- ☐ Assessment Center
- ☐ Case Management
- ☐ Day Program/Day Treatment
- ☐ Aftercare
- ☐ Informal Aftercare/Self Help
- ☐ Other: (Specify)

4. Phase of Treatment
- ☐ 1
- ☐ 2
- ☐ 3
- ☐ After Care
- ☐ Peer Counseling
- ☐ Other: Specify

5. Contact Recording Period (darken month *and* year)
- ☐ Jan ☐ May ☐ Sep
- ☐ Feb ☐ Jun ☐ Oct
- ☐ Mar ☐ Jul ☐ Nov
- ☐ Apr ☐ Aug ☐ Dec
- ☐ 1997 ☐ 1999
- ☐ 1998 ☐ 2000

Type of Contact/Services Provided

Darken the bubble to indicate type of contacts: (check all that apply)

DATE	No Show	Assessment	Intake/Admission	Education	Individual Counseling	Group Counseling	Support Group	Relapse Prevention	Case Management	Referral	Contact with Collateral (Other than CJ Agent)	Telephone Contact (with CJ Agent)	Meeting with CJ Agent	Written Reports to Collateral Agencies	Client not present - excused
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
/ / 19	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

6. Status
- ☐ Pretrial
- ☐ Pre-sentence
- ☐ Sentenced
- ☐ VOP

7. Date of Discharge (88/88/8888 = Still in Treatment) / /

8. Termination Status (Mark One)
- ☐ Active
- ☐ Completed in time frame
- ☐ Transitioned to more intensive treatment
- ☐ Transitioned to less intensive treatment
- ☐ Transitioned to another program (similar)
- ☐ Applied graduated sanctions
- ☐ Program discharge - no show
- ☐ Program discharge - not in compliance
- ☐ Program discharge - client left AMA
- ☐ Program discharge - transfer to another jail
- ☐ Program discharge - bonded out
- ☐ Program discharge - sent to DOC/jail
- ☐ Program discharge - detainer served
- ☐ Program discharge - released
- ☐ Other unsatisfactory discharge
- ☐ Arrest
- ☐ Death

9. Next Treatment Program

HIDTA Monthly Treatment Contact Form
Last Revision 03/98

10100191

HIDTA/RSAT Treatment Cover Sheet

Jurisdiction | Client ID | Gender M/F | M M / D D / Y Y Date of Birth | Last 4 digits of SSN | First 2 letters of last name

CSB Consumer ID | Counselor Number | Provider ID | SDU

Today's Date / / 1 9 9

Coder Last Name | Coder First Name

Last Name | First Name | MI

Alias Last Name | Alias First Name | MI

Race
- ☐ Alaskan Native
- ☐ American Indian
- ☐ Asian/Pacific Islander
- ☐ Black/African American
- ☐ White/Caucasian
- ☐ Unknown
- ☐ Other

Ethnicity
- ☐ Puerto Rican
- ☐ Mexican
- ☐ Cuban
- ☐ Other Hispanic
- ☐ Not of Hispanic Origin
- ☐ Unknown

Previous treatment? ☐ Yes ☐ No

Previous Treatment? (If you marked the previous answer "YES", mark all that apply)
- ☐ Detox
- ☐ Jail Based - OP
- ☐ Intensive Jail Based - IOP
- ☐ Intensive Jail Based - TC
- ☐ Int. Jail Based - dual diag. unit
- ☐ IOP
- ☐ OP
- ☐ Intermediate Care (28 day)
- ☐ Methadone Maintenance Help
- ☐ Residential
- ☐ Halfway House/Trans. Living
- ☐ Supported Living
- ☐ Supervision Reporting
- ☐ Day Reporting
- ☐ Drug Dealer Group
- ☐ Assessment Center
- ☐ Case Management
- ☐ Day Program/Day Treatment
- ☐ Aftercare
- ☐ Informal Aftercare/Self Help
- ☐ Other (Specify)

Employed?
- ☐ Employed full-time
- ☐ Employed part-time
- ☐ Unemployed, seeking employment
- ☐ Not in labor force, homemaker
- ☐ Not in labor force, student
- ☐ Not in labor force, retired
- ☐ Not in labor force, disabled
- ☐ Not in labor force, institutional resident/inmate
- ☐ Not in labor force, Other: unemployed, not seeking
- ☐ Unknown

Treatment Information

Treatment Provider Program Name

Last Name of Assigned Treatment Agent | First Name of Assigned Treatment Agent | MI

ASI Information

Primary Drug of Choice
- ☐ Alcohol - any use
- ☐ Alcohol - to intox.
- ☐ Cocaine/Crack
- ☐ Marijuana/Hashish
- ☐ Heroin
- ☐ Non prescription Methadone
- ☐ Other Opiates
- ☐ PCP
- ☐ Other Hallucinogens
- ☐ Methamphetamine
- ☐ Other Amphetamines
- ☐ Other Stimulants
- ☐ Benzodiazepenes
- ☐ Other Tranquilizers
- ☐ Barbiturates
- ☐ Other Sedative/Hypnotics
- ☐ Inhalants
- ☐ Over the counter
- ☐ More than one substance per day

Method of Use
- ☐ Oral
- ☐ Injection
- ☐ Smoking
- ☐ Other
- ☐ Inhalation
- ☐ Unknown

Frequency of Use
- ☐ No past month use
- ☐ 1 - 3 times in past month
- ☐ 1 - 2 times per week
- ☐ 3 - 6 times per week
- ☐ Daily
- ☐ Unknown
- ☐ Not collected

See Page 3 of HATTS Tip Sheet
(for ASI information, go to Assessment, then ASI within HATTS)

HIDTA/RSAT
Treatment Cover Sheet

Client ID ___ / ___ / _____

Date of Most Recent ASI ___ / ___ / 1 9 9 ___

Edition Number of ASI Administered ___

Composite Scores

Medical Composite Score ___.___

Employment Composite Score ___.___

Psychological Composite Score ___.___

Alcohol Composite Score ___.___

Drug Composite Score ___.___

Legal Composite Score ___.___

Family/Social Composite Score ___.___

Complete the following section **ONLY** if your treatment agency does not compute composite scores.

Medical Section:

Answer to Q#6 | Answer to Q#7 | Answer to Q#8

Employment Section

Answer to Q#4 | Answer to Q#5 | Answer to Q#11 | Answer to Q#12 | Answer to Q#17

Alcohol Use Section

Answer to Q#1* | Answer to Q#2* | Answer to Q#20a | Answer to Q#22a | Answer to Q#23a | Answer to Q#24a

*Past 30 Da

Drug Use Section:

Answer to Q#3* | Answer to Q#4* | Answer to Q#5* | Answer to Q#6* | Answer to Q#7* | Answer to Q#8*

Answer to Q#9* | Answer to Q#10* | Answer to Q#11* | Answer to Q#13* | Answer to Q#22b | Answer to Q#23b | Answer to Q#24b

*Past 30 Da

Legal Status Section:

Answer to Q#22 | Answer to Q#25 | Answer to Q#26 | Answer to Q#27

Family/Social Status Section

Answer to Q#3 | Answer to Q#10* | Answer to Q#11* | Answer to Q#12* | Answer to Q#13* | Answer to Q#14* | Answer to Q#15* | Answer to Q#

Answer to Q#17* | Answer to Q#18* | Answer to Q#19a | Answer to Q#20 | Answer to Q#22

*Past 30 Da

Psychiatric Status Section:

Answer to Q#3* | Answer to Q#4* | Answer to Q#5* | Answer to Q#6* | Answer to Q#7* | Answer to Q#8* | Answer to Q#9* | Answer to Q#

Answer to Q#11 | Answer to Q#12 | Answer to Q#13

*Past 30 Da

HIDTA/RSAT Offender Identification Numbers Form

Jurisdiction

Client ID

Gender M/F | M M / D D / Y Y — Date of Birth | Last 4 digits of SSN | First 2 letters of last name

Counselor Number

Provider ID

SDU

Last Name

First Name

MI

General Identification Numbers

Social Security Number - -

Date of Birth - -

Police Department Identification Numbers

Police Department Identification Number

FBI or NCIC

Department of Corrections Identification Numbers

Department of Corrections Number

Local Jail Identification Number

Treatment Facility Identification Numbers

Treatment Program Number

Probation/Parole/Pre-Trial Identifcation Numbers

Pre-Trial Identification Number

Probation Identification Number

Parole Identification Number

TASC Identification Number

Other Identification Number

HIDTA/RSAT Graduated Sanctions Data Abstraction Form

Today's Date / / 1 9 9

Jurisdiction

Client ID / /

Gender M/F | M M | D D | Y Y | Last 4 digits of SSN | First 2 letters of last name

Date of Birth

Counselor Number

Provider ID

SDU

Last Name

First Name

MI

Person Filling Out Form (Last Name)

Person Filling Out Form (First Name)

MI

BEHAVIOR (use the last date behavior occured) (use codes on back)	RESPONSE (use the date of responses) (use codes on back)
Date / / 1 9 9	Date / / 1 9 9
Date / / 1 9 9	Date / / 1 9 9
Date / / 1 9 9	Date / / 1 9 9
Date / / 1 9 9	Date / / 1 9 9
Date / / 1 9 9	Date / / 1 9 9

HIDTA/RSAT Criminal Justice Cover Sheet

Jurisdiction | Client ID | Gender (MF) | Date of Birth (M M / D D / Y Y) | Last 4 digits of SSN | First 2 letters of last name

Today's Date (/ / 1 9 9) | Counselor Number | Provider ID | SDU

Last Name of Assigned Supervising Agent | First Name of Supervising Agent | MI

Last Name | First Name | MI

Alias Last Name | Alias First Name | MI

Race
- ☐ Alaskan Native
- ☐ American Indian
- ☐ Asian/Pacific Islander
- ☐ Black/African American
- ☐ White/Caucasian
- ☐ Unknown
- ☐ Other

Ethnicity
- ☐ Puerto Rican
- ☐ Mexican
- ☐ Cuban
- ☐ Other Hispanic
- ☐ Not of Hispanic Origin
- ☐ Unknown

Employed?
- ☐ Employed full-time
- ☐ Employed part-time
- ☐ Unemployed, seeking employment
- ☐ Not in labor force, homemaker
- ☐ Not in labor force, student
- ☐ Not in labor force, retired
- ☐ Not in labor force, disabled
- ☐ Not in labor force, institutional resident/inmate
- ☐ Not in labor force, Other: unemployed, not seeking
- ☐ Unknown

Criminal Justice History

Date of First Adult Arrest (/ / 1 9) | Specify First Adult Offense | First Adult Offense* (Office use only)

Total Number of Adult Arrests | Total Number of Adult Convictions

Date of First Juvenile Arrest (if available) (/ / 1 9) | Total Number of Juvenile Arrests (if available)

Date of Instant Arrest (/ / 1 9) | Specify Instant Offense | Instant Offense* (Office use only)

Date of Intake to Jail/Prison (/ / 1 9) | Date of Expected Release from Jail/Prison (/ /)

Placed on supervision (mark one):
- ☐ Probation
- ☐ Pre-Trial
- ☐ Parole
- ☐ VOP

Begin Date (/ / 1 9) | Expected End Date (/ /)

Risk Score | Needs Score | Date Risk/Needs Assessment Given (/ / 1 9)

Previous Treatment?
- ☐ Yes
- ☐ No

Previous Treatment? (If you marked the previous answer "YES", mark all that apply)
- ☐ Detox
- ☐ Jail Based - OP
- ☐ Intensive Jail Based - IOP
- ☐ Intensive Jail Based - TC
- ☐ Int. Jail Based - dual diag. unit
- ☐ IOP
- ☐ OP
- ☐ Intermediate Care (28 day)
- ☐ Methadone Maintenance Help
- ☐ Residential
- ☐ Halfway House/Trans. Living
- ☐ Supported Living
- ☐ Supervision Reporting
- ☐ Day Reporting
- ☐ Drug Dealer Group
- ☐ Assessment Center
- ☐ Case Management
- ☐ Day Program/Day Treatment
- ☐ Aftercare
- ☐ Informal Aftercare/Self Help
- ☐ Other (Specify)

See Page 7 of the HATTS Tip Sheet

HIDTA/RSAT Monthly Supervision Contact Form

Jurisdiction | Client ID | Gender M/F | Date of Birth (M M / D D / Y Y) | Last 4 digits of SSN | First 2 letters of last name

Today's Date (M M / D D / Y Y) | Counselor Number | Provider ID | SDU

1. Last Name | First Name | MI

2. Person Filling Out Form (Last Name) | Person Filling Out Form (First Name) | MI

3. Date request for warrant/summons (technical violation) ___/___/199_

4. Date issue warrant ___/___/199_

5. Date revocation by court ___/___/199_

6. Date arrested for new offense ___/___/199_

Check the box to indicate the type of contacts (check all that apply)

TYPE OF CONTACT

DATE Format MM/DD/YYYY	Intake/Risk Assessment	Face to Face Contact (With offender)	Telephone Contact (With offender)	Contact with Collateral	Meeting with Treatment Provider	Telephone Contacts (With Treatment Provider)	Written Report (from Treatment Provider)	3 Way Meeting	Graduated Sanctions Administered	Court Appearance	Other Reports
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
___/___/199_	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

*Please put drug testing information on the HIDTA Drug Testing From

See Page 9 of the HATTS Tip Sheet

HIDTA/RSAT Drug Testing Form

Today's Date: ___ / ___ / 1 9 9 ___ Jurisdiction: ___ Client ID: ___ / ___ / ___ (Gender: M/F; M M = Date of Birth; D D; Y Y; Last 4 digits of SSN; First 2 letters of last name)

Status: ☐ In jail/prison ☐ Community

Counselor Number: ___ Provider ID: ___ SDU: ___

Last Name: ___ First Name: ___ MI: ___

Person Filling Out Form (Last Name): ___ Person Filling Out Form (First Name): ___ MI: ___

DRUGS/ALCOHOL TESTED

Check the appropriate box if tested and with the results

P = Tested and Positive
N = Tested and Negative (not Positive)
*Leave **BLANK** if a test is not performed for a drug*

DATE	Failed to show / Failed to provide	Alcohol	Marijuana	Cocaine	Heroin	Other Opiates	Barbiturates	Sedatives/Tranq	Amphetamines	Hallucinogens	Methadone
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N
___ / ___ / 1 9 9 ___	☐Y	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N	☐P ☐N

Appendix C: Jurisdiction - Specific Characteristics

	ALEXANDRIA CITY (%)	ARLINGTON COUNTY (%)	FAIRFAX COUNTY (%)	PRINCE WILLIAM COUNTY (%)	LOUDOUN COUNTY (%)
Previous Treatment					
Yes	48	44	49	94	100
No	34	13	25	4	0
Unknown	18	43	27	2	0
Drug of Choice					
Alcohol	10	8	19	0	0
Cocaine	28	4	22	30	13
Crack	36	46	10	22	37
Heroin	7	21	16	22	10
Marijuana	13	5	6	15	20
Morphine	0	0	0	0	0
PCP	0	4	1	2	3
Other	1	2	3	4	10
Unknown	6	11	22	4	7
Mode of Consumption					
IV injection	6	18	15	24	7
Non-IV injection	1	1	1	0	0
Smoking	60	58	35	46	63
Oral	10	8	21	9	10
Nasal	2	3	4	15	0
Unknown	21	11	25	7	20
Frequency of Use					
More than once a day	12	60	0	2	0
Daily	35	17	11	35	47
Weekly	26	9	4	37	10
Other	12	1	31	13	10
Unknown	14	13	54	13	33

1997 cover sheet cohort

	BALTIMORE CITY (%)	BALTIMORE COUNTY (%)	HOWARD COUNTY (%)	CHARLES COUNTY (%)	MONTGOMERY COUNTY (%)	PG COUNTY (%)
Previous Treatment						
Yes	31	48	2	35	24	31
No	36	21	1	18	28	64
Unknown	33	31	98	47	48	5
Drug of Choice						
Alcohol	2	5	22	13	23	3
Cocaine	8	5	2	15	6	7
Crack	3	17	21	46	10	55
Heroin	39	61	21	3	1	16
Marijuana	14	5	12	14	15	8
Morphine	0	0	0	0	0	0
PCP	0	0	0	3	0	1
Other	1	0	2	3	0	0
Unknown	33	8	22	5	46	8
Mode of Consumption						
IV injection	22	37	15	1	1	12
Non-IV injection	0	1	0	1	0	1
Smoking	21	25	33	75	24	65
Oral	3	6	23	13	25	5
Nasal	21	21	7	3	2	7
Unknown	34	10	22	8	47	11
Frequency of Use						
More than once a day	19	44	30	17	4	66
Daily	20	32	21	24	5	23
Weekly	4	6	13	5	17	2
Other	2	1	5	32	7	0
Unknown	56	17	31	23	68	10

	WASHINGTON DC (%)
Previous Treatment	
Yes	37
No	25
Unknown	39
Drug of Choice	
Alcohol	2
Cocaine	15
Crack	16
Heroin	26
Marijuana	7
Morphine	0
PCP	0
Other	0
Unknown	34
Mode of Consumption	
IV injection	19
Non-IV injection	0
Smoking	27
Oral	2
Nasal	10
Unknown	42
Frequency of Use	
More than once a day	10
Daily	28
Weekly	10
Other	7
Unknown	45

Instant Offense	ALEXANDRIA CITY (%)	ARLINGTON COUNTY (%)	FAIRFAX COUNTY (%)	PRINCE WILLIAM COUNTY (%)	LOUDOUN COUNTY (%)
Assault/Battery	2	1	8	0	0
Auto Theft	2	3	1	2	3
Property Crimes	11	27	18	15	17
Distribution	18	13	23	17	13
Possession	25	9	10	26	43
PWID	11	5	4	2	0
Paraphernalia	7	0	0	2	0
Forgery/Uttering	3	4	1	4	3
Probation/Parole Violation	8	7	1	22	17
Prostitution	1	0	0	0	0
Rape/Sodomy	0	0	1	0	0
Robbery	6	5	3	0	0
Homicide/Manslaughter	0	0	0	0	0
Weapons	0	0	0	0	0
Sexual Offense	0	1	0	0	0
Miscellaneous	1	5	3	7	0
Unknown	6	20	27	2	3

	BALTIMORE CITY (%)	BALTIMORE COUNTY (%)	HOWARD COUNTY (%)	CHARLES COUNTY (%)	MONTGOMERY COUNTY (%)	PG COUNTY (%)
Instant Offense						
Assault/Battery	2	7	3	13	7	2
Auto Theft	0	2	3	1	0	2
Property Crimes	14	50	19	15	7	27
Distribution	9	1	3	11	1	9
Possession	22	16	9	8	35	20
PWID	21	0	3	1	2	33
Paraphernalia	0	1	0	0	1	0
Forgery/Uttering	0	1	0	1	0	0
Probation/Parole Violation	17	2	0	3	0	2
Prostitution	1	2	0	0	0	0
Rape/Sodomy	0	0	0	0	0	0
Robbery	1	4	4	1	0	0
Homicide/Manslaughter	0	0	0	0	0	0
Weapons	1	0	0	0	1	1
Sexual Offense	0	1	1	0	0	1
Miscellaneous	4	0	7	7	9	1
Unknown	8	12	47	39	37	2

WASHINGTON DC
(%)

Instant Offense	
Assault/Battery	5
Auto Theft	1
Property Crimes	9
Distribution	9
Possession	14
PWID	16
Paraphernalia	0
Forgery/Uttering	1
Probation/Parole Violation	1
Prostitution	0
Rape/Sodomy	0
Robbery	7
Homicide/Manslaughter	0
Weapons	2
Sexual Offense	0
Miscellaneous	4
Unknown	31

	ALEXANDRIA CITY (%) 1	ARLINGTON COUNTY (%)	FAIRFAX COUNTY (%)	PRINCE WILLIAM COUNTY (%)	LOUDOUN COUNTY (%)
Age					
18-25	10	18	18	15	7
26-31	31	23	17	26	40
32-37	30	27	34	39	40
38-up	30	32	25	20	13
Mean Age	*34*	*34*	*34*	*33*	*33*
Gender					
Male	76	60	79	61	77
Female	21	33	12	39	23
Unknown	3	7	9	0	0
Ethnicity					
African American	84	60	42	48	40
Caucasian	12	21	41	46	57
Latino	0	5	4	2	0
Native Americans	0	0	0	0	0
Other	0	2	0	0	0
Unknown	4	12	13	4	3
# Adult Arrests					
Mean	11	11	14	13	14
Median	8	7	14	9	9
Unknown	9	18	32	4	3
#Adult Convictions					
Mean	7	7	8	9	11
Median	6	4	7	6	7
Unknown	8	21	32	2	3
Employed					
Yes	47	18	41	59	70
No	32	39	35	37	30
Unknown	21	43	25	4	0

1997 cover sheet cohort

	BALTIMORE CITY (%)	BALTIMORE COUNTY (%)	HOWARD COUNTY (%)	CHARLES COUNTY (%))	MONTGOMERY COUNTY (%)	PG COUNTY (%)
Age						
18-25	18	32	27	24	31	19
26-31	30	26	29	27	18	28
32-37	28	20	25	32	19	31
38-up	23	20	19	18	21	23
Mean Age	*33*	*30*	*32*	*32*	*31*	*33*
Gender						
Male	75	68	71	98	69	81
Female	21	26	10	1	12	18
Unknown	5	6	20	1	19	2
Ethnicity						
African American	81	36	33	54	40	77
Caucasian	8	52	49	43	25	10
Latino	3	1	0	0	8	7
Native Americans	0	0	0	1	0	0
Other	0	0	0	0	1	0
Unknown	8	11	19	1	25	6
# Adult Arrests						
Mean	10	7	9	7	4	10
Median	8	6	7	6	3	9
Unknown	9	14	46	44	42	5
#Adult Convictions						
Mean	4	4	5	4	2	4
Median	3	3	4	2	2	3
Unknown	12	24	47	60	43	5
Employed						
Yes	19	14	2	28	42	3
No	63	67	1	42	22	95
Unknown	19	19	98	30	36	2

WASHINGTON DC
(%)

Age	
18-25	6
26-31	15
32-37	25
38-up	44
Mean Age	38

Gender	
Male	71
Female	13
Unknown	16

Ethnicity	
African American	79
Caucasian	1
Latino	0
Native Americans	0
Other	0
Unknown	20

# Adult Arrests	
Mean	10
Median	8
Unknown	29

#Adult Convictions	
Mean	5
Median	4
Unknown	30

Employed	
Yes	16
No	53
Unknown	31

Mr. ISTOOK. Mr. Mollohan, did you have anything else you wanted to ask?

Mr. MOLLOHAN. I've got a couple of questions, but I would submit them for the record. I would though like to ask Mr. Clark one more question?

Mr. ISTOOK. Yes.

PRIVATE PRISON FOR SOUTHWEST DC

Mr. MOLLOHAN. I understand the Corrections Corporation of America is bidding to place approximately 1,280 D.C. inmates in a low-security male prison in Southwest D.C. Is that correct? Can you also tell me the status of that bidding process?

Mr. CLARK. Well, again, that's a Federal Bureau of Prisons RFP. I'm not directly involved in that at all. I do understand from the news media and actually from what I've heard directly from the company that they are—I'm assuming that there are several other companies that are probably also bidding on that same contract, including the company that got the first contract that you mentioned up in Pennsylvania. But beyond that, I had no conversations with the Bureau of Prisons on that issue.

Mr. MOLLOHAN. I understand there's a lot of angst over the Corrections Corporation of America because of their performance in Ohio. I am just wondering if you've picked up on any of that from the citizens in that area.

Mr. CLARK. Well, certainly it is very controversial in the District. And there are a number of people who have, for instance, read the report that I wrote, that I was complimented to see that the Chairman was carrying into the meeting today, who are concerned about that company.

The only thing I can comment on was what I found in that particular report. I wouldn't want to generalize on the company or privatization beyond that.

Mr. MOLLOHAN. Well, I don't have time to explore that with you, but if I had time, I would.

50 PERCENT OF DC FELONS IN PRIVATE FACILITIES BY 2003

But just quickly, under the Revitalization Act following up on my last line of questioning, the Act requires 50 percent of D.C.-sentenced felons to be housed in private facilities by 2003.

Mr. CLARK. Correct.

Mr. MOLLOHAN. Do you or are you proposing privatization of any medium- to high-security prisoners? Or would you oppose such a proposal?

Mr. CLARK. Well, it's not an issue that I've come to any conclusion on in my official role.

CLASSIFICATION OF DC INMATES

I mentioned that we had helped the Department of Corrections adopt the Federal Bureau of Prisons classification model. We had Federal Bureau of Prisons staff come in and train them and help them classify the entire population. The finding was that about 65 percent of the D.C. population was medium or high, on the Bureau of Prisons' scale, and only about 35 percent were minimum or low.

PROBLEMS WITH PRIVATIZED FACILITIES

Mr. MOLLOHAN. Would you recommend any medium- to high-security prisoners to be included in a privatized facility?

Mr. CLARK. At this time I wouldn't want to get engaged in that.

Mr. MOLLOHAN. I'm sorry. I'm asking you a question in this hearing. We're engaged in this, and we're funding this. You're the expert on the floor.

Mr. CLARK. Yes, there have been some significant problems found with the ability of some of the private companies to deal with the higher-end inmate, so I'm very cautious about that. There's not a track record——

Mr. MOLLOHAN. You're very cautious about what?

Mr. CLARK. I'm very cautious about putting higher-security inmates into private facilities until there's more of a track record of success.

Mr. MOLLOHAN. Would it be possible to meet this 50 percent requirement by the year 2003 if you did not house medium- to high-security prisoners in a private facility.

Mr. CLARK. Not with the District of Columbia population.

Mr. MOLLOHAN. You would not be able to do that. We're talking about the District of Columbia population?

Mr. CLARK. That's correct.

Mr. MOLLOHAN. Would it be possible to house 50 percent of the D.C. prisoners in private facilities if you could not include medium- to high-security prisoners?

Mr. CLARK. Not—no, it wouldn't be, at least according to the work that we did to classify the whole population, which again showed that only about 35 percent were below medium.

Mr. MOLLOHAN. Thank you, Mr. Clark.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Mollohan.

QUESTIONS FOR THE RECORD—COURT SERVICES

As I said, I will submit some questions for the record, and those questions will include, Mr. Clark and Ms. Wallace, what would be the impact on your offices of a larger number of revocation hearings, getting some people off the streets? Hopefully it would enhance tremendously the public safety and reduce the crime rate. Those questions will come with the record, and we appreciate your responses.

[The Committee's questions and the agency's response follow:]

QUESTION #1: Your FY 2000 request for the Court Services and Offender Supervision Agency provides $80.3 million in direct budget authority and $19.6 million from the 21st Century Policing Initiative for a total budget request of $99.9 million and an increase of 55% over the agency's FY 1999 availability. Please explain briefly to the Committee what this increase will be used for and what results we can expect.

ANSWER: Although a 55% funding increase over FY 1999 availability for the Court Services and Offender Supervision Agency (CSOSA) is substantial, the Administration has recognized this Agency's serious funding needs and supported us as much as possible within our budget request for direct authority. Additionally, there is a strong programmatic basis to provide assistance for many of our FY 2000 program increases from the Department of Justice's 21st Century Policing Initiative.

In order to improve public safety, CSOSA must establish accountability in the supervision of criminal offenders in the community. This goal necessarily includes better performance of the staff providing that supervision. The basic "infrastructure" of offender supervision has been neglected for years. Many staff simply lack basic tools to do their work and a substantial investment is needed if their efforts are to yield results.

Reducing caseload size is one of the Agency's highest priorities. More than one of every 20 District of Columbia residents is under some form of criminal justice supervision – pretrial release, parole, and/or probation – not including those who are incarcerated. With a few notable exceptions, caseloads are crushing, ranging from 75 cases per officer to 800 cases for some Pretrial Services Officers. The Agency seeks to address this critical public safety issue by substantially increasing the number of officers. A major initiative in this fiscal year and in FY 2000 is the continued recruitment, screening, hiring, training, and deployment of an adequate number of supervision officers. Our best estimate at the present time is that 400 to 500 additional Probation, Parole, and Pretrial Services Officers will be required to meet Federal standards for caseload supervision ratios.

Needless to say, these are ambitious plans requiring Administration and Congressional support. Last summer, a Budget Amendment was submitted which would have augmented the Agency's appropriation by $38.3 million and provided the means to move forward with plans to add staff and reduce caseload ratios. Unfortunately, only $5 million was appropriated from the Community Oriented Policing Service (COPS) grant program, essentially placing our expansion plans on hold for a year.

Our FY 2000 budget request, if approved in full, will permit us to begin moving from an offender tracking approach to a more intensive case management format. Contingent on the availability of resources, supervision officers ultimately will manage 18,500 probation and parole offenders at roughly a 50:1 ratio. Supervision should include once or twice weekly drug testing, with drug treatment placement where necessary and immediate sanctions for noncompliance. High-risk offenders will be managed more closely, with caseload ratios ranging from 35:1 to 15:1. Case management will also

include additional options available for high-risk offenders, such as structured residential housing, electronic monitoring and specialized treatment as appropriate.

The Agency also plans to strengthen its effectiveness by placing supervision officers in the community, and building on our partnership with community police officers. If law enforcement is to overcome the perception, and often the reality, that no one is paying attention to enforcing criminal justice and community expectations, we simply must have a level of offender management and contact that changes the dynamic. To be credible, the system must be able to deliver swift and certain consequences for violations. The FY 2000 budget proposes to fund the first substantial investment in D.C. criminal justice functions that have been neglected for decades, and is critical to improving public safety in the District of Columbia. Funding for the following program initiatives is requested:

Sanctions Center
One historic barrier to effective supervision has been the lack of **intermediate sanctions** short of revocation. There is reluctance to impose the "ultimate" sanction of revocation, and individuals are often given one more chance to shape up. This approach does not promote the level of accountability we are seeking. CSOSA's approach is to establish a series of intermediate responses, including a Sanctions Center. Designed along the lines of the Drug Court model, offenders and defendants will enter into "contingency contracts" with the releasing authority (judge, U.S. Parole Commission), agreeing in advance to a series of specific responses to specific violations. One response must include secure residential placement – a **"halfway back"** option. Currently, there is no Sanctions Center in the District of Columbia, and funding for contractual beds is almost non-existent.

The Sanctions Center will contribute to public safety as part of the graduated sanctions scheme. CSOSA will place offenders who repeatedly fail to comply with outpatient treatment in a closely supervised therapeutic setting where staff will address offenders' addictive behavior. The Center also will provide a secure setting for stabilization of drug-dependent individuals who relapse. It will be the focal point for a range of services available both to short-term "residents" and on an outpatient basis. Public health, education, and job training providers will be encouraged to co-locate in the Sanctions Center, making it a "one-stop" reporting center.

The Agency requests 43 positions, 22 FTE and $8,614,000 to fund renovations, repairs and operational expenses of a residential Sanctions Center. In FY 2000, $5,873,000 is requested in direct budget authority for the renovations and repair of the facility, and 43 positions, 22 FTE and $2,741,000 is requested from the 21st Century Policing Initiative grant program for operations.

Community Supervision
Community supervision is the basic building block of an effective offender management system. Offenders must know that the system is serious and that there are swift and certain consequences for violations. This cannot happen with current caseload ratios. With a few notable exceptions in each component, (the Drug Court for example)

caseloads are crushing. Prior to the Revitalization Act, caseload ratios ranged from 75 to 900 offenders for each officer; far in excess of those called for in nationally recognized standards or best practices. Caseload ratios of this magnitude make it impossible to provide proper supervision.

Pretrial Services Agency: There are approximately 9,500 defendants under pretrial supervision in the U.S. District Court and the D.C. Superior Court at any given time. The FY 2000 request will provide direct funding to annualize 21 Pretrial Service Officers from the FY 1999 COPS grant into the agency's base budget. In addition, funds are requested from the 21st Century Policing Initiative grant program to include the hiring of 24 new Pretrial Service Officers. With these resources, the average Pretrial Supervision caseload will be reduced to 200:1 by September 30, 2000.

Community Supervision Program: When the FY 2000 budget submission was prepared, there were approximately 18,500 probation and parole offenders in the District of Columbia. However, the implementation of several policies have improved supervision accountability and reduced the parolee population over the past several months. The Trustee is working closely with the Corrections Trustee, the D.C. Department of Corrections, and the U.S. Parole Commission to analyze the full impact of these policy improvements on the District's adult felon population.

The FY 2000 request will provide direct funding to annualize 32 Community Supervision Officers from the FY 1999 COPS grant into the base budget of the Community Supervision Program. Additionally, funding is requested from the 21st Century Policing Initiative grant program to include 85 new Community Supervision Officer positions. The annualization of the positions hired under the FY 1999 COPS grant combined with the FY 2000 request will reduce the average Community Supervision caseload from 90:1 at the close of FY 1999 to 61:1 by September 30, 2000.

In year one (FY 2000) of a two year staffing plan, CSOSA requests a total of 175 positions, 88 FTE, and $10,874,000 to improve the level of supervision for adults under probation, parole, pretrial or other court-ordered supervision by enhancing staff and related program support. For FY 2000, funding is being requested from the 21st Century Policing Initiative grant program.

Drug Testing

A positive drug test is a clear early warning indicator requiring an immediate response by the criminal justice system. Each time the system could intervene, but does not, another message is sent to the offender that there are no consequences. As a result, individuals often cycle repeatedly through the courts until their behavior escalates to the point where it can no longer be ignored. Incarceration may result, but eventually the offender returns to the community.

Pretrial Services is providing the leadership for the entire Agency in the area of drug testing. Over the years, Pretrial Services has developed a highly-automated and reliable process for collecting urine samples, documenting chain-of-custody, performing tests and

reporting results to case managers and judges on a "real time" basis. However, this technology is available only on a very limited basis to probation and parole supervision.

Less than 4 percent of all probationers are subject to regular drug testing. In parole, smaller numbers – less than 300 individuals – are being tested through the automated system. Historically, drug testing has been sporadic and unreliable, provided on a contractual basis through a city agency. The procedures used have not withstood legal challenges, thus undermining the integrity of parole supervision.

There is an urgent need to provide adequate drug testing (twice weekly, at a minimum) for the bulk of the post-conviction offender population. To be effective, and to avoid legal challenges, the testing process must be reliable and fast. It does no good to conduct drug testing and then fail to act promptly if a parolee or probationer begins to relapse. To bring the drug testing operation up to adequate and effective levels, there will need to be a major expansion of drug collection and laboratory capacity, establishment of various urine sample collection sites around the city, and computer connectivity to ensure prompt action at the first signs of relapse.

The Agency plans to routinely and randomly drug test all offenders and defendants under criminal justice supervision. Those with known histories of substance abuse – which includes upwards of two thirds of this population – will be tested on a twice-weekly basis. This is a fundamental element of the offender supervision infrastructure that must be built if we are to reach our crime-reduction goals.

The Agency requests funding to support the expansion of the Pretrial Services' Drug Lab capability, the hiring of additional staff for the Drug Court program and establishment of community-based collection sites for substance abuse testing. Multiple collection sites will produce higher compliance rates, reduce the time it takes to process drug tests at a new central lab, and ensure that all offenders under supervision are tested. Of the additional 33 positions, 18 FTE, and $3,797,000 requested, 11 positions, 6 FTE and $1,119,000 is requested in direct appropriations and 22 positions, 12 FTE and $2,678,000 is requested from the 21st Century Policing Initiative grant program.

Information Technology

CSOSA is implementing a 3-Year Information Technology plan – a strategy to use modern technologies in support of CSOSA's supervision and treatment needs. The implementation of the IT plan is an essential component of the reforms in process for the new agency.

The largest, most essential, and exciting components of this plan is PRISM and the state-of-the-art communications network over which PRISM data will travel. PRISM is our strategic supervision and treatment information system, an essential tool in the transition to community supervision. Offenders will no longer be able to remain anonymous to the criminal justice system, simply because the law enforcement and community supervision officers do not have information at their fingertips. Knowledge gaps in an offender's obligations create "loopholes" for escaping accountability. Lack of accountability

undermines public safety. For example, if a drug offender drops out of treatment, or fails to appear for a drug test, that should be viewed as a "red flag" prompting an immediate response. A well-designed automated information system can alert the parole officer, and appropriate actions can be taken. PRISM will provide the means to close loopholes, increase accountability, and enhance public safety.

The agency is facing a serious Y2K problem, if the Agency cannot complete plans for moving all applications and data off their mainframe hosts and onto the new platform, PRISM. In addition to supporting critical information needs of the agency, PRISM was planned as the Y2K solution for several vital systems not under the control of the Agency, and whose Y2K compliance we cannot ensure. The Agency has submitted a request to OMB from the Y2K Emergency Fund to complete the most critical components of PRISM and replace four legacy systems that are not Y2K-compliant.

If FY 1999 supplemental Y2K funds are approved, PRISM will be expanded in FY 2000 to support modern communications technologies, including telephony (for example, automatic phone calls to offenders and menu systems allowing offenders to call in for court dates). Subsequent versions of PRISM will include document control, expanded integration with external criminal justice agencies and treatment providers, and dissemination of information to the public. Information technology will also be used to enhance the effectiveness of the drug testing lab.

For FY 2000, the Agency requests 10 positions, 6 FTE, and $3,307,000 for state-of-the-art systems that will improve communications among all components of the criminal justice system: supervision centers, the drug testing laboratory, the Courts, the U.S. Parole Commission and Agency offices. For FY 2000, funding is being requested from the 21st Century Policing Initiative grant program.

QUESTION #2: Why does the Administration believe that funding for almost all of your Agency's infrastructure and initiatives should come from the CJSJ Subcommittee? And what is the impact if CJSJ cannot provide this funding?

ANSWER: One of the primary purposes of the Revitalization Act was to relieve D.C. of funding responsibility for certain "state-like" functions. We are in a unique situation as a Federally funded agency performing these state-level functions in a municipal jurisdiction. Recognizing the limited discretionary funding available and the needs of this start-up Federal agency, the Administration is proposing the award of $19.6 million from the 21st Century Policing Initiative for a problem solving partnership. There is a strong programmatic basis for this award because the functions the Agency performs are directly in line with the objectives of the 21st Century Policing Initiative. If the grant funding is not appropriated, criminal justice revitalization in the Nation's Capital will be put on hold for yet another year.

Last year, $38.3 million was requested in a FY 1999 budget amendment, but only $5 million was provided through the Community Oriented Policing Services grant program. Lack of funding has resulted in a serious Y2K compliance issue; supervision caseloads have been marginally reduced; drug testing of offenders is inadequate; limited treatment availability prevents the majority of offenders who are referred from receiving services.

An adequate and timely federal investment will produce significant dividends by reducing the part of the budget that represents our dependence on the most expensive correctional resource – namely, prison beds. Moreover, economic development in the District will be influenced by our success or failure in improving public safety.

QUESTION #3: How would you amend your FY 2000 budget proposal and program requests if the 21st Century Policing Initiative funding is not appropriated?

ANSWER: If the request from the 21st Century Policing Initiative is not approved, there would be no reasonable way to amend the Court Services and Offender Supervision Agency's (CSOSA) $80.3 million request for direct appropriations without placing our ability to meet the mandate of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act) in serious jeopardy. The FY 2000 budget proposes to fund the first substantial investment in D.C. criminal justice functions that have been neglected for decades. The combined resources, as proposed, will enhance supervision of all adult offenders, strengthen drug testing, treatment, and sanctions programs, and will provide for the strategic use of information. Without the funding requested within the grant program in FY 2000, the Trustee would be obligated to submit a request for FY 2000 supplemental funding to meet the District's immediate and long-range public safety needs, as well as the requirements of the Revitalization Act.

The Offender Supervision Trustee was created by the Revitalization Act to achieve the reorganization and transition of functions relating to pretrial services, parole, adult probation and offender supervision in the District of Columbia to a Federal Executive Branch Agency. The Trustee must certify to the Attorney General, and the Attorney General must concur, that the new Agency meets Federal standards and is ready to assume its functions by August 5, 2000. The purpose of the certification process is to ensure that the Agency has adequate resources and infrastructure to function effectively as an independent Federal agency, that offender supervision caseload ratios are significantly reduced to improve public safety, and to limit Federal liability exposure.

Last year, $38.3 million was requested by the Administration in a FY 1999 budget amendment, but only $5 million was provided through the Community Oriented Policing Service (COPS) grant program. The FY 1999 requested budget amendment would have supported year one of the Trustee's two-year staffing and public safety improvements plan. Lack of funding has resulted in a serious Y2K compliance issue; supervision caseloads have only been marginally reduced; drug testing of offenders is inadequate; and limited treatment availability prevents the majority of offenders who are referred for treatment from receiving services.

CSOSA is in a unique situation as a Federally funded agency, in that it performs "State-like" functions. In most State and local governments, programs involving these functions are typically eligible for assistance under Department of Justice grant programs. There is a strong programmatic basis to provide assistance from the 21st Century Policing Initiative for the support of programs identified in the FY 2000 request because these functions are in line with the objectives of the grant program.

The FY 2000 budget request for the 21st Century Policing Initiative within the U.S. Department of Justice includes language that would direct the award of $19.6 million, 250 positions, and 128 FTE to address staffing requirements and related program

activities for CSOSA. The Agency's FY 2000 request for direct appropriations is $80.3 million, 834 positions, and 814 FTE to support requirements set forth by the Revitalization Act. Of this amount, $17,400,000 is requested for the operations of the Public Defender Service, $15,800,000 is requested for the Pretrial Services Agency and $47,100,000 is requested for the Community Supervision Program which encompasses the former D.C. Board of Parole and Adult Probation.

Approximately $7.7 million of CSOSA's requested direct adjustments to base will be used to annualize the positions hired under the FY 1999 COPS grant into the direct budget authority of the agency. CSOSA has spent a great deal of time and resources recruiting, hiring and training the very best candidates for the 110 positions supported by the FY 1999 COPS grant. The annualization of these positions to the Agency's direct budget authority will ensure that the reductions in caseload ratios achieved this year will be maintained in the out-years. The remaining $3.4 million requested under the heading, "adjustments to base" is for mandatory adjustments due to uncontrollable factors. The total program changes requested in direct authority are 50 positions and $9.8 million. Of this amount, 39 positions and $2.8 million represents the entire FY 2000 program enhancements for the Public Defender Service, 9 positions and $525,000 to expand the Drug Court, 2 positions and $594,000 for partial staffing and construction of the new drug lab, and $5.9 million of the $8.6 million required to renovate, repair and begin the operation of the District's new Sanctions Center. Other than the Public Defender Service's request, all other requested program changes are reliant upon resources requested from the 21st Century Policing Initiative to fully attain the results as described in the Agency's budget justification for each program. Further, the only additional positions for supervision staff are requested through the 21st Century Policing Initiative.

QUESTION #4: CSOSA's FY 2000 budget request proposes 410 new positions over the FY 1999 appropriation. Do you have the capacity to hire and train qualified staff at this rate?

ANSWER: Over the past 18 months, the Trustee has established the infrastructure required to select, hire, and train the new staff that we are requesting as part of the Trustee's two-year staffing plan to achieve certification as a Federal agency. The Trustee has established a fully-operational Office of Human Resources, a state-of-the-art Training Center in CSOSA's headquarters facility, and has begun identifying "store-front" facilities in the community to accommodate the additional staff. Furthermore, based on the number of qualified applicants that have applied for and have been selected for the same or similar positions in FY 1998 and FY 1999, we are confident that highly qualified staff will be selected, trained and improving public safety in the District of Columbia by close of FY 2000.

The FY 2000 proposed budget for the Court Services and Offender Supervision Agency provides 410 new positions over the FY 1999 direct appropriation – 160 in direct budget authority and 250 from the 21st Century Policing Initiative grant program. Of the 160 positions requested from direct budget authority, 39 positions are requested by the Public Defender Service; therefore, CSOSA is requesting 371 new positions in FY 2000 – 121 from direct authority and 250 from the grant program. However, 110 of the new positions requested from direct budget authority will allow the agency to annualize into the base program the staff hired under the FY 1999 Community Oriented Policing Service (COPS) grant, leaving only 11 new positions to be hired of the 121 positions requested to be funded from direct budget authority in FY 2000.

The 11 positions requested from direct authority will allow the Pretrial Services Agency to expand the District's Drug Court program and hire staff required for the new Drug Lab. There are no new positions requested from direct budget authority for the Community Supervision Program in FY 2000. Of the 250 positions requested from the 21st Century Policing Initiative, 43 positions are requested by the Pretrial Services Agency, and 207 positions are requested for the Community Supervision Program.

As stated above, CSOSA has the authority to hire 110 positions in FY 1999 funded by the COPS grant, of which 70 positions were allocated to the Community Supervision Program and 40 positions to the Pretrial Services Agency. CSOSA has demonstrated its ability to hire and train qualified staff, its capacity to hire and train more staff, and ability to manage funds within the amounts made available. To date, 41 of the 70 positions allocated to the Community Supervision program and 34 of the 40 positions allocated to the Pretrial Services Agency have been filled with highly qualified candidates, some with many years of law enforcement experience, from all over the country.

The dollar amount allocated to the Community Supervision Program under the COPS grant was $3,149,000, of which $1,863,760 will support the salaries and benefits of 70 new positions, and $1,285,240 to be used to purchase computer equipment and

infrastructure. As of April 1, 1999, the amount budgeted for the 29 vacant positions is $482,324 ($385,859 for salaries and $96,465 for benefits). Through midyear, $634,949 of the $1,285,240 allocated for computer equipment and infrastructure was obligated. The Community Supervision Program fully expects to fill the vacant positions on schedule and will obligate the resources provided for equipment by September 30, 1999.

Of the $1,851,000 made available to the Pretrial Services Agency under the COPS grant, $979,762 will be used to hire 40 pretrial services staff, and $871,238 will be used to purchase computer equipment and infrastructure. The amount allocated for the remaining 6 positions to be hired under the COPS grant in the Pretrial Services Agency is $211,000 ($162,000 for salaries and $49,000 for benefits). Through midyear, $669,000 of the $871,238 allocated for computer equipment and infrastructure was obligated. The Pretrial Services Agency plans to fill the vacant positions by the end of June 1999, and will obligate the remaining amount provided for equipment by the end of the fiscal year.

QUESTION #5: The Revitalization Act requires you to certify to the Attorney General that the Court Services and Offender Supervision Agency is ready to assume its duties as an independent federal agency by August 5, 2000. The Attorney General must concur with this certification. What elements must be achieved prior to certification? What progress have you made to date?

ANSWER: The Offender Supervision Trustee was created by the Revitalization Act to achieve the reorganization and transition of functions relating to pretrial services, parole, adult probation and offender supervision in the District of Columbia to a Federal Executive Branch agency. The Trustee must certify to the Attorney General, and the Attorney General must concur, that the new Agency meets Federal standards and is ready to assume its functions by August 5, 2000. The purpose of the certification process is to ensure that the Agency has adequate resources and infrastructure to function effectively as an independent Federal agency, that offender supervision caseload ratios are significantly improved, and to limit Federal liability exposure.

The basic infrastructure of offender supervision in the District has been neglected for years. Therefore, we must build CSOSA from the ground up, starting with the most basic elements of organizational structure: acquiring office space; introducing office automation; hiring new staff; setting performance standards; and instituting staff accountability. It is our understanding that the Attorney General will require that prior to certification, the Trustee must establish the Agency infrastructure, as well as strategies, initiatives, policies, and procedures that significantly improve public safety. One of the most important infrastructure requirements is the implementation of information technology – not just within the Agency – but to include connectivity for critical information sharing with other components of the criminal justice system.

Administratively, the certification of CSOSA requires the establishment of myriad personnel management processes and systems: recruitment and hiring; training and development; performance management and compensation/incentives; time and attendance; disciplinary and adverse action procedures and federal benefits programs. Ideally, the final legislation establishing the Agency will designate it as an "excepted service" agency, with specific exemptions from civil service requirements regarding hiring and firing, so that the Trustee has the managerial discretion and flexibility needed to effectively manage the transition and certification of CSOSA.

The mission of the Trustee is not simply to establish a "new" federal agency. It is also to reorganize, transform and coordinate existing elements of the District of Columbia's Offices of Adult Probation and Parole. Current management and staff must be assessed, trained and assigned. In order to accomplish this, the Agency is developing an action plan that will set standards and assess existing staff on the following elements: federal security and suitability standards, including pre- and post-employment drug testing; education level; computer skills; and performance. Staff who meet these standards will be converted to regular appointments; those who do not will be discharged. Specific training plans are being developed for all supervision officers and support staff presently

in the process of being expanded and modernized by the new Director of Training. The performance evaluation system is being revised to measure meaningful outcomes related to crime and rehabilitation statistics of the offender population under CSOSA's jurisdiction, rather than measures of mere activity or process.

Stricter evaluation criteria will be used to select and appraise supervisory and managerial positions. Supervisors and managers will also be placed in a regular, on-going training regimen. Their performance evaluations will measure not just technical proficiency but also specific supervisory and managerial competencies.

Significant enhancements to community justice programs must be in place prior to Federal certification. The Revitalization Act mandated that CSOSA develop and operate intermediate sanctions programs for sentenced offenders. Currently, the Agency has a number of excellent programs on which to build. Unless CSOSA is properly funded, we cannot implement these models system-wide. The Sanctions Center, funding for which is requested in FY 2000, is a critical component of the graduated sanctions scheme.

In its first 18 months, CSOSA has implemented major reforms with significant benefits for public safety. Highlights include the following indicators of the progress that has been made within the Agency's resource constraints.

- The Trustee issued a policy change requiring the Board of Parole to issue warrants when parolees are charged with new offenses and there is a judicial finding of probable cause. **This new CSOSA policy has resulted in the detention of over 800 parole violators pursuant to this policy change**, in contrast to the historic practice of re-release to the community followed by subsequent crimes. One indicator of the success of this procedural change has been a 63% decrease in the number of parolees arrested on new charges since May 1998.

- **CSOSA has reduced the average time between a reported parole violation and hearing from 4-6 months to 10 days for a parolee who remains in the community.**

- **CSOSA has eliminated the backlog of pending parole violation hearings.**

- **CSOSA has undertaken extensive review and reform of management and operations** in both its parole and probation functions and is currently producing an automated policies and procedures manual for Community Supervision.

- CSOSA has nearly completed an intensive process of collecting baseline data on its offender population. We have learned how much more serious the backgrounds of our offenders and defendants appear to be when compared with figures reported in national surveys. For example, the Bureau of Justice Statistics reports that nationally, half of all probationers have no prior convictions, but **in the District of Columbia, only 1.7% of all adult probationers have no prior convictions. Among D.C. parolees, the percentage with no prior convictions is 1.0%.**

Twenty-three percent of D.C. parolees have six or more prior convictions.

- The CSOSA Information Technology staff is nearing completion of an innovative and comprehensive information system, called PRISM (Pretrial Real-Time Information Systems Manager), that will allow supervision officers to view case information on their desktop computers for improved decision-making. Prior to Revitalization, there were virtually no computers or automated case management systems in Probation at all.

- Since August 1998, CSOSA has allocated $1.6 million for a variety of treatment programs for offenders. To date, CSOSA has placed 131 offenders in residential treatment and 144 offenders in outpatient treatment. However, significantly more funding is required for the District's offender population.

- In collaboration with the Corrections Trustee, the D.C. Department of Corrections, and the U.S. Parole Commission, CSOSA has initiated a pre-parole program for offenders. Formerly, parolees were released from prison directly to the streets, without any structured environment through which to transition. All parolees are now placed in transitional facilities, usually residential halfway houses. In these settings, they receive diagnostic assessments and other transitional support services. **To date, CSOSA has placed over 558 individuals in halfway houses, of which 192 have successfully completed the program and transitioned to supervised release in the community.**

- In November 1998, we launched the first DC Community Justice Partnership with the Metropolitan Police Department (MPD) and the community in Patrol Service Area 704, in MPD's Seventh District. In 704, police officers and community supervision officers share information and work in teams to supervise offenders in the community, providing closer supervision, earlier intervention, and more timely responses to community concerns for safety. Due to the success of this partnership, police commanders in other parts of the city have requested that the program be expanded. We are currently working with MPD to implement Community Justice Partnerships in Police Districts 1, 3, 5 and 6.

QUESTION #6: Your agency budget requests funding to expand the Pretrial Services' Drug Lab capability and the Drug Court program currently in place in the District of Columbia. Please provide measurable data to substantiate the effectiveness of the District's Drug Court and drug testing programs. Include in this data projections if the requested funds are approved.

ANSWER:

Drug Lab Expansion

CSOSA requests 23 positions, 12 FTE, and $3,208,000 for the Pretrial Services Drug Lab expansion, and to increase drug testing of all defendants and offenders under supervision.

The vision of CSOSA is to greatly expand the present testing capacity of the Pretrial Services Drug Detection Laboratory (the Lab) so that all persons under criminal justice supervision can be tested and tracked through this automated, bar coded system. The in-house lab capacity will allow supervision officers to rely on quick and accurate drug testing results for immediate response to violations of release conditions. Lab expansion will provide effective and coordinated supervision where it is most needed and not adequately available; among all offenders on Court-ordered pretrial release, probation, and parole. Criminal offenders characterized as "hard core" drug abusers commit a disproportionate share of all crimes. If the criminal justice system expects to seriously combat the problem of substance abuse, drug users must be identified immediately when they enter the system. Failure to act swiftly perpetuates the cycle of crime and constitutes a threat to public safety. Frequent drug testing and effective interventions to break the drug use cycle are essential components of the strategy to improve public safety.

The Lab is an integral department not only for the D.C. Pretrial Services Agency but for Adult Probation, Parole, Family Division of the D.C. Superior Court, U.S. District Court and all constituent practitioners involved in these departments and agencies. During FY 1998, the Lab tested a total of 137,089 specimens submitted by 27,534 people supervised by these organizations. Frequent drug testing is proven to be a relatively inexpensive strategy that helps the Agency identify defendants and offenders with severe drug problems requiring intervention and treatment. Since 1993, treatment services available for the offender population have diminished dramatically. Between 1993 and 1997, the number of detoxification beds available at any given time through the D.C. Addiction Prevention and Recovery Administration (APRA) decreased from 105 to 35, a 67 percent reduction. During the same period, the number of residential treatment slots decreased from 379 to 144, a 62 percent drop. The number of outpatient slots fell 31 percent from 1,207 to 834. Therefore, drug testing allows CSOSA to provide these scarce treatment and intervention services to the individuals who need it most.

The Lab analyzes drug tests of adults and juveniles after arrest and before their initial appearances in court. In FY 1998, the Lab conducted 17,898 of these pretrial lock-up tests of adult criminal defendants and 1,993 lock-up and community tests of juvenile respondents. Weekly and bi-weekly surveillance tests are performed on individuals under

pretrial, probation and parole supervision. The Lab analyzed 53,689 surveillance tests for pretrial defendants, including Drug Court participants, 18,927 urine samples of probationers and 3,182 tests submitted by parolees. There were also 11,861 analyzed for juvenile respondents.

In addition to the remarkable number of urine samples the Lab processes on a daily basis, there are numerous requests throughout the day for "spot" tests or extemporaneous requests made by the organizations mentioned above or judges, in order to catch individuals without advance notice. Judges and case managers require immediate notice of the results of "spot" tests in order to act swiftly should the defendant test positive. Consequently, the Lab must conduct timely and accurate drug tests without fail. In FY 1998, the Lab analyzed 4,541 drug "spot" tests of pretrial defendants, 917 of juvenile respondents, 18,561 of probationers and 20 of parolees. Finally, the Lab provides analysis of drug samples of neglect and abuse respondents as a courtesy to the Family Division of the D.C. Superior Court. During FY 1998, the Lab analyzed 5,403 surveillance tests and 97 "spot" test of neglect and abuse respondents.

The Lab currently processes 400 to 700 urine samples per day. All positive samples are re-tested. Results are usually available within the hour and can be accessed in some courtrooms by judges via computer. The Lab Director is a toxicological chemist who can be qualified as an expert witness in legal proceedings. Lab staff also adheres to strict procedures regarding chain-of-custody of each urine sample. The Lab is open six days a week, fourteen hours a day.

The current space and staff of the drug lab is at maximum capacity. Accommodating the increases in drug testing projected for parole/probation, as well as pretrial increases in supervision testing, will more than quadruple the Lab's workload. This request will provide for the construction of a new larger Central Lab that will handle Gas Chromatography Mass Spectrometry (GCMS) confirmations as well as standard testing operations. Once the new lab is operational and the additional staff requested in the FY 2000 budget are hired, the Agency will have the capacity to collect and test over 600,000 samples per year.

In FY 1996, the Pretrial Services Agency conducted a unit cost analysis of specimen collection and drug testing analysis was $4.75 for a five drug screen when done in the Pretrial Lab. Assuming 40% for inflationary costs and the difference in pay from the District Schedule to the Federal General Schedule for Lab staff, the current Pretrial Lab costs for specimen collection and drug testing analysis is roughly $7.00. This still represents a considerable savings over the $16.00 currently paid by Federal Probation to contract for a 5 drug screen. If the savings per sample ($9) is multiplied by the 150,000 samples currently run annually in the Pretrial Lab, the $1,350,000 saved over contracting offsets the cost of a new Lab in less than a year. When the cost of contracting ($16.00) is compared with the number of samples that will run from the new lab on annual basis (approximately 600,000), the $9,600,000 required to contract drug testing on the same scale as proposed in the FY 2000 request is cost prohibitive. This analysis excludes the additional $22.00 in contracting costs paid by Federal Probation for GCMS tests for

positive confirmations that the new lab will also be able to perform. Furthermore, not only is in-house testing less expensive, it provides results in an hour or less, as compared to contract results that are not be available for several days.

Drug Court Expansion

Pretrial Services Agency is requesting 10 positions, 6 FTE, and $589,000 to expand the District's Drug Court. Currently, the 9 case managers in Drug Court can handle a maximum of 225 defendants, resulting in a case ratio of 25:1. In order to expand Drug Court to include up to 350 defendants, and comply with the 20:1 case ratio necessary for this level of supervision, Pretrial Services will require 8 additional case managers. In addition, the Drug Court has one supervisor responsible for all facets of court operations (eligibility screenings, placements, sanctions, progress reports, discharges), and one supervisor responsible for coordinating the delivery of drug treatment services to over 200 clients. In order to accommodate the increased population, Pretrial Services Agency requests funding for an Assistant Court Operations Manager. The Agency's request from the 21st Century Policing Initiative grant program would establish an Assistant Treatment Coordinator.

Recent nationwide evaluations have found that drug courts are successful in bridging the gap between courts and treatment systems. They offer more comprehensive supervision than other community-based supervision programs, resulting in higher rates of treatment program retention. Findings also include lower rates of drug use for drug court participants and lower rates of post-program recidivism.

The Superior Court Drug Intervention Program (SCDIP) opened in 1993. Its brief history presents an array of information about the impact drug courts have on the lives of individual criminal defendants as well as safety of the community. SCDIP was launched as a demonstration project with funding from the Center for Substance Abuse Treatment (CSAT). In the first program model as a demonstration project, SCDIP placed felony drug defendants into one of three components:

- *Graduated sanctions docket* – offered defendants twice weekly drug testing, optional referrals to community-based treatment, frequent status hearings with the judge and sanctions for program violations, including days observing Drug Court proceedings, jail or detoxification.
- *Treatment docket* – offered participation in a court-operated intensive treatment program with testing five times weekly, but sanctions were not imposed.
- *Standard docket* – served as the control group. Defendants received twice weekly testing, encouragement to find community-based treatment and judicial monitoring. The Court did not order them to treatment or impose sanctions for program violations.

An independent evaluation of the demonstration project conducted by the Urban Institute and supported by the National Institute of Justice demonstrates that treatment and sanctions combined reduce drug use and recidivism. This evaluation is currently under

review at the Department of Justice. Although the results are not final, available data indicates that defendants on the graduated sanctions docket were almost three times more likely and defendants on the treatment docket two times more likely to be drug-free in the month before sentencing than those on the standard docket. Additionally, sanctions participants were less likely than treatment and standard docket participants to be rearrested in the year after sentencing. On average, 78 percent of SCDIP participants had not been rearrested at ten months after sentencing.

The demonstration project revealed that about 60% of the defendants on both the sanctions and standards dockets reported attending Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings during pretrial release. On both dockets, those who attended were less likely to report drug use and criminal activity in the year following sentencing. However, sanctions participants who attended NA/AA while on pretrial release were significantly less likely than standard docket members and participants who did not attend these meetings to report stronger drug use in the year after sentencing. This indicates that the effect of a sanctions program is enhanced by combining it with treatment.

Given these results, in 1997, the SCDIP program model was changed to combine treatment and sanctions on the same docket. SCDIP eligibility standards were eventually changed to include non-violent misdemeanor and non-violent felony defendants. Current program participants receive outpatient treatment services from Pretrial Services, submit to drug tests twice weekly and are subject to sanctions of two days observing Drug Court proceedings for the first drug test violation and three days in jail for subsequent violations. Drug detoxification, intensive outpatient treatment and inpatient treatment are alternative sanctions.

The Urban Institute also conducted a process evaluation of SCDIP, examining the new program model for the period covering February 1997 through June 1998. Preliminary data from the demonstration project, data compiled from the process evaluation of the revised program model and some program data from Pretrial Services' Drug Test Management System of calendar year 1998 drug court participants are given below. These studies demonstrate the impact and effectiveness of SCDIP.

- Self-reported information provided by participants of the demonstration project reveals an almost 60% reduction in drug consumption during the year after sentencing compared with the month before arrest for the drug court offense.

- Self-reported data from the demonstration project illustrates SCDIP's impact on crime. Forty-seven percent of participants reported committing a violent crime prior to their arrest for the drug court offense, whereas in the month after sentencing, only seven percent reported committing a violent crime. Similarly, self-reported data indicated there was a 58 percent decrease in property crimes and a 67 percent decrease in drug crimes, in the period before arrest compared with after sentencing.

- Economic savings from the demonstration project are apparent. The cost was $8.91 per day to treat a defendant in SCDIP's intensive treatment program and $6.86 for the sanctions program, whereas the cost of jailing a defendant was $62.31 per day.

- 78 percent of program graduates had enrolled in some educational/vocational program during the one-year period after their involvement in SCDIP. Furthermore, clients' incomes a year after participating in SCDIP indicated an 87 percent increase compared with incomes before or during participation in the program. Notable also is the fact that only two percent of the combined treatment and sanctions participants of the demonstration project lost their jobs in the year after sentencing.

- The 1998 process evaluation showed that under the new program model the graduation rate of 37% was in keeping with the national average for drug courts.

- During calendar year 1998, the Pretrial Services Drug Detection Laboratory analyzed 8,201 drug samples submitted by SCDIP participants. Seventy-eight percent, or 6,441 samples, were negative for illicit drug use.

QUESTION #7: The Agency's budget proposal requests $5.87 million for a residential sanctions center to permit "appropriate responses upon the first signs of offender violation of conditions of release or relapse." Please provide evidence of the effectiveness of the sanctions center concept.

ANSWER: CSOSA's budget request, and the initiatives making up much of the request, are part of a larger approach designed to make offender supervision in the District credible and effective. There is considerable empirical evidence that many of our small-scale initiatives work to reduce drug use and recidivism. The next step is to expand upon what is working on a small scale and make it the norm across the system. The Sanctions Center is a necessary component of this comprehensive approach.

The Drug Court Evaluation summarized in the answer to Question #6 described findings that participants subject to immediate sanctions had lower rates of drug use, and lower rates of re-offending, than did either of the other two randomly assigned experimental groups. The key difference in approach was the imposition of immediate sanctions, beginning with a three-day period of observation of the Drug Court from the jury box, and quickly escalating to jail sanctions for repeated violations. A series of focus group interviews conducted by the evaluation team produced additional noteworthy results. Drug Court defendants invariably made similar observations of the process. They were certain the sanctions would be imposed, pursuant to their agreements with the judge. Many considered the structure of the program to be the key to their success. They recognized that without the pressure of sanctions, they would have slipped back to their old ways.

Further support for the concept of graduated sanctions can be found in the evaluation conducted by the University of Maryland and the Washington/Baltimore "High Intensity Drug Trafficking Area (HIDTA), which involved funding for drug treatment provided in a framework of frequent drug testing coupled with criminal justice sanctions. The evaluation compiled outcome data from 1,700 "hard core" addicts referred for HIDTA treatment, and included 12 separate local jurisdictions in Maryland, Northern Virginia and the District of Columbia. That evaluation – cited in the recent report by Drug Strategies "Facing Facts: Drugs and the Future of the District of Columbia" – showed that during treatment, only 12 percent of participating offenders were arrested for new crimes, compared to a national rearrest rate of 50 percent for comparable offenders. The State of Maryland has already acted on these favorable results and is implementing on a state-wide basis a "Breaking the Cycle" initiative incorporating all of these elements.

As successful as the sanctions-based approach has been in the Drug Court and in the regional HIDTA initiative, more sanctioning capacity must be built if the approach is to be expanded to the larger offender population. Many of the nation's top criminologists and public policy scholars have called for such an approach. All recognize that historically, probation and parole supervision has lacked resources, credibility, and the means to have an impact on crime. Dr. Joan Petersilia, in an article entitled *A Crime Control Rationale for Reinvesting in Community Corrections* (Attachment #1), describes

the rapid increase in probation and parole caseloads, pointing out that nationally, there are "nearly three times as many violent offenders (1.02 million) residing in the community as were incarcerated in prison (372,000). "These numbers make painfully clear," writes Petersilia, "why a failure to provide adequate funding for community corrections invariably places the public at risk." Dr. Petersilia's prescription calls for regaining the public's trust that "probation and parole can be meaningful, credible sanctions." She attributes the disappointing results in earlier "intermediate sanctions" programs to the fact that ***"they were usually implemented without creating an organizational capacity to ensure compliance with the court-ordered conditions of release"*** (emphasis added). Part of the organizational capacity must be a dedicated Sanctions Center controlled by CSOSA to ensure that enforcement really takes place.

Increasingly, other scholars are making the same points. Mark Kleiman, professor of policy studies at UCLA, writes in the February 2, 1997, issue of *The Washington Post* (Attachment #2): "the crimes committed by drug-involved offenders and their dealers might justify the high cost of imprisoning them, if there were no other way to make them stop. But the threat of repeated short spells in jail for continued drug use should be adequate to deter many of them, at a tiny fraction of the cost." Kleiman correctly notes that "current drug-testing practices of probation and parole combine infrequent testing and even more infrequent sanctioning for missed or 'dirty' tests." He calls for more drug testing coupled with "automatic but mild" sanctions. "To succeed, such a program requires adequate confinement facilities. These would not have to be prisons, since persons confined for only a few days pose less escape risk, and require fewer services, than typical inmates." Although Professor Kleiman does not use the term, the CSOSA-proposed Sanctions Center serves the same purpose. Kleiman estimates that the entire program of testing, sanctions and supervision "could be done for $2,000 per participant per year, more than twice the cost of probation but less than one-tenth the cost of prison."

Other evidence of the effectiveness of the Sanctions Center concept was summarized in a recent Wall Street Journal piece by John DiIulio, dated March 12, 1999 (Attachment #3). DiIulio writes that we "spend next to nothing on community-based corrections, and we get what we pay for... Most of what ails probation and parole can be fixed by cutting officer caseloads and spending more on performance-driven programs that take supervision seriously and put public safety first." DiIulio cites experience in Michigan between 1991 and 1997, when the number of probation and parole agents increased by more than half, and the average number of offenders supervised by each agent fell to 63 from 92. This led to an increase of more than 55% in the number of parolees charged with violating the terms of their release. "But over six years, Michigan prison admissions resulting from probation and parole violations grew by only 1.6%," demonstrating that "intensive supervision of offenders in community programs can be accomplished without disastrous impact on prison growth."

Finally, although the Agency's crime control efforts must begin with controlling substance abuse, it is important to note that the Sanctions Center – and the ability to establish credible responses to violations – will be useful in controlling other anti-social behaviors. There is further evidence on the effectiveness of this approach. One example

is the nationally-acclaimed Night Light program in Boston, which created police-probation partnerships to enforce curfews and reduce violence. There has been a precipitous drop in homicides and street violence in the past six years, with juvenile homicides dropping from 16 in 1993 to just 1 in 1998. While it would be difficult to identify a single factor responsible for such a promising trend, the greatly-increased credibility of supervision has been credited with creating a new message on the street: "those on probation must take their obligations seriously, or they will be detected in not doing so and consequences will ensue" (article by Ronald P. Corbett describing this program is Attachment #4).

In short, no single element of the Agency's strategy can succeed without the others. A Sanctions Center is needed to ensure enforcement of release conditions. Drug testing capability is needed to detect violations. Treatment is needed once addicts begin to feel criminal justice pressure and become "motivated" to change. Staff, with timely information at their fingertips, is necessary to manage the process. We know how to cut crime. Now we need the means to apply what we know. The Agency's budget request, and the distinct initiatives making up much of the request, are part of a larger approach designed to make offender supervision credible and to expand on what is working on a small scale. The Sanctions Center is a necessary component of this comprehensive approach.

QUESTION #8: For FY 1999, the DC Appropriations Act shows $59.4 million appropriated for your agency, yet at the top of page 6 of your "Summary of Requirements" in your justification, you show "1999 Budget Amendment Adjustment" of $7,715,000 and 110 positions. Was your budget amendment approved in an appropriations bill? If so, in which appropriations bill and in what amount?

ANSWER: On July 8, 1998, the President submitted a FY99 budget amendment for an additional 435 positions and $38.3 million for CSOSA. The Agency's original budget request for FY 1999 was $59.4 million. The amendment would have provided a 64% increase over the original FY 1999 proposed budget and a total increase of 127% over FY 1998. The Administration proposed to fund for one year this significant increase through Department of Justice grant programs for State and local law enforcement.

The Administration's original FY 1999 budget request was a compilation of the budgets for the Pretrial Services Agency, Parole, Probation and Offender Supervision Agency, and the D.C. Public Defender Service developed with only limited input from the Trustee (who had just been appointed). At the time it was developed, this budget assumed minimal enhancement of the current level of supervision for an estimated 10,000 adult offenders.

Because previous reporting systems within the District were neither integrated nor accurate, one of the first tasks of the Trustee was to ascertain the number of adults that require some form of conditional criminal justice supervision in the District. After reviewing and analyzing needs and capacity data from each of the agencies, the Trustee determined that **over 30,000 adult offenders** in the District require by law some form of conditional supervision – that is, **more than one of every 20 D.C. residents** is under pretrial release, parole or probation supervision. Furthermore, caseload ratios currently range from 75 to 900 offenders per supervision officer.

The budget amendment sought to address this critical public safety issue by substantially increasing the number of staff and establishing new programs to greatly enhance the level of supervision. One of the purposes of the Revitalization Act was to address critically needed public safety improvements in the District with Federal assistance. Programs of this nature in most State and local governments are typically eligible for DOJ Federal grants. The Administration proposed language to allocate grant funding to this soon-to-be Federal agency. Therefore, no additional funding was requested directly under the District of Columbia Appropriation Subcommittee's allocation to support this increase, and assumed favorable action by the CJSJ Subcommittee.

The Agency planned to use the funding provided by the amendment to advance three initiatives. First, to ensure that all DC offenders under supervision would be drug tested on a regular basis, to improve processing times and to provide adequate treatment services, $11,404,000 was requested from the President's proposed drug testing, intervention and treatment grant program. Second, to support the hiring of community

supervision officers and to prevent and deter crime through coordination of community policing and enhanced offender supervision; $19,365,000 was requested from the COPS program for a problem-solving partnership. This initiative included funding for information technology and the establishment of additional community supervision centers supporting police, supervision officers and service providers. Third, the establishment of a sanctions center to ensure adequate response to persons who violate conditions of supervision and to implement corrections-related recommendations of the District of Columbia Truth-in-Sentencing Commission, $7,500,000 was requested from the Truth-in-Sentencing Prison Grant program for establishment of a residential sanctions facility.

The budget amendment included language that would have directed the award of one-time-only funding from these three grant programs under the Department of Justice to support specified elements of the Agency's law enforcement and public safety activities. However, the FY 1999 Appropriation for the Department of Justice provided only $5 million from the COPS program for hiring of additional community supervision officers and related program support for CSOSA. CSOSA's FY 2000 budget requests the annualization into the Agency's base program of 110 positions that will be hired during FY 1999 pursuant to the funding provided through the COPS grant program. The amount of this annualization is $7,715,000.

QUESTION #9: On page 4 of your justifications, item 2 under Explanation of Changes states "Language is proposed that will require funds to be paid quarterly by the Treasury based on apportionment approved by the Office of Management and Budget, consistent with the treatment of other Federally funded District of Columbia entities, and to provide additional fiscal monitoring."

a. **Please explain and provide specific references to the "District of Columbia entities" that receive quarterly payments by the Treasury.**
b. **Please explain how this language will "...provide additional fiscal monitoring."**

ANSWER: The FY 2000 proposed appropriations language for the Court Services and Offender Supervision Agency would require that the annual amount appropriated would be, "...paid quarterly by the Treasury based on quarterly apportionment approved by the Office of Management and Budget." The proposed language differs from the FY 1999 appropriation language that provided, "...consistent with regulations and guidance governing the use of Federal funds by grantees, funds appropriated in this Act for the District of Columbia Offender Trustee shall be transferred by the Secretary of the Treasury to said Trustee only as funds are needed to pay properly incurred obligations."

The explanation provided in the FY 2000 budget justification is the proposed language is, "consistent with the treatment of other Federally funded District of Columbia entities, and to provide additional fiscal monitoring"; however, a more accurate description is to ensure that appropriations made by Congress are made available to the agency in an efficient manner, with appropriate levels of oversight and controls consistent with regulations applicable to Federal agencies. Additionally, since during this transition period, the Agency is an independent District of Columbia entity, its funding cannot be apportioned by the Federal Government. By inserting a provision into appropriations law that requires the Agency to be paid quarterly based on a quarterly apportionment approved by the Office of Management and Budget, the Agency will be treated, for financial purposes, as an independent Federal agency.

Further, CSOSA contracts with the Department of Justice for payroll and financial services, such that all funds expended by the Agency are paid out of the Treasury by the Department of Justice. Pursuant to a March 17, 1999, Memorandum of Understanding between the Treasury and CSOSA, a Department of Justice deposit account has been established to receive monthly deposits from Treasury based on CSOSA's outlay schedule. It is from this deposit account that the Department of Justice receives reimbursement. The Public Defender Service has a similar service arrangement with the General Services Administration, which also has a deposit account for this purpose.

Until CSOSA is certified as an independent Federal agency, it will maintain the service arrangement, as described above, with the Department of Justice. Once the Agency achieves Federal status, a separate deposit account will no longer be required since the Agency will have its own Treasury account.

ATTACHMENT #1

LAW & JUSTICE

A Crime Control Rationale for Reinvesting in Community Corrections

Crime prevention solutions coming out of Washington are politically attractive, but the author of this article explains that they are at odds with strategies advocated by practitioners, scholars, and numerous expert panels. Elected government officials have recently proposed spending more funds on prison construction at the expense of prevention programs. Taking such a reactive approach does not deter young people from becoming criminals, nor does it address the majority of criminals — those serving sentences on probation and parole. This article examines and substantiates the argument for focusing on crime prevention and community corrections rather than law enforcement programs.

by Joan Petersilia

Last year Congress passed the most ambitious crime bill in our nation's history, the Violent Crime Control and Law Enforcement Act of 1994. It allocated $22 billion to expand prisons, impose longer sentences, hire more police, and to a lesser extent, fund prevention programs. But as part of the Republicans' "Contract with America," the House significantly revised the Act, and the money allocated to prevention programs was eliminated. The amended bill—whose price tag rose to $30 billion — shifted nearly all of the $5 billion targeted for prevention programs into prison construction and law enforcement. As a *Los Angeles Times* op-ed concluded of the whole matter: "what started out last legislative season as a harsh and punitive bill has gotten down right Draconian" (*Los Angeles Times*, 1995).

While such tough-on-crime legislation has political appeal, it finds almost no support among criminal justice practitioners and scholars. They are uniformly agreed that such efforts — which endorse an "enforcement model" to the sacrifice of all else — will do little to curb crime. In recent months organizations as diverse as the International Association of Chiefs of Police (IACP), the U.S. Conference of Mayors, the American Bar Association (ABA), National Governors Association, the League of Cities, The RAND Corporation, the National Council on Crime and Delinquency (NCCD), the Campaign for an Effective Crime Policy (CECP), and the National Research Council have all voiced opposition to the approach.

Even prison wardens (who stand to benefit from an enforcement model) uniformly reject the crime-fighting solutions coming out of Washington. In a recent national survey of prison wardens, 85 percent of those surveyed said that elected officials are not offering effective solutions to America's crime problem (Simon 1994). Chase Riveland, Washington State Director of Corrections, said that focusing only on prisons and ignoring the rest of the system is "drive-by legislation, at best." And Jerome Skolnick, President of the American Society of Criminology (ASC), spoke of the federal efforts in his 1994 Presidential Address and entitled it, "What *Not* to Do About Crime."

What *is* wrong with the current proposals? Some argue that they are racist, others argue that they cost too much, but nearly everyone

agrees they have two major flaws: 1) they fail to prevent young people from entering and continuing a life of crime; and 2) they leave the vast majority of criminals, who are serving sentences on probation and parole rather than prison or jail, unaffected.

Criminologists have long observed that age 18 is the year of peak criminality. Analysis recently completed by Alfred Blumstein at Carnegie-Mellon showed that today we have the smallest cohort of 18-year-olds we will see for at least the next 15 years. Next year, the number is going to start going up, and the biggest growth will occur in the number of African American children who are now four to nine years old. Blumstein (1994) recently observed:

> These young people are being less well educated and socialized, and as a result are easy recruits for the booming crack cocaine industry, where weapons are a business accessory for an increasing number of youths. The result will be a steep increase in juvenile and young adult violent crime, unless we begin investing in community-based programs to better socialize kids when their parents are not doing so. This is a population crying out for our attention, and, as a society, we need to find a means to divert them from becoming as violent as their big brothers.

As more young people are recruited into and retained in a criminal lifestyle, the ability of back-end responses (such as imprisonment) to increase public safety is severely limited because of the replenishing supply of young people who are entering into criminal careers.

The second, and equally important reason that current federal efforts will fail, is that they focus exclusively on prisons as a corrections strategy, ignoring the fact that most criminals are serving probation and parole sentences. In 1993 there were just under five million adult (convicted) criminals — or about one in every 39 Americans. Seventy-two percent of all identified criminals were not in prison, but serving sentences in the community on probation or parole supervision. Even though we have quadrupled the number of prisoners in the past decade, prisoners are still less than 1/5 of the convict population, and the vast majority of offenders remain in the community amongst us (Bureau of Justice Statistics 1995). If we are to effectively control crime — as opposed to exacting retribution and justice — we must focus our efforts where the offenders are, which is in the community reporting to probation and parole officers.

> *Current crime policies are neither comprehensive nor will they be effective unless we focus on the needs and risks posed by probationers and parolees.*

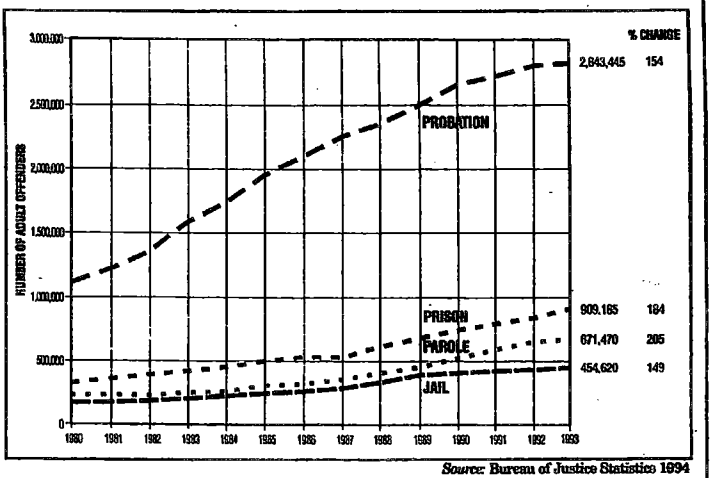
Despite the fact that both crime bills were touted by their proponents as comprehensive approaches to the crime problem, neither the 1994 Crime Act or the 1995 "Taking Back Our Streets" proposal *even mentions* probation or parole, much less provides funding or direction for revising programs or practices. Moreover, the federal bill will likely take money away from community corrections budgets, which are already at a dangerously low level, to fund the expanded prison space required to comply with federal mandates requiring state prisoners to serve 85 percent of their sentence (so called "truth in sentencing").

This article addresses the public safety consequences of current probation and parole practices. It contends that current crime policies are neither comprehensive nor will they be effective unless we focus on the needs and risks posed by probationers and parolees. Whether we are able to control the crime propensities of *these* offenders is critical to the effectiveness of any anti-crime program.

We must rethink the types of programs and funding levels that are appropriate for the kinds of clients these agencies now encounter. The majority of probationers are convicted felons, have prior criminal records, and are likely to be substance and alcohol abusers with few marketable skills. If we continue to ignore their behavior — and miss the opportunity to intervene positively — we are relatively assured of imprisoning them eventually. Current policy simply waits until their criminality escalates to the point of needing imprisonment, and such policies have now proven costly and ineffective at reducing crime.

The author suggests developing "surveillance plus treatment" programs for drug involved probationers, including offenders who are convicted of drug possession and use, but not trafficking. Evaluation research suggests that we now have program models that are effective at reducing their recidivism rates, that the public is supportive of rehabilitation as

Figure 1: Adults in Prison, Jail, Probation and Parole in the United States, 1980-93



Source: Bureau of Justice Statistics 1994

opposed to incarceration for such offenders, and that the cost-benefit tradeoffs between prison and community corrections are among the highest for that subpopulation (for a recent review, see Clear and Braga 1995).

Who is On Probation and Parole? A Profile of the Population

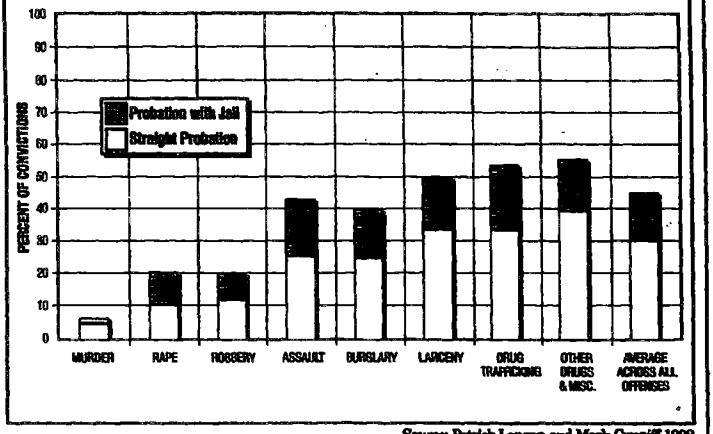
The public misunderstands the safety risks and needs posed by offenders currently under community supervision, particularly those on probation. Many erroneously assume that as prison populations have grown, probation population will have declined and that those remaining in the community will have become increasingly less serious, and hence less in need of supervision. But as shown in Figure 1, populations in all four components of the corrections system have grown at record rates since 1983, and the 3:1 ratio of community-based to institutional populations has remained relatively stable for more than a decade.

It might seem logical that since prison populations have quadrupled over the past decade, those remaining in the community are increasingly less serious offenders—since the more serious offenders have been skimmed off and sent to prison. Unfortunately, this is not true. Analysis shows that the probation population has become increasingly serious if judged by their prior criminal record, current conviction crime, or substance abuse histories (Petersilia et al. 1985). The truth is that the overall U.S. population has grown, more citizens are being convicted, and all corrections populations have grown simultaneously.

The Bureau of Justice Statistics (BJS) tracks the sentences handed down by the courts in felony convictions. They report that in 1986 the courts granted probation to 46 percent of all convicted felons (Langan and Cunniff 1992). Figure 2 shows the percent of felony convictions granted probation, by crime type.

As shown in Figure 2, about 30 percent of the defendants were required to serve some jail time as part of their probationary term. Considering different crime types, about 6 percent of murderers were placed on probation, as were 20 percent of convicted rapists. Twenty percent of convicted robbers and 40 percent of burglars were similarly sentenced to probation rather than active prison terms. The average sentence to probation was just under 40 months, and an average jail term (for those

Figure 2: Percent of Felony Convictions Granted Probation or Probation with Jail



Source: Patrick Langan and Mark Cunniff 1992

where it was imposed) was six months.

To gauge the public safety risks of probationers and parolees, it is useful to consider the population as a whole in terms of conviction crimes. This information is provided in Table 1, which shows the conviction crimes of all adults under correctional supervision during 1991.

Table 1 shows that about 16 percent of all adult probationers were convicted of violent crimes, as were 26 percent of parolees. This means that on any given day in the U.S. in 1991, there were an estimated 435,000 probationers and 155,000 parolees residing in local communities who have been convicted of violent crime — or over a half million offenders. If we compare that to the number of violent offenders residing in prison during the same year, we see that there were approximately 372,500 offenders convicted of violent crime *in* prison, and approximately 590,000 *outside* in the community on probation and parole! Overall, we can conclude that nearly three times as many violent offenders (1.02 million) were residing in the community as were incarcerated in prison (372,000). These numbers make painfully clear why a failure to provide adequate funding for community corrections invariably places the public at risk.

Of course, the type of crime an offender is convicted of doesn't necessarily equate with his/her risk of recidivism. Patrick Langan of BJS tracked for a three-year period a sample representing nearly 80,000 felons granted probation in 1986. Just over 40 percent of the probationers were classified by probation departments as needing either "intensive" or "maximum" supervision — meaning they appeared to be at a high risk of recidivating based on their prior criminal records and need for services. If probationers are growing in numbers and are increasingly more serious offenders, then they are in need of more supervision, not less. But less is exactly what they have gotten over the past decade.

Despite the unprecedented growth in probation populations and their more serious clientele, probation budgets have not grown. From 1977 to 1990 prison, jail, parole, and probation populations all about tripled in size. Yet only spending for prisons and jails had accelerated growth in overall government expenditures. In 1990 prison and jail spending ac-

counted for two cents of every state and local dollar spent — twice the amount spent in 1977. Spending for probation and parole accounted for two-tenths of one cent of every dollar spent in 1990 — unchanged from what it was in 1977 (Langan 1994). Today, although nearly *three-fourths* of correctional clients are in the community, only about *one tenth* of the correctional budget goes to supervise them.

The increase in populations, coupled with stagnant or decreasing funding, means that caseloads (the number of offenders an officer is responsible for supervising) keep increasing. While the 1967 President's Crime Commission recommended that ideal caseloads would be about 30:1, national averages for probation are now approaching 150:1, and for parole, 80:1. And in some communities, caseloads are much higher. In Los Angeles County, for example, where nearly 70,000 adults are on probation, funding cutbacks have resulted in caseloads reaching several hundred and few direct services. A recent report noted that 60 percent of all Los Angeles probationers are tracked solely by computer and have no contact with an officer (U.S. Advisory Commission 1993). Texas reports that it has about 400,000 adults on probation, and 95 percent of them are on regular supervision, which means they are only seen once every three months.

Nationally, BJS reports that three out of five felony probationers see a probation officer no more than once a month, at best, because actual contacts are often less than the number prescribed (Langan 1994). Because of underfunding and large caseloads, probation supervision in many large jurisdictions amounts to simply monitoring for rearrest. As Clear and Braga (1995,423) recently wrote: "Apparently, community supervision has been seen as a kind of elastic resource that could handle whatever numbers of offenders the system required it to."

But neglect in funding has had serious consequences. As caseloads rise, there is less opportunity for personal contact between officer and offender, limiting any ability of the officer to bring about positive change in the offender, or refer the offender to appropriate community-based resources and programs (which incidentally are also being reduced). Court-ordered fines and restitution don't get paid, and community service doesn't get performed — all

Table 1:
Adults Under Correctional Supervision, By Offense 1991

Most Serious Offense	*Percent of Adult Offenders*			
	Probation	*Jail*	*Prison*	*Parole*
All offenses	100%	100%	100%	100%
Violent offenses	16	22	47	26
Homicide	1	3	12	4
Sexual Assault	2	3	9	4
Robbery	2	7	15	11
Assault/other	10	8	10	6
Property offenses	34	30	25	36
Burglary	7	11	12	15
Larceny/theft	16	8	5	12
Auto theft	1	3	2	2
Fraud/other	10	8	6	6
Drug offenses	24	23	21	30
Trafficking	8	12	13	18
Possession/other	16	11	9	2
Public-order offenses	25	23	7	7
Weapons	1	2	2	2
DWI/DUI	16	9	NA	3
Other	9	14	5	3

Source: U.S. Bureau of Justice Statistics June 1994, August 1994, and May 1993

of which adds to probation's tarnished image as being too lenient and lacking in credibility.

Robert Kelgord, former Chief Probation Officer in Sacramento, California, recently testified that over half of the probationers he was responsible for went unsupervised. He went on to describe the overall California probation situation as follows:

> On each judicial day hundreds of California judges sentence thousands of offenders to probation, sternly enumerating the many conditions of probation that are to be enforced by the probation officer. Unfortunately, virtually all of these offenders will never see a probation officer and there will be absolutely no enforcement of the court ordered conditions. Equally unfortunate is that all of the players in this drama — especially the offender — understand that the offenders will go unsupervised, will have no accountability to the courts, and will, in a high percentage of the cases, simply reoffend (Commission on Future of California Courts 1993, 159).

Lack of services and supervision undoubtedly contributes to high recidivism rates, since it has been continually shown that there is a "highly significant statistical relationship between the extent to which probationers received needed services and the success of probation (U.S. Comptroller General 1976, 25)." As services have dwindled, recidivism rates have climbed. In the national BJS study mentioned earlier, Langan and Cunniff (1992) found that 43 percent of probationers were rearrested for a felony within three years of receiving a probationary sentence. The total group of some 79,000 probationers was responsible for nearly 34,000 arrests, including 632 arrests for murder, 474 for rape, and 5,500 for robbery and assaults. By the end of the three year period, 26 percent of the probationers had been sent to prison, another 10 percent to jail, and an additional 10 percent were designated absconders with unknown whereabouts. Overall, 46 percent of felony probationers were classified as "failures." The same study shows that while 53 percent of the sample was characterized as having a drug abuse problem, only 14 percent of the sample participated in any required drug treatment during the three-year follow-up period.

Parolees fare no better. BJS statisticians Allen Beck and Bernard Shipley (1989) tracked 108,580 parolees released from prison in 1983. The sample represented more than half of all released State prisoners that year. They found that within 3 years, 62 percent of them had been rearrested for a felony or serious misdemeanor (23 percent for a violent crime), 47 percent were reconvicted, and 42 percent were returned to prison or jail. By year-end 1986, those prisoners who were rearrested averaged an additional 4.8 new charges.

Another means to gauge the contribution of probationers and parolees to the crime problem is to examine the "criminal justice status" of offenders at the time they committed or were arrested for their current crime. Numerous BJS reports provide that information, and the relevant figures are summarized in the Figure 3 below. They attest to the contribution of probationers and parolees to the "crime problem," and the public safety consequences of reducing funding for community corrections. For example, 31 percent of persons on death row in 1992 report committing their murders while under probation or parole supervision. A study in Florida found that, over a 58-month period between January 1987 and October 1991, Florida parolees alone committed over 15,000 violent and property crimes, including 346 murders (Florida Department of Corrections 1993). Leaving probationers and parolees "unattended" is not only bad policy, it leaves many victims in its wake.

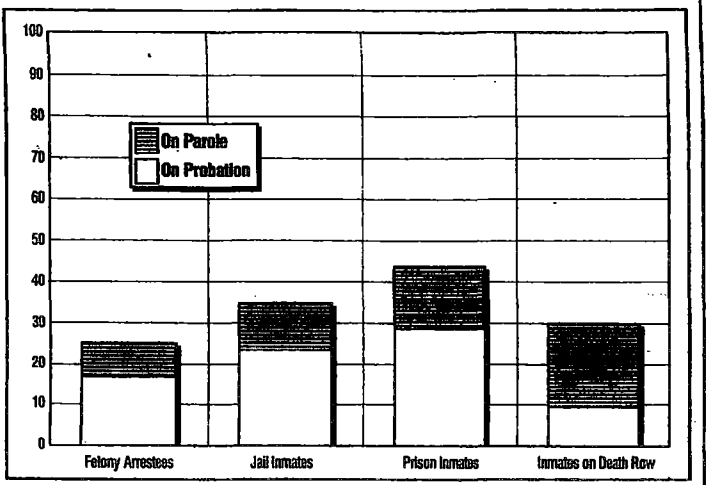
The high failure rates of probationers and parolees also contribute significantly to prison crowding. Current estimates show that between 30 and 50 percent of all new prison admissions are community supervision failures (Parent et al. 1994). Indeed, offenders who fail under community supervision are the fastest-growing component of the prison population.

What Can We Do? A Proposal To Develop an Integrated Treatment/ Control Program for Drug Offenders

The grim situation described above is known to most of those who work in the justice system or study it. Until we curb the criminal activities of the three-fourths of criminals who reside in the community, real reductions in crime or prison commitments are unlikely. But just as there is growing agreement about the nature of the problem, there is also an emerging consensus about how to address it.

We need to first regain the public's trust that probation and parole can be meaningful, cred-

Figure 3: The Percent of Offenders on Probation or Parole at Time of Offense



Sources: Bureau of Justice Statistics April 1990, April 1991, May 1993 and December 1993

ible sanctions. During the past decade, many jurisdictions developed "intermediate sanctions" as a response to prison crowding. These programs (e.g., house arrest, electronic monitoring, and intensive supervision) were designed to be community-based sanctions that were tougher than regular probation, but less stringent and expensive than prison. The program models were good and could have worked, except for one critical factor: they were usually implemented without creating an organizational capacity to ensure compliance with the court-ordered conditions. Intermediate sanctions were designed with smaller caseloads enabling officers to provide both services and monitoring for new criminal activity, but they never were given the resources needed to enforce the sanctions or provide necessary treatment. When the court ordered offenders to participate in drug treatment, for example, many probation and parole officers couldn't ensure compliance because local treatment programs were unavailable. Programs that were available often put offenders at the back of the waiting list. Similarly, when the court ordered fines or restitution to be paid, or community service to be performed, it often was ignored because of a lack of personnel to follow through and monitor such requirements. Over time, what was intended as tougher community corrections in most jurisdictions didn't materialize, thereby further tarnishing probation's and parole's image. (For a complete review of this experience, see Petersilia and Turner 1993; Clear and Braga 1995). And, while most judges still report being anxious to use tougher, community-based programs as alternatives to routine probation or prison, most are skeptical that the programs promised "on paper" will actually be delivered in practice. As a result, some intermediate sanction programs are beginning to fall into disuse.

But not all programs have had this experience. In a few instances communities invested in intermediate sanctions and made the necessary treatment and work programs available to offenders. And, most importantly, the programs worked: in programs where offenders received *both* surveillance (e.g., drug tests) and participated in relevant treatment, recidivism

was reduced 20-30 percent (Petersilia and Turner 1993). Recent program evaluations in Texas, Wisconsin, Oregon, and Colorado have found similarly encouraging results (Clear and Braga 1995). Even in BJS's national probation follow-up study, it was found that if probationers were participating in or making progress in treatment programs, they were less likely to have a new arrest (38 percent) than either those drug offenders who had made no progress (66 percent) or those who were not ordered to be tested or treated (48 percent).

There now exists rather solid empirical evidence that ordering offenders into treatment and getting them to participate, reduces recidivism. So, the first order of business must be to allocate sufficient resources so that the designed programs (incorporating both surveillance and treatment) can be implemented. Sufficient monetary resources are essential to obtaining and sustaining judicial support, and achieving program success.

Once we have that in place, we need to create a public climate to support a reinvestment in community corrections. Good community corrections costs money, and we should be honest about that. We currently spend about $200 per year, per probationer for supervision. It is no wonder that recidivism rates are so high. Effective treatment programs cost at least $12,000-$14,000 per year. Those resources will be forthcoming only if the public believes the programs are both effective and punitive.

Public opinion is often cited by officials as the reason for supporting expanded prison policies. According to officials, the public demands a "get tough on crime" policy, which is synonymous with sending more offenders to prison for longer terms. We must publicize recent evidence showing that offenders — whose opinion on such matters is critical for deterrence — judge some intermediate sanctions as *more* punishing than prison. Surveys of offenders in Minnesota, Arizona, New Jersey, Oregon, and Texas reveal that when offenders are asked to equate criminal sentences, they judge certain types of community punishments as *more* severe than prison.

One of the more striking examples comes from Marion County, Oregon. Selected non-violent offenders were given the choice of serving a prison term or returning to the community to participate in the Intensive Supervision Probation (ISP) program, which imposed drug testing, mandatory community service, and frequent visits with the probation officer. About a third of the offenders given the option between ISP or prison chose prison. When Minnesota inmates and corrections staff were asked to equate a variety of criminal sentences, they rated three years of Intensive Supervision Probation as equivalent in punitiveness to 1 year in prison (Petersilia and Deschenes 1994).

What accounts for this seeming aberration? Why should anyone prefer imprisonment to remaining in the community—no matter what the conditions? Some have suggested that prison has lost some of its punitive sting, and hence its ability to scare and deter. For one, possessing a prison record is not as stigmatizing as in the past because so many of the offenders' peers (and family members) also have "done time." A recent survey shows that 40 percent of youths in state training schools have parents who have been incarcerated. Further, about a quarter of all U.S. black males will be incarcerated during their lives, so the stigma attached to having a prison record is not as great as it was when it was relatively uncommon. And the pains associated with prison — social isolation, fear of victimization — seem less severe for repeat offenders who have learned how to do time.

In fact, far from stigmatizing, prison evidently confers status in some neighborhoods. Jerome Skolnick of U.C. Berkeley found that for drug dealers in California, imprisonment confers a certain elevated "home boy" status, especially for gang members for whom prison and prison gangs can be an alternative site of loyalty. And according to the California Youth Authority, inmates steal state-issued prison clothing for the same reason. Wearing it when they return to the community lets everyone know they have done "hard time."

The length of time an offender can be expected to serve in prison has also decreased — the latest statistics show that the average U.S. prison term for those released to parole is 17 months. But more to the point, for less serious offenders, the expected time served can be much less. In California, for example, more than half of all offenders entering prison in 1995 are expected to serve six months or less. Offenders on the street seem to be aware of this, perhaps because of the extensive media coverage such issues are receiving.

For convicted felons, freedom of course is preferable to prison. But the type of program being advocated here — combining heavy doses

of surveillance and treatment — does not represent freedom. In fact, as suggested above, such community based programs may have more punitive bite than prison. Consider a comparison between Contra Costa (California) County's Intensive Supervision Program (ISP) for drug offenders, which was discontinued in 1990 due to a shortage of funds, with what drug offenders would face if imprisoned:

ISP: Offenders were required to serve at least one year on ISP. In addition to twice weekly face-to-face contacts, ISP included a random drug testing hotline, Saturday home visits, weekly Narcotics Anonymous meetings, special assistance from police to expedite existing bench warrants, and a liaison with the State Employment Development Department. To remain on ISP, offenders had to be employed or in treatment, perform community service, pay victim restitution, and remain crime and drug-free.

Prison: A sentence of 12 months will require that the offender serve about half of that. During his term, he is not required to work nor will he be required to participate in any training or treatment, but may do so if he wishes. Once released, he will probably be placed on routine parole supervision, where he might see his officer once a month.

It is important to publicize these results, particularly to policymakers, who say they are imprisoning such a large number of offenders because of the public's desire to get tough on crime. But it is no longer necessary to equate criminal punishment solely with prison. The balance of sanctions between probation and prison can be shifted, and at some level of intensity and length, intermediate punishments can be the more dreaded penalty.

Once the support and organizational capacity is in place, we need to target the offender group that makes the most sense, given our current state of knowledge regarding program effectiveness. Targeting drug offenders makes the most sense for a number of reasons. Drug offenders weren't always punished so frequently by imprisonment. In California, for example, just 5 percent of convicted drug offenders were sentenced to prison in 1980, but by 1990 the number had increased to 20 percent. The large-scale imprisonment of drug offenders has only recently taken place, and there is some new evidence suggesting that the public seems ready to shift their punishment strategies for low-level drug offenders.

It appears that the public now wants tougher sentences for drug traffickers, and more treatment for addicts — what legislators have instead given them are long sentences for everyone.

A 1994 nationwide poll by Hart Research Associates reported that Americans have come to understand that drug abuse is not simply a failure of willpower or a violation of criminal law. They now see the problem as far more complex, involving not only individual behavior but also fundamental issues of poverty, opportunity and personal circumstances. The Drug Strategies report (1995) reports that nearly half of all Americans have been touched directly by the drug problem: 45 percent of those surveyed in the 1994 Hart poll said that they know someone who became addicted to a drug other than alcohol. This personal knowledge is changing attitudes about how to deal with the problem: seven in ten believe that their addicted acquaintance would have been helped more by entering a supervised treatment program than by being sentenced to prison.

It appears that the public now wants tougher sentences for drug traffickers, and more treatment for addicts — what legislators have instead given them are long sentences for everyone. The Drug Strategies group, who analyzed the Hart survey, concluded that "Public opinion on drugs *is* more pragmatic and less ideological than the current political debate reflects. Voters know that punitive approaches won't work." So, in that vein, the public appears willing to accept something other than prison for some drug offenders.

The public receptiveness to treatment for addicts is important, because those familiar with delivering treatment say that is where treatment can make the biggest impact. A recent report by the prestigious Institute of Medicine (IOM) recommends focusing on probationers and parolees to curb drug use and related crime. They noted that about one fifth of the estimated population needing treatment — and two fifths of those clearly needing it — are under the supervision of the justice system as parolees or probationers. And since the largest single group of serious drug users in any locality comes through the justice system every day,

the IOM concludes that the justice system is one of the most important gateways to treatment delivery and we should be using it more effectively.

Moreover, those under corrections supervision stay in treatment longer, thereby increasing positive treatment outcomes. The claim that individuals forced into treatment by the courts will not be successful has not been borne out by research, in fact just the opposite is true. The largest study of drug treatment outcomes (Treatment Outcome Prospective Study) found that justice system clients stayed in treatment longer than clients with no justice system involvement, and as a result, had higher than average success rates.

However, as noted above, quality treatment does not come cheap. But in terms of crime and health costs averted, it is an investment that pays for itself immediately. Researchers in California recently conducted an assessment of drug treatment programs, and identified those that were successful, concluding that it can now be "documented that treatment and recovery programs are a good investment (Gerstein et al. 1994)." The researchers studied a sample of 1900 treatment participants, followed them up for as much as two years of treatment, and studied participants from all four major treatment modalities (therapeutic communities, social models, outpatient drug free, and methadone maintenance).

Gerstein et al. (1994, 33) conclude:

> Treatment was very cost beneficial: for every dollar spent on drug and alcohol treatment, the State of California saved $7 in reductions in crime and health care costs. The study found that each day of treatment *paid for itself on the day treatment was received*, primarily through an avoidance of crime.
>
> The level of criminal activity declined by two-thirds from before treatment to after treatment. The greater the length of time spent in treatment, the greater the reduction in crime. Reported criminal activity declined before and after treatment as follows: mean number of times sold or helped sell drugs (-75 percent), mean number of times used weapon/physical force (-93 percent), percent committing any illegal activity (-72 percent), and mean months involved in criminal activity (-80 percent).

Regardless of type of treatment modality, reduction in crime was substantial and significant (although participants in the social model recovery programs had the biggest reduction). In the California study, the most effective treatment programs cost about $12,000 per year, per client.

In sum, there are several steps to achieving greater crime control over probationers and parolees. First, we must provide adequate financial resources to deliver programs that have been shown to work. Successful programs combine *both* treatment and surveillance, and are targeted toward appropriate offender subgroups. Current evidence suggests low-level drug offenders are prime candidates for the intermediate sanction programs considered here. Then, we must garner support, convincing the public that the probation sanction is punitive, and convincing the judiciary that offenders will be held accountable for their behavior.

Concluding Remarks

Current federal efforts to curb crime seek simple, politically attractive solutions where simple answers do not exist. There are no silver-bullet fixes to the crime problem, nor are there any hopeful signs that lead us to expect a spontaneous decline in the problem in the absence of dramatic policy action. If anything, the indicators point to increases in violent youth crime, a trend that will likely continue unless effective steps toward arresting it are taken.

This article argues that current federal efforts are misguided, and do not focus on preventing the crimes of the next generation or de-escalating the criminal careers of those on probation and parole. Dr. Dean Ornish, the guru of the low-fat road to cardiovascular health, shows a cartoon at the opening of his lectures that has application far beyond the topic of cardiovascular disease. The slide shows a crew of doctors frantically mopping up a floor that continues to be flooded by an overflowing sink. The problem, of course, is that no one has turned off the faucet.

Current crime policy is similarly focused. Short-term strategies have held sway at the expense of long-term prevention programs. We remain so consumed by the overwhelming challenge of providing cells for those imprisoned that we have little energy (or money) to address the more fundamental question of how to deter the ever increasing number of young people who choose to enter a life of crime, or dampen the escalating criminal careers of pro-

bationers and parolees.

Of course we must continue to imprison violent offenders. It is a false dichotomy to argue between tough law enforcement and community-based crime prevention programs. The choice is not one or the other—it must be both. We need to create enough prison space to incarcerate those who are truly violent and also support programs to reduce the tide of criminals that currently flood our society.

It will not be easy, so we had better start now. ❑

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APPA's Vision

WE SEE A FAIR, JUST AND SAFE SOCIETY WHERE COMMUNITY PARTNERSHIPS ARE RESTORING HOPE BY EMBRACING A BALANCE OF PREVENTION, INTERVENTION AND ADVOCACY.

We seek to create a system of Community Justice where:

- **A FULL RANGE OF SANCTIONS AND SERVICES** provides public safety by insuring humane, effective, and individualized sentences for offenders, and support and protection for victims;
- **PRIMARY PREVENTION INITIATIVES** are cultivated through our leadership and guidance;
- **OUR COMMUNITIES ARE EMPOWERED** to own and participate in solutions;
- **RESULTS** are measured and direct our service delivery;
- **DIGNITY AND RESPECT** describe how each person is treated;
- **STAFF ARE EMPOWERED** and supported in an environment of honesty, inclusion, and respect for differences; and
- **PARTNERSHIPS WITH STAKEHOLDERS** lead to shared ownership of our vision.

Trends to Resist and Support

Trends to Resist

1. *The use of incarceration is increasing*, with longer terms and an increasing emphasis on punishment.
2. *Caseloads are becoming increasingly overloaded* due to the increasing length of supervision, a larger pool of offenders, and a demand for specialized supervision.
3. *Media sensationalism of crime is increasing.*
4. *Internal conflict in community corrections is increasing.*
5. *The role of politics in community corrections is increasing* and leads to the exploitation of crime for the sake of winning elections.

Trends to Support

1. *The responsible use of technology (especially information technologies) is increasing* leading to enhanced efficiency and expanded supervision capability.
2. *There is an increase in interest in restoration of offenders.* This restoration theme includes education, victims and community.
3. *Community partnerships are increasing.* These partnerships are being established with other players in the criminal justice system, with human resource agencies and with education systems.
4. *Awareness of diversity is increasing.*
5. *There is an increased awareness of the role of prevention* in probation and parole work.
6. *There is increased concern for staff safety.*
7. *The role of politics in community corrections is increasing* and leads to an increased awareness of the vital need for the work of probation and parole.

Drug-Free or Unfree

To Get Heavy Users to Stay Clean, Link Parole and Probation to Abstinence



By Mark A.R. Kleiman

Last year, while no one was looking, the country took its first tentative steps toward getting a handle on the worst part of the drug problem. While the media was following the much-hyped medical marijuana initiative in California, President Clinton proposed, and the Congress approved, a program to finally get serious about controlling drug-involved offenders. It gives states the authority and incentive to come up with innovative solutions based not on imprisonment but on cutting drug demand. If we get this program right, it could be the most important drug policy innovation in a generation, with the real potential to make the drug problem significantly smaller.

The Clinton plan is based on two observations about the shape of the drug problem. First, heavy rather than casual users account for the overwhelming bulk of the heroin, cocaine and methamphetamine sold; and, second, most of those heavy users get arrested in the course of a year. The idea is to use the probation and parole system to put pressure on those users to stay clean as a condition of staying out of jail. It is not a program of coercive treatment. It is a program of coercive abstinence.

Here's how the argument goes:

People who use cocaine on a more than weekly basis account for about four-fifths of the total volume of cocaine consumed; heroin use is even more lopsided. This is not because heavy users are numerous. On the contrary, the total number of heavy cocaine and heroin users in the United States is probably no more than 3 million persons. The poverty of most "hard-core" users and the expense of maintaining a hard-core habit at black-market prices ($10,000 to $15,000 per year) together imply that hard-core users are driven to often income-producing crime: one or another variety of theft, drug dealing or prostitution.

A combination of surveys and arrestee drug-testing results suggest that about three-quarters of the high-dose cocaine users are arrested in the course of any given year (and are likely to be on bail, probation or parole when not in prison). If 80 percent of the hard drugs go to heavy as opposed to casual users and if three-quarters of the heavy users are in jail, on probation, or parole, then the population under criminal justice supervision accounts for 60 percent of total consumption.

The crimes committed by drug-involved offenders and their dealers might justify the high cost of imprisoning them, if there were no other way to make them stop. But the threat of repeated short spells in jail for continued drug use should be adequate to deter many of them, at a tiny fraction of the cost.

The current drug-testing practices of probation and parole departments combine infrequent testing and even more infrequent sanctioning for missed or "dirty" tests, with occasional punishments of great severity. But because both crime and drug abuse attract the reckless and impulsive, low-probability threats are unlikely to work.

The alternative—proposed by Robert DuPont, Jerome Jaffe, Douglas Anglin, John Kaplan and Howard Zinberg—would be frequent tests (twice a week would be ideal) with automatic, but mild sanctions. A first failure might result in two days' confinement; the penalty would escalate if there were repeated failures over a short period. Quitting any drug habit typically involves repeated failures; hence the importance of creating predictable penalties, and, ideally, rewards for periods of success.

The testing technology itself is easy to operate, and the tests are quite inexpensive on a mass-production basis.

To succeed, such a program requires adequate confinement facilities. These would not have to be prisons, since persons confined for only a few days pose less escape risk, and require fewer services, than typical inmates. Coerced abstinence will require either dedicated judicial capacity or legal authority for administrative sanctioning, in order to avoid gridlocking the courts. It will also require someone to go out and arrest those who refuse to come in for testing or sanctions. In addition to the testing costs, the major expense of such a program would be the time of probation, parole and other staff required to administer it. The whole thing could be done for less $2,000 per participant per year, more than twice the cost of probation but less than one-tenth the cost of prison.

Testing and sanctions for drug-involved offenders on probation or parole could have substantial therapeutic benefit, even if there were no drug treatment involved. Facing constant pressure to abstain, those drug-involved offenders who cannot stop without professional treatment will be strongly motivated both to seek out treatment and to stick with it. Others, once confronted with the fact that their preferred lifestyle of drug use is no longer available, will find that they can quit on their own or with the help of one of the widely available 12-step programs, such as Narcotics Anonymous. Nevertheless, the availability of treatment programs would probably lower failure rates among offenders subject to testing and sanctions.

Coerced abstinence would not only be cheaper than prison cells or beds in a halfway house. For those offenders able and willing to comply, it offers much better life prospects, since the experience of remaining drug-free outside of jail is much more valuable than the same experience while confined. Of course, if a significant number of offenders prove unable or unwilling to comply with such a program, its costs would rise substantially. But identifying persistent offenders who cheat on drug tests and incapacitating them by incarceration is itself a task well worth doing, even if the testing does not have the desired deterrent effect.

Using the criminal justice system to reduce drug demand will do more than any feasible level of drug law enforcement to break up drug markets. Reduced demand means less revenue for drug dealers, which in turn means fewer guns, less disruption of neighborhoods and fewer kids lured out of school or licit jobs into the lucrative, but eventually disastrous, life of retail drug selling.

A well-designed program of coerced abstinence would cost about $4 billion per year—assuming that about two-thirds of heavy heroin and cocaine users would be covered at any one time—less any savings from reduced prison use. Measured against the roughly $35 billion national drug abuse control budget, this is a modest cost. The question is not whether to try coerced abstinence, but how to make it work.

Last year's legislation required states to come up with some sort of testing-and-sanctions program by 1997 in order to keep getting federal grants to build new prisons. However, Congress refused to either provide direct aid to such programs, even on a pilot basis, or to allow the states to use federal prison-building dollars for testing-and-sanctions programs.

Congress should go along with the administration in funding and evaluating some pilot programs before coerced abstinence goes nationa and in allowing the states flexibility in spendin their prison-building funds. If testing and sanc tions helps some user-offenders go straight i the community, it can serve all the goals of pris on construction at a much lower cost.

That is about as much as the federal goverr ment can do. The real action will have to be a the state level. As usual, the devil is in the d tails, and those have to be worked out state b state. Is there a governor out there who want to be a hero?

Mark Kleiman is professor of policy studies at the University of California, Los Angeles. A version of this piece first appeared in the Drug Policy Analysis Bulletin published by the Federation of American Scientists.

Washington Post Feb 2, 1997

ATTACHMENT #2

Getting Deterrence Right: Applying Tipping Models and Behavioral Economics to the Problems of Crime Control

Mark A. R. Kleiman

Presented to

The Jacob Marschak Interdisciplinary Colloquium

On Mathematics in the Behavioral Sciences

UCLA

February 6, 1998

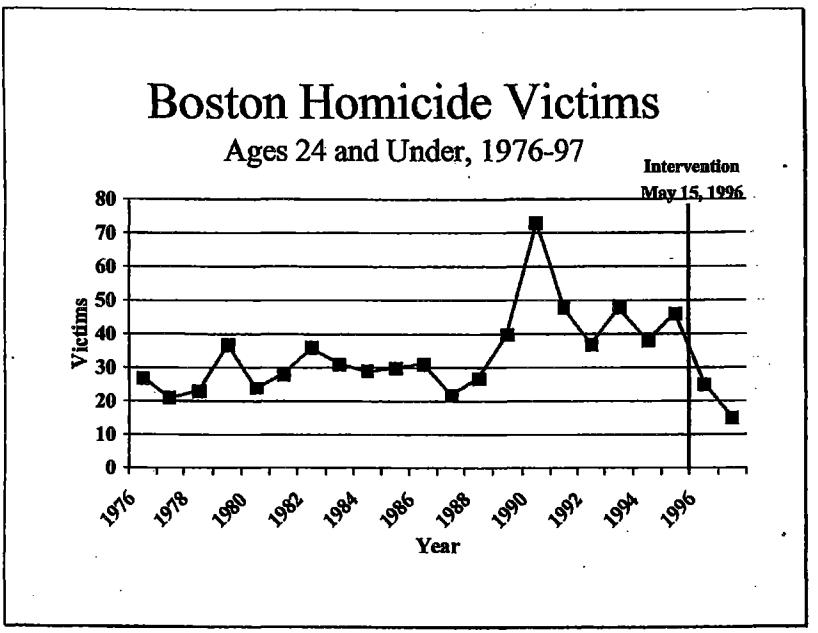
My theme is crime control and how to do it better. I'm here because I'm excited: I think we're in the process of learning how to control crime much more effectively than we have been able to in the past.

It's well known that New York's subways and streets are much more civil and orderly now than they were five years ago and that serious crime there has fallen dramatically.

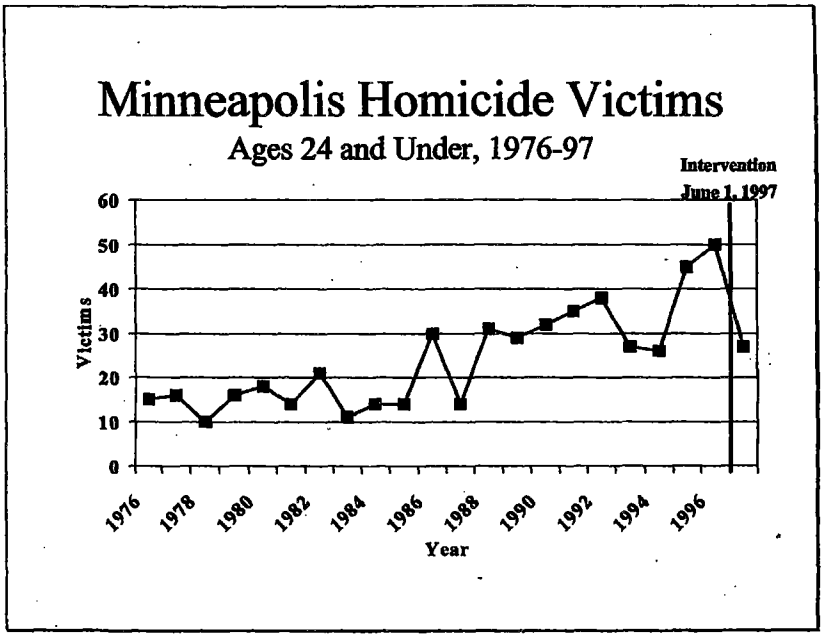
Those efforts were inspired by, and seem to bear out, the "broken windows theory" proposed by George Kelling and James Q. Wilson, that forms much of the conceptual basis for "community policing."

But how is it that reducing graffiti reduces mugging? I have a story to tell about that, and it's a story that justifies the choice made by Bill Bratton in New York to employ what might be called "focused" or "targeted" zero tolerance rather than the usual meaning of zero tolerance: a policy of making arrests for every observed violation of the law.

It's less well known that in Boston and Minneapolis, rates of youth homicide have fallen spectacularly as a result of a coordinated enforcement intervention targeted at gangs of violent juveniles – an intervention aimed, not at breaking them up, but at getting them to stop killing one another.



Note that the Boston pattern is consistent with falling homicide rates in the northeastern cities that got hit early by the crack epidemic, though the decline is still pretty dramatic. But Minneapolis is one of the cities in the Upper Midwest where crack arrived late and homicide rates have been soaring. There's no external reason why Minneapolis homicides should be way down.



How did these programs work? The details varied, but the concepts were identical (they were both invented by David Kennedy).

Let me tell the Boston story, which I know better:

1300 kids in 65 gangs.
Violence along stable intergang dispute lines.
Kids afraid that not being violent when provoked would make them seem weak.

Investigators knew which gangs were shooting, but couldn't prove anything.

Shooting increased gang prestige, and thus the prestige of the shooter.

Assembled police (gang, juvenile, drug) probation (adult and juvenile), prosecutors (state and federal) DEA, ATF, state police, truant officers.

Brought in kids in groups.

Message:

We know who you are.
We know what you're doing.
We can crack down on any group.
If we crack down on your group.
You can't live your (mostly illegal) life.

The rules: no deadly violence
Consequences of breaking the rules:
Concentrated attention until the whole group says "uncle."

When it becomes necessary, the task force delivered a crackdown, publicized it, and protected the target gang after they gave up their guns.

The task force then did a second old-style attack, using undercover drug buys, on the most violent group, got them all sent away for long sentences, and publicized that.
The results you see.

I'd like to explore the logic of the new crime control, and suggest how employing it more consistently could greatly abate what remains, in my view, a society-threatening social problem and the single greatest barrier to improving economic opportunity in urban neighborhoods of concentrated poverty.

Lots of things control crime – there's not much doubt that early childhood interventions, if we can learn to do them right, could have a big impact – but today I want to concentrate on the operations of what is loosely called the criminal justice system: police, courts, and corrections agencies.

The classical story talks about three crime-control effects of enforcement and punishment: incapacitation, deterrence, and rehabilitation.

Incapacitation is the easiest to understand: If we lock up people who commit more than their share of crimes, the population remaining free will include fewer high-rate offenders.

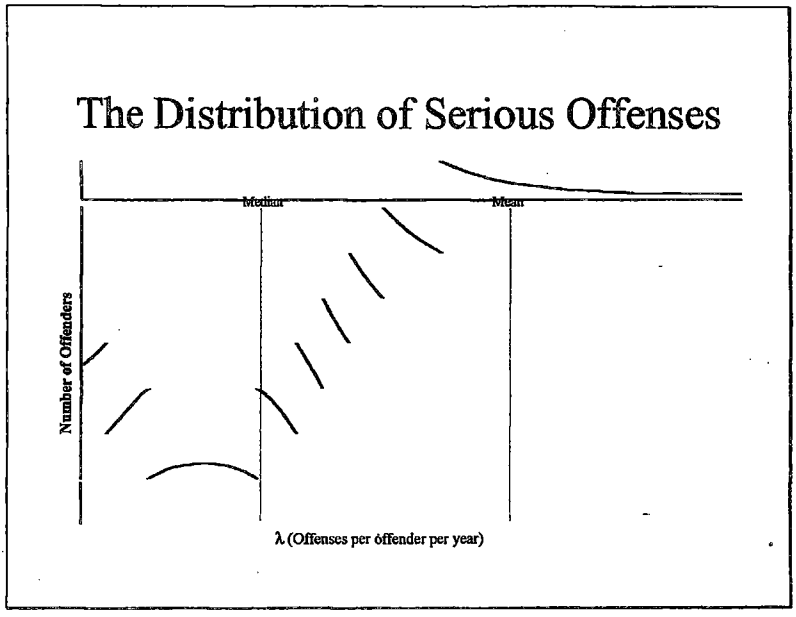
Since prison cells are expensive, incapacitation makes sense only if we can lock up people who, on average, commit lots of crimes.

There's lots of evidence that we in fact do so – that the average offender in prison would be doing much more than $25,000 per year worth of damage if he were running around free.

But that is true only because a relatively small number -- about 10% -- of those behind bars commit astounding numbers of offenses.

In the famous Rand Inmate Survey, the median prisoner had committed seventeen crimes in the year before incarceration, but the average offender had committed almost 200.

Offending is widespread, but persistent, serious offending is highly concentrated. Everything depends on the right-hand tail of the distribution



This is consistent with a famous generalization called "Pareto's Law": 20% of any population accounts for 80% of any activity. Pareto's Law holds true about more things than you might expect.

This led Peter Greenwood of RAND, among others, to suggest that we should rethink sentencing policy to concentrate on high-rate offenders: a policy he called "selective incapacitation."

That turns out to be harder than it looks: an offender's criminal history (rap sheet) is a pretty poor indicator of his actual behavior, since most crimes never lead to an arrest.

Moreover, since criminals, like basketball players, tend to leave the game in their early thirties, basing sentences on the number of felony convictions – as in "three strikes" – tends to fill the prisons with people who would otherwise be retired muggers.

Incapacitation is a pretty mechanical process. Deterrence, by contrast, depends on changing the behavior of potential offenders by changing their perception of the likely consequences of offending.

The key to deterrent crime control lies in understanding the decision processes of (actual and potential) offenders. Since, serious, persistent offending is highly concentrated, it's the behavior of serious, persistent offenders – and of those who might become such offenders – that we most need to understand.

There are two extreme competitors here: models of purely rational choice – offenders comparing the benefits of offending to its costs – and models of utterly irrational social determination.

I want to offer a middle way: a model assuming that offenders seek their own well-being but pays attention to factors that might cause them to deviate from normative rationality as economists understand it.

If offenders tend to lapse from rationality in specific ways, and if we keep passing laws and making policies as if offenders were perfectly rational, we will wind up inflicting more punishment than we need to for less crime control benefit than we could have.

That's the "behavioral economics" of my title: I think that offenders are more likely than most people to be both reckless, in a way described by "prospect theory," and irrationally present-oriented.

The argument is simple: people who calculate rationally and who react strongly to small probabilities of horrible consequences sometime in the distant future don't become persistent offenders.

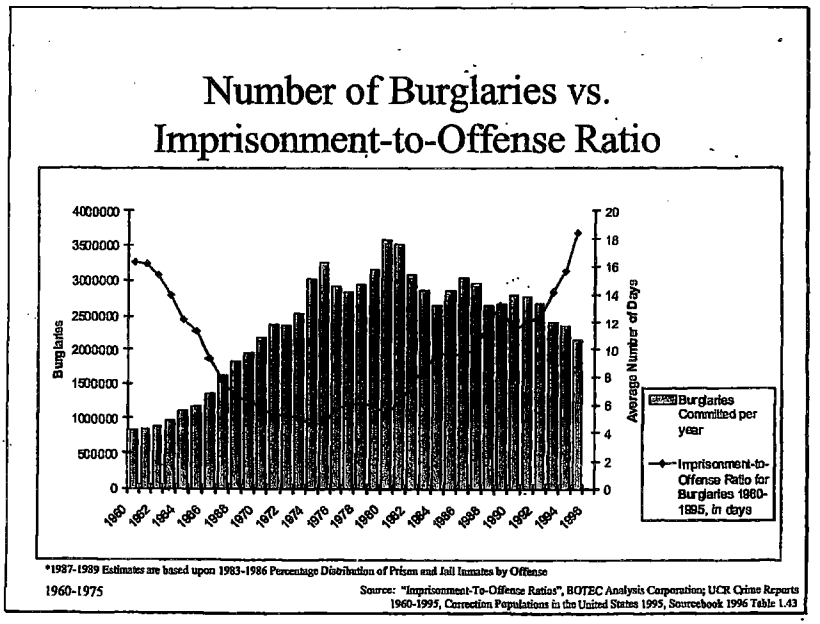
To control the behavior of such people, we need consistent and immediate sanctions, even if the sanctions themselves are relatively mild. What we have now is a system of severe sanctions, applied very sporadically and a long time after the offense.

Now that isn't to say that deterrence always fails; in gross terms, it works pretty well. The simplest way to think about a deterrent threat when it's only occasionally carried out is in terms of what economists call "expected value."

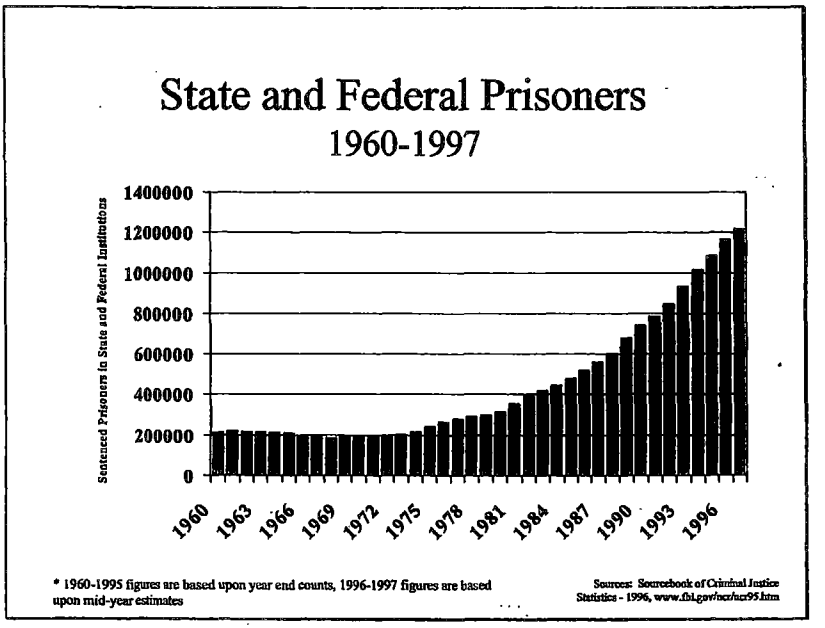
An expected value is a probability-weighted average. [Remember the typical American family of the fifties with 2.7 kids? That's an expected value: all the kids divided by all the families was 2.7.]

If nine times out of ten a mugging results in no punishment, (because the mugger never gets caught) but the tenth time it results in five years in prison, then the expected-value punishment is five years times one chance in ten, or half a year.

By looking at the total number of crimes of a given type and the total number of people in prison for that crime, we can easily calculate the expected-value punishment.



Here's a graph for burglary over time: Note how the punishment rate fell sharply during the early 1960s due in part to the closing of big old prisons in many states, and how the rate of burglary started to climb explosively, which of course then pushed the punishment per crime down even further.



And also note how the explosion of prison-building in the mid-1970s was closely followed by a peak, and then a steady decline, in burglary. This isn't nearly enough to show cause and effect, but it's about what a simple deterrence model would predict.

On the other hand, the expected punishment-price of a burglary never went below about five days, and it is now nearly twenty days. That doesn't seem like much of a penalty for breaking into your home, but compared to the average "take" from a burglary, it's really quite a lot.

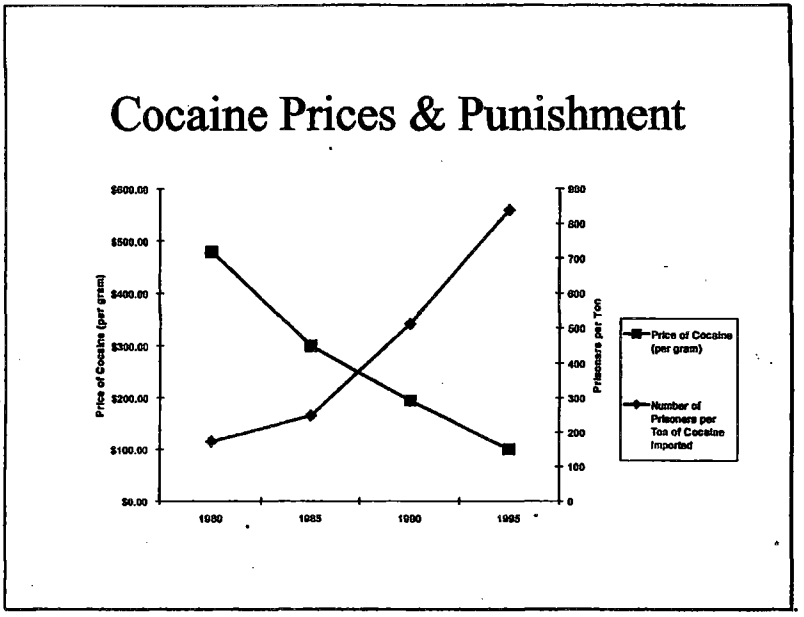
Given the low prices fences pay for stolen goods, a typical residential burglary nets the criminal perhaps two hundred dollars. Even at five days per burglary, that amounted to forty dollars per day served behind bars. At today's higher punishment-price, the effective take is nearer ten dollars per day served.

The deal for mugging is substantially worse.

That illustrates an important general principle of criminology: " The wages of sin are well below the legal minimum." Any purely rational-actor theory of crime would have a hard time explaining why people doing such unrewarding misdeeds. The illicit-drug markets, where the reward-to-punishment ratio tends to be more favorable, still don't behave as economic rational-actor theories would predict.

I have to plead guilty here: A dozen years ago, Peter Reuter and I came up with a model called "risks and prices" which asserted that drug prices ought to reflect punishment risks. Back then, the problem with the model was that the price of cocaine seemed unsustainably high compared to the punishment risk. (Unfortunately, my attempt to sell cocaine futures short failed for lack of a broker.)

Now, the puzzle is just the opposite:

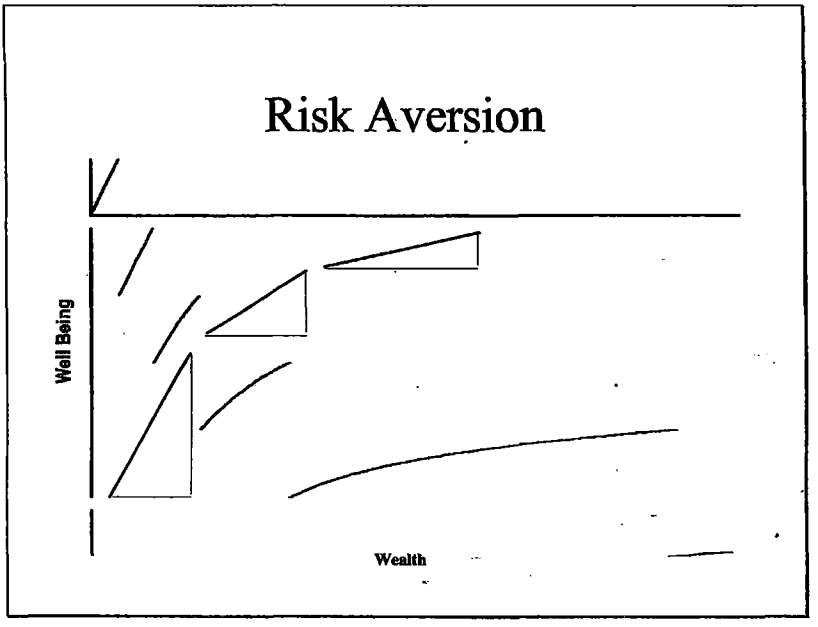


Even compared to the growth in cocaine shipments, the growth in cocaine punishment has been astounding. As a result, the punishment-price per ton of cocaine has soared. yet the prices, rather than rising, have continued to fall.

Something's wrong here.

Now of course no offender faces the expected value of punishment, any more than any family has 2.7 kids. So one problem may be that randomized threats don't work as well as reliable threats, even if the long-term average is the same.

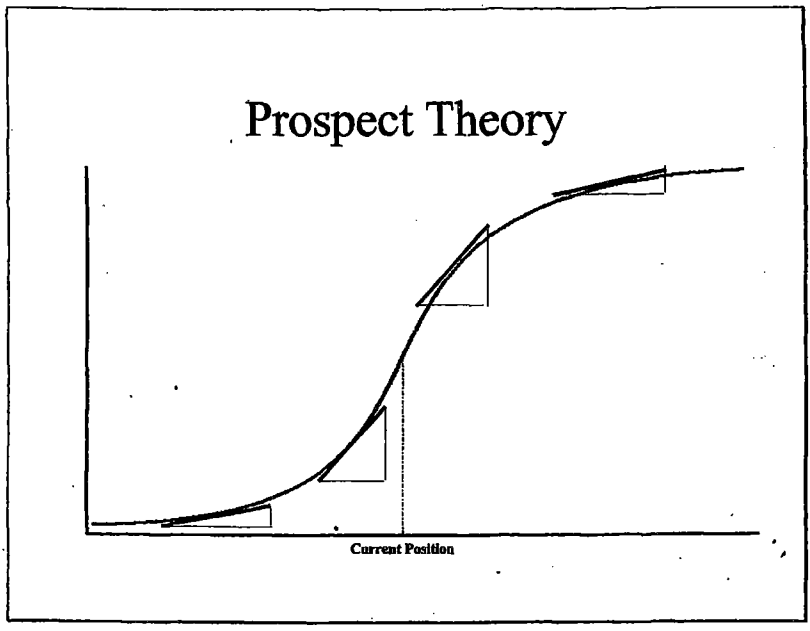
But the standard theory of rational behavior predicts just the opposite. We expect rational people to be risk-averse; that's why they buy insurance policies.



If I draw a curve representing how much my well-being goes up as my income or wealth grows – what economists call a "utility curve" – it turns out to rise less and less steeply as my wealth grows: a hundred dollars means less to Bill Gates than to someone living on a minimum-wage job.

If people's behavior matched this graph, the small threat of a big punishment would work wonders. Recall the idea from agency theory of controlling agent behavior by an infinitesimally small risk of an enormous punishment. It might work for corporate executives; I doubt it works as well for burglars.)

Now there is a competing theory, not of rational action – I don't think there's any doubt that rationality implies risk aversion – but of actual behavior.



It's called "Prospect Theory," and is due to Kahnemann and Tversky. It says that in many situations actual behavior is risk-averse in gains but risk-seeking in losses. Given a choice between a week in Hawaii for sure and an even chance at two weeks in Hawaii, most people will choose the sure thing, just as risk-aversion theory would suggest.

But once we start dealing in losses from the current position – if the gamble is between a week in jail and an even chance at two weeks in jail – lots of people will act as if they're risk-seeking and take the gamble rather than settling for a sure loss. (This S shaped utility curve was first proposed by Friedman and Savage.)

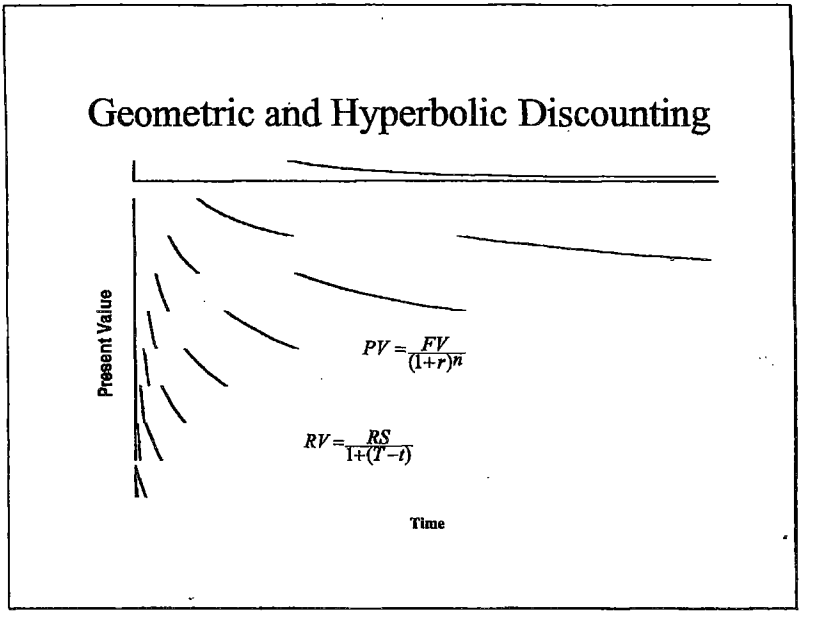
So if offenders tend to behave according to prospect theory, an occasional big punishment won't deter them as well as reliable small punishments with the

same expected value. That's part of the story about why the current prison-building boom hasn't reduced crime as much as we might have expected: we're over-relying on severity and underplaying certainty.

There's a second possible reason. Punishments arrive after crimes, in many cases months after. By definition, the last twenty-five years of a thirty-year sentence start five years from now.

Even perfectly rational people value future gains or losses less than the same-sized losses arriving right away. After all, if I have money now I can put it in the bank (or pay off my mortgage) and either way I earn, or avoid paying, interest.

Economists have a well-worked-out theory of how a rational person would trade off present versus future gains and losses. It goes under the name of discounting.



The formula is one of geometric decay. It has the property of depending only on the distance in time between the earlier and later benefit or cost, and not at all on when the decision is made. If I have to choose between $100 a year from now and $110 two years from now I should make the same decision whether the decision is to be made now or next January. The decision depends only on my personal discount rate, which in turn depends on the rest of my financial picture, particularly the rates at which I can borrow or lend. The result is that the future is devalued compared to the present, but only at the rate of a few percent per year.

Again, there's an alternative theory, not of rational action but of actual behavior.

It's well-verified in the psychology and behavioral-economics laboratories, on species ranging from pigeons to sophomores.

It has a different, hyperbolic, formula, which leads to a much more rapid fall-off over time. It also depends crucially on when the decision gets made. (The capital T in the formula represents the date when the reward or punishment arrives, the little t the date when the decision gets made.)

Imagine offering a five-year-old a marshmallow now or two marshmallows tomorrow. Only a pretty tough five-year-old would be able to wait. Now offer the same child a marshmallow in a week or two marshmallows in eight days. Same choice: wait a day and double your marshmallow. But the result is likely to be quite different.

Anyone who has ever stayed up all night preparing a paper, a proposal, a presentation, or a lecture has demonstrated hyperbolic discounting, or "temporal myopia" as it's known in the literature (though it's been suggested that "temporal false perspective" would be a more accurate label).

If offenders are even more temporally myopic than the rest of us, the difference between a punishment now and a punishment six months from now may be, in Mark Twain's phrase, the difference between the lightning and the lightning bug.

One of the worst bad guys caught in the Boston crackdown remained stony-faced through his arraignment on charge under which he faced a minimum of fifteen years in prison. But he went ballistic when the judge, in granting him bail, imposed a 6 pm curfew. Why? Because the sentence was some indefinite time in the future; the curfew was that night, and that night he had things to do.

A third obvious theory is that deterrence works imperfectly because offenders mis-estimate deterrent threats.

Surveys of offenders frequently find them quite ignorant of the actual threats they face, especially under obscure punishment-enhancement laws. That suggests that it's important to communicate the threat.

Bentham said that the two most important characteristics of a deterrent punishment were certainty and celerity. Prospect theory and temporal

myopia suggest why. To Bentham's two C's I would add a third: Communication.

Communication, in this context, isn't merely verbal.
Actions also communicate.

Offenders, like other people but probably more so, are likely to believe their own experience more than what they read or what others tell them. In judging the likely consequences of lawbreaking, they will refer mostly to what has happened to them.

For most offenses, no one is even arrested. Most arrests don't lead to convictions. And most convictions, especially for the minor, non-violent offenses that form the beginning of most criminal careers, don't lead to any real sanction.

The insistence on very long sentences for identified persistent serious offenders, combined with budget realities, means that the typical punishment for the first few detected offenses is probation: that is, under current conditions, nothing. That sends a very bad signal about the consequences of lawbreaking. It's as if we were trying to develop career criminals.

How is an offender supposed to judge which "last chance to go straight" is really his last? He's likely to keep testing the system until it lands on him hard, which is bad news for him and us alike.

So a first implication of this line of thinking – the line of thinking that says that offenders tend to be reckless, short-sighted, and ill-informed rather than cool calculators of likely consequences – is that every detected non-trivial violation of law ought to lead to some non-trivial deprivation of liberty.

That can't mean prison or jail – we don't have enough cells – so by definition it must mean probation. The trick is making probation mean something. That's essential for another reason as well. Since serious, persistent offenders get caught eventually, most of them are (or should be) on probation or parole if not actually behind bars.

This gives us the capacity to supervise their behavior in much more detail than applies to those whose liberty is unconditional. But the current probation and parole systems rely on the same sort of low-probability, deferred, but occasional severe sanctions used by the rest of the system.

Community corrections is the potential key to crime control. To make that potential real requires that community corrections officers have three things:

The technology to monitor behavior that occurs out of their presence.

The authority to impose rapid and predictable sanctions

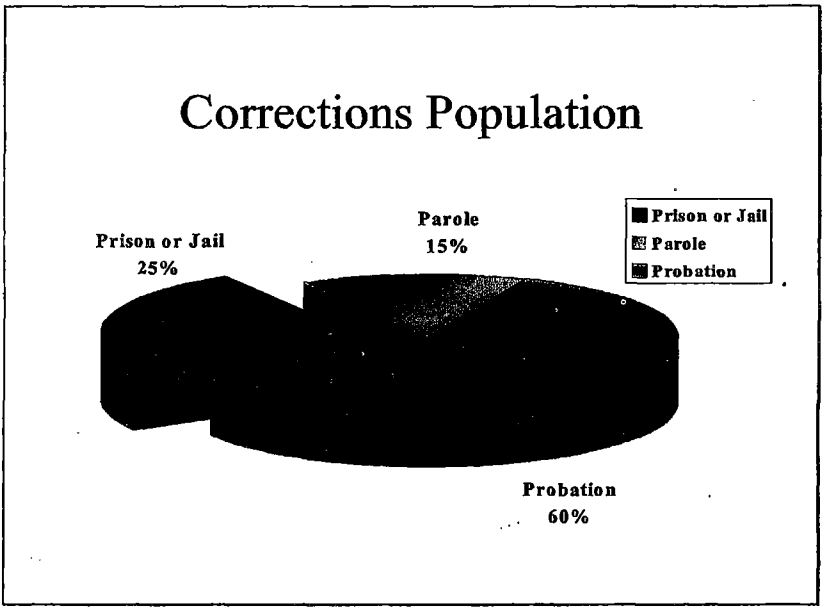
The resources (budget and manpower) to acquire and use the technology and administer the authority

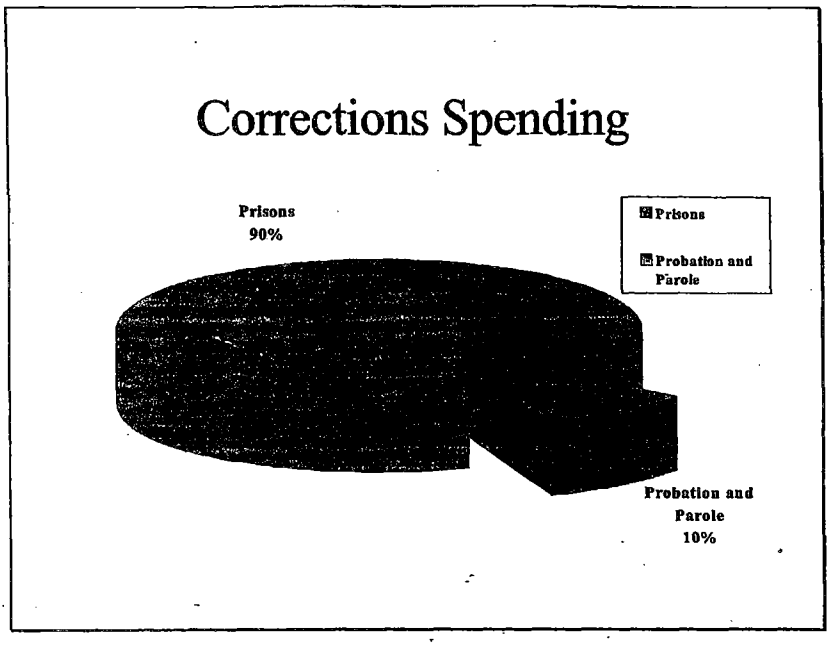
[For example, if every cocaine-using burglar on probation faced two drug tests a week, with two days' confinement right away for every missed or "dirty" test we could eliminate about 40% of the total market for cocaine and substantially reduce the amount of time that population spends behind bars. The drug test is a way to monitor, in five minutes and for five dollars, one slice of the offender's behavior over the past seventy-two hours.

Another potentially important technology of community corrections is electronic position monitoring. But my point for today is not the technical details, but the principle of establishing behavioral standards and enforcing them with swift and consistent sanctions.]

Giving the community corrections system that new technology and authority will require more resources: a "caseload" of 300 implies that very little effective supervision can occur.

To make this work, we should be prepared to reallocate money away from prisons and jails – which with about one fifth of the total corrections population account for nearly 90% of corrections spending – and toward probation and parole.





But just adding more bodies without adding technology and authority contributes little to crime control. Current probation supervision in Los Angeles is effectively nothing, and twice, or even four times, nothing is still nothing. Pouring resources into a fundamentally misconceived process just increases its futility.

In short, we need to apply to crime control the common-sense principles that apply to child-raising and puppy-training.

So much for the behavioral economics of crime control. Now for the "tipping" part.

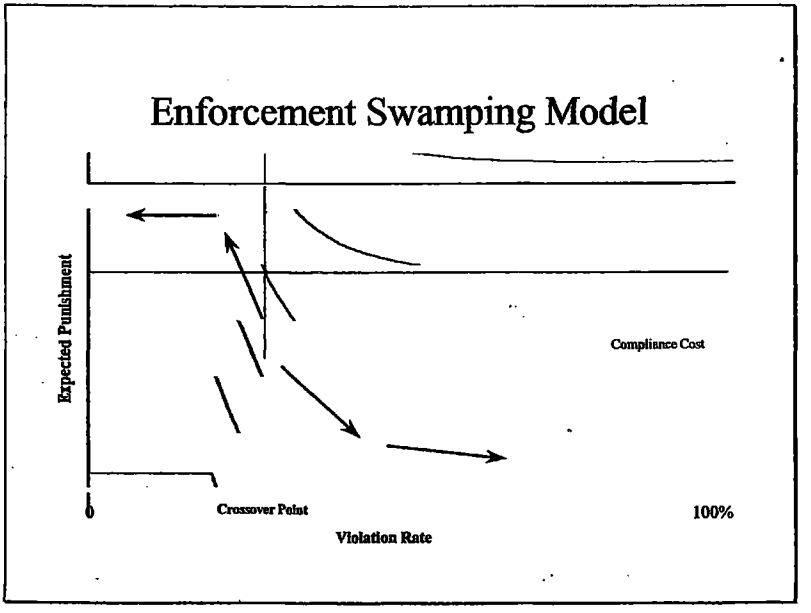
Even for perfectly rational offenders, the rational amount of offending by any one person depends in part on how many other people are committing the same offense in the same area. Thus decisions to offender are interdependent

decisions. If punishment capacity is scarce, punishment-per-crime tends to fall as the rate of offending rises, as happened during the 1960s.

Therefore, some people who would not offend when offense rates are low will offend if offense rates are high, because having lots of "competition" for enforcement attention reduces their individual chances of being caught and punished. That is the logical structure of a riot.

It's described by a class of models invented by my teacher, Thomas Schelling, and known by his label of "tipping" models because of the way that results "tip" from one extreme to another after some threshold is crossed.

I call the version of tipping applicable to crime "enforcement swamping": once violations are high enough to swamp the capacity of the enforcement system, increases in offense rates will feed on themselves.



Assume a parking lot designated "Shoppers Only: No Commuter Parking." It has 1000 parking spots. Parking there is free for shoppers; commuters, if caught, face a $15 fine. A single attendant is in charge of locating and ticketing commuter vehicles; he has the capacity to write up to 100 tickets per day. A nearby lot offers all-day parking for $7.50.

If all of those who park illegally are ticketed, they would be better off paying for legal parking. On the other hand, if fewer than half are ticketed, then it's actually cheaper (on an expected-value basis) to park in the free lot and take your chances. So the least-cost solution to the parking problem from an individual commuter's viewpoint depends on how many of the other commuters decide to take their chances in the free lot. If more than 200 commuters risk it, they will all save money on average.

Now consider how the situation might develop over time. If very few commuters park illegally, those who do will quickly learn that it's more expensive that way. That will drive the number of illegally parked cars toward zero. On the other hand, if many commuters park illegally, that will turn out to be the cheaper option, and the number will tend to grow. Eventually, the entire lot may fill with commuters, leaving no spaces for shoppers; that too is a stable, self-reinforcing condition.

What could the parking authorities do once the high-violation equilibrium had established itself? One option is a temporary boost in ticket-writing capacity, on the model of a standard police "crackdown." In the example, if there is enough capacity to write more than 500 tickets per day, parking illegally will never be the least-average-cost option, no matter how many commuters try it, because even with 1000 violators the probability of a ticket will be more than one-half. A sanction probability of .5 is the "crossover" or "tipping" point of the system -- values below that tend toward zero, while values above that tend toward one.

Once the burst of enforcement starts to drive down the number of violations, enforcement capacity can be reduced. Once the number of violators is safely below 200 per day, even a single ticket-writer will be enough to keep legal parking the cheaper option.

An alternative strategy would be to rely on a self-fulfilling bluff. Put up big signs that say "As of Monday, all illegally parked vehicles will be ticketed." If enough people believe the signs, the threat will be carried out. If it works, the bluff alone will be sufficient. Or the threat could be added to an actual boost in enforcement as a way of speeding the transition from the high-violation to the low-violation stable state.

Even if additional enforcement capacity is unavailable, all is not lost. If one-tenth of the lot is designated a "zero tolerance" area where all illegally parked vehicles will be ticketed, that threat can be carried out even with the original level of resources and 100% violations. The result will be that commuters learn not to park in the "zero tolerance" spaces. As the number of violators in that area shrinks toward zero, the zone of total enforcement can be gradually expanded without exhausting enforcement capacity. Eventually, unless the commuters can organize themselves for a campaign of massive resistance, the entire lot can be moved from a high-violation stable state to a low-violation stable state, without ever expanding the number of ticket-writers.

(Violators could be targeted on any other characteristic that doesn't include more than10% of them in any one category: last digit of the license plate number, for example.)

There are four important implications of this model:

First, a modest increase in enforcement coming after an increase in offending may have little effect, especially if the increase is temporary or sporadic: the task is to change the entire climate of expectations that can make high offense rates self-sustaining. That's likely to require large and sustained, rather than small and temporary, enforcement interventions.

Second, since expectations matter, communicating the message that enforcement has increased is essential to success even if the offenders as individuals are perfectly rational, and even more important if some of them aren't. (A sign that says "All misparked cars will be ticketed" will be true if enough people believe it.)

That sort of advertising will also increase the value of any increase in actual enforcement. David Kennedy has proposed an innovative, communication-

based approach to breaking up open retail drug markets. His approach seems likely to work at much lower cost than the standard long-term, concentrated crackdown typified by the "Pressure Point" operation that broke up the heroin bazaar on Manhattan's Lower East Side in the early 1980s, and perhaps even better than the more complex market disruption strategies pioneered by Tampa's QUAD.

Assume there's a big open market in a neighborhood called Vial City, and that we've decided to break up the market on D-Day, thirty days from now. Start now by leafletting the area with flyers saying, "We've decided to shut this market down as of [D-Day]. Don't buy or sell drugs here after that date, or we promise you will be arrested." Then have the police approach known buyers and sellers personally, conveying the same message. Note the plate numbers of non-local buyers, and send post cards to the registered owners saying, "As of [D-Day], the drug bazaar in Vial City will be closed. As a reminder, automobiles found with drugs in them are subject to seizure and forfeiture."

At D minus 14, start visiting the mothers and girlfriends of the known sellers. "Ms. Smith, please make sure Johnny isn't selling in Vial City on [D-Day]. If he does, he's sure to get busted." Keep up the leafletting and do another round of personal contacts starting at D minus 7. Put up a billboard if the budget will handle it.

On D-Day, send out some additional uniformed and undercover cops, with instructions not to "sweep the streets," but merely to make arrests if they observe dealing activity. If the publicity has worked, they will be profoundly bored. Only a few very sleepy or skeptical buyers and sellers will show up, and as soon as the arrests start to happen they're likely to make themselves scarce. The next day, the market will be as dead as vaudeville, and the courts will be less, rather than more, burdened with Vial City crack-distribution cases than they had been used to seeing.

This isn't a solution to the drug abuse problem; most (though not all) of the buyers will find other sources of supply once Vial City is closed. But it is a solution to the problem the market has imposed on Vial City's residents. (This is more than a nice thought-experiment; someone ought to actually try it.)

Third, equal opportunity enforcement is sometimes the wrong rule. If you can't get past the crossover point for everybody, get past it for somebody and work outward. Anything that creates a subset of offenders or offenses for whom enforcement is not swamped will eventually clean that subset of offending; then you slowly expand the "clean" subset until it includes everything.

That's how the New York City subway system licked its graffiti problem. It designated - and clearly marked - 10% of its cars as "clean cars" and committed that they would never roll until they were clean of graffiti. At that point, spraying those cars became unrewarding because no one would see the tags.

At only 10%, the system could afford the commitment; if a few cars had to stand idle, that was no disaster. The Transit Authority then slowly expanded the "clean" fleet until it included all the cars. Another form of concentrated enforcement is to concentrate it, or threaten to concentrate it, on the most egregious offenders. That sets up a competition among offenders (or groups) to avoid enforcement attention. How does a Texas Ranger with only one bullet control an angry mob of 100 people? He says, "First SOB who steps forward, dies." That's part of the story of Cease-Fire in Boston.

Fourth, anything that signals high offense rates will therefore act as an invitation to offend; anything that signals low offense rates will act as a deterrent to offending. That's one reason "broken windows" strategies can work.

Conclusion: Some new principles of crime control

1. Certainty and celerity before severity.
2. Communication of threats: Don't just strike the rock, talk to the rock.
3. Some non-trivial punishment for each conviction.
4. Add technology, authority, and resources to make community corrections effective punishment. If we can't learn to punish people and control their behavior when we're not paying for their room and board, we're out of luck.

5. Targeted zero tolerance for specific "broken-windows" behaviors keyed to specific neighborhoods, to try to move them to low-offending equilibria.
6. Targeted zero tolerance for any offending by individuals and groups whose serious offenses earn them special attention.
7. Make offenders compete to avoid enforcement attention.

THE WALL STREET JOURNAL.

ATTACHMENT # 3

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Friday, March 12, 1999

Two Million Prisoners Are Enough

By John J. DiIulio Jr.

Violent crime has dropped 21% since 1993, and property crime is at a post- 1973 low. No one really knows which demographic, economic or other factors explain what fraction of the decrease in crime. But recent studies confirm that increased incarceration has helped to cut crime. Yet the same research also suggests that the nation has "maxed out" on the public-safety value of incarceration.

Until recently, increased incarceration has improved public safety. But as America's incarcerated population approaches two million, the value of imprisonment is a portrait in the law of rapidly diminishing returns. The justice system is becoming less capable of distributing sanctions and supervision rationally, especially where drug offenders are concerned. It's time for policy makers to change focus, aiming for zero prison growth.

Current laws put too many nonviolent drug offenders in prison. A 1997 study by Harvard economist Anne Morrison Piehl found that in Massachusetts, about half of recently incarcerated drug offenders had previously been charged, and a third had previously been convicted, of a violent offense. But most of the state's drug offenders had no known record of violence, while half its probation population consisted of violent felons.

New York state is another example. Since 1973 the Rockefeller laws have landed legions of nonviolent drug offenders in the state's prisons for mandatory terms ranging from 15 years to life. I have been calling for the repeal of the Rockefeller laws since 1995, and the case for repeal is now stronger than ever. Based on the results of a forthcoming Manhattan Institute study by Ms. Piehl, criminologist Bert Useem of the University of New Mexico and me, it appears that at least a quarter of recent admissions to the state's prisons are "drug-only offenders," meaning felons whose only crimes, detected or undetected, have been low-level, nonviolent drug offenses. And we were able to derive similar drug-only estimates for several other state prison systems.

In 1997, as crime continued to decline, the prison population grew by 5.2%. Spending on correctional institutions is crowding out spending on other proven crime-reduction strategies, including improved policing. A study released last month by the Rockefeller Institute of Government found that in 1983, 52% of total U.S. criminal-justice spending went to police, 28% to corrections. By 1995, 43% went to police and 37% to corrections.

Policy makers at all levels of government should dedicate themselves to further public-safety gains while keeping the prison population around two million and even aiming to reduce it over the next decade. The path to zero prison growth can be paved by five policy steps:

-- Repeal mandatory-minimum drug laws, release drug-only offenders, and mandate drug treatment both behind bars and in the community. Between 1980 and 1994, the incarceration rate for drug arrests increased to 80 per 1,000 arrests from 19. Continued increases in drug incarceration will yield little or no public-safety value. Recent studies by Yale psychiatrist Sally Satel and UCLA criminologist Mark A.R. Kleiman indicate that community-based coerced abstinence programs tend to succeed where other approaches fail. The Center for Alcohol and Substance Abuse has produced persuasive data on the promise of specialized drug courts. The National Institute for Healthcare Research

has collected reams of reliable data about the efficacy of certain faith-based substance abuse programs.

-- Reinvent and reinvest in probation and parole. Currently, we spend next to nothing on community-based corrections. We get what we pay for. About a third of all people arrested for violent crimes are on probation, parole or pretrial release at the time of their arrest. A recent study of Texas probationers found that three years after receiving probation, 44% of first-time violent offenders with a prior felony history had returned to prison. Likewise, a 1996 New York state study found that within three years of their release, 43% of state prison inmates released between 1985 and 1992 had returned to prison -- half for a new crime, half for parole violations.

Most of what ails probation and parole can be fixed by cutting officer caseloads and spending more on performance-driven programs that take supervision seriously and put public safety first. Boston's Deputy Probation Commissioner Ronald Corbett has spearheaded a five-year effort to enter into crime-cutting partnerships with police, community leaders and clergy. Early on, the effort resulted in a quadrupling in the number of probationers prosecuted for violating the terms of their conditional release. Even though few of those violations resulted in incarceration, would-be street felons got the message, and Boston has since had only four gun-related youth homicides.

Between 1991 and 1997, the number of probation and parole agents in Michigan increased by more than half, and the average number of offenders supervised by each agent fell to 63 from 92. Former Michigan Director of Corrections Kenneth McGinnis explains that these changes resulted in an increase of more than 55% in the number of parolees charged with violating the terms of their release. But over six years, Michigan prison admissions resulting from probation and parole violations grew by only 1.6%, demonstrating, Mr. McGinnis says, that "intensive supervision of offenders in community programs can be accomplished without a disastrous impact on prison growth."

-- Stop federalizing crime policy, and modify federal sentencing guidelines. Washington's role in crime control has expanded dramatically since 1968. But the results have been mixed at best. Too often Congress twists reasonable ideas developed by local law enforcement (the need to restrain repeat violent offenders regardless of their age) into grotesque federal policies (last year's defeated plan to remove federal restrictions on incarcerating juveniles with adults).

Earlier this year, an American Bar Association report led by former Attorney General Edwin Meese III detailed the dangers of further federalizing crime policy. Federal lawmakers should heed the Meese report, and study "Fear of Judging," a just-published book by former federal prosecutor Kate Stith and Judge Jose A. Cabranes, who make a solid case for reforming federal sentencing procedures. Such changes would undoubtedly reduce the number of drug-only offenders in federal prisons by tens of thousands.

-- Study and promote faith-based crime prevention and restorative justice. Scientific studies testify to the efficacy of faith-based efforts. In a 1998 report issued by the Manhattan Institute, criminologist Byron R. Johnson of Vanderbilt University summarized the results of a systematic review of more than 400 studies testing the relationship between all sorts of religious influences (churchgoing being just one) and crime and delinquency. The report echoed the conclusion of a study published in 1995 in the journal Criminology, namely, that most of the best available empirical evidence suggests that religion significantly reduces crime and delinquency.

The remarkable leaders and programs behind these findings know one God but many religions and ideologies. The liberal New York Theological Seminary recently launched an antiviolence youth outreach program staffed by ex-offender graduates of its historic Sing Sing education ministry, advised by leaders of the Amer-I-Can program directed by former football star Jim Brown and supported financially by both Republican Gov. George

Pataki and the Ford Foundation. The Prison Fellowship Ministry, led by Watergate offender Charles Colson, a religious conservative, recently launched an initiative dedicated to ministering to the spiritual and material needs of prisoners, ex-prisoners, and their families, including the over one million youngsters in this country who have one or both parents in prison or jail.

The National Ten-Point Leadership Foundation, led by Rev. Eugene F. Rivers III of Boston, a former Philadelphia gang member, has put responsible adults in the lives of thousands of at-risk youths, and helped to spark ecumenical, interfaith and public-private partnerships dedicated to reducing violence in cities all across the country.

These faith-based anticrime programs, and a growing number of secular ones as well, are predicated upon the concept of "restorative justice," according to which the ultimate purpose of the criminal law is to restore the "shalom" or peace that crime robs from victims, perpetrators, and communities alike. Restorative justice returns America to the ethical understanding of those who founded the American penitentiary to reclaim public order and repair broken hearts, lives and communities on both sides of the walls.

-- Redouble efforts at juvenile crime prevention. I have argued before and I continue to believe that demographic trends will exert strong upward pressure on crime rates in the years just ahead unless we take strong steps to prevent juvenile crime.

Most experts seem comforted that only a fifth of the more than 1.5 million annual "delinquency" cases in the mid-1990s involved violent crimes, and reassured by statistics showing that barely 0.1% of all juvenile arrests were for homicide. But in Philadelphia and many other cities in the mid-1990s, homicide was the leading cause of death for people age 13 to 21. Rosy statistics cannot mask the travesty of some 2,000 juvenile-committed homicides a year -- a death toll that would have been higher were it not for vast post- 1990 improvements in emergency medical technology. The statistics cannot hide the reality that an estimated six out of 10 of the most serious youth offenders are never caught.

Juvenile crime has declined from its horrific peak in 1994, but with a record 70.2 million juveniles in the population, the number of 14- to 17-year-olds will be 20% greater in 2005 than it was in 1996. By 2006, America will be home to some 30 million teenagers, the largest number since 1975. Over the next decade, all but five states will experience significant growth in the number of young males entering their most crime-prone years.

For all the good news about crime and other social indicators, too many of America's children are still growing up abused (over a million substantiated cases a year), impoverished (at least 16%), without a father in the home (at least 40%) or subject to other influences that researchers have consistently found are associated with crime and delinquency.

In 1997, researchers at the U.S. Bureau of Justice Statistics estimated that if present incarceration rates were to remain constant, 5% of Americans would be imprisoned during their lifetimes (the rates are 16.2% for blacks, 9.4% for Hispanics and 2.5% for whites). But the rates need not remain constant, nor should they. Zero prison growth is possible. In the end, whether or not we achieve this goal will be a profound measure not merely of how nimble we are when it comes to managing public safety cost-effectively, but also of how decent we are, despite our many differences, when it came to loving all God's children unconditionally, including all those in criminal custody.

Mr. DiIulio is a professor of public policy at Princeton University and a senior fellow at the Manhattan Institute.

(See related letters: "Letters to the Editor: The Useless War Against Drugs" -- WSJ March 19, 1999)

ATTACHMENT #4

Chapter Ten

AMAZING GRACE (AND THEN SOME): REFLECTIONS ON THE BOSTON STRATEGY

Ronald P. Corbett, Jr.

Second Deputy Commissioner
Massachusetts Probation Service

If everyone who offended was forcibly removed from the community because of the offense, almost everyone would have to move sometime, and 'justice' would be the main cause of mobility....a view of community justice that does not regard separation of offenders as its main function more closely approaches the ideal of justice. It treats offenders, victims, and their neighbors as dependent on one another in their pursuit of a good life. Crime is a powerful attack on the quality of life, so responding to crime in a way that helps the community recover and strengthens community life is the most profound task of justice. To do so without unnecessarily wrenching offending citizens from their communities, but instead rededicating their behavior to a safer community, is the goal of community justice.

Todd R. Clear and Ronald P. Corbett, Jr. (1997, p. 71)

INTRODUCTION

Sometimes success can be as bewildering as failure. Correctional professionals are accustomed to false starts, blind alleys, and disappointing outcomes. The problems we attempt to address (criminal behavior and its attendant pathologies) do not yield easily to our most strenuous and inspired efforts. We press on in the face of this stubborn intractability.

Accordingly, when things do work out — and especially when they exceed our most optimistic projections — we are stunned. William F. Buckley, Jr., arch-conservative publisher and columnist, once ran a quixotic campaign for mayor of New York City. Asked what his first step would be if elected, he replied "I'd demand a recount." We know how he feels.

But sometimes you just have to take "yes" for an answer. So it has been for those involved in what has come to be known as the Boston Strategy, an array of strategies and interventions aimed at reducing youth violence in the city. Launched in the wake of dramatically escalating rates of youthful homicide, this multi-agency initiative has, by general agreement, been a surprisingly effective effort as measured by official statistics on homicide and gun-related violence. Having hoped for some impact but not expecting impressive results, the partners in the strategy have found it as difficult to explain their success coherently and specifically as it was to design and implement the strategy in the first place.

We have gotten better at it; we have discerned the pattern in the carpet ever more clearly. And we have tried to be helpful to dozens of jurisdictions who are anxious to learn what happened and how they can emulate it back home.

This article aims to provide a partial answer, in narrative form, to these now familiar inquiries. The following section presents an overview of one major element in the Boston strategy, a probation-based initiative dubbed by its founders, as "Operation Night Light." In the next section, some of the context, operations, early experiences, and eventual results of Night Light are presented. Afterwards, I will identify six major lessons learned about the nature of youth violence, the strategies that seem to avail against it, and the agency, community and political dynamics that such efforts unleash.

In the concluding section of the paper, some tips on replication are offered, combining what may be helpful hints with important cautionary notes. Though sound and empirically tested programs can "travel to other jurisdictions," their exportability can be exaggerated since so much of what we attempt is bounded by local circumstances and subcultures, defying the notion of "one size fits all" interventions. What counts is grasping the principles at work in any successful effort and customizing them to a new site rather than transplanting a program in its entirety to an often significantly different time and place.

OPERATION NIGHT LIGHT — HISTORY, OPERATIONS, AND IMPACT

In the early 1990's, communities across the country were experiencing a worrisome surge in serious violence committed by juveniles, reflected in increasing numbers of homicides committed by teenagers. In the face of this disturbing trend, these same communities searched for policies to stem this bloody tide. The problem became more urgent in the face of predictions from Professor James Fox of Northeastern University, among others, who foresaw a major increase in juvenile violence occurring by the end of the decade due to changing demographics (Fox, 1996).

In the late winter and early spring of 1988, Boston began to experience the first effects of a developing network of rival and violent youth street gangs. Boston Public Schools security personnel saw the emergence within the schools and documented the first list of gangs and individual gang members and the schools they attended. The list described loosely federated groups organized around very specific territory. These gangs started what has become the custom of gangs naming themselves for the street or public housing development in which the members live.

As the police department struggled for a strategy, gang activity and its effects grew more serious. The summer brought horrific shooting incidents on the street during daylight hours, with rival gang members gunning each other down in drive-by and ride-by shootings. In August 1988, the city's attention was riveted to a "ground zero" in the gang violence explosion, the intersection of Humboldt Avenue and Homestead Street in Roxbury. Twelve year-old Darlene Tiffany Moore was shot in the head and killed by crossfire. As she sat atop a mailbox, talking with friends, rival gang shooters transformed her into a "mushroom" (the gang jargon for an innocent victim) and a symbol of the horror.

According to the Office of Strategic Planning of the Boston Police Department (Boston Police Department, 1998), Boston, a city that experienced

75 homicides and 5,920 aggravated assaults in 1987 would see 95 homicides and 6,291 aggravated assaults by year's end 1988. Homicides would reach an all-time annual high of 152 in 1990. Aggravated assaults reached the decade-high peak of 6,960 in calendar 1990. Eighteen of the homicide victims in 1990 were age 17 or younger (J. Jordan, personal communications, May 12, 1998). "Crack" cocaine arrived on the scene around this time, attracting the developing gangs to become distributors of this highly profitable product. Traffickers in semi-automatic handguns also identified a potential market and began running guns to the emerging gangs.

Gang behavior in the courthouses grew bolder in this period. Court officials describe regular disruptions in the courtrooms and corridors, intimidation of witnesses, and attempted intimidation of staff. One justice in the Dorchester District Court made headlines with a call for assigning the National Guard to secure the courthouse. Probation officers began to identify and catalogue gang colors and individual gang members and their affiliations.

Led by then patrol chief and now Commissioner Paul Evans, the police department's management searched for alternatives in the face of the growing numbers of shootings and homicides. By Spring 1990, a new strategy was ready to take the streets in the form of the new Anti-Gang Violence Unit.

A proper understanding of Night Light — and what it adds uniquely to the criminal justice arsenal — depends on placing it in the context of the traditional practices of probation. Probation is both a sentence and a status. As a sentence, it constitutes far and away the most popular option in use. Nationally 60% of all offenders under correctional supervision are on probation (BOTEC, 1998). The corresponding percentage in Massachusetts is 69%. Offenders placed on probation are on conditional liberty, free to remain in the community provided that they comply with any conditions of their probationary status set by the sentencing judge. Common conditions include avoiding subsequent arrests, reporting to a probation officer, not leaving the state without permission, and, commonly, paying restitution and obtaining substance abuse counseling or other relevant treatment.

For younger offenders, some judges had traditionally imposed curfews, although this practice had waned during the 1980s and early 1990s due to difficulties with enforcement. Parents were not as cooperative as they once were, probation officers became comfortable with nine to five schedules, and they also were weary of returning to high crime areas in the evening.

The Genesis of Night Light

The building blocks of what would become Night Light were created with the fielding of a new Gang Unit within the Boston Police Department. Probation officers Bill Stewart and Rick Skinner and Gang Unit Detective Bob Merner set the first block in place with a corridor conversation in the summer of 1990. Realizing they were watching the same youthful offenders from two different points on the perimeter of the "revolving door," they and others from both agencies began to brainstorm new forms for collaboration. As Dorchester Chief Probation Officer Bernard Fitzgerald reported, "We began seeing the same Gang Unit guys in the courthouse every single day for four months."

Using the intelligence from their contacts with the Gang Unit and information developed from their interactions with gang members, probation officers began asking judges to include curfews and area restrictions in conditions of probation. It was expected that this escalation in the intensity of supervision would lower the number of violations for new arrests as compliance with curfews and other collateral conditions of probation improves. This escalation in enforcement strategy was a product of the recognition that high-risk offenders required a "short leash" and would take advantage of any laxity, as well as the realization that the deterrent effect of curfews — and the associated compliance rates — would be predicated on strict enforcement.

On their own Fitzgerald, Stewart, and Skinner began to move away from the existing model of probation by getting away from their desks in the courthouse. They began approaching probationers on the street, who all but rubbed their eyes in disbelief at the sight of their probation officers on their turf. In August 1991, Stewart wrote a memo to District Judge James Dolan, recounting his witnessing open drug dealing by one of his clients at 2:00 p.m. on a residential street in the district. Judge Dolan, an early supporter of the collaboration, became an even more determined backer of methods to ensure that probation would have teeth.

Police officers began to see probation as a powerful deterrent and began to carve out for themselves a new role in deterrence. As one Boston Police Department detective said,

> *"Well I used to watch people walk out of court with probation as the end result, I said 'That's B———!' But I can see now what good, supervised probation can do - it sounds corny - for the community. I've seen gangs decimated from a particular neighborhood only because of supervised curfews and area restrictions. So again, as I touched on before, I know so much more about probation as a tool."*

Informal contacts continued to grow and yield results. On November 12, 1992, "Night Light" started — and Boston began its work toward a strategy of community corrections — when Stewart and Skinner got in the back seat of a police car with Merner and partner Bob Fratalia.

Operations

A typical evening in Night Light would include the matching of a one- or two-person probation team with a similar team from the Gang Unit. The team would meet at Gang Unit Headquarters to prepare for the evening's work. The probation officers involved would have identified some ten to fifteen probationers they want to see that evening, concentrating on those cases thought to be "active" on the street at a given time or on those who have been slipping in terms of their compliance with probation conditions. Operating in an unmarked car and in plain clothes, these teams would proceed to the first scheduled curfew check. The police team is responsible for safety issues and

is sensitive to the manner in which the home is approached and also to exit areas, should the probationer seek to evade the contact. Once the security issues, which are not monumental in most cases, are addressed, the probation officer(s) will approach the door and seek entry. Once inside the home, the contact proceeds as would any typical probationary home visit. Every effort is made to ensure that the parents and other family members are not alarmed by the presence of probation and police officers and courtesy and a friendly manner are emphasized.

The purpose of the visit is to ascertain whether the probationer is home in observance of the curfew, to reinforce the importance of strict observance of all conditions, and to inquire of any parents present about the behavior of the probationer, both in the home and in the community. After those basic objectives are accomplished, and any other issues of concern to any of the parties are addressed, the team will thank everyone for their cooperation and go on to the next scheduled contact.

It is not uncommon for a team to stop at a park or street corner where youth are congregated to determine whether any probationers are present and also to demonstrate to the youth of the city that the probation and police departments are working together in the evening and are interested in the whereabouts and activities of young people on probation. We have learned that word spread fast that there is a new mode of operation in probation and a new level of jeopardy for those who would ignore their probationary obligations.

Costs and Benefits of the Program

The partnership between probation and the police was sustained because both sides were reaping tangible and significant benefits. From the probation point of view, the presence of the police makes it possible to enter the most crime-ridden areas of the city into the late evening. That is, the police provide a high degree of security for probation officers who are not armed or equipped with telecommunications capacity. Also, because of the familiarity between the departments that has grown out of Night Light, there is now routine sharing of information on a citywide level regarding the identities of those on probation; any information obtained by any police officer concerning the activities of a probationer (whether the subject of Night Light or not) can be passed on to probation. While it may seem an obvious strategy, it does not seem to be the practice in most jurisdictions to exchange information between probation and law enforcement routinely. This failure robs probation of access to the contacts and observations made by police who are working the community on a 24-hour, 7-day per week basis and, therefore, have more "eyes and ears" working the streets than even the most proactive probation department can muster. This increased flow of information and intelligence regarding probationer activities has been of the greatest by-products of Night Light.

In sum, from probation's point of view, there is a new credibility to probation supervision and the enforcement of curfews and area restrictions that was not present when probation activities were limited to the 9 to 5. time

frame. Feedback from offenders, police, parents and community members alike indicates that the kids are aware things have changed and have become more cautious, not to say more compliant, in their behavior. This is a breakthrough.

From the police perspective, they now have a tool available to them that significantly enlarges their own power. Many police officers will speak of the frustration that comes with knowing certain offenders are active in a community but being unable to control them due to the difficulties involved in crime detection and apprehension. While not all offenders being targeted by the police are on probation, both common sense and the available data suggest that probationers account for upwards of 20 percent of all serious crime (Council on Crime in America, 1996). Any strategy that can legally target this group through closer surveillance and supervision can have a deterrent effect. Deterrence is achieved through incapacitating probationers by requiring they avoid certain areas and be in their homes at a reasonable hour each evening and not on the streets at times when gang-related violence flourishes. The understanding among probationers that, while they will most often not be detected undertaking criminal activity, their failure to abide by court-ordered conditions can put them in jeopardy of incarceration just as certainly as if they were arrested for a new offense is a point not lost on them. Put differently, the threshold for depriving them of their liberty is much lower than it is for the non-probationer and permits their removal from the street for a variety of non-criminal behaviors.

The police both marvel at and appreciate the power of probation officers in this respect. Members of the Gang Unit have often commented on how the kids fear their "P.O." more than they fear an uniformed officer. Provided this broader power is used fairly and judiciously, it does put a formidable crime-fighting technique on the street as a supplement to that which is achieved through conventional police strategies. As stated by Bernard L. Fitzgerald, Chief Probation Officer for the Dorchester District Court,

> *These are a few examples that come to mind of the benefits of a strong probation enforcement policy. One of the most striking examples is that of a young man who, along with his brothers, was the leader of a very violent drug involved gang in the Dorchester area.*
>
> *His mother made a plea for him in court, to prevent him from being incarcerated. She said that if the court allowed him to continue on probation she would keep him at her new home in Plymouth.*
>
> *The young man's terms of probation were written so that he couldn't be in Dorchester at any time other than to go to court. Within the next two days, the defendant's probation officer, while riding with the Gang Unit, spotted the defendant in the back of a taxi. The police stopped the taxi and when they*

approached it they observed the probationer trying to hide an object which turned out to be a nine (9) millimeter handgun.

He was arrested for violation of his probation and possession of a firearm. He was found in violation of probation and committed to prison.

By virtue of this action, we were able to put a bit of a block on the activities of this gang. Another example of the benefit of the Night Light program is evidenced by the young man who said that his probation officer saved his life.

The young man came to his probation officer on a Monday morning and said that, had it not been for fear of being caught, he would have been with three friends who were arrested for a double murder.

He said that he had been asked to go with his friends to a party on Friday evening. He declined the invitation citing the fact that he had curfew and his P.O. periodically checked him at his home and if he were out he would be found in violation and sent to jail.

The probationer stayed home and his friends tried to rob two young men of their jewelry at a party and when they resisted they shot and killed them.

The probationer said that he had no doubt that he would have been part of that had he not been afraid of violating his curfew.

A Balanced Approach

It was understood by all participants in this new approach that more credible enforcement had to be leavened by a commitment to provide appropriate services and interventions to youth who frequently needed help and support in finding a new, pro-social direction as they abandoned the ganglife. The help came in three related forms: job assistance, faith-based counseling, and personal advocacy.

Access to employment was at the top of everyone's list. Getting kids jobs served multiple purposes. Work kept youth busy, and therefore, unavailable for gang activities. It also provided spending money and, in other instances, basic provisions for neglected younger siblings. Finally, it was a means to instill the habits of punctuality, following direction, and interacting appropriately with peers and the public, all sorely needed by the targeted youth.

In the early 1990's, the city of Boston greatly expanded its summer jobs program, so that it was realistic for all youth who were interested to have a

good chance of locating summer employment. Key officers in the Gang Unit contributed their own personal efforts to the cause and developed, after securing corporate support, what came to be known as the "Summer of Opportunity" (SOO). SOO provided youth referred by Gang Unit officers with a combination of work experience and life skills training. Those youth who successfully completed the summer program (which an average of 90% were able to do) were provided part-time jobs during the school year (Buntin, 1998).

At-risk youth in Boston found a second stream of support coming from an entirely new direction. In May 1992, a local Baptist church experienced the unthinkable — a gang-related stabbing and shooting took place during a church service. In the wake of this shocking event, inner city clergy mobilized to address the church's role in combating youthful violence. The "10 Point Coalition" was formed, comprised of ministers committed to taking their message to the streets in outreach to the hardest hit areas. These initial forays into gang areas led to the slow but steady development of relationships between kids and clergy that evolved into court advocacy as well as church-based programming such as "Gangs Anonymous" meetings, sponsored and attended by church leaders (Buntin, 1998).

The involvement of clergy and other church folk lent a special cast to the on-going efforts. The "10 Point Coalition" sponsored prayer meetings and special liturgies where blessings were bestowed on the Strategy and those active in it. To many of those involved, this new and decidedly spiritual dimension was deeply felt. It was as if the Almighty was smiling on Boston's efforts and bestowing a welcome and amazing grace on the undertaking.

These efforts were rounded out by a growing corps of "Streetworkers," hired by the Mayor, whose charge was to hit the streets and work with young people in crisis wherever, and whenever, they could be found. The streetworkers were hired for their skills in developing rapport with young people and mobilizing community resources. Greeted initially with suspicion by the police, in time a close, mutually respectful relationship developed that allowed the police to get the message out to gang leaders without the static that came with direct communication. The streetworkers helped head off trouble when alerted to emerging "beefs," worked with kids whom the police or probation might identify as on the cusp of serious trouble, and connected youth with city and other services that created healthy options for them to pursue (Buntin, 1998).

The incorporation of this emphasis on services, outreach, and advocacy gave needed balance to the Boston strategy and gave moral authority to the efforts of the police and probation. Both clergy and streetworkers identified themselves with the interest of community members and could not have supported a strategy that relied on stepped-up enforcement to the neglect of services and support. This commitment to a balanced approach, which had the manifest support and involvement of Boston's most aggressive police officers, made unconventional alliances possible. The lion laid down with the lamb, as it were. The youth saw a new seriousness about stemming youth violence coupled with a genuine, consistent campaign to identify and increase

the help available to them. Stereotypes and rigid role definitions broke down, all in the service of saving Boston's children.

A recently published case study of the Boston strategy, developed at Harvard University's Kennedy School of Government, put the matter this way:

> *The outreach programs established by the Gang Unit and the Anti-Gang Violence Unit had a two-fold effect: they benefited kids and gave the police the credibility it needed to build close ties to the 10 Point Coalition and other service organizations. The presence of these relationships in turn created a reservoir of good will that allowed the police and other law enforcement agencies to intensify its policing efforts without alienating large segments of the black community.*
>
> *"If we [the 10 Point Coalition] had not played a role in the intervention and prevention process in Boston, what you would have had was something akin to apartheid," says (Reverend Jeffrey) Brown. "You'd have had the police versus the youth. It would have been Dodge City* (Buntin, 1998, p.19).

Program Impact

What difference have the more than 6,000 Night Light contacts (home visits, street contacts, etc.) made in the last six years? While direct impact is notoriously difficult to prove, the trends in the affected areas, in terms of declining rates of homicide and other violent crimes, are encouraging. To point to some recent data, there was one juvenile homicide during 1996, one in 1997, and one through June of 1998, compared to sixteen for 1993 (J. Jordan, personal communications, May 12, 1998). The data presented in Tables 1, 2, and 3 document a decline in homicides during the period in which Night Light has operated.

Table 1

Boston Homicides, All Ages

Year	Homicides
1992	76
1993	98
1994	85
1995	96
1996	61
1997	43
1998*	15

**Data is through June 30, 1998*

Table 2

Boston Juvenile Homicides

Year	16 and Under
1992	8
1993	16
1994	6
1995	4
1996	1
1997	1
1998*	1

**Data is through June 30, 1998*

Table 3

Boston Juvenile Homicides by Firearms

Year	16 and Under
1992	5
1993	10
1994	5
1995	2
1996	0
1997	1
1998*	1

**Data is through June 30, 1998*

While no one involved with Night Light feels this positive trend is attributable primarily to Night Light, all of the staff involved believe strongly that compliance with probation, as well as lessened levels of gang-related violence, are at least partially attributable to the efforts of the Night Light staff. The networks that grew out of this innovation, which brought together clergy, streetworkers, community leaders and researchers as well as criminal justice personnel, were regularly in touch with offenders in the affected neighborhoods and were unanimous in their perception that probationary sentences and those that enforce them were seen in an entirely new light. David Kennedy of Harvard University's Kennedy School of Government commented frequently on how often gang members he spoke to felt restrained by curfew checks, area restrictions, and more frequent and unannounced home visits that came with the Night Light regimen.

In addition, court personnel believe that probationary sentences have gained a new and enhanced credibility due to the stricter enforcement of key conditions that Night Light provides. It is clear now, as it has not always been in the past — the word is on the street, so to speak — that those on probation must take their obligations seriously, or they will be detected in not doing so and consequences will ensue.

There is also the hard to measure but real reassurance that comes to those neighborhoods where Night Light takes place. The knowledge that probation officers are around with the police assuring that probationers are off the streets in the evening brings a measure of relief to hard hit communities. It is also very clear that the parents of these young people, who are often in a losing battle to keep their sons and daughters from responding to the lure of the streets, genuinely appreciate the support they receive through curfew enforcement. While this program is designed primarily to deter these young offenders from committing any new crimes, their parents recognize that it also serves to keep these same young people from being victimized themselves in the mortal combat that envelops their streets.

SIX LESSONS LEARNED

The Importance Of Balance

> *A man does not show his greatness by being at one extremity or another but rather by touching both at once.*
>
> Albert Camus

Correctional interventions must be two-fisted. An attempt to make real progress by utilizing either law enforcement strategies or treatment approaches alone is doomed to failure. The problems we address never yield to one dimensional approaches.

Secondarily, the one-theme approach will not garner critical political support. Solutions must be bipartisan in policy terms. The investment in enforcement clears the path for a complimentary investment in treatment. Average Americans want to see a measure of both, shifting in proportions to the realities confronted.

Publicity Builds Momentum and Commitment

President Clinton visited Boston in February 1997, as the culmination of an extended series of positive media hits for the Boston strategy. Regular coverage by both local and national media outlets (e.g., coverage on the ABC Evening News in its "Solutions" series) drew popular and, more importantly, internal attention to the effort. Everyone wanted in — there was no lack of volunteers or resources available to support the effort.

For any new initiative to flourish, there has to be a buzz surrounding it that focuses attention and elicits support. Both an internal strategy, creating organizational incentives for involvement, and an external strategy, building political support, are critical.

Accordingly, new programs must attract the best and brightest in an agency through strong support and internal marketing by the agency's leadership and

must catch the eye of key figures in the agency's authorizing environment, the circle of key public figures whose support is crucial to the agency. Nothing will accomplish this faster than sustained, positive media coverage.

Nurture the Relationship among Partners

Partnerships of any kind are fragile affairs and require work if they are to be sustained. Regular communication and an honest effort to honor each partner's unique role and requirements are key to longevity.

In the early years of the Boston strategy, there were bi-weekly meetings to which all participating agencies were invited, including both administrative and line staff. They were well attended and served multiple functions. The frequency of the meetings allowed those present to get to know and trust each other. The opportunity to get up-to-date intelligence and to share success stories sustained interest and commitment. The "open forum" approach, where anyone irrespective of rank could speak to the group, made for lively meetings where the key issues surfaced.

Use an Objective Outsider

Groups, particularly if they are highly charged and successful, can develop a blindness to potential mistakes or lost opportunities. "Groupthink" takes over, in the flush of enthusiasm and fellow-feeling engendered by in a new and exciting venture. Reality can sometimes get lost.

One antidote to this dynamic is to involve an outsider whose job, whether by design or happenstance, is to keep the project honest and aware of all developments, to look for flaws of logic, errors of omission, and possibilities for enhancements that only a disinterested party will easily notice.

In the Boston experience, David Kennedy of Harvard University played just such a role. Kennedy worked from a great respect for the practical wisdom of the participants and looked first to leverage their abilities and insights by feeding back to them in refined form the raw material of his many long and patient discussions with the key players.

> *Once again, an excerpt from the case study puts it best: Kennedy also played an important role in facilitating inter-agency cooperation. Kennedy didn't attempt to push his own approach to tackling youth violence on the group; rather, he pushed participants to think about what they could do to work more effectively together. Although many of the participants had already forged close working relationships, Kennedy's outsider perspective further encouraged working group members to drop their institutional egos. According to Kennedy, the working group process created a real sense of excitement* (Buntin, 1998, p. 25).

Get Good Data

We don't know what we don't know. Though length of experience and seeming familiarity with a problem may lull us into thinking that we

understand its dimensions and true nature, gathering hard data before undertaking a new project can bring some surprises or at least impose a needed discipline on the process.

David Kennedy provided an essential service by helping the participants gather reliable data on the phenomenon and the offenders in question. Putting the up-front work into getting good data paid off in the group's understanding of the nature of youth violence. An examination of the particulars of 155 youth homicides in Boston revealed a high correlation with gang membership and gang-related activities and demonstrated the concentration of both perpetrators and victims among the relatively slim ranks of chronic offenders well-known to the system. This information was critical to the development of the strategy.

Secondly, tracking the results of the project provided both required documentation of results to the outside world while also helping to shape and refine the emerging strategy. This is also covered in the next and final lesson.

Be Experimental

> *The country needs and, unless I mistake its temper, the country demands bold, persistent experimentation. It is common sense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something.*
>
> Franklin D. Roosevelt, 1932

A bias toward experimentation is reflected in passion for novelty, flexibility, and measurability. Corrections is awash in failed strategies and the only recourse for the prudent manager is to keep trying. Moreover, trying to find entirely new ways that break from conventional approaches is especially critical. Breakthroughs in science come from exploring new techniques for which there is often no logical support. We still do not know why some very effective medicines work. We must be similarly foolhardy in corrections. We love the long-shot, the odd-ball, the "what if..." frame of mind. It is this spirit that energized the architects of the Boston strategy and accounts for much of their success.

Flexibility in design and implementation is equally important. If the ideal model cannot or does not work, modify it, tweak it until it starts showing some results. Again, this is precisely how the most accomplished scientists work. They follow an iterative process, constantly testing, changing, and testing again. Sticking with something after its shown flaws is not determination but stubborn pridefulness.

Finally, look for proof that you are attaining the ultimate outcomes. Have a bottom line and stay with it. In Boston, the goal always was to stop the killing. The participants never looked up until the numbers began to drop dramatically. Fewer funerals was the goal and they kept close score.

THOUGHTS ON REPLICATION

Principles Travel but Programs Don't

Too often, a certain model gains popularity and becomes the darling of the correctional field. Boot camps are a good, recent example. Like Cabbage Patch dolls, everyone has to have one. The trouble with adopting programs wholesale because they are in fashion and appear to work is that it ignores the reality that people, places, conditions, and resources vary significantly in ways that can both foster and impede success. What works for me will work for you only if you're just like me. Usually, you are not.

Principles can transfer, however. Looking to the essence or core properties of a program is helpful, for they can be embodied differently depending on the key variables in the adopting jurisdiction. Custom-tailor the general approach to local realities. Steal my ideas, not my programs.

It Takes A Crisis

A delegation from Boston recently visited another state interested in adopting the Boston strategy. In a meeting with the officials of that state, someone asked "What does it take to get a program like yours started?" After a pause, I responded: "It helps if one of your churches is shot up."

The tragedy at the Morning Star Baptist Church in Boston was clearly a catalyst for much of what started in Boston. No one honestly hopes for such an event, but the cold truth is that something of that caliber is often the unplanned jump-start for subsequent reform. Absent a shared sense of urgency, the mandate for change is a weak and uncertain thing.

You cannot plan for, and should not instigate, a crisis, but you can reveal one. Sometimes, seeing that there is attention drawn to otherwise little known and ominous conditions and trends can provide a critical mass of concern and coverage. A flair for the dramatic is a well-known attribute of change agents.

Look for Natural Born Leaders

Peter Drucker, a management guru, has said that wherever something really great is happening, there is a maniac on a mission. Big results require extraordinary leaders. The best ideas in corrections are never self-executing. Uninspired management can undermine the best models and real leadership can breathe life into the most half-baked ideas.

New projects need champions. Agencies and jurisdictions committed to radical improvements must identify and enlist talented administrators with a passion for the enterprise and a hunger to succeed. They are few in number but every system has them. Find one and put him/her on the case.

Start Small

Do not launch the Normandy invasion if all you need at the moment is to take a beachhead. Over-reaching squanders resources, divides attention, strains logistics, and makes retreat difficult.

Look to your most favorable circumstances and start there. First learn what it takes to succeed. Make an early victory nearly inevitable through a

concentration of force. Use that small success to build momentum. By moving slowly but consistently, you can spread yourself thick.

Take Stock of Existing Relationships

City-wide interventions require the buy-in of a diverse group of public and private officials. Historians of war tell us that soldiers risk their lives more for comrades than cause. Social action is no different. Only hard-earned mutual trust based on personal regard will get any coalition through the inevitable setbacks.

The best working relationships do not come cheap. They are built around a lot of coffee cups, in station house back rooms, in drafty church basements, in courthouse corridors, and at the scenes of shootings. It takes a while to learn who you can rely on, whose back you are willing to cover.

Agencies wishing to take the lead in a new strategy must be assured that they have sufficient allies. If more work needs to be done on cultivating key relationships, hold off the new initiatives and build those key alliances. Your potential partners will want to know that you are dependable, honest, courageous, and a team player. Show them.

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Court Services and Offender Supervision Agency
for the District of Columbia
Office of the Trustee

June 3, 1999

The Honorable Ernest J. Istook, Jr.
Chairman, Subcommittee on the District of Columbia
House Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Congressman Istook:

Thank you for your continued interest in the Court Services and Offender Supervision Agency (CSOSA) as we move forward towards federal agency certification. I have enclosed responses to your questions that arose at our meeting on April 27, 1999, and additional questions based on subsequent discussions with your staff. I hope that this information provides a clear understanding of our mission, present day situation and the challenges facing us in the coming year.

You will find that CSOSA is striving to create a professional program for defendant and offender supervision that results in a two-pronged outcome of success. Those being the orderly reintegration of the defendant/offender into the general population through drug screening, counseling and sanctioning which will result in reduced crime on our streets and restored faith in the safety of the Capital's citizens.

I have instructed my legislative affairs team to coordinate with your staff and keep them fully apprised of our efforts. I of course am always available to discuss with you any concerns or questions about our mission. As you are fully aware, we are at present working with your staff and fellow committee members to ensure proper funding for the goals we have set and greatly appreciate your personal involvement in achieving success in this matter.

Sincerely,

John A. Carver, III

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Court Services and Offender Supervision Agency
for the District of Columbia

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Composition of D.C. Defendants and Offenders & Supervision Caseload Information

CSOSA Caseloads and PSO/CSO Staffing Requirements

- The **attached display** distributes the number of defendants and offenders in the District of Columbia that require some form of community supervision and the recommended caseload ratio required for effective supervision. This population is compared to the number of Pretrial Service Officers (PSOs) and Community Supervision Officers (CSOs) that are responsible for their supervision and the average caseload per officer in FY 1999. Staff are distributed between those funded by direct budget authority and those funded from the FY 1999 Community Oriented Policing Services (COPS) grant program. The FY 2000 staff include positions funded from direct appropriations, including the annualization to the base program of FY 1999 COPS grant positions, and positions requested in FY 2000 from the 21st Century Policing Initiative grant program, and the anticipated impact on the average supervision caseload.

- Of the 250 positions requested in FY 2000 from the 21st Century Policing Initiative, it is planned that 109 positions will be additional line staff (PSOs and CSOs) which will reduce the average caseload from 112:1 in FY 1999 to 77:1 by close of FY 2000. In order to achieve the recommended average caseload ratios, it is projected that an additional 474 PSOs/CSOs will be required beyond the FY 2000 request.

Pretrial

- *Intensive Supervision* cases currently comprise about 2% of the total Pretrial caseload. The size of this caseload is a function of the number of Pretrial Supervision Officers (PSOs) currently available to supervise it. It does not necessarily reflect the number of defendants needing intensive supervision, since it is not based on the results of an objective risk assessment. These cases involve high-risk defendants who are charged with felony offenses with an average length of supervision of 6 to 18 months. The conditions of release for defendants in this category are to comply with program reporting, curfew, and drug testing requirements. Individuals are returned to a District halfway house for noncompliance. The recommended supervision caseload ratio for this population is 20:1. The FY 1999 appropriation provides direct funding of 4 PSO positions. At this rate, the current average caseload for this population will be 50:1 at the end of the current fiscal year. The FY 2000 budget plan requests a continuation of direct funding for 4 positions as well as an additional 3 COPS positions. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 29:1 by the end of FY 2000. Further proposed management enhancements include an in-house out-patient drug treatment program dedicated to this population.

- *Heightened Supervision* cases comprise about 2% of the total Pretrial caseload. The size of this caseload is a function of the number of PSOs currently available to supervise it. It does not necessarily reflect the number of defendants needing heightened supervision, since it is not based on the results of an objective risk assessment. These cases involve high-risk defendants charged with felony offenses

and certain misdemeanor offenses with an average length of supervision of 6 to 18 months. The conditions of release for defendants in this category are to comply with program reporting, curfew, and drug testing requirements. The recommended supervision caseload ratio for this population is 20:1. The FY 1999 appropriation provides direct funding of 6 PSO positions. At this rate, the current average caseload for this population will be 50:1 at the end of the current fiscal year. The FY 2000 budget plan requests continuation of direct funding for a total of 6 positions as well as an additional 5 positions from the 21st Century Policing Initiative grant program. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 27:1 by the end of FY 2000. Further proposed management enhancements include an in-house out-patient drug treatment program dedicated to this population.

- *Drug Court* cases comprise about 3% of the total Pretrial caseload. These cases involve defendants with non-violent felony and misdemeanor charges, and substance abuse histories with an average length of supervision of 5 to 12 months. The conditions of release for defendants in this category are to report for twice weekly drug testing; immediate drug treatment placement; sanctions for violations; and favorable disposition of criminal case upon completion. The recommended supervision caseload ratio for this population is 20:1. The FY 1999 appropriation provides direct funding of 9 Case Manager positions. At this rate, the current average caseload for this population will be 39:1 at the end of the current fiscal year. The FY 2000 budget plan requests an increase of 8 positions in direct funding for a total of 17 positions. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 20:1 by the end of FY 2000. This plan meets compliance with the recommended caseload ratio benchmark for this population. Further proposed management enhancements include expanded services to address the mental health population, child care and women's groups.

- *District Court Unit* cases comprise about 2% of the total Pretrial caseload. These cases involve all defendants released Pretrial in the United States District Court with an average length of supervision of 3 to 24 months. The conditions of release for defendants in this category are to meet all court-ordered reporting and drug testing requirements as applicable. The recommended supervision caseload ratio for this population is 35:1. The FY 1999 appropriation provides direct funding of 2 PSO positions. At this rate, the current average caseload for this population will be 125:1 at the end of the current fiscal year. The FY 2000 budget plan requests a continuation of direct funding for 2 PSO positions and an increase of 1 COPS funded PSO position. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 83:1 by the end of FY 2000. Further proposed management enhancements include enhanced drug treatment and case management supervision.

- *Intermediate Supervision* cases comprise about 45% of the total Pretrial caseload. These cases involve all defendants showing positive drug tests at lock-up or evaluation; or with multiple pending cases (i.e., re-arrest while on Minimum supervision); or under Parole or Probation supervision. The average length of supervision is 3 to 18 months. The conditions of release for defendants in this

category are to report in person or by telephone once weekly; once weekly drug testing if initially tested positive; if three violations occur in 30 days, then twice weekly testing and drug treatment placement; and sanctions for subsequent violations. The recommended supervision caseload ratio for this population is 35:1. The FY 1999 appropriation provides direct funding of 9 PSO positions and 19 COPS funded positions. At this rate, the current average caseload for this population will be 196:1 at the end of the current fiscal year. The FY 2000 budget plan requests an increase of direct funding of the 19 COPS positions obtained in FY 1999, for a total of 28 PSO positions. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 128:1 by the end of FY 2000. Further proposed management enhancements include program reorganization to10 teams, each with a supervisor and approximately 15 PSOs. Each team will handle cases generated from a specific MPD police district. Each team will be located in a field unit where defendants check-in, submit to drug testing. Also proposed is support staff to handle defendant reporting.

- *Regulatory and Traffic Cases* comprise about 12% of the defendants processed through the courts who need supervision. These cases involve all defendants on the D.C. misdemeanor and traffic lock-up calendar with an average length of post-arrest supervision of 1-3 months. The conditions of release for defendants in this category are weekly drug testing if their urine sample at arrest is positive for a controlled substance or the defendant admits to current drug use; and regular reporting to PSA if necessary. The recommended supervision caseload ratio for this population is 150:1. The FY 1999 appropriation does not provide for direct or COPS funding of staff to monitor this population. Due to the limited number of new positions requested in the FY 2000 budget, no positions are anticipated for this program at this time. If funding were provided, initiatives would include interviewing arrestees, conducting criminal background checks, producing bail reports for the court, conducting drug testing/surveillance, making social service referrals, notifying the court of compliance with conditions of release, and tracking rearrests.

- *Minimum Supervision* cases comprise about 33% of the total Pretrial caseload. These cases involve all defendants misdemeanors and limited, non-violent felonies with no other pending cases; no pending/prior Bail Reform Act ("bail jumping") charges; and not under probation/parole supervision. The average length of supervision is 3 to 9 months. The conditions of release for defendants in this category are release on personal Recognizance, or verification of address, or report for a drug evaluation (if positive, then Intermediate supervision required). The recommended supervision caseload ratio for this population is 175:1. The FY 1999 Budget provides for direct funding of 3 PSO positions and 2 COPS funded positions. At this rate, the current average caseload for this population will be 800:1 at the end of the current fiscal year. The FY 2000 budget plan requests an increase of direct funding for a total of 5 PSO positions. If planned FY 2000 funds are provided, the caseload ratio is expected to remain at 800:1 by the end of FY 2000. Proposed management enhancements include monitoring of defendants for re-arrest only. New staff will also conduct criminal history checks in citation cases, interview defendants who will be detained overnight,

monitor curfew compliance for defendants, contact defendants on bench warrant status and encourage them to "surrender."

Probation

- Currently, *Diagnostic/Treatment* programs comprise about 7% of the total Probation caseload. Programs include the following:

  1. Traffic Alcohol Program – Diagnostic Unit prepares pre- and post-sentence investigations and makes treatment referrals for traffic alcohol offenders.

  2. Probation and Parole Resource Center is an intensive, abstinence based outpatient treatment and supervision program for drug involved adult probationers and parolees. The program provides a range of drug counseling and education services as well as other supportive services and referrals during an intensive six-month service period followed by aftercare services.

  3. Domestic Violence specialized treatment programs offer domestic violence education and related counseling services to adult batterers. The program utilizes the nationally recognized Duluth Model educational/treatment curriculum in working with batterers groups.

  The recommended supervision caseload ratio for this population is 20:1. The FY 1999 appropriation provides for direct funding of 36 Community Supervision Officer (CSO) positions and COPS grant funding of 5 positions. At this rate, the current average caseload for this population will be 21:1 at the end of the current fiscal year. The FY 2000 budget plan requests direct funding for the 41 positions funded in FY 1999, and an additional 3 positions from the 21st Century Policing Initiative grant program. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to meet the recommended caseload ratio of 20:1 by the end of FY 2000.

- *Specialized Supervision Programs* currently comprise about 29% of the total Probation caseload. Programs include the following:

  1. Community Resource Management Program is an intensive supervision initiative serving high-risk adult male and female offenders aged 18 to 26 years.

  2. Sanction Team for Addiction and Recovery/High Intensity Drug Trafficking Area Team (STAR/HIDTA) program is a specialized drug assessment and education program for adult probationers sentenced in Drug Court to community supervision. Probationers identified as HIDTA clients are placed in federally funded out-patient and/or residential drug treatment programs while being intensively supervised by STAR/HIDTA Community Supervision Officers.

  3. Electronic Monitoring and Intensive Supervision Program (EMIS) provides intensive supervision in conjunction with state-of-the-art electronic surveillance technology. Curfew enforcement is a primary function of this program.

Arrangements are made to receive the Court Order directing electronic monitoring on the day of sentencing or immediately thereafter. EMIS staff install monitoring equipment on offenders within one day of the receipt of the Court Order. Additionally, intensive reporting and monitoring within the program result in immediate responses when violations take place.

4. Traffic Alcohol Program – Supervision Unit – provides intake, orientation and supervision services to include specialized group counseling and treatment referrals for traffic alcohol offenders.

5. Domestic Violence Intervention Program (DVIP) includes two specialized treatment teams offering domestic violence education and related counseling services to adult batterers, using the nationally recognized Duluth model educational/treatment curriculum.

6. Sex Offender Diagnostic & Supervision Program is comprised of a dedicated team of specially trained CSOs. Program CSOs follow identified sex offender cases from the point of adjudication through the pre-sentence and supervision phases of involvement with the Court. Emphasis is placed on working closely with the offender to coordinate available treatment resources and to coordinate the registration and monitoring policies. Eventually, this program will also develop a psycho-educational group training curriculum to work with sex offenders and their families.

The recommended supervision caseload ratio for this population is 20:1. The FY 1999 budget provides for direct funding of the 35 CSO positions funded in FY 1999, and COPS grant funding of 4 positions. At this rate, the current average caseload for this population will be 88:1 at the end of the current fiscal year. The FY 2000 budget plan requests direct funding for the 39 positions funded in FY 1999, as well as an increase in 12 positions to be funded from the 21st Century Policing Initiative grant program. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 67:1 by the end of FY 2000.

- *General Supervision Programs* currently comprise about 64% of the total Probation caseload. Programs include the following:

1. General Probation Supervision is comprised of seven teams, which prepare pre-sentence investigations for the Court. The teams are located in Judiciary Square Building B and in regional field units located throughout the District of Columbia.

2. Interstate Compact Service provides screening, intake, diagnostic and monitoring services for all Interstate Compact matters involving offenders originating in the District of Columbia, but under supervision in other jurisdictions. Additionally, the team assumes responsibility for certain Parole interstate matters.

3. Out-of-Town Supervision provides a full range of case management services for adult probationers and parolees being supervised in the District of Columbia via the Interstate Compact. These offenders originate in other jurisdictions and are supervised in regional field units located throughout the District of Columbia.

The recommended supervision caseload ratio for this population is 35:1. The FY 1999 appropriation provides for direct funding of 69 CSO positions and COPS grant funding of 9 positions. At this rate, the current average caseload for this population will be 99:1 at the end of the current fiscal year. The FY 2000 budget plan requests direct funding of 78 positions and 28 positions to be funded from the 21st Century Policing Initiative. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 73:1 by the end of FY 2000.

Parole

- Currently, 10% (600 offenders) of Parole's total caseload is managed by the *Young Adult Supervision Unit* (YASU). YASU provides assistance and surveillance for parolees sentenced under the Youth Rehabilitation Amendment Act (YRA) and the now-repealed Federal Youth Corrections Act (FYCA), as well as other young adult offenders between the ages of eighteen and twenty-six. Case studies suggest that youthful offenders require more guidance and supervision to promote positive adjustment in the community. The recommended supervision caseload ratio for this population is 20:1. The FY 1999 Budget provides for direct funding of 6 Community Supervision Officer (CSO) positions. At this rate, the current average caseload for this population will be 100:1 at the end of the current fiscal year. The FY 2000 budget plan requests a continuation of direct funding for 6 positions as well as an additional 4 positions from the 21st Century Policing Initiative. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 58:1 by the end of FY 2000.

- The *Special Supervision* Unit (SSU) comprises 8% (488 offenders) of Parole's total caseload. SSU provides an intensive level of supervision and support for parolees with special needs. These parolees have emergency needs and/or crippling adjustment problems in the areas of serious mental illness, physical disabilities and severe substance abuse. The unit also supervises sex offenders. The recommended supervision caseload ratio for this population is 20:1. The FY 1999 Budget provides for direct funding of 7 CSO positions. At this rate, the current average caseload for this population will be 70:1 at the end of the current fiscal year. The FY 2000 budget plan requests a continuation of direct funding for 7 positions as well as an additional 4 positions from the 21st Century Policing Initiative grant program. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 46:1 by the end of FY 2000.

- Parole's three *General Supervision* Units (GSUs) comprise a significant majority 81% (4,668 offenders) of its total caseload. The GSUs provide assistance and surveillance for parolees aged twenty-seven and above who generally pose less risk to

the community than younger offenders. Parole Officers in the GSU monitor adherence to the conditions of parole, investigate, evaluate, report and recommend action on alleged violations, provide narcotic surveillance, and identify supportive services with appropriate referrals and follow-up to address individual client's needs.

Also included in this caseload population is Parole's Substance Abuse Intervention and Treatment Unit (SAINT/HIDTA). Through the use of accessible community resources, SAINT/HIDTA provides sanction-based alcohol and drug abuse treatment for addicted offenders to promote substance abuse rehabilitation, and life skills and vocational enrichment. Consequences for violations and other negative behavior are administered swiftly.

The recommended supervision caseload ratio for this population is 35:1. The FY 1999 Budget provides for direct funding of 32 CSO positions and COPS grant funding of 9 positions. At this rate, the current average caseload for this population will be 114:1 at the end of the current fiscal year. The FY 2000 budget plan requests direct funding for 46 positions as well as 34 positions from the 21st Century Policing Initiative grant program. If planned FY 2000 funds are provided, the caseload ratio is expected to decrease to 58:1 by the end of FY 2000.

CSOSA Caseloads and PSO/CSO Requirements

PRETRIAL	Recommended Supervision Ratio	Defendants*	FY 1999 Staff ** Direct	COPS	Total	Average Caseload	FY 2000 Staff *** Direct	COPS	Total	Average Caseload	Additional PSOs Required
Intensive Supervision	20:1	200	4	0	4	50:1	4	3	7	29:1	3
Heightened Supervision	20:1	300	6	0	6	50:1	6	5	11	27:1	4
Drug Court	20:1	350	9	0	9	39:1	17	0	17	20:1	...
District Court Unit	35:1	250	2	0	2	125:1	2	1	3	83:1	4
Intermediate Supervision	35:1	5,500	9	19	28	196:1	28	15	43	128:1	114
Regulatory & Traffic	150:1	1,500	0	0	0	1,500:0	0	0	0	1,500:0	10
Minimum Supervision	175:1	4,000	3	2	5	800:1	5	0	5	800:1	18
Total, PRETRIAL		12,100	33	21	54	224:1	62	24	86	141:1	153

PROBATION	Recommended Supervision Ratio	Offenders*	FY 1999 Staff ** Direct	COPS	Total	Average Caseload	FY 2000 Staff *** Direct	COPS	Total	Average Caseload	Additional CSOs Required
Diagnostic/Treatment	20:1	880	36	5	41	21:1	41	3	44	20:1	...
Special Supervision	20:1	3,435	35	4	39	88:1	39	12	51	67:1	120
General Supervision	35:1	7,691	69	9	78	99:1	78	28	106	73:1	114
Total, PROBATION		12,006	140	18	158	76:1	158	43	201	60:1	234

PAROLE	Recommended Supervision Ratio	Offenders*	FY 1999 Staff ** Direct	COPS	Total	Average Caseload	FY 2000 Staff *** Direct	COPS	Total	Average Caseload	Additional CSOs Required
Young Adults	20:1	600	6	0	6	100:1	6	4	10	58:1	20
Special Supervision	20:1	488	7	0	7	70:1	7	4	11	46:1	14
General Supervision	35:1	4,668	32	9	41	114:1	46	34	80	58:1	53
Total, PAROLE		5,756	45	9	54	107:1	59	42	101	57:1	87
TOTAL, CSOSA		29,862	218	48	266	112:1	279	109	388	77:1	474

* The number of defendants and offenders are based on the average monthly cases during the first six months of FY 1999.

** FY 1999 Staff include positions funded from direct appropriations and the FY 1999 COPS grant.

*** The estimated distribution of FY 2000 Staff include positions funded from direct appropriations, including the annualization to the base of FY 1999 COPS grant positions, and positions requested in FY 2000 from the 21st Century Policing Initiative grant program.

Drug Lab and Drug Testing

COURT SERVICES AND OFFENDER SUPERVISION AGENCY
DRUG TESTING DATA

FY 2000 Budget Request

- CSOSA requests funding to support the expansion of the Pretrial Services' Drug Testing Lab capability, the hiring of additional staff for the Drug Court program and establishment of community-based collection sites for substance abuse testing. Multiple collection sites will produce higher compliance rates, reduce the time it takes to process drug tests at a new central lab, and ensure that all offenders under supervision are drug tested on a regular basis. Of the additional 33 positions, 18 FTE, and $3,797,000 requested, 11 positions, 6 FTE and $1,119,000 is requested in direct appropriations and 22 positions, 12 FTE and $2,678,000 is requested from the 21st Century Policing Initiative grant program.

- The vision of CSOSA is to greatly expand the present testing capacity of the Pretrial Services Drug Detection Laboratory (the Lab) so that all persons under criminal justice supervision can be tested and tracked through this automated, bar coded system. The in-house lab capacity will allow supervision officers to rely on quick and accurate drug testing results for immediate response to violations of release conditions. Lab expansion will provide effective and coordinated supervision where it is most needed and not adequately available; among all offenders on Court-ordered pretrial release, probation, and parole. Criminal offenders characterized as "hard core" drug abusers commit a disproportionate share of all crimes. If the criminal justice system expects to seriously combat the problem of substance abuse, drug users must be identified immediately when they enter the system. Failure to act swiftly perpetuates the cycle of crime and constitutes a threat to public safety. Frequent drug testing and effective interventions to break the cycle of drug use and crime are essential components of the strategy to improve public safety.

- The Lab is an integral department not only for the D.C. Pretrial Services Agency but for Adult Probation, Parole, Family Division of the D.C. Superior Court, U.S. District Court and all constituent practitioners involved in these departments and agencies. During FY 1998, the Lab tested a total of 137,089 specimens submitted by 27,534 people supervised by these organizations. Frequent drug testing has proven to be a relatively inexpensive strategy that helps the Agency identify defendants and offenders with severe drug problems requiring intervention and treatment. Since 1993, treatment services available for the offender population have diminished dramatically. Between 1993 and 1997, the number of detoxification beds available at any given time through the D.C. Addiction Prevention and Recovery Administration (APRA) decreased from 105 to 35, a 67 percent reduction. During the same period, the number of residential treatment slots decreased from 379 to 144, a 62 percent drop. The number of outpatient slots fell 31 percent from 1,207 to 834. Therefore, drug testing allows CSOSA to provide these scarce treatment and intervention services to the individuals who need it most.

- The Lab analyzes urine samples of adults and juveniles collected after arrest and before their initial appearances in court. In FY 1998, the Lab conducted 17,898 of these pretrial lock-up tests of adult criminal defendants and 1,993 lock-up and community tests of juvenile respondents. Weekly and bi-weekly surveillance tests are performed on individuals under pretrial, probation and parole supervision. The Lab analyzed 53,689 surveillance tests for pretrial defendants, including Drug Court participants, 18,927 urine samples of probationers and 3,182 tests submitted by parolees. There were also 11,861 analyzed for juvenile respondents.

- In addition to the remarkable number of urine samples the Lab processes on a daily basis, there are numerous requests throughout the day for "spot" tests or extemporaneous requests made by the organizations mentioned above or judges, in order to catch individuals without advance notice. Judges and case managers require immediate notice of the results of "spot" tests in order to act swiftly should the defendant test positive. Consequently, the Lab must conduct timely and accurate drug tests without fail. In FY 1998, the Lab analyzed 4,541 drug "spot" tests of pretrial defendants, 917 of juvenile respondents, 18,561 of probationers and 20 of parolees. Finally, the Lab conducts drug tests of parents before the D.C. Superior Court charged with abuse or neglect of their children. Since child neglect is often associated with substance abuse, drug testing is considered essential in making decisions regarding the need for foster care, or as a condition for leaving children in the care of a parent. During FY 1998, the Lab analyzed 5,403 surveillance tests and 97 "spot" test of neglect and abuse respondents.

- The Lab currently processes 400 to 700 urine samples per day. All positive samples are re-tested. Results are usually available within the hour and can be accessed in some courtrooms by judges via computer. The Lab Director is a toxicological chemist who can be qualified as an expert witness in legal proceedings. Lab staff also adheres to strict procedures regarding chain-of-custody of each urine sample. The Lab is open six days a week, fourteen hours a day.

- The current space and staff of the drug lab is at maximum capacity. Accommodating the increases in drug testing will more than quadruple the Lab's workload. This request will provide for the construction of a new larger Central Lab that will handle Gas Chromatography Mass Spectrometry (GCMS) confirmations as well as standard testing operations. Once the new lab is operational and the additional staff requested in the FY 2000 budget are hired, the Agency will have the capacity to collect and test over 600,000 samples per year.

Cost Effectiveness of Pretrial Lab versus Contracting

- In FY 1996, the Pretrial Services Agency conducted a unit cost analysis of specimen collection and drug testing analysis was $4.75 for a five drug screen when done in the Pretrial Lab. Assuming 40% for inflationary costs and the difference in pay from the District Schedule to the Federal General Schedule for Lab staff, the current Pretrial

Lab costs for specimen collection and drug testing analysis is roughly $7.00. This still represents a considerable savings over the $16.00 currently paid by Federal Probation to contract for a 5 drug screen. If the savings per sample ($9) is multiplied by the 150,000 samples currently run annually in the Pretrial Lab, the $1,350,000 saved over contracting offsets the cost of a new Lab in less than a year. When the cost of contracting ($16.00) is compared with the number of samples that will run from the new lab on annual basis (approximately 600,000), the $9,600,000 required to contract drug testing on the same scale as proposed in the FY 2000 request is cost prohibitive. This analysis excludes the additional $22.00 in contracting costs paid by Federal Probation for GCMS tests for positive confirmations that the new lab will also be able to perform. Furthermore, not only is in-house testing less expensive, it provides results in an hour or less, as compared to contract results that are not be available for several days.

FY 1999 Drug Testing

- During the first and second quarters of FY 1999, the Pretrial Services Agency performed 66,576 drug tests, of which 37 percent (24,340) resulted in positive findings (*Table 1*). Tests were performed upon PSA Adult, Juvenile and Abuse/Neglect Defendants and CSOSA Parole and Probation Supervision Offenders. The total population tested was 16,216, of which 51 percent (8,270) tested positive (*Table 2*). Twenty-five percent of all tested individuals tested positive two or more times during the period, and 25 percent committed 3 or more related violations (*Table 3*). A related violation can be a positive drug test, failing to report for a drug test, failing to submit a sample for a test, or a failing (removal from) a treatment program.

- Generally, only follow-up drug tests are performed by PSA on behalf the Court Services and Offender Supervision Agency; this includes surveillance and spot testing. Initial testing was not performed on behalf of CSOSA, as initial tests are performed only on Pretrial defendants prior to lock-up or for evaluation prior to placement into the drug testing program.

- Thirty-four percent (22,715) of tests completed by PSA were performed on behalf of CSOSA's Parole Supervision and Adult Probation Divisions as follow-up tests (*Table 1*). Testing was performed on 6,390 individuals; 42 percent of this population (2,706) tested positive (*Table 2*).

- PSA completed 20,079 drug tests on behalf of CSOSA's Adult Probation Division, of which 31 percent (6,156) resulted in positive findings (*Table 1*). Testing was performed on 6,153 individuals; 43 percent of this population tested positive (*Table 2*), 1,172 tested positive two or more times during the period, and 918 committed three or more related violations (*Table 3*).

- PSA completed 2,636 drug tests on behalf of CSOSA's Parole Supervision Division, of which 8 percent (201) resulted in positive findings (*Table 1*). Testing was performed on 237 individuals; 28 percent of this population (67) tested positive

(*Table 2*). Forty-one tested positive two or more times during the period, and 70 committed 3 or more related violations (*Table 3*).

- PSA referred 673 Adult Defendants to treatment, of which 415 were accepted into treatment. This includes 61 defendants that were referred and accepted into CSOSA treatment program slots. Ninety-five Probation offenders and 70 Parole offenders were also placed in treatment slots funded by CSOSA during the first half of this fiscal year (*Table 3*). It is important to note that data on Probation and Parole referrals to treatment is not available, because currently it is not maintained in the automated system.

- *Table 4* provides a breakout of drug testing data as it specifically relates to Probation Drug Testing Groups. These include General Probation, Sanctions, HIDTA Probation, Urban Services, Intensive Probation, Domestic Violence, and Other/Miscellaneous tests. Data regarding the number of people tested is redundant in that it potentially includes individuals who are counted among more than one group as a result of the progression of the case management and supervision process. This Table denotes the number of people tested, the number of tests performed and the average number of tests per individual for each of the related groups.

- *Table 5* provides a breakout of drug testing data as it specifically relates to Parole Drug Testing Groups. These include General Parole, HIDTA Parole, Special Supervision, Young Adult, Sex Offender and Other/Miscellaneous tests. Data regarding the number of people tested is redundant in that it potentially includes individuals who are counted among more than one group as a result of the progression of the case management and supervision process. This Table denotes the number of people tested, the number of tests performed and the average number of tests per individual for each of the related groups.

- *Table 6* provides a breakout of Spot Test data as it relates to PSA Adult, Juvenile and Abuse/Neglect Defendants as well as Probation and Parole Offenders. Twenty percent (13,582) of all tests performed by PSA (66,576) are performed as spot tests. Additionally, 42 percent (6,868) of all people tested by PSA (16,216) are spot tested. Ninety-four percent of all Probation offenders tested by PSA receive spot tests. In fact, 60 percent of all tests performed on Probation Offenders are Spot tests. Thirteen percent of all Parole offenders tested by PSA receive spot tests. Merely 1 percent of all tests performed on parolees are Spot tests. It is important to note that Parole random spot tests are not currently done through the automated system; therefore, accurate data is not available. Data regarding the number of people tested is redundant in that it potentially includes individuals who are counted among more than one group as a result of the progression of the case management and supervision process.

PRETRIAL DRUG LAB -- TESTING DATA for CSOSA
October 1, 1998 through March 31, 1999

Table 1

TESTS	Initial Tests (Lockups, Evaluations)			Followup Tests			Totals		
	Total Tests	Pos. Tests	Pct Positive	Total Tests	Pos. Tests	Pct Positive	Total Tests	Pos. Tests	Pct Positive
PSA (Adult)	8,030	3,481	43%	25,394	9987	39%	33,424	13,468	40%
PSA (Juveniles)	1,099	732	67%	6,937	3157	46%	8,036	3,889	48%
PSA (Abuse/Neglect)	-	-		2,401	626	26%	2,401	626	26%
Probation	-	-		20,079	6156	31%	20,079	6,156	31%
Parole	-	-		2,636	201	8%	2,636	201	8%
						TOTAL, Tests	**66,576**	**24,340**	37%

Initial tests are those conducted during lockup or evaluation tests prior to placement in the drug testing program.
Followup tests are all tests other than lockup and evaluations, including surveillance and spot tests.
Tests counted above were those tests for which a specimen was collected and which produced a positive or negative result. Those occasions when a client/defendant failed to submit a sample or report for a scheduled test have not been included.

Table 2

PEOPLE	Initial Tests (Lockups, Evaluations)			Followup Tests			Totals		
	Total People	w/Pos Test	% w/Pos Test	Total People	w/Pos Test	% w/Pos Test	Total People	w/Pos Test	% w/Pos Test
PSA (Adult)	7,250	3,139	43%	3,430	2489	73%	9,087	4,676	51%
PSA (Juveniles)	935	630	67%	1,099	695	63%	1,656	1,082	65%
PSA (Abuse/Neglect)	-	-		477	247	52%	477	247	52%
Probation	-	-		6,153	2639	43%	6,153	2,639	43%
Parole	-	-		237	67	28%	237	67	28%
						TOTAL, People	**16,216**	**8,270**	51%

This table counts the number of different people tested in each category. Because the same person could have had tests during the time period in multiple categories, the "Totals" columns do not add up. That is, "Totals--Total People" is not the sum of "Initial Tests--Total People" + "Followup Tests--Total People." The "Grand Total" row reflects the total number of different people tested during the period, combining all the categories.

PRETRIAL DRUG LAB -- TESTING DATA for CSOSA
October 1, 1998 through March 31, 1999

Table 3

PEOPLE	Referred to Treatment	Accepted in Treatment	With 2 or more Pos	With 3 Violations
PSA (Adult)	671	414	2,176	2,082
PSA (Juveniles)			603	676
PSA (Abuse/Neglect)			132	300
Probation		95	1,172	918
Parole		70	41	70
TOTAL, People	**671**	**579**	**4,124**	**4,046**

The count of clients Referred to Treatment is reflected in column 2, those actually Accepted into Treatment in column 3. Data on Probation and Parole referrals to treatment is not currently maintained in the automated system. Column 4 reflects the count of people who had 2 or more positive tests during the period. Column 5 reflects the count of people who had 3 violations during the period. A violation can be a positive drug test, failing to report for a drug test, failing to submit a sample for a test, or a failure (removal) from a treatment program.

Table 4

PROBATION GROUPS	People Tested	Tests	Average Tests per Person
Regular Probation	418	3,279	8
HIDTA Probation	137	2,782	20
Intensive Probation	64	394	6
Sanctions	53	1,156	22
Urban Services	184	825	4
Dom. Violence CPO	21	23	1
Dom. Violence	578	885	2
All Others	1,372	2,874	2
TOTAL, Probation	**2,827**	**12,218**	**4**

Most probation tests are random spot tests (see Table 6), where the client is not assigned to any one group.

Table 5

PAROLE GROUPS	People Tested	Tests	Average Tests per Person
HIDTA	125	1,575	13
Sex Offenders	112	1,061	9
All Others	-	-	
TOTAL, Parole	**237**	**2,636**	**11**

The majority of parole random spot tests are not currently done through the automated system; therefore, accurate data is not available.

Table 6

SPOT TESTS	People Tested	Tests	Average Tests per Person
PSA (Adult)	559	932	2
PSA (Juveniles)	396	492	1
PSA (Abuse/Neglect)	109	122	1
Probation	5,773	12,002	2
Parole	31	34	1
TOTAL, Spot Tests	**6,868**	**13,582**	**2**

Drug Treatment

Drug Treatment Referral Programs Available to District of Columbia Offenders

- Since August 1998, the Court Services and Offender Supervision Agency (CSOSA) has funded 275 placements for probation and parole offenders, and pretrial defendants in treatment programs. The display below provides the number of CSOSA clients placed by treatment modality and contract program provider.

Treatment Modality	Placements	Total Placed
Drug Residential		53
Second Genesis, Inc.	53	
Alcohol Residential		49
Second Genesis, Inc.	20	
RAP, Inc.	29	
Women with Children		17
Vanguard Services Unlimited	17	
Drug Transitional		12
Vanguard Services Unlimited	12	
Drug Outpatient		53
The Next Step Foundation	30	
Family & Medical Counseling	23	
Alcohol Outpatient		51
The Next Step Foundation	39	
Family & Medical Counseling	12	
Sex Offender Outpatient		40
National Center on Institutions And Alternatives	40	
TOTAL		**275**

- In addition to CSOSA contracted programs, the Agency refers offenders to High Intensity Drug Trafficking Area (HIDTA) grant-funded programs, as well as to the District of Columbia Addiction Prevention and Recovery Administration (APRA) program for treatment services. For the period October 1, 1998, through May 14, 1999, CSOSA has placed 64 probation offenders and 70 parole offenders in treatment programs funded by HIDTA. Additionally, according to APRA, from October 1, 1998, through April 22, 1999, 558 probation offenders and 349 parole offenders were placed in APRA treatment programs.

- Generally, CSOSA offenders are referred to one of the program resources described above. However, exceptions are made if the offender is able to pay for treatment through the use of person medical insurance. In such cases, CSOSA parole and probation officers facilitate placing an offender in a program that is acceptable for use under individual insurance plans.

Sanctions Center and Impact on Criminal Justice System

TAB 4

COMMUNITY JUSTICE MODEL
Accountability and Effective Supervision through Graduated Sanctions

- The Revitalization Act requires CSOSA to develop and operate intermediate sanctions programs for individuals under our supervision. Historically, supervision officers have had few sanctioning options short of revocation. CSOSA is establishing a series of graduated responses to violations that will improve accountability of offenders and enhance public safety, while requiring minimal involvement of the U.S. Parole Commission, the D.C. Board of Parole, or the D.C. Department of Corrections. Designed along the lines of the Drug Court model, offenders and defendants will enter into "performance contracts" with the releasing authority (judge, U.S. Parole Commission), agreeing in advance to a series of specific responses to specific violations. One response must include secure residential placement – a "half-way back" option. Currently, this option does not exist in the District.

- Research shows that rapid, graduated responses to violations of conditional release, or sanctions, deter repeat crime. On the other hand, violations of the law or probation or parole that generate no immediate response, or simply a revocation hearing months after the actual violation, do little to slow the pattern of repeat offending among individuals on pretrial release, probation, or parole.

- The experience of intensive supervision and treatment programs in the Washington, D.C. area that utilize graduated sanctions demonstrates the effectiveness of utilizing immediate, graduated sanctions as a supervision strategy. Substance abuse treatment and sanctions programs funded by the Washington/Baltimore High Intensity Drug Trafficking Area (HIDTA) place defendants and offenders who test positive for illegal drug use into intensively supervised treatment programs that are reinforced with graduated sanctions. If a defendant or offender within the program uses drugs, he or she faces additional time in court or jail. Research on performance of HIDTA participants demonstrates that immediate sanctions reduce the number of offenders who commit additional violations. In the study, 1,216 defendants and offenders from the Washington-Baltimore area participated in HIDTA treatment/sanctions programs during a fifteen month period in 1996 and 1997. Participants were 50 percent less likely than offenders not subject to treatment and graduated sanctions to pick up a new arrest (Taxman, et al, 1999).[1]

- CSOSA will place individuals who fail to comply with supervision conditions or outpatient treatment, as indicated by positive drug tests, in a closely supervised residential setting – a Sanctions Center – where their behavior is addressed. The Sanctions Center also will provide a secure setting for stabilization of drug-dependent individuals who relapse. The potential for further drug and criminal relapse will be addressed through each individual's risk and needs and making appropriate revisions to the original performance contract.

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[1] Taxman, Faye S., Kubu, Bruce, & DeStefano, Christine Depies. (1997). Treatment as Crime Control: Impact of Substance Abuse Treatment on the Individual Offending Rates of Hard-Core Substance Abusing Offenders. Working Draft, The Washington Baltimore High Intensity Drug Trafficking Area (HIDTA).

- The Sanctions Center will be operational 24 hours a day, seven days per week to provide treatment intervention and accountability greatly needed by the population under our supervision. Warrants will be issued immediately for individuals who escape from this Center, and their release will be revoked.

- We expect that the Sanctions Center will have 100 beds. In total, it is projected that the Sanctions Center will be able to accommodate up to 7,240 individuals per year – up to 7,060 individuals for a 3 to 7 day sanction and approximately 180 individuals for 60 days of comprehensive treatment and support services.

- During FY 1998, a total of 1,185 parolees were revoked for one or more drug-related violations. Additionally, during the first six months of FY 1999, 543 parolees have been revoked for violating these conditions. Consistent with CSOSA's proposed sanctions scheme, many of these offenders would be placed in the Sanctions Center. Based on the projected number of probationers and pretrial defendants with three drug-related violations for FY 1999, a minimum of 1,836 probationers and 4,164 defendants would also be subject to CSOSA's graduated sanctions scheme, including placement in the Sanctions Center.

- At the Sanctions Center, individuals will participate in very rigorous treatment and support services between the hours of 6 a.m. and 9 p.m. The schedule of services will be intense and highly structured. We will rely on a team of individuals to provide the treatment and support services. Contract treatment staff will conduct assessments and provide treatment interventions. A team of Community Supervision Officers (CSOs) will provide the core case management services. CSOs will conduct risk and needs assessments to determine each offender's supervision needs. Based on the assessments, they will provide individual and group interventions in the areas of criminality, anger management and life skills. They will also provide basic educational, employment readiness, family counseling and housing placement services. When more in-depth services are required, CSOs will make appropriate referrals. We will encourage education, job training and public health providers to co-locate in the Sanctions Center.

- The treatment and support services provided at the Sanctions Center should assist individuals in planning for how to improve accountability and prevent relapse. A relapse prevention plan and updated supervision plan will be developed for each individual and incorporated into the revised performance contract prior to his/her release from the Sanctions Center. CSOs will consult with the contract treatment staff and the supervising CSO to revise the performance contract. The supervising CSOs will be responsible for monitoring compliance with the revised performance contract.

- A key element of the relapse prevention plan is the development of a community network for support and accountability. Mentors will play a major role in this community network. We will assign mentors to individuals at the Sanctions Center,

who will assist individuals in building and sustaining pro-social relationships. We will recruit mentors from the community, including the public and private sectors. We will also engage the public and private sectors in placing individuals in appropriate housing, employment, and community service. Together CSOSA and the Metropolitan Police Department (MPD) have already begun to establish partnerships with other city agencies, social service providers, and key stakeholders to develop an intervention network that provides support for client reintegration and services to neighborhoods throughout the District.

Staff Composition

TAB 5

CSOSA STAFF COMPOSITION

Experience and Retention

- The probation/parole community supervision officers (CSOs) employed by Court Services and Offender Supervision Agency (CSOSA) have extensive experience in offender supervision. The majority of our CSOs have approximately fifteen years of experience. The majority (about 95%) of the CSOs have a bachelor's degree and many have advanced degrees. There are also a significant number of Certified Addictions Counselors.

- Ninety-six percent of pretrial services officers (PSOs) have a bachelor's degree in a criminal justice-related field. A large number of PSOs have approximately two to five years of criminal justice experience. A recent group of newly hired PSOs, who will be supervising defendants on pretrial release, have an increased number of years experience working as either pretrial or probation officers, and a few of them have advanced degrees. All but two Drug Court case managers have college degrees and some have advanced degrees. All of the case managers are required to be Certified Addictions Counselors.

"Grandfathering" Issue

- The formation of CSOSA includes the acquisition of existing law enforcement staff from the District of Columbia (D.C.) Government (Parole and Pretrial) and the D.C. Superior Court (Adult Probation). Many of these individuals are highly motivated, skilled employees, but possess varying degrees of experience, education and training. In addition, not all may meet the new agency's performance or suitability requirements.

- For purposes of determining which existing law enforcement staff will be retained, an internal Working Group is developing standards and policies in each of these areas. In order to meet the standards for retention, we anticipate that an officer must have a 4-year degree (or qualify for a waiver), have computer skills, fully meet a set of performance retention standards currently being developed and must be the subject of a background investigation which has been favorably adjudicated for suitability. Officers who fail to meet any of these requirements may not qualify for retention. Also, all staff will be subject to random drug testing and periodic reinvestigations.

- The Trustee has the authority under our current legislation to hire and discharge staff without regard to the civil service requirements contained in either federal or D.C. statutes; and adverse personnel actions are not subject to appellate review. These important provisions are key elements in developing and maintaining a high-quality workforce.

Background Investigations

- CSOSA has established Personnel Security background investigation (BI) policies that designate all permanent positions as Public Trust, High Risk, which is consistent with the designation of other federal law enforcement and related support positions. All CSOSA Public Trust, High Risk positions require a single scope background investigation (SSBI),

which includes employment, personal, residence, law enforcement, references, and financial coverage. The cost of the SSBI for 120 day service is $2,700. However, due to budget constraints the agency is unable to conduct the SSBI on each employee at this time. Until the necessary funds become available, each employee will undergo a national agency check with written inquiries (NACI), which includes national agency and law enforcement checks, as well as a credit check, and is the minimum requirement for employment with the federal government. The cost of the NACI, including the credit check is $125. In addition, individuals transferring from another federal agency who have been the subject of a previous investigation equivalent to our requirements will not, initially, undergo a new investigation. The NACI, credit check, and BI start up cost for the entire agency based on FY 1999 funded positions is $1,652,625. Reinvestigations will be required every 7 years; therefore, the annual recurring cost for base positions will be approximately $236,089.

- Even though funding was not included in our FY 1999 budget for NACIs or SSBIs, the Trustee has allocated $57,875 from other base programs in order to meet the minimum standard level of investigation for federal employees. In addition, the agency has reallocated $69,000 of base program funds to conduct SSBIs for a very small number of employees. The background investigation process began in February 1999, and as of May 1999, CSOSA has requested 46 NACIs and 22 BIs.

- The investigation process requires each employee or applicant to complete a public trust position questionnaire and a declaration for federal employment form, as well as sign a credit release statement and provide a resume, as required. The Office of Personnel Management conducts the BIs and the processing time is approximately 120 and 70 days for the SSBI and the NACI respectively. Consequently, results of the 22 requested SSBIs have not yet been returned. In addition, the Agency has developed effective personnel pre-employment background check procedures. This includes having prospective employees complete the public trust position questionnaire and run a check of the national crime and information center database.

- Further, in order to ensure compliance with WALES/NCIC rules and regulations, the D.C. Pretrial Services Agency, Adult Probation and Parole conducted fingerprint checks on all agency employees. As a result of those checks, to date, four people have been terminated. Their employment was terminated for one or more of the following reasons: misdemeanor conviction(s), pattern of criminal behavior that resulted in misdemeanor convictions, and failure to disclose information pertaining to an arrest(s).

- In addition, all new employees must undergo pre-employment drug testing. In FY 1998, 108 pre-employment drug tests were conducted, and in FY 1999, the agency has budgeted for 119 additional pre-employment tests at $130 each. CSOSA does not have the base funding to provide for the drug testing of existing employees; however, the agency plans to establish a random drug testing program in FY 2000.

Separations

- Our records through the National Finance Center (NFC) indicate that as of May 28, 1999, a total of 29 staff left CSOSA since October 1997. The data is limited because of the dates that CSOSA took over the personnel functions from the District and from the Courts – February 15, 1998 for Adult Probation, October 11, 1998 for Parole, and November 8, 1998 for the remainder of the Adult Probation staff. The 29 separations are further categorized as 23 resignations and 6 retirements. In at least 11 cases, employment was terminated or individuals resigned due to derogatory background information, conduct or performance issues.

TAB 6

FY 1999 COPS Grant

FY 1999 COPS GRANT

- In FY 1999, CSOSA has the authority to hire 110 positions funded by the COPS grant, of which 70 positions were allocated to the Community Supervision Program and 40 positions to the Pretrial Services Agency. CSOSA has demonstrated its ability to hire and train qualified staff, its capacity to hire and train more staff, and ability to manage funds within the amounts made available. To date, 41 of the 70 positions allocated to the Community Supervision program and 34 of the 40 positions allocated to the Pretrial Services Agency have been filled with highly qualified candidates, some with many years of law enforcement experience, from all over the country.

- The dollar amount allocated to the Community Supervision Program under the COPS grant was $3,149,000, of which $1,863,760 will support the salaries and benefits of 70 new positions, and $1,285,240 to be used to purchase computer equipment and infrastructure. As of April 1, 1999, the amount budgeted for the 29 vacant positions is $482,324 ($385,859 for salaries and $96,465 for benefits). Through midyear, $634,949 of the $1,285,240 allocated for computer equipment and infrastructure was obligated. The Community Supervision Program fully expects to fill the vacant positions on schedule and will obligate the resources provided for equipment by September 30, 1999.

- Of the $1,851,000 made available to the Pretrial Services Agency under the COPS grant, $979,762 will be used to hire 40 pretrial services staff, and $871,238 will be used to purchase computer equipment and infrastructure. The amount allocated for the remaining 6 positions to be hired under the COPS grant in the Pretrial Services Agency is $211,000 ($162,000 for salaries and $49,000 for benefits). Through midyear, $669,000 of the $871,238 allocated for computer equipment and infrastructure was obligated. The Pretrial Services Agency plans to fill the vacant positions by the end of June 1999, and will obligate the remaining amount provided for equipment by the end of the fiscal year.

- CSOSA is fully confident the remaining vacancies will be filled shortly. The resources provided under the COPS grant fund the 110 new positions at a 50 percent lapse rate. Therefore, the hiring plan for these new staff is staggered throughout the year. Additionally, interviews have been scheduled or conducted for all the vacant positions in the Pretrial Services Agency, and applicants are being rated for the planned July hires in the Community Supervision Program.

PLANNED HIRING SC[illegible]LE FOR COPS GRANT
CURREN[illegible] OF 5/3/99

99% - *OCTOBER* Position	91.6% - *NOVEMBER* Position	83.3% - *DECEMBER* Position	75% - *JANUARY* Position	66.6% - *FEBRUARY* Position	58.3% - *MARCH* Position
	Community Supervison Officer	Accounting Assistant		IT Trainer	CS Assistant
	Community Supervison Officer	Procurement Assistant		Personnel Assistant	CS Assistant
	Community Supervison Officer	Lan Operations Mgr			CS Assistant
	Community Supervison Officer				Pretrial Services Assistant
	Community Supervison Officer				Pretrial Services Assistant
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	Community Supervison Officer				
	CS Assistant				
	CS Assistant				
	CS Assistant				
	CS Assistant				
	CS Assistant				
	CS Assistant				
	Drug Surv. Monitor				
	Drug Surv. Monitor				
TOTALS: 0	37	3	0	2	5
ACCRUED: 0	37	40	40	42	47

5/2/99 11:55 AM

PLANNED HIRING SC ILE FOR COPS GRANT
CURREN .s OF 5/3/99

50% - APRIL Position	41.6% - MAY Position	33.3% - JUNE Position	25% - JULY Position	16.6% AUGUST Position	8.3% - SEPTEMBER Position
Pretrial Services Officer	LAN Technician		Asst. Deputy Director		
Pretrial Services Officer	LAN Technician		Asst. Deputy Director		
Pretrial Services Officer	Asst. Deputy Director		Supv. Community Supv. Officer		
Pretrial Services Officer	CS Assistant		Community Supervison Officer		
Pretrial Services Officer	Supv. Community Supv. Officer		Community Supervison Officer		
Pretrial Services Officer	Supv. Community Supv. Officer		Community Supervison Officer		
Pretrial Services Officer	Supv. Community Supv. Officer		Community Supervison Officer		
Pretrial Services Officer	Supv. Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor		CS Assistant		
Pretrial Services Officer	Drug Surv. Monitor				
Pretrial Services Officer	Drug Surv. Monitor				
Pretrial Services Officer	Visual Basic Programmer				
Pretrial Services Officer	Network Engineer				
Pretrial Services Officer	Pretrial Services Officer				
Pretrial Services Officer	Asst Operations Director				
Pretrial Services Assistant	Senior Network Engineer				
Pretrial Services Assistant	Visual Basic Programmer				
PRISM Director					
Supv Pretrial Services Officer					
Supv Pretrial Services Officer					
Treatment Specialist					
Treatment Specialist					
Network Engineer					
	23	22	0	13	0	0
	75	97	97	110	110	110

5/26/99 11:56 AM

ADJOURNMENT

Mr. ISTOOK. Thank you so much for your attention, your efforts, your candor and your work. We will be in touch with you. If there's nothing further, we will stand adjourned.

TUESDAY, MAY 18, 1999.

DISTRICT OF COLUMBIA COURTS

FINANCIAL PROBLEMS OF COURTS

AND

FY 2000 BUDGET

WITNESSES

GLORIA L. JARMON, DIRECTOR, HEALTH, EDUCATION AND HUMAN SERVICES ACCOUNTING AND FINANCIAL MANAGEMENT ISSUES, ACCOUNTING AND MANAGEMENT INFORMATION DIVISION, GENERAL ACCOUNTING OFFICE

ANNICE M. WAGNER, CHIEF JUDGE, D.C. COURT OF APPEALS, AND CHAIR, JOINT COMMITTEE ON JUDICIAL ADMINISTRATION

EUGENE N. HAMILTON, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA AND MEMBER, JOINT COMMITTEE ON JUDICIAL ADMINISTRATION

ULYSSES B. HAMMOND, EXECUTIVE OFFICER, D.C. COURTS

MICHAEL W. FARRELL, ASSOCIATE JUDGE, D.C. COURT OF APPEALS AND MEMBER, JOINT COMMITTEE ON JUDICIAL ADMINISTRATION

GEOFFREY M. ALPRIN, ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA AND MEMBER, JOINT COMMITTEE ON JUDICIAL ADMINISTRATION

CHAIRMAN ISTOOK'S OPENING REMARKS

Mr. ISTOOK. The Committee will come to order. This hearing, of course, was originally scheduled to happen a couple of weeks ago. Because of the tornadoes in Oklahoma, I was not back at that time, and I appreciate the forbearance of everyone in waiting until today to conduct this particular hearing.

We are meeting this afternoon to receive testimony concerning the court system in the District of Columbia. First we are going to be hearing from the General Accounting Office on the status of their review of certain court operations as requested by the Committee on a bipartisan basis last September. After that, we will be hearing from court officials about their fiscal year 2000 budget request.

I think to make sure that everyone has an opportunity for an exchange, we would like to make sure that the GAO and the court personnel are part of the same panel, so if one has a comment that dictates that there ought to be a response from the other, we can make sure that that occurs. I appreciate everyone coming together today.

I don't have any further comments myself, but, Mr. Moran, I am happy to yield to you as the Ranking Member for any comments you would like to make.

CONGRESSMAN MORAN'S OPENING REMARKS

Mr. MORAN. Thank you very much, Mr. Chairman. Thank you for holding this hearing. I know that we all could sympathize with the plight of your constituents in Oklahoma, and certainly understand why the hearing had to be postponed.

I want to welcome Judge Hamilton and Judge Wagner and Executive Officer Ulysses Hammond, and our greetings to Gloria Jarmon and the other officers of GAO who are with us as well.

COURT-APPOINTED ATTORNEYS NOT BEING PAID

Last year while we were working on the fiscal year 1999 budget, we came across a matter that really affected the fiscal 1998 budget, and that was that the court's court-appointed attorneys were not being paid. Some of them had not been paid for months.

One thing led to another. We pursued it because these were not your K Street lawyers, not that we don't fully respect our K Street lawyers, but sometimes they have more disposable income available than our court-appointed attorneys. Some of these court-appointed attorneys handled cases like child abuse and domestic abuse that need to be prosecuted, but oftentimes the people involved do not have the resources to pay a lot of money, and these court appointed attorneys are people who have decided to pursue this profession, and so we particularly respect that decision. But when they are not paid, their families suffer.

So we pursued it And, of course, we got into a disagreement over the amount of money that had been transferred in light of the restructuring and who should pay for parts of the court operations. Certain portions were taken out of the part of the court system that D.C. had paid for in the past.

But that led to other allegations of financial mismanagement and some personnel management abuses that were brought to light by certain whistle blowers. Judge Hamilton, I think, acted very properly and made sure that no one felt intimidated. Whether there was any real reason to be intimidated or not, he made it so no one would feel intimidated coming forward.

GAO AUDIT OF COURTS REQUESTED BY COMMITTEE (SEE P. 538)

We got a better understanding, however, when last year's Chairman, Charles Taylor, and I sent a letter to have the General Accounting Office audit the courts. We appreciate the work that they have done and their willingness to provide us at least with their preliminary findings. I think that will bring some light on a process that really has escaped public scrutiny for some time, because it came within the regular budget of the District of Columbia and apparently was not necessarily a high priority in terms of the accountability process.

We certainly respect the independence of the judicial system and have no intention of treading in areas where we should not, but we are responsible for the amount of money that is expended, particularly when it is a direct Federal appropriation. We want to make sure that not only is there not the suggestion of arrogance or partiality, but we don't even want the perception of that in our court system. We want to make sure that people are aware that we have

an impartial and a proper system of justice in the District of Columbia, that is free of these kinds of allegations.

So that is really the intent of this hearing and this kind of scrutiny, which I think is appropriate for the District of Columbia Court of Appeals and the Superior Court.

I appreciate your taking this responsibility as chairman as seriously as you do, Mr. Chairman. You are doing an excellent job, particularly in suggesting that the Members get very much involved in understanding the system. So this oversight hearing will give us that better understanding, and I appreciate your having it.

Thank you.

Mr. ISTOOK. Thank you, Mr. Moran.

I also wanted to acknowledge, although she is not a member of the Committee, we have the Delegate from the District, Ms. Eleanor Holmes Norton, with us. Is there anything you wanted to say as a preliminary matter?

Ms. NORTON. Thank you. No, Mr. Chairman. Thank you very much.

Mr. ISTOOK. If there is anything that occurs during the hearings, I have invited Ms. Norton, if she feels there is some input that may be useful from her, to let us know about that.

Ms. NORTON. I appreciate that, Mr. Chairman.

Mr. ISTOOK. Thank you, Ms. Norton.

WITNESSES SWORN

I always point out to witnesses that we have a standard practice of swearing in all witnesses that are going to appear before the committee. What I would like to do, because we have some matters that will, of course, pertain to the GAO report and then some matters that do not pertain, I know, to the GAO report directly, I would like to proceed first with the presentation from the GAO, and then have—let me pose an open question here. We could then have the opening statements from the panelists from the court system before we get into general questioning, or we could get into discussion about the GAO report with the other panelists and then have their presentations later. Is there any preference that you have, Mr. Moran?

Mr. MORAN. I don't have any preference. Whatever you choose to do, Mr. Chairman.

Mr. ISTOOK. Perhaps since everyone is expected to begin with their prepared statement, why don't we go through all of those before we have any questions. So if we could have the witnesses that are present, Ms. Jarmon from GAO, Chief Judge Wagner, Chief Judge Hamilton and Mr. Hammond. I don't know if there is anyone else that will be testifying. If there is anyone else that you have with you who intends to testify, if all of you could join us at the table and let me swear you in.

Judge WAGNER. There are two other members of the Joint Committee on Judicial Administration present. Whether they will want to make a response to anything that occurs here, I don't know. As you know, we are here for our fiscal year 2000 budget. At least that is what we came prepared to do. We are prepared to adjust to any change that the Committee wishes to make.

Mr. ISTOOK. Thank you, Judge Wagner.

[Witnesses sworn.]

Mr. ISTOOK. We will proceed in this order: Ms. Jarmon, Judge Wagner, Judge Hamilton. Those of you who presented written testimony to us, we have the entirety of that. There is no need to read through the entire statement. It will be placed in the record. Feel free to communicate in whatever fashion you think will be most informative to us.

Ms. Jarmon.

PREPARED STATEMENT OF GLORIA JARMON, GAO

Ms. JARMON. Mr. Chairman and members of the subcommittee, I am pleased to be here today to respond to your questions related to the District of Columbia Courts' financial operations for fiscal year 1998, its first year of operations with direct Federal funding. I would like to summarize my statement, but I ask that my entire statement be made part of the record.

[The prepared statement referred to follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on the District of Columbia,
Committee on Appropriations, House of Representatives

For Release on Delivery
Expected at
2 p.m.
Tuesday,
May 18, 1999

DISTRICT OF COLUMBIA COURTS

Financial Related Issues for Fiscal Year 1998

Statement of Gloria L. Jarmon
Director, Health, Education and Human Services Accounting and Financial Management Issues
Accounting and Information Management Division

GAO/T-AIMD/OGC-99-176

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to respond to your questions related to the District of Columbia Courts' (DC Courts) financial operations for fiscal year 1998, its first year of operations with direct federal funding. Consistent with your request, we focused on the following four questions:

- What were DC Courts' obligations for fiscal years 1996, 1997, and 1998?
- Did DC Courts have a spending plan for fiscal year 1998 and obligate funds consistent with available resources?
- Why were payments to court-appointed attorneys deferred from July through September 1998?
- Did DC Courts process payments to court-appointed attorneys in accordance with policies and procedures?

In summary, we found that DC Courts experienced difficulties in planning and budgeting during this transition year. As adjusted by us, its records showed that it potentially over-obligated its resources by more than $5 million, which would violate the Anti-Deficiency Act. After we briefed DC Courts officials, they told us they do not believe that a violation of the Anti-Deficiency Act occurred. I will compare the essence of our respective positions later in my statement. We also identified a legal issue regarding the Crime Victims Compensation Program.

In performing our work, we reviewed DC Courts' financial records, and held extensive discussions with DC Courts officials over the past several months. We shared a draft of this statement with DC Courts

officials, and incorporated their comments to the extent that it was appropriate. Our work was performed in accordance with generally accepted government auditing standards.

Reported Obligations for Fiscal Years 1996 through 1998

DC Courts' records indicated that total obligations in fiscal years 1996, 1997, and 1998 were $115.4, $119, and $126.3 million, respectively. Fiscal year 1998 obligations reflect our adjustments, as discussed later, and are not comparable to the prior years' obligations. This is primarily due to the changes resulting from the Revitalization Act of 1997. For example, DC Courts non-judicial employees received federal benefits that increased DC Courts' obligations for fiscal year 1998. In addition, the adult probation function was transferred from DC Courts to a new entity, the Court Services and Offender Supervision Agency for the District of Columbia (COSA), in fiscal year 1998. DC Courts also provided its non-judicial employees a 7-percent pay raise and assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation for court operations.

Prior to the decision to transfer the adult probation function to a new entity, DC Courts had requested $123.5 million to fund its fiscal year 1998 operations. When DC Courts received $108 million in its fiscal year 1998 appropriation, it no longer had operational responsibility for the adult probation function, but continued to pay salaries and related costs on behalf of the COSA Trustee. In March 1998, the COSA Trustee took over the payments for the operations and subsequently reimbursed DC Courts $7.8 million for the costs DC Courts paid on the COSA Trustee's behalf. These costs and the related reimbursements were included in DC Courts' fiscal year 1998 obligations and available funds.

DC Courts' Spending Plan

Upon receipt of its fiscal year 1998 appropriation, DC Courts was responsible for developing a spending plan based on an appropriation that was about $15.5 million less than it requested. DC Courts did not

develop a plan to ensure that its obligations did not exceed available resources. It obligated throughout the year based on its expectation of receiving additional funds. While DC Courts received an additional $1.7 million in appropriated funds for the fiscal year, it did not receive all of the funding it anticipated. DC Courts also received $12.1 million in grants, interest, and reimbursements, including the $7.8 million from the COSA Trustee, during the fiscal year.

However, letters between DC Courts and the Office of Management and Budget (OMB) during fiscal year 1998 reflect DC Courts officials' expectations of receiving additional resources and OMB's concern that if DC Courts did not lower its rate of spending, its obligations would exceed available funds. For example, in an April 1998 letter, OMB advised DC Courts that it was incurring obligations at a rate that would necessitate a deficiency or supplemental appropriation. For their part, DC Courts officials continued to seek additional funds during their discussions with the COSA Trustee, Department of Justice, and OMB.

By the end of the fiscal year, DC Courts' records showed that obligations exceeded available resources by about $350,000. Specifically, its records showed obligations of almost $122.2 million and funds received of about $121.8 million. However, as I will now discuss, we found that adjustments needed to be made to these amounts.

- DC Courts deferred more than $4.1 million of court-appointed attorney payments that were eventually paid with fiscal year 1999 funds, but did not record these amounts as fiscal year 1998 obligations. While DC Courts officials had the authority to make these payments with fiscal year 1999 funds, this did not make the deferred payments fiscal year 1999 obligations. The vouchers were approved by the presiding judges or hearing commissioners in fiscal year 1998, and the obligations should have been recorded in fiscal year 1998. Accordingly, we added this amount to DC Courts' reported fiscal year 1998 obligations.

- DC Courts treated interest earned primarily from its quarterly apportionments of its appropriation as available budgetary resources for court operations. However, DC Courts did not have authority to spend this interest. For this reason, we have reduced the amount that DC Courts reported as available resources for fiscal year 1998 by $773,000.

As adjusted, DC Courts' recorded obligations and available funding for fiscal year 1998 would be $126.3 and $121 million, respectively, resulting in a potential over-obligation of more than $5 million. The Anti-Deficiency Act prohibits federal and DC government officials from making expenditures or obligations in excess of amounts available in an appropriation or fund unless otherwise authorized by law. The Anti-Deficiency Act requires the head of an agency to report immediately any such violation to the President and the Congress, including all relevant facts and a statement of actions taken. OMB Circular A-34, Instructions on Budget Execution, provides additional guidance on information that the agency is to include in its report to the President. OMB instructs agencies to include the primary reason or cause for the over-obligation, any extenuating circumstances, the adequacy of the system of administrative control of funds, any changes necessary to ensure compliance with the Anti-Deficiency Act, and steps taken to prevent a recurrence of the same type of violation.

DC Courts officials told us that they do not believe that a violation of the Anti-Deficiency Act occurred. In essence, DC Courts officials assert that the authority Congress provided in the fiscal year 1999 Appropriation Act to use fiscal year 1999 funds for deferred attorney payments constitutes an exception to the Anti-Deficiency Act. DC Courts officials further assert that the exception is available whenever they have obligations in excess of their budgetary resources. We disagree with this position. The fiscal year 1999 Appropriation Act was enacted after fiscal year 1998 ended. The authority cited by DC Courts only authorizes it to use fiscal year 1999 appropriations to pay deferred amounts to court-appointed attorneys, but does not excuse DC Courts from managing its activities within the appropriation level Congress provided or authorize obligations in excess of available budgetary resources. Accordingly, the

critical issue for applying the Anti-Deficiency Act in this case is whether the over-obligations were entirely attributable to the mandatory obligations for court-appointed attorneys and were, therefore, authorized by law. We conclude that they were not, primarily because

(1) fiscal year 1998 obligations for court-appointed attorneys were similar to the prior fiscal year and the estimated amount for fiscal year 1998;

(2) DC Courts did not base its spending during most of the fiscal year on the appropriation it received; and

(3) DC Courts' records indicated that a discretionary pay raise of about $2.8 million was given to its non-judicial employees during fiscal year 1998.

In addition, DC Courts officials told us that they were authorized to retain the interest earned on quarterly apportionments of their appropriation and make it available for court operations. They noted that no statute prohibits retaining interest earned on apportionments. We disagree with this position primarily because the Revitalization Act specifically requires "that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund." Thus, DC Courts did not have statutory authority to augment its appropriation with interest earned on apportioned appropriations.

Recently, DC Courts officials advised us that there were obligations of over $1 million in their fiscal year 1998 records that needed to be de-obligated. DC Courts officials stated that these included amounts that the District should not have recorded as obligations and amounts for services that were no longer anticipated. We are currently reviewing these proposed de-obligations. It will be important that DC

Courts continue reviewing its records and do all required investigating and reporting under the Anti-Deficiency Act.

Deferral of Payments to Court-Appointed Attorneys

Throughout fiscal year 1998, it was clear that unless DC Courts modified its spending or received additional funds, it was facing a shortfall. By the third quarter when DC Courts had not received the additional funds it anticipated, there were limited options available for addressing the projected shortfall. DC Courts officials considered furloughing employees and closing the courts for a period during the summer, as well as deferring court-appointed attorneys' and expert service providers' payments. In May 1998, OMB officials advised DC Courts to reduce non-personnel costs instead of furloughing employees or closing the courts to avoid an Anti-Deficiency Act violation. DC Courts made the decision on July 24, 1998, to defer payments for court-appointed attorneys for the remainder of the fiscal year, and then used fiscal year 1999 appropriations to pay those amounts. DC Courts had budgeted $31.6 million for such payments in fiscal year 1998, an amount that was similar to the previous fiscal year, and as of July 1998, $25.8 million had been expended on court-appointed attorney payments. The Congress authorized use of the DC Courts' fiscal year 1999 appropriation to fund these deferred payments. However, this did not change the payments from fiscal year 1998 obligations to fiscal year 1999 obligations. The presiding judges or hearing commissioners approved the vouchers in fiscal year 1998 and the obligations should have been recorded in fiscal year 1998.

Processing of Payments to Court-Appointed Attorneys

Now I would like to discuss the payments that were made to court-appointed attorneys during fiscal year 1998 in terms of the process for making such payments, and whether they were made promptly. Your concern was that court-appointed attorneys were being paid late or not the right amount and that vouchers were sometimes being lost.

We found that DC Courts processed vouchers for court-appointed attorneys in accordance with its policies and procedures. However, its procedures did not include time frames for making payments to court-appointed attorneys. Our analysis of DC Superior Court's fiscal year 1998 paid voucher data through July 1998, showed that 94 percent of the vouchers for court-appointed attorneys and expert service providers were paid within 30 days[1] of the presiding judge's or hearing commissioner's approval and 83 percent of these vouchers were paid within 60 days of the date submitted.

You were also interested in the incidence of voucher amounts being reduced at the time they are approved by the presiding judges or hearing commissioners. Our analysis of fiscal year 1998 paid voucher data showed that judges or hearing commissioners reduced voucher amounts in 9 percent of the cases, of which more than half involved reductions of $100 or less. DC Courts did not have procedures covering how judges or hearing commissioners were to report to the attorney or expert service provider their decisions to reduce voucher amounts claimed. However, DC Courts officials stated that this information was available to attorneys who requested it.

Regarding lost or missing vouchers, we found that there were no procedures for retaining data on the number of vouchers reported as missing or the disposition of such vouchers. DC Courts officials stated that such data were not maintained.

Crime Victims Compensation Program

I would now like to discuss a matter that did not affect DC Courts' use of its fiscal year 1998 appropriation for court operations, but that will need to be addressed if DC Courts is to have the requisite authority to make payments out of its Crime Victims Fund. A District law established the Crime Victims

[1] The District's fiscal year 1999 Appropriation Act provided that DC Courts would be subject to the federal Prompt Pay Act, which requires that DC Courts pay a "proper invoice" within 30 days of its receipt or be subject to an interest penalty.

Compensation Program under DC Courts jurisdiction prior to the enactment of the Revitalization Act. The Revitalization Act supports the authority of DC Courts to deposit fines, fees, and other money to the credit of the Crime Victims Fund under the District law. The District law provides that payments of up to $25,000 from the Fund can be made to crime victims for shelter, burial costs, or medical expenses. DC Courts' records indicated that over $1.5 million in such payments were made during fiscal year 1998.

However, there is nothing in the language of the District's fiscal years 1998 or 1999 Appropriation Acts that appropriates amounts from the Crime Victims Compensation Fund, nor have we identified any other federal law authorizing payments from the Fund. Accordingly, we conclude that DC Courts did not have the requisite legislative authority to make payments from the Fund. This is a matter for the Congress and DC Courts to address.

Mr. Chairman, this concludes my statement. We will be separately reporting to you on these and other issues that you asked us to review and will include recommendations for addressing the matters discussed in this testimony. I will be happy to answer questions from you or other members of the Subcommittee.

OPENING REMARKS OF GLORIA JARMON, GAO

Ms. JARMON. With me today is Steven Haughton from our Accounting and Information Management Division and Richard Cambosos from our Office of the General Counsel.

Consistent with your request, we focused on four questions: One, what were D.C. Courts' obligations for fiscal years 1996 through 1998; two, did D.C. Courts have a spending plan for fiscal year 1998 and obligate funds consistent with available resources; three, why were payments to court-appointed attorneys deferred between July and September 1998; and, four, did D.C. Courts process payments to court-appointed attorneys in accordance with policies and procedures?

COURTS VIOLATED ANTI-DEFICIENCY ACT

In summary, we found that D.C. Courts experienced difficulties in planning and budgeting during this transition year and that its adjusted records showed that it potentially overobligated its resources by more than $5 million, which would violate the Anti-Deficiency Act. D.C. Courts officials told us that they do not believe that a violation of the act occurred. I will explain our respective positions in a moment.

Related to the first question of the Courts' obligations, we found that the Courts' records showed total obligations of about $115 million in fiscal year 1996, $119 million in 1997 and $126 million in 1998. Fiscal year 1998 obligations reflect our adjustments and are not comparable to the prior years' obligations primarily due to the changes resulting from the Revitalization Act of 1997, including the receipt of Federal benefits by nonjudicial employees and the transfer of the adult probation function from D.C. Courts to a new entity.

7 PERCENT PAY RAISE

D.C. Courts also provided its nonjudicial employees a 7 percent pay raise and assumed responsibility for the judges' pension costs in fiscal year 1998.

NO SPENDING PLAN

Related to your second question as to the spending plan, D.C. Courts did not develop a spending plan early in fiscal year 1998 to match the appropriated funds received of $108 million. It obligated throughout the year based on its expectation of receiving additional funds. While some additional funds were received, the Courts did not receive all the funds it anticipated. Letters between D.C. Courts and OMB during fiscal year 1998 reflect D.C. Court officials' expectations of receiving additional resources and OMB's concern with the Courts' rate of spending.

[CLERK'S NOTE.—The Committee was not provided with copies of the letters referred to from D.C. Courts to the President's Office of Management and Budget; however, the Committee did receive a copy of (1) an internal Court memorandum dated November 14, 1997 from Ulysses B. Hammond announcing a 7 percent salary increase effective December 7, 1997 and (2) a copy of a letter dated January 29, 1998 from the President's Office of Management and Budget to Mr. Hammond stating that "* * * As we discussed, the District of Columbia Courts cannot continue to incur obliga-

tions for the remainder of FY 1998 for the adult probation function. Currently the Courts are incurring obligations at a rate that could exceed the FY 1998 appropriation of $108 million," See pages 494 and 495 for a copy of each of the letters.]

$5 MILLION ANTI-DEFICIENCY ACT VIOLATION

By the end of the fiscal year, the Courts' records showed that obligations exceeded available resources and, after adjustments made by us for obligations related to the deferred attorneys' fees and interest that D.C. Courts did not have the authority to spend, D.C. Courts potentially overobligated available funds by more than $5 million, which would violate the Anti-Deficiency Act.

D.C. Courts officials told us that they do not believe that a violation of this Act occurred primarily because in regard to the deferred attorneys' fees, they asserted that the authority Congress provided in the fiscal year 1999 Appropriations Act to use 1999 appropriations for deferred attorney payments constitutes an exception to the Anti-Deficiency Act.

We do not believe that this authority authorizes obligations in excess of available budgetary resources. We believe that the important issue here is whether the overobligations were entirely attributable to the mandatory obligations for court-appointed attorneys. We conclude that they were not.

COURTS ILLEGAL USE OF INTEREST EARNED ON APPROPRIATION

Next, in regard to the interest, it is the Courts' view that no statute prohibits retaining interest on apportionments and using such interest for court operations. However, we noted that the Revitalization Act requires that all money received by the Courts be deposited in the U.S. Treasury or the Crime Victims Fund.

[CLERK'S NOTE—Regarding the use of interest for court operations, the General Accounting Office states that "We are unaware of any statute that authorizes DC Courts to retain and spend interest earned on appropriations for court operations. Further, it undermines the Home Rule Act provisions * * * Accordingly, DC Courts was not authorized to retain or use this interest income and should have remitted it to the U.S. Treasury.". (See page 10 (page 551, this volume) of GAO report B-283119 transmitted to Congress September 16, 1999.)]

DEOBLIGATION OF $1 MILLLION—GAO REVIEWING

Recently, D.C. Courts officials advised us that there were fiscal year 1998 obligations of over $1 million that needed to be deobligated. We are currently reviewing these proposed deobligations. It will be important that D.C. Courts continue reviewing its records and do all required investigating and reporting under the Anti-Deficiency Act.

COURT APPOINTED ATTORNEYS NOT PAID

Related to your third question as to the reason for the deferred payments to court-appointed attorneys, this occurred because of the shortfall that the Courts faced in fiscal year 1998, as previously mentioned.

COURTS' FLAWED PROCEDURES FOR PROCESSING CJA PAYMENTS

Related to your fourth question as to the Courts' policies and procedures for processing payments to court-appointed attorneys, we found that D.C. Courts processed such vouchers in accordance with its policies and procedures. However, procedures did not include time frames for making payments to court-appointed attorneys or tracking vouchers reported as missing.

Mr. Chairman, this concludes my statement. I would be happy to answer questions from you or other members of the subcommittee.

Mr. ISTOOK. Thank you, Ms. Jarmon.

I am not quite sure of the protocol. I have listed for Judge Wagner to be next. If I violate any internal protocols among yourselves, please forgive me.

CHIEF JUDGE WAGNER'S OPENING REMARKS

[See pp. 496–537, for prepared statement of Joint Committee on Judicial Administration]

Judge WAGNER. Ordinarily I would have started with my statement regarding the fiscal year 2000 budget, which, as you know, this hearing was originally scheduled to be. However, it seems appropriate to say something about what has just been said; therefore, I will start there, if you don't mind.

[CLERK'S NOTE.—For the record, this hearing was first scheduled to take place on Tuesday, May 4, 1999. The Committee Clerk notified Ulysses Hammond, Executive Officer of the Court by telephone, as is ordinarily done, of the date and subject of the hearing and that the General Accounting Office would be providing the Committee with an interim report on GAO's review of the Courts' planning and budgeting difficulties. The Committee subsequently received information that a DC law firm was contacting Committee members in an effort to have the hearing canceled or, if that was not successful, to not have GAO testify (see p. 487 "Pro Bono Lobbying"). Early on May 4, 1999, the day of the scheduled hearing, Chairman Istook returned to Oklahoma to assess the damages caused by tornadoes that struck parts of his congressional district the night before. As a result of his unscheduled travel, the hearing was postponed. Court officials were fully aware weeks in advance of the hearing that GAO officials would be providing an interim report of their findings at the hearing.]

Mr. ISTOOK. Sure.

Judge WAGNER. Okay. Although the timing of the hearing on GAO's preliminary report has not permitted the Courts to formulate a full response, we must point out that the issues raised turn upon interpretations of statutes in light of the facts involved in the case.

Now, as lawyers, you realize the statement that you have just heard presents legal conclusions without any statutory references or legal references.

Have you had an opportunity to review the Courts' legal position on these issues? Are you permitted to answer that?

Mr. ISTOOK. Well, I think we are here to hear what you wish to say in that regard.

Judge WAGNER. If you have not, let me suggest we are certain you will want to examine the legal authorities which support the positions of the Court before reaching any legal conclusions about these important issues.

I cannot overemphasize the importance of public trust and confidence in the courts. You may know, we have just completed a 3-day conference involving people from all over the United States interested in preserving the American system of justice and inspiring confidence in the justice system. Therefore, it gives me some concern that we are proceeding in a piecemeal and preliminary fashion, when we know that, given the process that GAO ordinarily follows, these findings that they report today could possibly change.

For example, the deobligations which were obligations that the District took out when we were with the District, but it turns out will have to be put back because they are not things for which we are obligated, that is but one example.

But briefly, for the record, I do want to say a few things about what has occurred, and I think you should be aware of them.

As you already know, the Courts were faced with a funding shortfall of over $11 million in fiscal year 1998, resulting from two unanticipated obligations imposed upon the Courts by the Revitalization Act. This was an aberrant year. It was unusual. Nobody knew what was going to happen because the Courts had always been a part of the District of Columbia pie.

[CLERK'S NOTE.—The House Committee on Appropriations *was not involved* in the National Capital Revitalization and Self-Government Improvement Act of 1997 (Title XI of the Balanced budget Act of 1997, Public Law 105–33, approved August 5, 1997; 111 STAT. 712–787). That Act, on the House side, was a product of the House Committee on Government Reform and Oversight (Subcommittee on the District of Columbia, chaired by Congressman Thomas M. Davis of Virginia). See "clerk's note" on page 435.]

First there was $3 million in unanticipated costs resulting primarily from the increased costs of benefits to court employees by reason of their becoming Federal employees under the Revitalization Act for the purpose of those benefits. When we submitted our budget, we did not know that our employees were going to be receiving Federal benefits and that this would involve additional costs; therefore we submitted something that did not take that into account. And there were other items, such as the costs of the General Services Administration processing our payments through their GSA system. We had to pay for that. Thus, there were unanticipated costs of about $3 million.

[CLERK'S NOTE.—Regarding unanticipated costs referred to by Judge Wagner, the General Accounting Office states "Anti-Deficiency Act provisions constitute some of the fundamental financial management requirements for federal and District government activities subject to the congressional budget process. The act's purpose is to ensure that agencies or activities funded by annual appropriations manage their affairs so as not to exhaust their appropriations before the end of the fiscal year and require additional funding for their annual operations. OMB and we have stated that officers or employees of the federal government subject to the Anti-Deficiency Act may not incur obligations against anticipated receipts, including supplemental appropriations requested but not yet enacted, because such receipts may not be realized. For example, the Congress may not enact a supplemental appropriation in the amount requested by an agency. The official having administrative control of the appropriation is required to establish regulations to ensure compliance with the Anti-Deficiency Act and to identify the reasons for any obligation or expenditure exceeding an apportionment.". (See page 11 (p. 552, this volume) of GAO report B–283119 transmitted to Congress September 16, 1999 reprinted at the end of this hearing.)]

Second, as you know, adult probation was transferred from the Courts to the Offender Supervision Trustee, and the adjustment was made removing $20 million from the Courts' budget to the Trustee's budget to fund the new agency, even though our experience, that is, the experience of the Courts, which had operated that function, and budgeted costs, indicated that adult probation had been operated for only $12 million.

[CLERK'S NOTE.—See "Clerk's Note" on page 435, this volume.]

Congressman Moran, you had expressed an interest in ascertaining whether or not and how that could happen, that to take one function and fund it, it would cost you $8 million more. It is our understanding, however, that is no longer a part of the audit.

OMB, the Trustee and the Department of Justice have all agreed that too much money was transferred from the Courts to the Trustee in fiscal year 1998, although each came up with a different figure. And no one can be faulted for that, I guess, because there was no way to know. When you have a new agency, the costs are different than those for the former agency.

The problem is that by taking away this money, it left us with functions for case processing which were not funded. Indeed, the Congress by its subsequent action, authorizing the transfer of funds to the Courts from the Trustee, also agreed that there was some overfunding. As you know, this occurred in August. We received the first part, without coming for congressional action, and the last part came late because the Congress recessed without enacting the transfer authorization. That is understandable as well. Other business goes on, and you can't always take action.

[CLERK'S NOTE.—$1,700,000 for FY 1998 was transferred to the District of Columbia Courts for court operations by section 507 of Public Law 105–245, approved October 7, 1998 (112 STAT. 1857). The funds were transferred from Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee at the request of the President's office of Management and Budget.]

The Courts continue to believe that they can demonstrate that the new agency was given $8 million too much, stripping the Courts of funds needed for other essential case-processing functions. Thus, the appropriation for fiscal year 1998 unintentionally created a built-in shortfall of over $11 million. It was our understanding that the Congress sought, by bringing in the GAO, to verify the genesis of this shortfall. And indeed, everyone tried to help, including the Congress, the Trustee, the Justice Department. Everyone tried to make the adjustment, but unusual circumstances prevented this from occurring in a timely manner.

[CLERK'S NOTE.—Committee staff repeatedly requested the Executive Officer of the Court to show where in budget justification material or hearing records or budget hearing statements for current or past years the Court discussed or showed a cost or budget of $12 million ($8 million below the $20 million transferred) for its 'adult supervision' function. The Executive Officer, to this day, has not responded.]

EFFORT TO CIRCUMVENT ANTI-DEFICIENCY ACT BY NOT REPORTING VALID OBLIGATIONS

What then about the pertinent considerations of statutes? In order to comply with the fiscal year 1998 appropriations and the Anti-Deficiency Act, the Courts were forced to consider a number of severe cost-cutting and budget-preserving measures. In addition to a $3 million reduction in discretionary spending and a request for a supplemental appropriation, the Courts included in their adjusted spending plan the possibility of utilizing a statutory exception to the Anti-Deficiency Act. That is what we thought we were doing.

This exception has existed in every D.C. appropriation since 1976. It allowed the Courts to defer payments of certain court-appointed attorneys at the end of a fiscal year and then use the funds made available in the following fiscal year.

[CLERK'S NOTE.—"See Clerk's Note" at bottom of this page.]

The reason this existed is simple. By Constitution, we have to provide attorneys for individuals, indigent individuals, in criminal cases. We have to appoint those attorneys, no matter what we have projected the cost to be. And there is no way of knowing what those costs will be precisely when a budget submission is made. So Congress, in its wisdom, saw fit, since 1976, to allow items that were incurred in one year for these things to be paid in a subsequent year. Indeed, in this fiscal year, in 1999, the use of the statutory exception was plainly authorized and expressly accepted by Congress in the fiscal year 1999 appropriation.

[CLERK'S NOTE.—See "Clerk's Note" at bottom of this page.]

I would like to explain the reason for the exception as we see it. Operating under such a constitutional requirement to appoint counsel without the ability to predict when and how many claims will be submitted for services is a major handicap each year. Because of this, you have in your wisdom seen fit to allow us some flexibility. We have provided GAO with the statutory authority for the Courts' position. The statutory authority, we believe, provided a legitimate way for the Courts to deal with a difficult situation without violating the law. That was our goal.

[CLERK'S NOTE.—Chief Judge Wagner's preceding statement is not supported by the hearing record, and in fact, appears to be in direct contravention to the specific purpose for which the language was requested by the Courts in their FY 1976 budget. Language in the FY 1976 DC Appropriations Act (PL 94–333; 90 STAT. 787) states "* * * That $2,895,000 of this appropriation (to remain available until expended) shall be available for obligations incurred in fiscal year 1975 and fiscal year 1976 for the compensation and reimbursement of attorneys appointed under the District of Columbia Criminal Justice Act of 1974 * * *". Judge Harold H. Greene, Chief Judge of the DC Superior Court, testified on December 9, 1975, that "We have so far paid out $1,758,132 to attorneys and others in fiscal year 1975 obligations. We expect 2,000 to 3,000 more vouchers to come in, Generally those vouchers may be requests that relate to the more complex and long, drawn-out cases * * *". "* * * we would be able to use part of the additional $1 million * * * to pay off some of the 1975 obligations * * *". "We believe that, because of the peculiarities of the system, where the obligation is incurred when the lawyer is appointed, but his bill doesn't come in until the case is over, it takes many months sometimes after the fiscal year is over until we know exactly how much actually needs to be paid." In addition, the Courts' printed justifications stated "The proposed language

will allow for the payment of fiscal year 1975 obligations which may exceed the amount already appropriated for fiscal year 1975 ($1,995,000) out of the amount requested in the fiscal year 1976 budget." (see pages 187, 188, 195, 199, 207 and 222, part 2, FY 1976 hearings before House DC Appropriations Subcommittee.) ***There is absolutely nothing in the printed justifications or in the Courts' testimony to support the notion that the language was intended to allow the Courts to defer payments to certain court-appointed attorneys, or to allow the Courts to apply the unused funds derived from the deferred payments to pay for other Court functions. Clearly the language that was justified by the Courts and approved by the Congress was intended to allow the Courts to use current year appropriations to pay prior year obligations received in the current year; not to defer current year obligations and use the funds gained from the deferral for other Court functions. It appears the Courts have taken language requested for a particular situation and used it for situations contrary to the justified purpose.***]

Unfortunately, we were left, because of an unusual set of circumstances, with having to defer, not for months and months, but rather from towards the end of July until we could get enough money to pay the attorneys, first by the transfer of the Trustee of the first $1.1 million through a grant process, and then by congressional action authorizing the Trustee to transfer an additional $1.7 million, all of which the Trustee agreed was an overpayment.

I think if you look at, and if you examine the facts as they unfolded during that year, you will find, first, that no one is to blame for this and no one is pointing the finger. There was no way to predict, having submitted a budget under one set of circumstances and having received it under another, what was going to happen, number one. Number two, I think you will find that the Court acted responsibly and within the existing statutory authority in using the only vehicle available to it until the situation could be remedied by congressional act. It was remedied by congressional act, even though some of those acts came a little bit too late to avoid the unfortunate situation with our lawyers.

I realize you are reading that now, but we have and would like to have an opportunity to submit a detailed memorandum of law addressing this important issue. We think it is important from the standpoint of, number one, explaining to you what happened and for you to examine in connection with your responsibility. Number two, and perhaps foremost, in recognizing what is more important than justice. It is important for us to assure that the public maintains confidence in the court system. Unless these reviews are conducted in a manner that affords a full and complete picture so that the integrity of the process can be preserved, I think that we may undermine what we are trying to achieve. I think we have a common goal here.

I appreciate this opportunity to address it, and I apologize for not being able to address it more fully, but given the time constraints of just finding out what was going to be said, it became somewhat difficult to do that, particularly since I had to prepare my testimony for the budget.

Mr. ISTOOK. I appreciate that, Judge Wagner.

Judge Hamilton.

CHIEF JUDGE HAMILTON'S OPENING REMARKS

Judge HAMILTON. Yes. If I might say, Mr. Chairman, we were in a very, very difficult situation. In 1998, on the one hand, the Supe-

rior Court is charged with processing approximately 160,000 cases, and in order to process those cases, it takes an awful lot of work. It takes an awful lot of staff.

The fact of the matter is, we were underfunded for fiscal year 1998. Trying to deal with the processing of 160,000 cases on the one hand, and meet all of our obligations on the other hand was an almost impossible task. The fact of the matter is we were able to manage through those difficulties in such a way that the case processing, the administration of justice, was not impaired one iota. We processed the lockups that came to our court every day, we processed the wills that came there for probate, we processed the children who came there for child support. The one thing we were unable to do was to pay the lawyers as timely as we would have liked to have paid them. The fact of the matter is, however, no matter what you say, no matter how you cut it, the bottom line is we did not have the money with which to pay them.

Now, people have harkened back to the pay raise that our employees were given. The fact of the matter is that was included in the budget. The budget, the overall budget that was approved, I believe, for some $123 million included the pay raise that was given to the employees. It was understood all along that the employees would be given a pay raise.

In addition to that, it was understood that our budget had been cut too much. Everybody understood that. The only question was by how much? And everyone, as Chief Judge Wagner said, was busy trying to ascertain precisely how much too much our budget had been cut. The GAO, even today, has not proffered an amount by which, based upon their audit as an independent agency, as to exactly how much our budget was excessively cut. But everyone knew that it had been cut too much. Everyone knew that; the Trustee, OMB, the Congress and everyone else knew that the budget had been cut too much, and everyone was working to rectify that situation.

[CLERK'S NOTE.—Chief Judge Hamilton's statement "Everyone knew that; the Trustee; OMB; the Congress and everyone else knew that the budget had been cut too much * * *", IS NOT ACCURATE as it relates to Congress. Committee staff repeatedly requested the Executive Officer of the Court to show where, in budget justification material, or in hearing records, or in budget hearing statements for current or past years, the Court discussed or showed a cost or budget of $12 million ($8 million below the $20 million transferred) for its 'adult supervision' function. The Executive Officer, to this day, has not responded. Chief Judge Hamilton's inclusion of Congress in his statement that "everyone else knew that the budget had been cut too much" is inaccurate, is misleading and is not factual as it relates to the Committee. The Committee did not "cut" the Courts budget; the Committee approved the amounts recommended by the President's Office of Management and Budget (OMB) which were based on the Revitalization Act (title XI of PL 105-33). The Committee on Appropriations was not involved in the Revitalization Act which was a product, on the House side, of the House Committee on Government Reform and Oversight Committee (Subcommittee on the District of Columbia, chaired by Congressman Thomas M. Davis of Virginia). If the Committee on Appropriations "knew that the budget had been cut too much", the Committee's recommendations would have reflected an appropriate adjustment to the amounts recommended by OMB.]

The problem is the relief that we finally obtained in that regard came after the end of the fiscal year, but having come when it did, it came with the recognition of the fact that the budget had been

cut too much in evaluating the cost of the operation of adult probation.

Now, we are not saying that that was an easy determination to make. It was a very difficult determination to make, and that is why it was not done accurately, and no one is at fault for not having accurately determined that value. But the fact of the matter is it was not accurately determined, and it still today has not been determined by independent agencies such as the GAO.

The Court has always maintained it is one figure, the OMB has maintained it was another figure, and other people have other figures, but we have yet to have an independent agency determine the exact amount by which that budget was overcut, and that would be of a great benefit to everyone who has been involved in this controversy.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Judge.

PREPARED STATEMENT OF CHIEF JUDGE EUGENE N. HAMILTON

[The prepared statement of Chief Judge Hamilton follows:]

THE HONORABLE EUGENE N. HAMILTON
CHIEF JUDGE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
IN THE HOUSE OF REPRESENTATIVES
HOUSE APPROPRIATIONS COMMITTEE
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA
MAY 18, 1999

Mr. Chairman and Members of the Subcommittee, I am delighted and honored to appear before you today in support of the FY-2K Budget of the Superior Court of the District of Columbia.

The Superior Court has submitted a complete Budget Document which I will not repeat during this hearing. It is requested that the Superior Court's complete Budget Document with all supporting information be made a part of the Record of these hearings. It is also requested that my written Statement in its entirety be made a part of the Record of these hearings.

Mr. Chairman, the Superior Court's FY-99 Budget is in the amount of $72,230,000 with 1,017 FTEs. For FY-2K, the Superior Court has requested a total dollar amount of $81,000,100 and 1,058 FTEs. Since the submission of our original request , I have

done a more careful analysis of the Superior Court's needs and, in addition to the 1,058 FTEs that were on board as of March 19, 1999, the Superior Court needs 28 more FTE's as shown on Attachment 1, which was Attachment 3 of my letter of March 23, 1999 to the Chairman.

Mr. Chairman, the Administration has supported $78,561,000 for the Superior Court and has not specified any limit as to the number of FTEs. I will, therefore, confine my testimony at this time to those items that the Administration has not fully supported.

The Superior Court has requested $2,500,000 for an Integrated Justice Information System. The Administration supported this request to the extent of $965,000, leaving a difference of $1,535,000, which is necessary to allow the Superior Court to have any hope of putting an integrated information system. It is not anticipated that the 2.5 million dollars will be the total cost of such a system, but will be the cost of the system design.

The Superior Court has been awarded a $350,000 Byrne Grant. This grant will be used to conduct an in-depth analysis as to how to proceed in the design of an integrated information system. The Superior Court has obtained technical assistance from the National Consortium for Justice Information and Statistics in the preparation of an RFP for the analysis. The Consortium filed a Report regarding the Superior Court's present information infrastructure which stated, among other things:

"Recommendations:

A. Organization Recommendations for the Superior Court

1. This Project Needs a Full Time Project Manager. If the Superior Court is serious about creating an integrated information system, it must make a commitment to manage the project. This management must come from someone dedicated to the project and its management.

.....

B. Hardware Recommendations for the Superior Court

1. The continuation of building on and band-aiding the mainframe environment may not serve the needs of the court. Although it had its day, the time may be at hand for a new platform and system architecture. The proposals for the RFP should address this possibility.

.....

C. Applications Recommendations

1. The Court most definitely needs a single information system that addresses the various court functions in an integrated fashion. Although, some of the systems may be independent based on their functions (e.g., a jury system)—the presumption should be for integration not independence.

....."

These recommendations make it clearer than ever before that the Superior Court needs the full $2,500,000 requested in order to undertake the integration of its information systems. Secondly, Mr. Chairman, the Superior Court has also requested $375,000 for

stipends to be paid to mediators and other neutrals in our Alternative Dispute Resolution Program. This request was supported by the Administration to the extent of $230,000, which leaves a difference of $145,000. The Superior Court would like to add child neglect cases to the existing grant funded Program that now mediates child abuse cases. If this is done, there will be a total of approximately 1,500 cases in the mediation program which will require an additional $300,000. In addition, the Court needs an additional $60,000 to appropriately compensate other mediators in the Family Division. Lastly, the Superior Court needs an additional $15,000 to adequately compensate persons conducting evaluations of the mediators.

Mr. Chairman I must request at this time an additional item that has not been included in the Court's Budget. On May 3, 1999, Judge Graae, Chair of the Superior Court Criminal Justice Act Committee wrote me as follows:

"I understand the Court is currently in the process of presenting its budget request for the next fiscal year. Last year, the

CJA Committee made a unanimous recommendation to you that the rates for investigators be increased from the current $10/hr. to $25. I attach a copy of my 3/23/98 memo to you about this. More recently, you will recall that CJA practitioners who participated in our judicial training expressed great concern about the impact low investigator pay has on their ability to provide effective representation. I urge you to ask for a budgetary increase that would allow the CJA-CCAN programs to pay investigators $25 an hour."

Judge Graae wrote in his March 23, 1998 Memorandum, in part, as follows:

"CJA Investigators have been paid $10 an hour for ten years. The $10 rate (up from $7.50) was set in late 1987 despite the CJA Committee's strong recommendation that it be raised to $12.50. Investigators and DCJ lawyers have periodically campaigned for an increase, most notably in May 1994 when many practitioners wrote to express concerns about their ability to provide effective representation given the unavailability of experienced investigators

willing to accept $10 an hour. Institutionally, we did not respond to the overtures made by practitioners in 1994. The situation since then has obviously become worse and is undermining our ability to ensure that CJA-eligible defendants are accorded their 6th Amendment rights.

We recommend a raise to $25, even though it represents more than a doubling of the rate. We note that CJA investigators in U.S. District Court are currently paid $35 an hour, up from the $20 they were being paid in 1987. Although we would obviously like to have parity for the investigators working for CJA attorneys in our court, we recognize budgetary constraints make that unrealistic."

Mr. Chairman, I fully endorse Judge Graae's comments and his request. Mr. Chairman, I therefore request that the Court's Budget be increased by a mere $500,000 to increase the investigators fee to $25 per hour.

The Superior Court requested $160,000 to replace 52 sliding filing units for the closed files section in the Criminal Division. These units are approximately 30 years old and have become safety hazards. The Administration did not support this item at all, which leaves a void of $160,000.

The Superior Court has requested $600,000 for equipment replacement. This item was not supported by the Administration, leaving an insufficiency of $600,000. The Superior Court has gone for many years without an appropriation for equipment replacement. As a consequence, the Superior Court has an inventory of minimally functioning equipment that is plagued with breakdowns. This equipment includes computers, photocopying machines and facsimile machines. The Superior Court needs to implement a systematic replacement plan for this aging equipment and this plan is estimated to cost $600,000.

In addition to the items currently supported by the Administration, it is requested that the Committee and the

Congress also support the items referred to above that were not supported by the Administration.

Thank you, Mr. Chairman.

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RECOGNITION OF ULYSSES HAMMOND, EXECUTIVE OFFICER

Mr. ISTOOK. Mr. Hammond, I believe you had the oath, and we were expecting to hear from you. Do you wish to take a place at the table?

Mr. HAMMOND. No, Mr. Chairman, I will defer to the Joint Committee.

Mr. ISTOOK. All right. You did receive the oath because we may get back to you.

PAY RAISE APPROVED IN 1997

Judge WAGNER. May I just say, as far as the pay raise was concerned, that was approved by the Joint Committee in '97, I believe, and at that time we thought that there would be sufficient funds to cover it. We also thought that a transfer—that an adjustment could be made between the agencies without the need for congressional action. So did some other people in the administration. That turned out not to be the case, but it was too late for us to do anything about it, and we had given the pay raise.

But you need to recognize that when we gave that pay raise, our employees, I believe, were about 18 percent behind everyone else. And we didn't give 18 percent, we only gave like 7 percent. So they are still way behind everyone else.

At the same time, we had other employees who were doing a transition and getting reports that they were going to get the full raise. We had to address a morale problem, and we continue to address that morale problem. There is really no reason why employees in the courts should receive a sum so much less than other employees doing comparable jobs in the Federal courts. The employees in the D.C. courts are very professional, and we need to keep them if we want to do a professional job. It is a big job. I think that it is kind of unfair how we have kept them so far behind in pay.

But in any event, that is not to say anything except we thought we had enough funds covered both by the budget and certainly by what was going to come later. Maybe in hindsight we shouldn't have done that. Maybe they shouldn't have received it, but they would have been 18 percent behind everybody else.

Also in hindsight, maybe we should have closed the courts, which was the option, with a $11 million hole in the budget. Maybe we should have. We considered it, but other people persuaded us that we really shouldn't do that. It is too important to keep the courts functioning. You can't understand the devastating impact it has when you close the courts down and you have cases that were scheduled to go that can't go, and you have to go back in to fit in the queue with other cases. It is just an unreasonable option.

CHAIRMAN ISTOOK—COURTS NEED TO BE ABOVE REPROACH

Mr. ISTOOK. I appreciate your testimony, and hopefully with some of the exchanges that we are about to enter into, we can help develop an understanding of things a bit better.

Judge Wagner, I certainly agree with what you mentioned about the significance of the issue and the necessity for faith and confidence in the court system. The courts, which are charged with enforcing the law, if they are not viewed by the public as following

the law themselves, then we terribly undercut the faith and confidence in our entire system of justice.

Judge WAGNER. Yes, we do.

Mr. ISTOOK. So I think the common term of phrase is being like Caesar's wife, is the old historical adage, to be above reproach in everything that is done.

Judge WAGNER. I agree.

Mr. ISTOOK. Certainly when you indicate that, as you said, we considered closing the courts, that certainly indicates to me that there was a recognition of how severe the legal issue was as to whether you had the authority to continue obligating funds or not, because otherwise you wouldn't have considered a measure such as closing the courts if you didn't know that there was a severe question.

I must note when people say, well, we expected Congress to do this, Congress is an institution. No one person can speak for the Congress of the United States. Congress can only act collectively by the will of the majority of its Members. Any expectation that Congress would do this or Congress would do that cannot be relying upon any one person or for that matter any one committee's representation of what may be occurring.

Judge WAGNER. We really didn't look to the Congress until we realized—see, we hadn't dealt with the Federal Government before. We thought they could make the adjustment themselves, and it turned out that could not be done.

COURTS IGNORED OMB ADVICE

Mr. ISTOOK. I understand there is some uncertainty in the situation. I notice the GAO report mentions there was an exchange of correspondence dating back to at least April of 1998 with OMB, halfway within the fiscal year, advising the Courts that obligations were being incurred at the rate that would create a deficiency.

[CLERK'S NOTE.—See p. 495 for copy of OMB letter.]

So certainly I think that everyone is sensitive to the needs of the Courts to take care of the personnel in the courts, but also we understand that we must insist that the Courts, like every other agency of government, follow the same law and the accountants.

TIME LINE OF EVENTS

One thing that I think would be helpful to receive both from the Courts and the GAO would frankly be a time line saying at this date, this was recognized, and this was communicated. There is some reference to a couple of items in that in the GAO report, and it is not fully fleshed out to establish those things. I think that would be useful for us.

[CLERK'S NOTE.—See pages 590–596 for time line report referred to.]

IDENTIFYING COURT OFFICLAL(S) RESPONSIBLE FOR ANTI-DEFICIENCY ACT VIOLATION

I also would like to know, and I think we need as clear an answer as possible, since the Courts are bound by the Anti-Deficiency Act like any other government agency, who bears the responsibility for making sure that the Courts comply with the Anti-Deficiency

Act? I would appreciate the answer from each of you so we can understand how you see that. Judge Wagner, Judge Hamilton, Mr. Hammond, who bears that responsibility?

Judge WAGNER. If you have a copy of Title 11, it might be helpful. I think you need to understand we are structured with a fiscal officer who by statute is bonded and responsible for taking care of the fiscal accounts of the Court, who reports to the Executive Officer. The Executive Officer is like the CEO of a corporation in a sense in that he has responsibilities that are spelled out in the statute related to accounts and budgeting and personnel and day-to-day administrative operations.

The joint committee is a policy-making body for the District of Columbia Courts, but because these people act subject to us, then, of course, we would be responsible.

Mr. ISTOOK. I am trying to get a simple answer to the question, and maybe you are telling me there is not a simple answer, but I want a simple answer to the question of who—where does the buck stop? Who has the responsibility to make sure the Courts of the District of Columbia do not overspend their budget?

Judge WAGNER. I think it is a shared responsibility.

Mr. ISTOOK. And among whom?

Judge WAGNER. I think the shared responsibility by statute would have to be in the joint committee, the Fiscal Officer and the Executive Officer of the courts.

Mr. ISTOOK. Who are those persons?

Judge WAGNER. The joint committee, four members are present. One member is not present.

Mr. ISTOOK. Name them for the record. I would appreciate that.

Judge WAGNER. The Chair of the joint committee, I chair the joint committee. Chief Judge Hamilton is a member by statue. Two members—and it is in the budget testimony, by the way—two members are appointed, are voted on by their respective courts, and the Executive Officer is selected by the joint committee by statute.

Mr. ISTOOK. So I am still trying to get to understand that, I know the names of the persons you are describing by office.

Judge WAGNER. Mr. Ulysses Hammond is the Executive Officer and has been since 1990.

Mr. HAMMOND. 1990.

Mr. ISTOOK. When you named the joint commission——

Judge WAGNER. The Fiscal Officer is Mr. John Schulteis.

Mr. ISTOOK. The other two members you did not name?

Judge WAGNER. Judge Geoffrey Alprin, Judge Michael Farrell, and Judge Nan Shuker, who is not present, who is trying a case and could not be here today.

Mr. ISTOOK. Sure. Judge Hamilton, I want to pose the same question to you. Do you concur with Judge Wagner's assessment of who bears the responsibility, the legal responsibilities, for assuring that the District of Columbia Courts operate within their budget?

Judge HAMILTON. Well, I think it is a shared responsibility among the individuals that Chief Judge Wagner has mentioned, but when it comes down to obligating the Court with respect to funds for representation, that is a situation which arises out of the individual appointments by each individual judge as that situation

arises. Of course, as has been pointed out by Chief Judge Wagner, that is a constitutional obligation which everybody bears a responsibility to fulfill.

Mr. ISTOOK. Getting the verses right. Would you agree, though, that if, for example, you have, as you see, a constitutional requirement that you must fund the defenders for the indigents, you must have the court-appointed attorneys, and you must fund them, would not that create an obligation on the part of the people in charge of the budget to make adjustments elsewhere in the budget, rather than let a constitutionally-mandated funding not occur?

Judge HAMILTON. Well, that is true, but that sometimes is a whole lot easier said than actually done, as Chief Judge Wagner has pointed out, perhaps in some situations the choice is between appointing counsel and incurring an obligation for the appointment of counsel on the one hand and shutting down the court on the other hand.

Mr. ISTOOK. There were no other options? There was nothing else in capital budgeting, there was nothing else in any expenditure, there was nothing in utilities, in overhead?

Judge HAMILTON. No.

Mr. ISTOOK. You are saying there was no other option whatsoever?

Judge HAMILTON. No, there wasn't. The gap was so large, the gap was so large that it turned out to be in the vicinity of approximately $4 to $5 million, between the funds we had and the funds that were obligated. The largest ticket item in the Court is CJA, indigent representation. By far that is the largest ticket item. Now, in order to make up that kind of shortfall somewhere else, we would have had to shut the Court down for weeks.

Mr. ISTOOK. Doesn't that all depend upon when you became aware there was an impending shortfall and when you became dedicated to taking action? For example, if you wait until 2 months are left in the fiscal year, your options are very limited. If you take action with 6 months or 8 months remaining, you have a lot more options.

Judge HAMILTON. Well, it would only affect the period of time over which the reduction in operation would occur. It would not affect the total reduction in the operation.

In other words, we were given a total number of days that we would have to cut back our obligation. The only difference it would make is whether you took all of those days in August, whether you took them all in July, or whether you spread them out over a longer period of time. The fact of the matter is in processing cases, the impact is virtually the same. If you shut down for 1 day a week for a long period of time, those cases begin to back up on you.

Mr. ISTOOK. Let me finish this——

Judge WAGNER. May I say something?

Mr. ISTOOK. I need to finish this line.

Judge WAGNER. It is related to that line.

Mr. ISTOOK. Let me come back to that in a moment, because I want to make sure we have established—Mr. Hammond, do you agree with what Judge Wagner testified as to where the responsibility lies for assuring the District Courts operate within their budget?

Mr. HAMMOND. Yes.

Judge WAGNER. Incidentally, I wanted to cite the code provision, 11 D.C. Code 1701, et sequitur. You need to look at that. It is asking for a legal conclusion as a fact is a dangerous thing. If you look there, you will see specifically itemized what each person is supposed to do. But it sounds like you think we did not do anything else. In fact, we had to save some money by cutting back in many areas, having hiring freezes and freezes on travel and other types of measures just to make up the amount we did make up.

Mr. ISTOOK. When did those measures begin?

Judge WAGNER. Excuse me?

Mr. ISTOOK. When did those measures begin?

Mr. HAMMOND. Those began in November.

Judge WAGNER. November 1997, according to Mr. Hammond, they began, so that there were savings effected.

Judge HAMILTON. That is small in relationship to the shortfall. The only way we could make up that type of shortfall is a substantial reduction in operation, and thereby substantially reduce the payroll to the employees or defer the payment of fees to counsel.

Mr. ISTOOK. Sure. And the pay raises were effective when?

Judge WAGNER. We approved them in November, and I believe they were effective the beginning of December.

Mr. HAMMOND. December 7th.

Mr. ISTOOK. I need to make sure that other Members have a chance for questioning. I have taken too much time here. I yield to Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. I will just follow up on that.

COURTS USED FUNDS FOR DISCRETIONARY PAY RAISE

We have the facts on the table here, but one fact is that you were under a legal obligation to compensate the court-appointed attorneys. Another fact is that you made a decision to provide a pay raise which was volitional on your part. It was not a legal obligation. You have stated that pay raises had been deferred for a number of years.

I have no objection to your granting a pay raise to the employees. It seems to me that is appropriate. The problem is that you did not have a legal obligation to do that, while you had a legal obligation to reimburse the court-appointed attorneys. You chose to do the one which was at your discretion at the expense of the obligation to pay the court-appointed attorneys, it would appear. That is what I want you to clarify for the record, because had you not granted the pay raise, it seems to me you would have been able to meet your legal obligation to compensate the court-appointed attorneys in a timely manner.

Judge WAGNER. First of all, the pay raise cost, I will have to get somebody——

Mr. HAMMOND. 2.8.

Judge WAGNER. According to Mr. Hammond, $2.8 million. $2.8 million will not cover $5 million, as you can see. So there was no way that was going to do the deal. Of course, hindsight is a beast you can ride anywhere. I think the Joint Committee acted in good faith in November upon the recommendation of our fiscal people

that there was sufficient money available to implement a pay raise that would cost what this one did; that we would still be able to operate within budget, as we have in all the years past; that we acted on that and took that step.

Well, of course, after December, it became obvious that maybe we were going to have a problem if we did not get an adjustment there, if we did not get the money back. No one was preferring one over the other. It is the last thing in the world we wanted to do was to defer the attorneys. We appreciate fully what they do for the Court at a very low cost. Indeed, we had asked for an increase in the budget to increase their pay because we feel that they are very much underpaid. But, as I said, it was one of those situations where very late it looked like an adjustment could not be made in time to save the day.

You know, but for circumstances, all of that money would have come into the budget that came into the budget in August and again in October before the end of the fiscal year, and we would have been fine. But never was there a preference, would you agree, that we were preferring employees to lawyers. No, we acted in good faith, thinking we had sufficient funds to cover it. That may be a mistake.

Mr. MORAN. I appreciate your response on the record.

ANTI-DEFICIENCY ACT VIOLATION

If I might, Mr. Chairman, I would like to ask a question about this Anti-Deficiency Act because it is a serious charge. It is an understandable situation, but the explanation that since Congress authorized the Courts to use fiscal '99 appropriations to cover the $5 million shortfall in fiscal 1998 expenditures, the Courts did not violate the Anti-Deficiency Act, I think by that logic what would prohibit you or any Federal agency from overspending its fiscal '99 budget on the argument that Congress could or will provide funds in future years to cover any shortfall in the current year?

We need a brake on the ability to do that, and there are any number of situations where one could say, well, I have got to pay this, no matter what. I am under a legal obligation. So the appropriation cap is really not an impediment to meeting those financial obligations. The obligation is to control the budget so that you have adequate resources to meet your obligations within a time line as well as expenditure level.

I think we should give GAO an opportunity to respond to the response that Chief Judge Wagner has given to the GAO response.

Judge WAGNER. What you just gave is not my complete response.

Mr. MORAN. I know you don't agree with what I just said.

Judge WAGNER. I agree with what you said, as far as it goes, except you didn't go far enough in explaining what our position is. So to the extent they are going to be responding to something that is not our position, that is fine, but I would like to state what our position is.

Mr. MORAN. They took very clear notes on what your position was, Chief Judge, and I think it is your position they will be responding to, rather than my observations.

So if I may, Mr. Chairman, I would like to ask Ms. Jarmon perhaps and her colleagues if they would respond to the explanation

offered by the Court as to the suggestion that this is, in fact, a violation of the Anti-Deficiency Act.

Judge WAGNER. I don't know if it is potential or a fact. I thought they said potential.

Mr. MORAN. As to the suggestion this might be a violation of the Anti-Deficiency Act.

GAO RESPONSE TO ANTI-DEFICIENCY VIOLATION

Ms. JARMON. In our report we mentioned that if the entire overobligation had been related to the deferred attorney fees, that then it would be something we would look at differently. But we believe from looking at the records that the entire obligation was a potential overobligation of $5 million, wasn't solely because of the deferred attorney fees.

There were three reasons we noted related to that. One was that the amounts paid, according to the Courts' records, for deferred attorneys' fees in fiscal year 1998 was similar to what was paid in 1997 and similar to the amount estimated for 1998, about $31 million. The second, we would like to note the spending throughout this year, 1998, was more than what the appropriation was. We felt like the shortfall was obvious early in the fiscal year, in October of 1997. Then, like Chief Judge Wagner has mentioned, the discretionary pay raise which became effective in December 1997 for fiscal year 1998, about $2.8 million, at that time the shortfall was known. For those three reasons, we feel like there is still a potential overobligation of $5 million. That would be a violation of the Anti-Deficiency Act.

Mr. MORAN. Given the way you explain it, the context, it appears to be a different situation than what was addressed by Chief Judge Wagner in that your explanation, as I understand it, Chief Judge——

Judge WAGNER. What do you mean by that?

Mr. MORAN. I am going to explain what I mean. As I understand it, you are saying that because you had an obligation to, for example, pay the court-appointed attorneys' fees, to process whatever cases came before the court, that you would have to spend that money. But what we are understanding is that early on, at the very beginning of the fiscal year, there was a realization that there was a shortfall. You then made a conscious decision within your discretion to exacerbate that shortfall by granting the pay raise and to continue on a spending level that was clearly in excess of the amount that was available through appropriations.

That is my understanding, my interpretation, of what Ms. Jarmon just said more articulately, but that seems to be a different situation than what you described.

I don't want to be argumentative. You disagree?

Judge WAGNER. I don't want to be argumentative either, but I think one thing is we are trying to interpret a statute and a factual background without all of the facts and without all of the legal positions. Those kinds of things are probably best left to lawyers putting this together.

COURTS FAILED TO ACKNOWLEDGE THAT FUNDS WERE LIMITED

But just from the standpoint of the raise factually, we received a recommendation for the pay raise from our staff, which we were assured we could cover. We believed that, and we voted on that, and it was passed by the Joint Committee. That can't change.

But the reality is we did not realize that we were in a dangerous posture at that time. We just did not realize it was a dangerous posture for a number of reasons. It never occurred to us that, contrary to all assurances that we received, that there could not be an adjustment between the two agencies. And we didn't even rely on that for the pay raise. As far as I know, the pay raise had nothing to do with the adjustment. The pay raise had to do with your looking at your budget, somebody recommending to you that these numbers will support these numbers, and we approved the pay raise. That was a long way before anything occurred with the lawyers.

I do think—I wanted to respond to one thing you had said regarding this obligation business. As you know, we delayed payments because we did not want to spend out money that would violate the Anti-Deficiency Act, and it wasn't just the 1999 Act upon which we relied. We also relied upon assurances by—well, I don't want to say by whom, but we relied upon our assurances that since 1976, this statute had been set up in a certain way, and it was good common sense that the statute is set up in a certain way, so that that was the only account that we could defer. And we deferred the attorney's fees to avoid violating the Anti-Deficiency Act.

[CLERK'S NOTE.—Regarding the deferral of attorney fees, the "deferral" of any obligation does not eliminate or void the obligation; the obligation has already been incurred and is not dependent on whether payment of the obligation occurs or is deferred. A violation of the Anti-Deficiency Act (31 U.S.C. 1341) occurs at the time of the overobligation; not at the time of payment. Chief Judge Wagner's preceding statement regarding "* * * assurances * * * since 1976 * * *" is not supported by the hearing record, and in fact, appears to be in direct contravention to the specific purpose for which the language was requested by the Courts in their FY 1976 budget. Language in the FY 1976 DC Appropriations Act (PL 94-333; 90 STAT. 787) states "* * * That $2,895,000 of this appropriation (to remain available until expended) shall be available for obligations incurred in fiscal year 1975 and fiscal year 1976 for the compensation and reimbursement of attorneys appointed under the District of Columbia Criminal Justice Act of 1974 * * *". Judge Harold Greene, Chief Judge of the DC Superior Court, testified on December 9, 1975, that "We have so far paid out $1,758,132 to attorneys and others in fiscal year 1975 obligations. We expect 2,000 to 3,000 more vouchers to come in. Generally those vouchers may be requests that relate to the more complex and long, drawn-out cases * * *". "* * * we would be able to use part of the additional $1 million * * * to pay off some of the 1975 obligations * * *". "We believe that, because of the peculiarities of the system, where the obligation is incurred when the lawyer is appointed, but his bill doesn't come in until the case is over, it takes many months, sometimes after the fiscal year is over until we know exactly how must actually needs to be paid." In addition, the Courts' printed justifications state "The proposed language will allow for the payment of fiscal year 1975 obligations which may exceed the amount already appropriated for fiscal year 1975 ($1,995,000) out of the amount requested in the fiscal year 1976 budget." (see pages 187, 188, 195, 199, 207 and 222, part 2, FY 1976 hearings before House DC Appropriations Subcommittee.) *There is absolutely nothing in the printed justifications or in the Courts' testimony to support the notion that the language carried in the FY 1976 and subsequent DC appropriations Acts was intended to allow the Courts to defer payments to court-appointed attorney's or to allow the Courts to apply the unused*

funds derived from the deferred payments to pay for other Court functions. Clearly the language that was justified by the Courts and approved by the Congress was intended to allow the Courts to use current-year appropriations to pay prior year obligations for which the vouchers were received by the Court in the current year; not to defer current year obligations and use the funds gained from the deferral for other Court functions. It appears the Courts have taken language requested for a particular situation and used it for situations contrary to the justified purpose.]

Judge WAGNER. I don't know how the Federal courts do this, but I think we probably should look and see, because I am sure they run into the same problem with this kind of situation.

Mr. MORAN. I have other questions on the fiscal year 2000 budget, but I will wait for another round.

Mr. ISTOOK. Right. We obviously have been a little liberal on the 5-minute rule.

Judge WAGNER. I wanted to know if my colleagues wanted to say anything.

Mr. ISTOOK. Let's make sure the Committee Members have a chance to explore things. If you want to defer to them, you can do that.

Mr. Aderholt.

Mr. ADERHOLT. I have no questions.

Mr. ISTOOK. All right, back in my lap. That is fine.

JUDGES MUST ACCEPT CONSEQUENCES OF THEIR MISTAKES

You know, I think as we look at this, judges make mistakes, too, just like the rest of us. Judges have to accept the consequences of those mistakes.

Judge WAGNER. Oh, absolutely.

COURTS SPENDING PLAN RAISES QUESTIONS (SEE PP. 460–461)

Mr. ISTOOK. The concern here is not just looking back, but also there is a question of where are we now? Is there any reason to anticipate, and perhaps, Ms. Jarmon, I don't know to what extent you may have looked at this issue. But looking at the current situations and projecting forward, let me ask you, and if you have not looked at this, we may need to ask you to do so. Is there any reason to anticipate that there will be further problems during the current fiscal year regarding the court system coming in within budget?

Ms. JARMON. We did receive a draft spending plan from the Courts for fiscal year 1999, which does show that there is a spending plan that matches the appropriation received in '99 of $121 million. We were a little concerned when the spending plan does show that several months toward the end of the fiscal year, the amounts for the court-appointed attorneys are expected to come from refunds and reimbursements. I am not sure if the Chief Judge would elaborate on what that is. On the plan it shows it is supposed to come from refunds and reimbursements to be received in the fiscal year.

Mr. ISTOOK. Can you tell us during which months of the fiscal year you are speaking and how much those refunds and reimbursements are?

Ms. JARMON. I will let Steve Haughton elaborate on that.

Mr. HAUGHTON. Based on the spending plan, which includes actual costs through February of 1999 and projections for the remainder of the year, the spending plan identifies 121 million, based upon $31 million being budgeted for the CCAN and CJA attorneys.

However, it has raised a couple of red flags for us, because in the conference report for the '99 appropriation, it specifically identified that $31 million, $31.9 million, was supposed to be roped off for CJA and CCAN. In addition to that, other funds from that appropriation were supposed to be used for the deferred '98 amounts that would carry forward to '99. So based upon that, we were expecting to see a budgeted amount of either $36 million for CJA and CCAN, or having the $4 million that was deferred and used to pay for '98 obligations removed from the total budget to show $117 million available for '99. We didn't see that.

What we did see were asterisks explaining that basically from June through September CCAN payments and for the middle of August the CJA payments would need to be funded through either reimbursements, refunds or reprogramming. We had basically just spoken with the Fiscal Officer to try to get additional information. We didn't know exactly what refunds or reimbursements were expected to cover or to provide the additional funds necessary to pay those indigent services for the remainder of the year.

Ms. JARMON. So the answer to your question, it starts in July or August, according to the courts spending plan.

Mr. ISTOOK. Let me make sure I understand correctly. First let me ask, and give me the different figures, which was it that was June to September, and which was August to September?

Mr. HAUGHTON. The CCAN program, which is Counsel for Child Abuse and Neglect program.

Mr. ISTOOK. That was June.

Ms. JARMON. That is correct. And CJA, midway through August and September, the Criminal Justice Act program.

Mr. ISTOOK. And the total amount of those funds that they project will be going to legal defense costs but coming from reimbursements, refunds and reprogramming?

Mr. HAUGHTON. Expected.

Mr. ISTOOK. Yes, anticipated to come from those reimbursements and so forth, what is the dollar amount of those?

Mr. HAUGHTON. It is estimated in the spending plan $4.1 million to $5.1 million.

Mr. ISTOOK. Okay. So I want to make sure I understand correctly what you are saying. Of their plan to pay current-year indigent defense costs, which is approximately $31 million overall, during the latter part of the year, they project that $4 to $5 million of it must come from the cash flow that will come from reimbursements, refunds and reprogramming as opposed to being already guaranteed from appropriated funds?

Mr. HAUGHTON. Correct.

FY 1998 SPENDING PLAN SHOWED OVERSPENDING

Mr. ISTOOK. Okay. And do you know if that is consistent with how they have mapped out their spending plans in prior years?

Mr. HAUGHTON. This is a little different from the spending plans which we had seen in the prior years. Last year, in fiscal year '98

up through April, their spending plan cost projections were at a level that was in excess of the funds that were actually available, as Ms. Jarmon had mentioned, and it wasn't until that time when the Courts had made a determination that they would consider deferral of CJA and CCAN payments for the last 3 months of the year that they went back to the spending plan and reduced the amounts that they had originally estimated for the CJA and CCAN programs for 1998.

AMOUNT OF PRIOR YEAR REIMBURSEMENTS

Mr. ISTOOK. Do you know what is the total amount of projected reimbursements, refunds and reprogrammings for the entirety of FY '99 and do you know whether, if you take a comparable period, whether it be June to September of last year or of any prior year, there has typically been a flow of $4 to 5 million available from those categories? Do you have that information?

Mr. HAUGHTON. We don't have any information for fiscal year 1999, but in '98 and the prior years, refunds were in the ball park of $300,000 to $500,000.

Mr. ISTOOK. That is a full year?

Mr. HAUGHTON. That is correct.

Mr. ISTOOK. Refunds, $300,000 to $500,000.

Mr. HAUGHTON. Last year, '98, was the first year they had reimbursements, which came from the Court Services Trustee for the adult probation program. That was a 1-year item. So we are not—I don't expect that there will be any reimbursement for '99 from that. In '98 it was approximately $7.8 million.

Mr. ISTOOK. It would sound like most of that would depend upon reprogramming. Do you have any idea what reprogramming that would be?

Mr. HAUGHTON. We are not aware of that.

Mr. ISTOOK. Thank you very much.

COURTS RELYING ON REIMBURSEMENTS TO PAY FOR INDIGENT DEFENSE PROGRAMS

Let me ask, can you flesh out what the gentleman was testifying to regarding whether, in order to meet the legal defense system needs during the current fiscal year, you are relying upon reimbursements, refunds and reprogrammings?

Judge WAGNER. I have to defer to the Executive Officer on that. Unfortunately our Fiscal Officer couldn't be here. I don't know if our Executive Officer is prepared to respond to that or not.

Mr. HAMMOND. We are depending upon a combination of both reimbursements as well as the appropriation. That is part of the entire spending revenue for the Courts. We usually project very conservatively with respect to those reimbursements. We have had very, very good results in past years in those.

Mr. ISTOOK. First, is it correct for the current fiscal year, in order to be able to pay the incurred legal defense costs out of FY '99 dollars, that in order to do so, you are relying in the latter part of the year on approximately $4 to $5 million from reimbursements, refunds and reprogramming?

Mr. HAMMOND. Yes, but not just in the latter part of the year. We will be relying on that level of revenue coming in throughout the year to cover those costs.

Mr. ISTOOK. Can you tell us how much of that comes from reimbursements, how much from refunds and how much from reprogramming?

Mr. HAMMOND. Most all from reimbursements.

Mr. ISTOOK. So reimbursements——

Mr. HAMMOND. No reprogrammings. Those reimbursements are primarily the reimbursements from our Title IV(E), Title IV(D) programs. Those are the primary reimbursements that we receive.

Mr. ISTOOK. So you are saying you are expecting $4 to $5 million worth of reimbursements. Flesh out for me what programs you are describing from which you expect to receive reimbursements.

Mr. HAMMOND. These are reimbursements primarily from the child support program, of which only costs the District roughly about—I am sorry, the Federal government picks up 66 percent of the cost of running the child support program. We are responsible for the collections area for that program, as well as what we call the IV(E) program, which is the foster care payments as well. Foster care processing, I am sorry; foster care, the processing of those cases.

REIMBURSEMENTS—CHILD SUPPORT AND FOSTER CARE

Mr. ISTOOK. How much of that is from the child support and how much from the foster care?

Mr. HAMMOND. I will have to provide you with that, Mr. Chairman.

Mr. ISTOOK. Sure.

[The information follows:]

REIMBURSEMENTS

	Actual FY1998	Estimated FY1999
Child Support Enforcement IV–D	$1,995,332	$2,250,000
Foster Care/Child Abuse/Neglect IV–E	532,965	550,000
Total	2,528,297	2,800,000

COMPARISON OF REIMBURSEMENTS WITH PRIOR YEARS

Mr. ISTOOK. Let me check something here. Let me see if I can find this. I know in some of the material you provided to us, there is some information about child support reimbursements. I am not sure I saw that. This is a greater amount than past years, correct? Is this a significantly greater amount for this reimbursement than the child support and the other program compared to prior years?

Mr. HAMMOND. This is basically consistent with what we have had in past years.

Mr. ISTOOK. You are saying this is not an anomaly, as he suggested, but this has been consistent with how it has been in past years?

Mr. HAMMOND. Yes. We also have a reimbursement from the offender supervision agency as well. We are still taking some of the

costs for the operation of that particular agency as well. So there will be a portion of this that will come in from the offender's supervision agency as well.

Mr. ISTOOK. You can appreciate, I am sure, that we want to make sure there are no surprises——

Mr. HAMMOND. That is right.

Mr. ISTOOK [continuing]. Lurking here, and trying to distinguish, is this something that is distinct from past years and maybe a predictor of a surprise to come, or is this something that is consistent with those years. That is what I want to know.

COURT ASSURANCE OF ADEQUATE FUNDING FOR FY 1999

Mr. HAMMOND. As Chief Judge Wagner indicated, Mr. Chairman, 1998 was an aberrant year. We have never seen one like it. I hope we never see another one like 1998. 1999 is not like 1998. We will have adequate funding in order to cover the costs of the program as outlined in the statute for this fiscal year.

Mr. ISTOOK. Okay. Mr. Moran, I yield to you.

CONGRESSIONAL INTENT IGNORED BY COURTS—FY 1999 SPENDING PLAN

Mr. MORAN. Well, thank you very much, Mr. Chairman.

If what you just said, Mr. Hammond, is the case, that fiscal year 1999, is the normal year and last year was an abnormal year, it seems to me that zeroing out the Counsel for Child Abuse and Neglect program in June, July, August and September, is a decision that is contrary to congressional intent and direction and is consistent, in fact, with the decision made in fiscal year 1998 to shortchange the court-appointed attorneys program, because you have done the same thing with the Criminal Justice Act program, cutting it in August and zeroing it out in September, and then relying upon a hope that there will be adequate refunds and reimbursements that will meet these expenditure requirements.

You don't have the $36 million that you were directed to have budgeted for court-appointed attorneys in your spending plan. You have not budgeted for that. You have assumed that additional money is going to come in at the end of the year. In other words, that program expenditure is at greater risk than any other component part of your budget.

I have the spending plan here in front of me. Is it all right to share this with the witnesses? This is your information, so I don't see why it would be wrong to share it with you. We got it from you. But—I was hoping you would see it, too, Judge.

[CLERK'S NOTE.—See pages 460–461 for copy of spending plan referred to.]

Judge WAGNER. We are going to look at it, but I don't recall seeing this.

Mr. MORAN. I know Mr. Hammond is familiar with it. I have the conference report on the FY 1999 D.C. appropriations bill that talks about the fact that "* * * it appeared that the Courts had a balance of $4 million, or twice as much as was needed, for the remaining month of September 1998" for attorneys for indigents. This is the paragraph that we put in because of our concern and

priority. "However, additional information supplied at the request of certain subcommittee members showed that"—I think that is probably myself and Mr. Taylor—"showed that the Courts had reduced payments in July 1998 by two-thirds and had made no payments in August 1998. As a result, the Courts owe more than $5.7 million to attorneys for indigents as of September 30, 1998.

"Accordingly, to avoid a similar situation this year, the Courts are directed to use the FY 1999 allocation of $31,936,000 for court-appointed attorneys for that purpose and for that purpose only. The Courts are further directed to pay immediately all obligations carried over from FY 1998 and prior years using other funds from their FY 1999 appropriation."

We directed $31.9 million to be spent for court-appointed attorneys out of this appropriation, and yet the budget we are shown shows that you have—there is a shortfall budgeted of, what, I guess about $5 million? You are budgeted to be about $5 million short, which seems to be in direct contrast to what we directed you to do.

I don't understand why this is happening.

Mr. HAMMOND. Let me see if I can muddy this up a little more.

Mr. MORAN. Oh, good. I just want you to see what I was talking about.

Mr. HAMMOND. The spending plan is just that. It is a spending plan. We adjust that monthly as additional revenue comes in, because you also don't know exactly how fast the revenue is going to come in a given year. So that is why we adjust this on a monthly basis.

The spending plan that you have right now, yes, does not reflect an amount in those categories for September. But as you go through the fiscal year, the revenue comes in at a clip that also allows us to put in the plan not money that is projected, but money that we have on hand and can show exactly how it is being spent.

Mr. MORAN. I understand what you are saying, Mr. Hammond, but you didn't do that to any other line item of the budget. That is the only line item in the budget, the two of them together; those are the two categories for paying court-appointed attorneys, and those are the only line items in the budget that are deliberately zeroed out. In other words, you are putting them at greater risk than any other component part of the budget, making them dependent upon additional reimbursements and fees that may or may not come in during the course of the year.

We had a specific directive: "Spend $31.9 million out of the money we budgeted for 1999 obligation as discussed, we granted you, in this fiscal year '99 appropriation." Yet we look at the budget, and it is not there. You budgeted what? What does it say, Judge Hamilton, is actually budgeted? It is not $31.9. It must be about 26——

Judge HAMILTON. $26.6 million.

COURTS' FY 1999 SPENDING PLAN

[CLERK'S NOTE.—The Courts FY 1999 Spending Plan referred to by Congressman Moran follows:]

DISTRICT OF COLUMBIA COURTS FISCAL YEAR 1999 SPENDING PLAN—REVISED—THROUGH 3/31/99 FISCAL YEAR 1999

[In thousands of dollars]

	Oct. 1999 to Feb. 1999	March	April	May	June	July	Aug.	Sept.	Totals
Court of Appeals:									
Personnel Comp.	1,721	407	370	365	400	400	440	445	4,548
Personnel Benefits	275	59	57	56	70	70	70	69	726
Travel & Trans. of Persons	2	2	3	3	11	2	1	1	25
Transportation of Things	.....	.....	1	1	.....	1	.....	.....	3
Rent, Comm. & Utilities	25	29	.....	.....	.....	7	3	4	68
Printing & Reproduction	15	1	3	4	4	4	3	3	36
Consulting & Other Serv.	262	20	368	252	194	368	60	60	1,584
Supplies & Materials	107	9	5	3	2	6	5	5	142
Acquis of Capital Assets	69	7	200	200	122	40	40	29	707
Total	2,476	534	1,007	884	803	898	622	615	7,839
Superior Court:									
Personnel Comp.	18,768	4,291	3,870	3,870	3,870	3,870	3,870	3,891	46,300
Personnel Benefits	3,506	792	719	719	719	720	720	720	8,615
Travel & Trans of Persons	46	13	7	7	7	7	7	6	100
Transportation of things	6	.....	1	.....	.....	1	.....	.....	8
Rent, Comm. & Utilities	1,494	707	(385)	200	82	50	100	90	2,338
Printing & Reproduction	200	2	100	.....	.....	88	.....	.....	390
Counsel for Child Abuse & Neglect Program	3,294	627	565	565	(1)	(1)	(1)	(1)	[2] 5,051
Consulting & Other Serv. (other than CCAN)	5,955	1,002	580	580	[1] 200	(1)	(1)	(1)	8,317
Supplies & Materials	431	175	50	25	25	50	25	19	800
Acquis of Capital Assets	204	30	100	20	20	100	20	6	500
Total	33,904	7,639	5,607	5,986	4,923	4,886	4,742	4,732	72,419
Court System									
Personnel Comp.	2,114	459	440	420	440	440	440	459	5,212
Personnel Benefits	392	89	77	77	77	77	78	78	945
Travel & Trans of Persons	4	.....	3	2	2	2	2	.....	15
Transportation of Things	.....	.....	1	.....	.....	.....	.....	.....	1
Rent, Comm. & Utilities	.....	750	615	.....	.....	538	.....	.....	1,903

Printing & Reproduction	15	.....	15	20	10	7	5	5	77
Criminal Justice Act Program	4,497	3,128	1,924	1,924	1,924	1,924	[1]1,302	([1])	[2]26,623
Consulting & Other Serv., (other than CJA)	1,415	14	2,060	.....	.....	2,060	.....	.....	5,549
Supplies & Materials	894	(500)	2	2	2	2	2	3	407
Acquis of Capital Assets	5	1	2	.....	.....	2	.....	.....	10
Total	19,336	3,941	5,139	2,445	2,455	5,052	1,829	545	40,742
Operating budget grand totals	55,716	12,114	11,753	9,315	8,181	10,836	7,191	5,892	121,000
Capital budget	227	925	2,000	2,000	1,000	848	.....	.....	7,000

[1] Funding requirements will be provided either through reprogrammings or the use of refunds and reimbursements. Refunds and reimbursements are expected to amount to between $4.1 million and $5.1 million.
[2] $26,623 plus $5,051, total $31,674

RELIABILITY OF "CONGRESSIONAL APPROPRIATION" COMPARED WITH "REIMBURSEMENTS"

Mr. ISTOOK. Let me mention this: When you have an appropriation from the Congress of the United States, you know that money will materialize. It will be available. When you have cash, you have to budget your cash flow, we realize that. Different streams of revenue will arrive at different times. When you have a stream of revenue from any other source, it is not as certain as knowing that you have an appropriation from the Congress.

Mr. Moran has noted that Congress said we want to make sure that this money is going to be used for this purpose. Instead you said, well, it is contingent upon the other revenue arriving.

You expressed that you have perfect confidence that the other revenue will be here. But, as Judge Hamilton noted, he feels there is a constitutional obligation to make sure that legal counsel is provided, and that it has to have a priority accordingly. The budget doesn't seem to reflect those same priorities. Sometimes priorities are said one way at one time and another way at another time.

If a shortfall materialized, if not all your reimbursements came in, if not all of your other revenue streams not coming from Congress came in, where and how would you make adjustments? According to your budget, you would be forced to make that adjustment in the legal defense program.

REIMBURSEMENT LETTERS

I think it would be very useful to us, and I would ask that you get to us immediately, when you say you are relying upon certain reimbursements, Federal reimbursements, and I am sorry, I did not memorize the different titles you recited, I would like to have in writing to this Committee written confirmation from the appropriate officials in those programs to show to this Committee saying, yes, we are going to be reimbursing the District X amount at X time, so that we can be assured that there is a reliability, that these funds are going to be materializing in a timely fashion to make sure these needs are met.

Mr. HAMMOND. That is no problem.

[The following was supplied for the record:]

Child & Family Services Agency
609 H Street, N.E.
Washington, DC 20002

Memorandum

To: John F. Schultheis
Fiscal Officer

From: Linden DeJoseph
Budget Manager

Date: May 26,1999

Subject: FY '99 Title IV-E Reimbursements

This memo acknowledges today's conversation with Mr.John Dyson.

Please be advised that the Child and Family Services Agency received your first quarter claim for court services in the amount $416,048. Along with CFSA's expenditures, your costs were reported on the initial claim to the Department of Health and Human Services. Based upon varying percentages of reimbursements, your reimbursable amount totaled $151,899. Your second quarterly claim of $348.865 will be reimbursed $122,354.

Mr.Dyson's preliminary figures of $434,000 and $365,000 in estimated costs for the third and fourth quarters are expected to generate reimbursable revenues to the courts in amounts of $152,212 and $128,010 respectively for the remaining two quarters.

If you should need additional information, please call me on (202) 724-2214.

cc: M.Mooring
J. Sprowls

Government of the District of Columbia
OFFICE OF THE CORPORATION COUNSEL
JUDICIARY SQUARE
441 FOURTH ST., N.W.
WASHINGTON, D. C. 20001

IN REPLY REFER TO:

25 May 99

Mr. John Schultheis
Fiscal Officer
District of Columbia Courts
515 5th St. NW, Room 116
Washington DC 20001

Dear Mr. Schultheis;

This is to confirm that services have been provided by the D.C. Superior Court under cooperative agreement with the Office of the Corporation Child Support Enforcement Division. These services include central payment processing and assistance in enforcement of child support cases. We have received a budget for approximately $3.7 million for FY 99 which would be reimbursed using 66% federal funds.

We are currently processing invoices for expenditures during the first quarter of this year of $ 753,618 and for the second quarter of $ 858,769 and payment will be made using the appropriate federal reimbursement rate.

The DC Superior Court provides essential child support services and helps to improve the financial lives of thousands of residents of the District of Columbia I hope this information has been helpful. If you have questions please call me at (202) 724-1548.

Sincerely,

Philip L. Browning
Director Child Support Enforcement Division

cc: Jo Anne Robinson

Court Services and Offender Supervision Agency
for the District of Columbia
Office of the Trustee
Washington, DC 20004

April 8, 1999

MEMORANDUM

TO: John Schultheis
Fiscal Officer, D.C. Courts

FROM: Karin Franceschelli
Controller, CSOSA

SUBJECT: FY 1999 Reimbursements

Thank you for your March 16, 1999, request to comment on a list of potential non-personnel expenses that the Court may have incurred on behalf of CSOSA during the first quarter of FY 1999. After thorough examination of the items and comparison with our records, the attached document contains our best estimates of reimbursements due the Court during FY 1999.

Part I: "Staff Locations/Percent of Use"

We are in agreement regarding the percentage of Adult Probation occupancy of facilities, except in regard to Building B. Currently, Adult Probation occupies 49% of Building B available space; however, if the proposed interim housing plan is implemented, Adult Probation space will be 54% of the total available space.

Location:	Percent of Total:
Building B, 409 E Street, NW	49.0%
Moultrie Courthouse, 500 Indiana Avenue, NW	nominal
1418 Good Hope Road, SE	100.0%
1707 Kalorama Road, NW	50.0%
401 New York Avenue, NE	66.6%
Hamilton School, 1401 Brentwood Parkway, NE	40.0%

Property costs were calculated based on the percentage of the total square footage available (if known) from lease information previously provided by the Court. Building B and Moultrie Courthouse estimates are calculated based on an occupancy charge for District municipal facilities ($6.59 per sq. ft.). This occupancy charge includes all

utilities, security and custodial services, plus it includes a 1% administrative fee. Charges for 1418 Good Hope Road are based upon calculated telephone services and postage, since CSOSA assumed rent, property tax, utilities, security and custodial services for this facility effective FY 1999. There was no information regarding charges for the Hamilton School at the time of this estimation. Please provide any detail in regard to charges incurred by the Court for this field site.

In addition, telephone services are estimated based on $30 per person per month and includes funding for fax lines. Postage is estimated by location at $50 per position per annum.

Part II: Urban Services Program:

It is proposed that the Urban Services boot camp will operate two cycles in March/April and June/July 1999 for adult probationers. The estimate is based on the FY 1998 amount that was reimbursed to the Court for 50% of the operating expenses of the program. A copy of the Court's new contract with the Northern American Family Institute has been requested. As you may be aware, the Trustee has committed to only pay for direct contract costs for two classes in FY 1999.

Part III: Other Costs:

CSOSA does not anticipate any charges for printing, employee mileage allowance, training, supplies, data processing support and office machine maintenance since these expenses are directly performed and funded by CSOSA for its employees. Since the Pretrial Services Agency and the Probation Drug Testing Unit provide drug testing services for the Court, the Court has not incurred any drug testing charges on behalf of the Trustee. It is recommended that the Court continue to pay for the expenses related to the vehicle that is used for electronic monitoring, since CSOSA provides electronic monitoring services for up to 100 juveniles annually at no cost to the Court.

As you know, charges for Domestic Violence staff salaries and benefits for 2.7 pay periods in the 1st Quarter have already been reimbursed. Information regarding that payment is included in the attached reimbursement schedule. # 151,642.52 transferred on 3/17/99

If you have any questions about the information contained in this memorandum or the attached document, please call me at 202-220-5713. I look forward to working with you to resolve these reimbursement issues as soon as possible.

Attachment

cc: Jay Carver, Trustee
Monty Wilkinson, Deputy Director
Jim Williams, Associate Director for Management and Administration

Reimbursement to District of Columbia Courts for Adult Probation Support
FY 1999 Reimbursement Schedule
(Current as of April 7, 1999)

Description	Annual Estimate	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Y-T-D Reimbursement	Remaining Balance	Comments
Domestic Violence Staff								
Salaries	120,012.50	120,012.50	0.00	0.00	0.00	120,012.50	0.00	
Benefits	31,630.02	31,630.02	0.00	0.00	0.00	31,630.02	0.00	
Total, Domestic Violence Staff	151,642.52	151,642.52	0.00	0.00	0.00	151,642.52	0.00	Reimbursement for 2.7 pay periods.
Building B/409 E St., NW								Adult Probation current occupies 43,700 sq. ft. (inlcuding shared space) or 49% of Building B. If interim housing plan is implemented, Adult Probation space will be 54%. Estimate based on MOU with the District for occupancy at $6.59 per sq. ft. which includes a 1% fee. Telephone services are based on $30 per position per month; postage assumes $50 per position.
Occupancy Charge:								
Utilities								
Security								
Custodial Services								
Total, Occupancy Charge	287,983.00	71,995.75	71,995.75	71,995.75	71,995.75	0.00	287,983.00	
Telephone Services	46,800.00	11,700.00	11,700.00	11,700.00	11,700.00	0.00	46,800.00	
Postage	6,500.00	1,625.00	1,625.00	1,625.00	1,625.00	0.00	6,500.00	
Total, Building B/409 E Street, NW	341,283.00	85,320.75	85,320.75	85,320.75	85,320.75	0.00	341,283.00	
Courthouse/500 Indiana Ave., NW								During FY99, it is expected that the following teams will be located in the Moultrie Courthouse: 6 staff in the Traffic Alcohol Program (Rm. 1230) and 5 staff in the Intake Control Center (Rm. 4206) This calculation assumes that Adult Probation occupies 1,200 sq. ft. in the Courthouse. How is security funded in the Courthouse? Telephone services are based on $30 per position per month; postage assumes $50 per position.
Occupancy Charge:								
Utilities								
Security								
Custodial Services								
Total, Occupancy Charge	7,908.00	1,977.00	1,977.00	1,977.00	1,977.00	0.00	7,908.00	
Telephone Services	3,960.00	990.00	990.00	990.00	990.00	0.00	3,960.00	
Postage	550.00	137.50	137.50	137.50	137.50	0.00	550.00	
Total, 500 Indiana Ave., NW	12,418.00	3,104.50	3,104.50	3,104.50	3,104.50	0.00	12,418.00	
1418 Good Hope Road, SE								Adult Probation occupies 100% of this facility, or 6,835 sq. ft. Effective FY99, CSOSA assumed the rent, utilities, custodial services and security costs for the AFU. Phone and postage as above.
Telephone Services	10,800.00	2,700.00	2,700.00	2,700.00	2,700.00	0.00	10,800.00	
Postage	1,350.00	337.50	337.50	337.50	337.50	0.00	1,350.00	
Total, 1418 Good Hope Road, SE	12,150.00	3,037.50	3,037.50	3,037.50	3,037.50	0.00	12,150.00	
1707 Kalorama Road, NW								Adult Probation occupies 50% of this facility, or 9,440 sq. ft. of 18,880 sq. ft. Property estimates based on information provided by the Court. Phone and postage are calculated as above.
Rent	69,000.00	17,250.00	17,250.00	17,250.00	17,250.00	0.00	69,000.00	
Property Tax	5,271.00	1,317.75	1,317.75	1,317.75	1,317.75	0.00	5,271.00	
Utilities	6,000.00	1,500.00	1,500.00	1,500.00	1,500.00	0.00	6,000.00	
Security (estimate)	66,500.00	16,625.00	16,625.00	16,625.00	16,625.00	0.00	66,500.00	
Custodial Services	12,762.00	3,190.50	3,190.50	3,190.50	3,190.50	0.00	12,762.00	
Telephone Services	3,960.00	990.00	990.00	990.00	990.00	0.00	3,960.00	
Postage	550.00	137.50	137.50	137.50	137.50	0.00	550.00	
Total, 1707 Kalorama Road, NW	164,043.00	41,010.75	41,010.75	41,010.75	41,010.75	0.00	164,043.00	

Description	Annual Estimate	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Y-T-D Reimbursement	Remaining Balance	Comments
401 New York Ave., NE								Adult Probation occupies 66.6% of this facility, or approx. 8,380 sq. ft. of 12,583 total available sq. ft. Property estimates based on information provided by the Court. Phone and postage are calculated as above.
Rent	179,953.63	44,988.41	44,988.41	44,988.41	44,988.41	0.00	179,953.63	
Property Tax	3,330.00	832.50	832.50	832.50	832.50	0.00	3,330.00	
Utilities (No additional charge)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Security (estimate)	66,750.00	16,687.50	16,687.50	16,687.50	16,687.50	0.00	66,750.00	
Custodial Services	22,598.71	5,649.68	5,649.68	5,649.68	5,649.68	0.00	22,598.71	
Telephone Services	9,000.00	2,250.00	2,250.00	2,250.00	2,250.00	0.00	9,000.00	
Postage	1,200.00	300.00	300.00	300.00	300.00	0.00	1,200.00	
Total, 401 New York Ave., NE	282,832.34	70,708.09	70,708.09	70,708.09	70,708.09	0.00	282,832.34	
1401 Brentwood Parkway, NE	???							Adult Probation occupies 40% of the space assigned to the Court at the Hamilton School. Does Hamilton School charge the Court for utilities, phone, postage and custodial services? If so, please provide detail. What are the Court's security costs for Hamilton School?
Utilities								
Security								
Custodial Services								
Telephone Services								
Postage								
Total, 1401 Brentwood Parkway, NE								
Urban Services Program								Based on the FY 1998 annual amount that was reimbursed to the Court for 50% of the operating expenses of the program, $496,000 / 6 cycles per year is $82,667 per cycle. A copy of the Court's new contract with the Northern American Family Institute has been requested so that a better estimate can be made. The Trustee has committed to direct contract costs for 2 classes.
March/April Cycle	82,667.00	0.00	82,667.00	0.00	0.00	0.00	82,667.00	
June/July Cycle	82,667.00	0.00	0.00	82,667.00	0.00	0.00	82,667.00	
Total, Urban Services Program	165,334.00	0.00	82,667.00	82,667.00	0.00	0.00	165,334.00	
GRAND TOTAL	$ 1,129,702.86	$ 354,824.11	$ 285,848.59	$ 285,848.59	$ 203,181.59	$ 151,642.52	978,060.34	

D.C. COURTS
REIMBURSEMENTS

	Actual FY 1997	Actual FY 1998	Actual FY 1999	Projected FY 2000
REIMBURSEMENTS				
PRIMARY				
Child Support Enforcement IV-D	1,783,950	1,995,332	2,294,641	2,200,000
Foster Care/Child Abuse/Neglect IV-E	433,337	532,965	553,334	500,000
Domestic Violence Staff Payroll	-	-	151,643	-
Offender Service Trustee	-	7,822,782	1,106,703	715,000
Crime Victim Administrative Exp.	-	278,598	266,245	-
OTHER				
D.C. Dept. Human Services/Security Bldg..B	-	100,214 *	99,133	100,000
Miscellaneous Reimbursements	108,929	489,277	103,091	95,000
TOTAL	2,326,216	11,219,168	4,574,790	3,610,000

* Receivable from DC Dept. of Human Services

Mr. MORAN. Thank you, Mr. Chairman.

CHIEF JUDGE WAGNER NOT FAMILIAR WITH COURTS SPENDING PLAN
(SEE PP. 460–461)

Judge WAGNER. I wasn't familiar with your document. I hesitate to comment on what I am not familiar with.

Mr. MORAN. I understand.

Judge WAGNER. I can see the logic of what you are saying. On the other hand, I see the logic of the cash flow you are talking about. If you would like to see a revised spending plan with that $31 million in it, regardless of whether we get this reimbursement——

INDIGENT DEFENSE PAYMENTS SPECIFICALLY APPROPRIATED—COURT MADE PAYMENTS CONTINGENT

Mr. ISTOOK. Make the payments for indigent defense the priority and let other things be contingent.

Mr. MORAN. That is right.

Judge WAGNER. Well, other things may be something that nobody wants to see.

Mr. MORAN. We understand that. But as the Chairman said——

Judge WAGNER. As long as you understand that.

Mr. MORAN [continuing]. The Congress of the United States, which does appropriate the money, is responsible for the accountability for that money, stated very clearly——

Judge WAGNER. Basically it is an earmarked fund is what you are saying. You want the earmarked fund put in an earmarked category.

Mr. MORAN. We don't want it contingent upon other fees coming in. We made this money available for child abuse and neglect.

Judge WAGNER. I am troubled by that contingent basis.

Mr. MORAN. It is based upon fees and reimbursements. That is not a direct appropriation. We made a direct instruction, spend $31.9 million for the Counsel for Child Abuse and Neglect and Criminal Justice Act programs. It was a priority. Now we see the budget, and it is a dependent on nonappropriated revenue. It is more at risk than any other component.

Judge WAGNER. If it is at all possible, we will get you the kind of spending plan you wanted to see.

Mr. MORAN. Thank you, Judge.

Now, I have a welcome relief. I did have a question about the fiscal year 2000 budget. You are great people.

Mr. ISTOOK. Let the record show it has taken an hour and a half to get to this point.

Mr. MORAN. I think we finally got the answer we were sort of hoping we would get. You are terrific judges, all of you. I hear great things about Mr. Hammond from Judge Lee in Fairfax County and so on, so I don't want to be a bad guy, but this is something that we had to be insistent upon.

COURTS BUDGET INCREASING WHILE CRIME RATE DECREASING

Now, let me ask about the budget. $108 million in '98, $128 million in '99. Now you are asking for $131 million for fiscal year

2000. Going up, but the crime rate is going down. From what we understand, you have been relieved of several financial responsibilities, adult probation, domestic violence, judges' pensions, and we have a declining crime rate, so it would seem that the caseload has declined in recent years.

I think it would be helpful to supply for us what, in fact, is the caseload for the past 3 years, because while your budget is going up, it would seem that the caseload, in fact, has been going down. I know the Superior Court's Family Division caseload has diminished, but we want to know what part of that is part of this court's workload. That would be helpful for the 2000 submission.

Judge HAMILTON. Overall, the Superior Court from '97 through '98 , we had an increase in our inventory of cases from 53,766 cases to 54,513 cases, a 1 percent overall increase in the inventory.

It is true, fortunately, that crime is declining very, very substantially in the District of Columbia, and did so in FY '98. In calendar '98, there was approximately a 10 percent reduction in crime. However, there are other areas in which the court has had to take on some additional obligations. For example, in the civil division, from '97 to '98, we had a 3 percent increase in our caseload. In our Domestic Violence Unit we had a 3 percent increase in our overall caseload. In the Probate Division, we had a 3 percent increase in our caseload. So fortunately crime is going down, but other areas are going up overall. Domestic violence is one of the areas which has shown one of the greatest increases.

We also have some difficulty in adjusting to our child support enforcement area, which has been stretched to the limit as a result of trying to keep up with 10 of the requirements that have been placed on child support enforcement by switching over from child welfare to temporary assistance to needy families. The whole system is turning over. That has imposed a tremendous strain on us in trying to keep up in that very, very important area.

So in addition to that, in the Superior Court, our infrastructure has gone lacking, particularly as far as automation is concerned, for so many years. In order to continue to keep up what we have to do in a timely manner, we have to become more automated. That has placed a tremendous strain on us.

So we are still behind. As Judge Wagner has indicated, in terms of our employees' compensation, we are still behind the curve as far as what their compensation is, and a great deal of the increase which has been requested in this budget is for the purpose of trying to bring our employees up to par insofar as where their compensation is concerned.

Mr. MORAN. Thank you, Judge.

APPEALS COURT BUDGET LOWER FOR FY 2000

Judge WAGNER. Our caseload in the Court of Appeals has been relatively constant. There has not been a large fluctuation. We are actually having a reduction in our budget request this year.

Mr. MORAN. You are?

Judge WAGNER. Yes.

RECONCILING CRIME RATE REDUCTION WITH CASELOAD INCREASE

Mr. MORAN. It just seems the crime rate is actually going down, whereas the caseload, you are telling us, is going up. Does that mean our police are doing a better job? There is some other factor. There is an X factor missing in the equation to explain it.

Judge HAMILTON. While the crime is coming down, the crimes that are traditionally thought of as the part 1 crimes, for example, and the part 2 crimes—for example, felony indictments were down 3 percent. Felony preindictments were down 8 percent. Quality of life crimes were down 32 percent. However, as I said, domestic violence was up 3 percent.

Now, that grows out of the fact that there has been an enhanced awareness of the importance of domestic violence enforcement and the police department has beefed up its domestic violence enforcement. So we have had to react to that situation.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you.

I recognize, Judge, just like domestic violence, sometimes you will get matters that spill over to the criminal court, and sometimes it is a victim protective order that is reflected in the civil proceedings. I realize there is an interplay there.

Let me delve into some the things related to the 2000 budget. Several of these things and some others maybe need to be done for the record.

CIVIL FILINGS PER CAPITA VERY HIGH IN DISTRICT

I notice the material that you have supplied to me indicates, if you look on a per capita basis, per citizen basis, that the Superior Court in the District of Columbia has more suits filed per capita than any other State or similar jurisdiction, the technical difference. The next highest State—whereas the District had 31,724 filings per capita, the next highest was Massachusetts, and it was only 16,419. D.C. was about double.

If you looked at purely civil filings per capita, you show 23,363 filings per capita, again almost double the next highest State, which was New Jersey with 12,035.

Obviously there is a lot of litigiousness in the District. It may stem from different factors.

What I wanted to ask you is what is it about either the populace or the legal structure in the District which could be the underlying cause that creates this disparity between the District of Columbia and any State in the country regarding filing of civil lawsuits? I know it is not because of the Federal ones, because we are talking about the District court.

Judge HAMILTON. We dispose of approximately 90 percent of our civil cases in less than 24 months.

Mr. ISTOOK. These are filings I am describing.

Judge HAMILTON. We are the venue of choice. In other words, in a multijurisdictional incident where a person can file in the surrounding jurisdictions as well as in the Federal court, people choose to file in the Superior Court because they are assured in most cases of a disposition of their case in less than 24 months.

Now, what is the reason——

Mr. ISTOOK. You think you are getting some cases that in other jurisdictions would be filed in Federal court?

SUCCESSFUL ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Judge HAMILTON. Or some other available jurisdiction. The reason for that is because we have an extremely successful alternative dispute resolution program, which is world-renowned. People come from all over the world, Africa, South America, Europe and other places——

Judge WAGNER. Japan.

Judge HAMILTON [continuing]. Japan—to study our alternative dispute resolution. As a result of the operation of that division, we have to try only a very small number of cases. So consequently, notwithstanding those very high filings that you have just ticked off, we dispose of most of our cases in less than 24 months.

Mr. ISTOOK. Do any other witnesses have any other beliefs as to what may underlie that?

Judge WAGNER. It is the inherent nature of a tristate jurisdiction. Basically we are contiguous to Maryland and Virginia, and we have a large influx of people into the city to work, so you have events that occur here.

Mr. ISTOOK. An auto accident, personal injury case.

Judge WAGNER. Or something that occurs in a department store or whatever. But we do have—I don't know how many people they say come into the District every day to work, but it does explode our population and the opportunity for creating lawsuits.

DISTRICT HAS SECOND LARGEST BAR IN COUNTRY

Then, of course, you know, we have a very large bar here, and many people doing business in the District of Columbia and the surrounding jurisdictions. We have the second largest bar in the country. Where there are lawyers, there are lawsuits.

Mr. ISTOOK. Yes, we all know the adage about if there is one lawyer in a town, they starve; however, if there are two, they do very well.

DISTRICT GOVERNMENT CREATES SITUATIONS FOR LAWSUITS

Judge FARRELL. If I can add, too, we have a local government in the District which has never been shy in creating causes of action. For example, we have a jurisdiction which I think rightly has been something in the forefront in creating consumer protection statutes and human rights protection statutes, and these create statutory rights, and people avail themselves of them and come to court.

Mr. ISTOOK. Has anyone done some sort of report, Law Review article, trying to quantify this particular factor or these other factors? Is anyone aware of any? That would be very useful to know.

I do know, as you mentioned, within the Federal court's jurisdiction, many people denounce the litigation explosion. They will jump on lawyers and so forth. But actually it is part of the Federal court jurisdiction that is exploding because of government-created causes of action resulting from changes in the underlying law. That is what has produced an explosion there. You are saying there is a similar factor that is part of your civil filings.

Judge FARRELL. I think to a certain extent. I think our legislature has been very receptive over the years to keeping the courts open and perhaps expanding the availability of the judicial system to citizens who feel they have been aggrieved. They have done that by statute. We have no control over those actions and those causes of action being brought.

ALTERNATIVE DISPUTE RESOLUTION PROGRAM AND CHILD ABUSE CASES

Mr. ISTOOK. I wanted to ask Judge Hamilton, you mentioned the alternative dispute resolutions. I was not aware until looking through some of the material on the budget submissions that matters relating to child abuse and neglect are being handled through the ADR procedures. How long has that been occurring, and how many such cases are being handled in that system?

Judge HAMILTON. It is a new program which is grant-funded, and I believe it is about 18 months, is it?

Mr. HAMMOND. Less than that; about 12 months.

Judge HAMILTON. And we are trying to expand it to include all of our cases involving either abuse or neglect. We are just now handling either neglect or abuse, I don't know, but not all of the cases. We find that is a very, very effective and efficient way to dispose of those cases without subjecting those families to the litigation process.

Mr. ISTOOK. I have got to tell you, I have a certain level of discomfort in thinking of child abuse and neglect cases being handled that way, although I do understand also, of course, sometimes things are reported that really don't rise to the level. I would appreciate getting further information on how many cases that relate to child abuse and neglect are going through alternative dispute resolution and what are the criteria for when such an instance qualifies for that process and for when it may be kicked out of that process and back into court, obviously for the protection of the children. I would certainly like to have a lot more information on that.

Judge ALPRIN. Mr. Chairman, one of the reasons, I think, for the program is that the number of child abuse and neglect cases has gone from about 500 in the mid-'80s to about 1,800 last year and the year before. It is to handle that explosion in child neglect and abuse cases, mostly neglect, about 80 percent, that I think a program like that was developed.

Mr. ISTOOK. All right. I just realize that is a very tricky area. Dispute resolution, you are talking about a dispute over whose property line is on which side of the fence or where the fence is located, things like that. Neighborhood disputes are one thing with alternative dispute resolution. When you are talking about the safety and well-being of a child, it gets very tricky. That is why I would be interested in knowing what the guidelines are.

ALTERNATIVE DISPUTE RESOLUTION—GUIDELINES FOR CHILD ABUSE AND NEGLECT CASES

Judge HAMILTON. I agree, Mr. Chairman. I can assure you we do have a very carefully crafted protocol with respect to which cases are processed in that. I just don't have it at my fingertips.

Mr. ISTOOK. Right. I recognize that. I would appreciate receiving that.

[The information follows:]

Excerpt from the D.C. Courts June 24, 1999 response to the Committee's questions:

Mediation, as a form of alternative dispute resolution used in the Courts, is an informal and confidential process in which an impartial third party facilitates a discussion of interests and issues. In the area of child abuse and neglect, parties in mediation address family needs and services to be provided, as well as issues related to the adjudication of neglect. Recognizing the important role that mediation might play in helping to expedite permanency for children, both the Health and Human Services Administration, through its Court Improvement Program, and "Adoption 2002: The President's Initiative On Adoption and Foster Care, Guidelines for State Legislation Governing Permanence for Children," asked states to study the feasibility of employing alternative dispute resolution techniques as a method for expediting permanency. Presently, about half of the states either have implemented or are investigating the development of such programs.

The D.C. Courts' Child Protection Mediation Program, like other alternative dispute resolution (ADR) mechanisms, seeks to build a consensus to reach an outcome in a more efficient manner than through litigation. In Child Protection cases, the products of the case are a "stipulation" that the abuse or neglect occurred and a plan for rehabilitative services for the family. Criminal charges may be pursued by the U.S. Attorney's Office outside of this forum.

Child Protection Programs have two federally mandated goals: first and foremost, protection of the best interest of the child and, second, reunification of the family (if possible). The service plan—whether reached through mediation or imposed by a judge—includes placement of the child, services for the child (e.g. counseling, special education) and services for the parents (e.g. anger management classes, parenting classes, job training).

The D.C. Courts' Child Protection Mediation pilot program ran from April 1998 to April 1999, funded by a grant. In developing the pilot program, the Courts examined a number of child protection ADR programs around the country, incorporating the best aspects of these programs. All cases are screened so that parties who lack capacity to participate or where domestic violence issues predominate, are not allowed to enter mediation. In the pilot program, of the 88 eligible referrals, 40 cases were assigned to mediation. More than half of the mediated cases reached a full agreement, and 89% reached at least partial agreement. The Courts are currently analyzing the program and expect to make some adjustments prior to permanent implementation.

In the cases selected for mediation, the mediation session replaced the normally scheduled status hearing, although at any point in the mediation, or in the case of an unsuccessful mediation, the parties could stop the proceedings and request and receive a status hearing. All other Court proceedings remained in place irrespective of whether a case had been designated for mediation. At the conclusion of mediation, if an agreement was reached, it was presented to the judge for approval.

INTEGRATED JUSTICE INFORMATION SYSTEM

Mr. ISTOOK. I am also interested in the $2.5 million in your budget request for the integrated justice information system where your bringing together some different computer systems to try to track all aspects of caseload-case management. I realize this has been greatly needed in a lot of areas within the District generally, to bring computer systems up to date, but I also know how tricky it can be.

I will tell you a bit of background. When I was on the library board that covers all the public libraries in Oklahoma City and Oklahoma County, I had to make a bunch of decisions about going to an on-line, on-time computer system in the library system. From experience, I learned about a lot of the decisions you had to make to make sure something like this goes right.

Can you tell me from the standpoint of an integrated justice system such as you have, and this may be for the record, I would like to have some more information on who you believe actually has the model system that you can look to? There is a great difference between taking someone who has experience and working a system and using it to develop your own, or trying to create your own system. I would like that information for the record detailing a lot more about this expenditure.

Judge HAMILTON. All right, I will be happy to get that to you.

I went over this just yesterday, and we have looked at the system in Colorado, and Colorado has done an awful lot in developing an integrated justice information system. In addition to that, we feel that the two vendors, the two prominent vendors, most prominent vendors, are Microsoft and Oracle. Between these two companies, we feel that they have the best database technology available in order to permit us to do that.

In addition to that, Mr. Chairman, we recognize—we have had a study done already, and this study—and I have quoted extensively from this study in my statement—and this study recognizes the absolute necessity for an on-board, full-time project manager in order to manage this, because, as you say, you can waste an awful lot of money trying to develop this awfully quickly. I have gone over it just yesterday, and everybody understands that before we do anything, take any major steps, that an on-board project manager will be there, so he is there to guide this thing from the ground right up.

Mr. ISTOOK. Okay. I would appreciate getting that. I am certain from experience having someone on the inside that is the key person, there is no substitute for it. It is an absolute necessity. If you don't have such a person, you might as well not spend the money.

Judge HAMILTON. That is right.

[The information follows:]

Question. Please provide detailed information on your request for funding for the integrated justice information system. Is there a model for the system? What are the financial estimates for the completion of the system? What is the time frame for completion of the system?

Answer. The Superior Court has requested $2.5 million in FY 2000 federal appropriations to support the second phase of the Integrated Justice Information System initiative, System Design. During this phase, the Court will retain expert consultants to develop a comprehensive design plan for a court-wide integrated information system. With full funding, the Court will be able to complete the System Design on an accelerated basis and move swiftly into the Development Phase. The Court's goal is to fully implement a court-wide integrated information system within three years. In order to meet this goal, the System Design Phase must be completed within one year. Given the complexity of the Court's existing information technology environment, which consists of 18 separate mainframe databases serving 10 major operating divisions and 7 administrative divisions, as well as the lack of automation entirely in some critical Court operations, such as Juvenile Supervision and Treatment, the Court must commit substantial resources to obtain a completed design plan within twelve months. The estimated total cost of the System Design Phase is $3 million; however, the Court expects to receive approximately $500,000 in grant funds to fund the Integrated Justice Information System project in FY 2000, and therefore, requests the remaining $2.5 million in appropriations.

With FY 1998 and FY 1999 grant funds, the Court is presently undertaking a Requirements Analysis which will determine the specific needs and capabilities of the integrated system. The results of the Requirements Analysis will enable the Court to develop more detailed technical specifications and cost estimates for each remaining phase of the Integrated Justice Information System initiative. There is not, at the present time, a pre-existing system or model under consideration by the Court for the proposed integrated system. In January 1999, the Court received technical assistance from experts affiliated with the National Court Information Systems Technical Assistance Project. Information obtained through that process indicated that the total project cost for the Integrated Justice Information System initiative, from inception through final testing and implementation (Phase IV) within three years, may be as high as $8 million. Accordingly, the Court is working with the following project plan:

Phase	Estimated Cost	Completion Date
Requirements Analysis	$350,000 (Grant-Funded)	October 1999
System Design	$2.5 million	October 2000
System Design	$500,000 (Grant-Funded)	October 2000
System Development	$3 million	June 2000-October 2001
Testing & Implementation	$2 million	October 2002

Additional information on the Superior Court's Integrated Justice Information System initiative follows.

D.C. Superior Court
Integrated Justice Information System:

Project Overview

I. Introduction

The Superior Court of the District of Columbia faces increasing challenges in its mission to provide the citizens of the nation's capital with an efficient and effective forum for the administration of justice due to the lack of modern information management capabilities. The Court presently maintains eighteen separate mainframe databases which were designed, some as long as fifteen or twenty years ago, to manage particular types of cases processed in separate operating divisions and units of the Court. Although the majority of these systems run on the same platform and contain many identical data elements, they are not integrated and users must interface with multiple systems in order to obtain complete information about a party or case. Redundant data entry by court staff in different operating divisions undermines data quality and is a wasteful and costly use of limited staff resources. Front-line staff report that the systems are not user-friendly by today's standards, and administrators are dissatisfied with the systems' inability to produce useful management reports and handle critical data queries. Further, the systems are highly customized and idiosyncratic, as is typical of older systems, and therefore are difficult to maintain and train staff to use. Ultimately, judicial decision-making is negatively impacted by the lack of access to accurate, timely and complete data at critical junctures in the criminal justice process. The Court's fragmented information technology infrastructure also limits its ability to obtain or share information electronically with other District Government agencies, impeding the criminal justice system's ability to deliver seamless and timely services to District citizens.

The lack of integration of the Court's present automated information systems, and lack of automation entirely in some divisions, makes it extremely difficult to identify persons who are involved in multiple cases processed in different divisions of the Court. For example, in order to determine whether a defendant in a domestic violence case is also a party to a child abuse or child custody case, court staff must access three separate systems, the domestic violence database, the juvenile and neglect database, and the domestic relations database. Since the databases are not linked or shared, the user must separately query each of them. Further, there is no single identifier that is universally and permanently associated with an individual upon his or her contact with the Court. Rather, case numbers are assigned to every *case* filed within a particular operating division or unit using an alpha-numeric code which reflects the division or unit where the case was filed (alpha code) and the chronological order and year filed (numeric code). As a result, a criminal defendant who also has pending child neglect and child support cases would have three separate case numbers, as each of these matters is handled in a different division of the Court. Likewise, a youth appearing in Court on a delinquency charge may have previously been in the abuse and neglect system, and therefore have two case numbers which, under the present system, are not associated with one another.

Similarly, the Court cannot readily identify members of the same family who appear in Court in different cases. Judges are often faced with having to make critical decisions quickly, such as whether a neglected child should be removed from the home and placed with an adult family member, without adequate access to important information such as whether the proposed family member has a criminal record, or is a known substance-abuser. Again, there is no common identifier to associate cases in which one or more parties are related to persons involved in other cases at the Court.

Adding to the problem of identifying related cases, the Court's Family Division maintains caseload data in three separate systems, which are not linked or shared. Cases involving juveniles and abused and neglected children, are contained in the Juvenile Information System Records Access (JISRA) database. Domestic relations cases, which include divorce, custody and related matters, are maintained in a domestic relations section of the Court's Civil Division database. Finally, child support and paternity cases, are entered into the District's Child Support Computer System, which is administered by the Office of the Corporation Counsel.

There are an increasing number of cross-division initiatives in Superior Court which are hampered by the Court's inadequate intra-agency data-sharing capability. These initiatives, such as Adult Drug Court, Juvenile Drug Court, and Child Protection Mediation, were implemented by the Court to address special needs and require the cooperative sharing of information among several divisions of the Court. For example, Child Protection Mediation Program officials cannot readily determine whether children in these cases have siblings who are or have been involved in other abuse and neglect cases at the Court.

Among the court divisions most impeded by the lack of a modern computing system is the Social Services Division, which is the District of Columbia's Juvenile Probation Department. The Social Services Division has little automation, with the few computers currently in operation unable to handle even routine office functions such as word-processing and e-mail. Probation officers maintain hand-written records of their contacts and visits with probationers, and the Division cannot produce management reports without time-consuming, labor-intensive hand counts of clients and cases. Perhaps most troubling, the Division is severely limited in its ability to supervise thousands of juvenile offenders who are released into the community, or provide appropriate and timely treatment and support services to the children and families referred to the Division for counseling, substance abuse and other health-related assessments, drug treatment and education, and related services.

Finally, the lack of *inter*-agency integration, and common identifiers and data standards among agencies, makes it difficult for the Court and other agencies to identify and track criminal offenders from their initial contact with the justice system at arrest, during pretrial detention or community release and supervision by other agencies, through court processing, to the post-disposition phase. The Court's Criminal Information System (CIS), for example, does not update directly into the city's Criminal Justice Information System (CJIS), thereby delaying the availability of disposition data to other criminal justice agencies. Alternatively, the Court

cannot readily determine if an individual brought into Court on a felony criminal charge has existing traffic or D.C. ordinance violations, as the Metropolitan Police Department does not assign Police Department Identification Numbers (PDID numbers) to these cases. In order to obtain complete information about an individual or family's involvement with the Court, users must spend considerable time searching the Court's multiple databases for related cases which are not linked by a common identifier and do not employ a systematic methodology for establishing relatedness with an adequate degree of confidence.

The Court's Social Services Division (Juvenile Supervision & Treatment) is especially affected by the lack of inter-agency data-sharing capabilities of the Court and other District Government agencies. For example, the Division cannot track the detention status or placements of juveniles under the court-imposed supervision of the Youth Services Administration, or readily locate the whereabouts of children in foster care placements managed by the Department of Human Services, or communicate effectively with the D.C. Public Schools regarding children who are exhibiting truancy, substance abuse, or other high-risk behavior, or monitor court-ordered conditions of probation concerning school attendance by juvenile probationers.

At present, inter-agency data-sharing capabilities in the District of Columbia's justice system agencies are either non-existent or consist of batch data dumps or some limited real-time transfers. This situation grows more tenuous as federal mandates for data-sharing within regional jurisdictions and nationally increase. In addition, the District's criminal justice agencies are increasingly implementing inter-agency initiatives designed to enhance public safety and reduce crime. The success of such initiatives over time will depend greatly on these agencies' ability to share information swiftly and accurately. Lastly, the District's immediate proximity to suburbs in the bordering states of Virginia and Maryland enhances the need for an information system that can easily communicate with other governmental entities outside of the District's governing structure

To address these problems, the Court has launched the Integrated Justice Information System Project, or IJIS. The broad vision for IJIS is to create an integrated computer information system that will support the Court in achieving its mission to provide efficient and impartial resolution of disputes and full access to justice for the citizens of the District of Columbia.

II. Goals and Objectives

The IJIS project seeks to advance the Court's achievement of the following goals:

Goals

- **Enhance public safety,** by increasing the availability of accurate, timely and complete criminal offender data to justice system agencies and individual decision-makers, including

police offices, prosecutors and defense attorneys, judges, court employees, pretrial supervision, probation and parole officers, and corrections staff.

- **Provide fair and swift justice** to citizens of the District of Columbia, through faster case processing, enhanced judicial decision-making, and greater coordination with other agencies.

- **Improve services to families and youth,** by enhancing the Court's ability to identify and respond holistically to cases involving the same individual or family, and monitor court-ordered treatment and support services for abused and neglected youth, victims of spousal violence, at-risk and delinquent juveniles, and others.

- **Enhance public trust and confidence in the justice system,** through improved service delivery, expanded public access, increased accountability to the public, and more efficient use of public resources.

The Superior Court has established the following objectives to guide implementation activities for the IJIS project:

Objectives

- Eliminate or minimize redundant data collection by court staff across and within operating divisions and units of the Court.

- Improve data accuracy, timeliness, and completeness by standardizing data elements and implementing streamlined and technologically advanced data entry procedures.

- Reduce paperflow across and within operating divisions by maximizing electronic data-sharing and updating business practices to reflect new technological capabilities.

- Improve identification of related cases (individuals and families) to facilitate efficient and effective case processing, provide swifter linkage of individuals and families to needed support services, and enhance judicial decision-making.

- Enhance caseflow management by modernizing business practices to reflect new technologies.

- Improve scheduling/calendar management to provide more efficient case processing and reduce waiting time in court for external court customers, such as law enforcement personnel, attorneys, litigants, and members of the public.

- Enhance data-sharing and coordination with other justice system agencies to provide seamless delivery of services and efficient use of public resources.

- Improve management reports to provide enhanced decision-support for court executives and managers.
- Consolidate current applications to maximize operating efficiencies.
- Enhance public access to court information and services by increasing the availability of electronically-accessible information on court operations and services to the public.

III. Integrated System Features

The integrated information management system will enable the Court to share information electronically across multiple operating divisions, provides judges with timely access to critical data, & permit inter-agency data-sharing with other District criminal justice agencies. The integrated system will be designed to feature:

- Unique identifier codes for individuals & families
- Single point of data entry
- Conformance to modern data standards & improved data accuracy
- Automatic data transfers & updating
- Expanded ad hoc query capability & decision support
- Automated calendaring, scheduling & noticing of parties
- Integrated financial transactions associated with case processing
- Automation of Court Social Services – Juvenile Supervision & Treatment
- Compatibility with future technologies – electronic filing, scanning & imaging, fingerprint identification, etc.

IV. Project Plan

The IJIS Project will be implemented in several phases, with the goal of creating a court-wide integrated system within three years, as shown below.

Phase	Estimated Cost	Completion Date
Requirements Analysis	$350,000 (Grant-Funded)	October 1999
System Design	$2.5 million	October 2000
System Design	$500,000 (Grant-Funded)	October 2000
System Development	$3 million	June 2000-October 2001
Testing & Implementation	$2 million	October 2002

Mr. ISTOOK. Let me ask first Mr. Aderholt, do you have any questions?

Mr. ADERHOLT. I just walked back in. I will let you know.

Mr. ISTOOK. If you do, speak up. I think we are winding down.

CRIME VICTIMS COMPENSATION PROGRAM

For the Crime Victims Reimbursement Program, you are currently asking for a couple of FTE's to be paid out of that particular fund. Are those existing FTE's that currently are being paid from other funds?

Judge HAMILTON. I am not certain about that.

Mr. HAMMOND. No, Mr. Chairman.

Mr. ISTOOK. These are new personnel?

Mr. HAMMOND. New authorized.

Mr. ISTOOK. Who currently manages the fund then? Who intakes the requests for reimbursement from the crime victims and so forth?

Judge HAMILTON. We manage the whole thing in the court. We are one of two or three jurisdictions in the whole country where the Crime Victims Compensation Fund is managed by the court. We did that several years ago because the fund at that time was managed by the Department of Human Services and was in such great disrepair——

Mr. ISTOOK. When you say managed by the court—excuse me for interrupting, Judge, when you say managed by the court, do you mean there are some court personnel that are doing that, or just——

Judge HAMILTON. Yes, sir. It is a division within the court, a department in the court.

Mr. ISTOOK. How many people?

Judge HAMILTON. I'm not sure.

Mr. HAMMOND. Five.

Mr. ISTOOK. Then I don't understand the distinction between what those five people are doing and what these other two people would be doing, unless they are add-ons to the same thing.

Judge HAMILTON. They are add-ons.

Mr. ISTOOK. That would be seven people doing that then.

Judge HAMILTON. Yes. We brought the time between filing and adjudication down quite substantially. What is it now?

Mr. HAMMOND. It is now 1 month. We brought it down, yes.

Judge HAMILTON. We want to be able to bring it down somewhat less than that and reach more people who might be eligible for compensation under the Crime Victims Act.

REQUIREMENT FOR INTERPRETERS FOR COURT SPECTATORS

Mr. ISTOOK. I believe you indicated you have a letter from the Department of Justice requiring that the District provide interpreters not only for litigants or for accused persons, but also for spectators in the courtroom. There is a reference in your material, of course, to Gallaudet University and doing things for hearing-impaired.

Is the Department of Justice letter, if you can get that to me, limited only to hearing impaired persons, or is that to any person who has a need for an interpreter? You are saying if they are sit-

ting in the courtroom, you must provide an interpreter for every spectator in the courtroom so they can understand what is going on, no matter what language it may be?

Judge HAMILTON. I am not certain about that. I do know it is the case with respect to, say, the hearing-impaired person under the Americans with Disabilities Act. That came as somewhat of a surprise to me, but the Civil Rights Division, I believe, of the Justice Department, some office within there, has made it very clear that that is a requirement under the ADA.

DEPARTMENT OF JUSTICE LETTER ON INTERPRETERS

Mr. ISTOOK. I would appreciate the Court providing to us a copy of their letter and, of course, whatever you exchanged with them, because I wonder how far this will go.

[The information follows:]

REQUIREMENTS FOR SIGN LANGUAGE INTERPRETERS FOR SPECTATORS

The Courts have been informed that, under the provisions of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, the Courts are required to provide sign language interpreters or other accommodations to all hearing impaired participants, including spectators, in court proceedings. The Department of Justice letter regarding the complaint which brought this requirement to our attention follows:

U.S. Department of Justice

Civil Rights Division

Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

NOV 13 ...

Nov. 13, 1998

Wanda Radowitz
ADA Coordinator
District of Columbia Courts
Personnel Division
515 5th Street, N.W.
Room 214
Washington, D.C. 20001-2131

Re: Complaint Number 204-16-65

Dear Ms. Radowitz:

This is to confirm our telephone conversation regarding access to the Superior Court for persons who are deaf and hard of hearing. As stated in our telephone conversation, we received a complaint alleging that the D.C. Superior Court refused or failed to provide the services of sign language interpreters for a deaf woman so that she could view and understand the trial of the man accused of murdering her boyfriend. The trial, United States v. Mohammed Al-Majdi, (Felony No. 2019-98), began on Monday, October 19, 1998, and has been postponed to a later date. We have received your oral assurance that an interpreter will be provided at the trial when it resumes.

In the interest of resolving the complaint amicably, we enclose for your consideration a draft settlement agreement and policy, which requires the D.C. Superior Court to provide the services of interpreters to ensure effective communication with persons who are deaf or hard of hearing.

Please let me know when you are ready to discuss the settlement agreement and policy. My phone number is (202) 307-2236.

Thank you for your cooperation in this matter.

Sincerely,

Robert J. Mather
Trial Attorney

Attachments

EXTENT OF LANGUAGE TRANSLATION SERVICES

Mr. ISTOOK. It is one thing if you have John that is a litigant or an accused to provide translation services, but it sounds to me like they are saying if you have someone that is a spectator in the courtroom, maybe they are related to one of the parties, maybe they aren't, but no matter what their language, you have got to stop the trial, and you can't proceed with the trial until you go round up an interpreter, not for someone involved in the case, but just because someone is sitting in the courtroom. Do I understand correctly what that letter seems to say from the Department of Justice?

Judge HAMILTON. It is the hearing-impaired individual, that is true.

Mr. ISTOOK. About—go ahead.

Judge HAMILTON. As to the language problem, I am not certain about that.

Mr. ISTOOK. Okay.

Mr. ADERHOLT. Who is the letter from?

Mr. ISTOOK. The Department of Justice, Civil Rights Division.

Mr. ADERHOLT. I would be interested in that letter, too.

Judge WAGNER. It is a matter of concern in other States as well. It is a national issue.

Judge ALPRIN. You will be interested to know that I had a trial last week or the week before, and when the panel—the] overall jury panel from which the jury panel would be selected, there were two hearing-impaired persons. I have never had one before. So I got two on this panel, and for one there was the need for a sign language interpreter, but the person did not understand American Sign Language. We had to give her a reporter who took real-time testimony, like this gentleman I think is doing now, and have her sit next to him and see what was being said. As it turned out, one of them didn't make the panel, but one did. It was the one who understood ASL, American Sign Language. He sat, and the case went forward, a civil case, to decision. That is what happened in Superior Court last week.

LANGUAGE "SIGNER" IN JURY ROOM

Mr. ISTOOK. Did you have a signer in the jury room?

Judge ALPRIN. Yes. The first time it ever happened to me. It happened to other judges before, under very strict instructions not to say a word except to interpret what was being said to the juror and what the juror was saying back to other jurors, under an agreement of confidentiality, with the consent of all sides. That is how we did it. We thought we had to do it under the ADA.

Mr. ISTOOK. I am glad that it was with the consent of both sides. If either side objected, I don't know how you would have handled that.

Judge ALPRIN. I would call up here for guidance.

Judge WAGNER. The Court of Appeals.

Mr. ISTOOK. That will be useful information to find out more about.

QUESTIONS FOR THE RECORD

I don't have any further questions other than those I am going to submit for the record.

[CLERK'S NOTE.—See pages 597–667, this volume, for Committee's questions for the record and the Courts' responses, and pages 668–715, this volume, for Congressman Moran's questions for the record and the Courts' responses.]

COURTS RECEIVING

Mr. ISTOOK. Mr. Moran or Mr. Aderholt.

PRO BONO LOBBYING ASSISTANCE—CONFLICT OF INTEREST

Mr. MORAN. I think that we ought to be able to wind this up. I am just going to quickly mention a couple of areas where I have gotten letters. You don't have to respond unless you want to, but I have been told that the Courts are receiving pro bono lobbying assistance from members of the D.C. bar on its budget request and the D.C. Court Employees Whistle-Blower Protection Act. If that is the case, one would wonder whether any of the attorneys have cases before the court, whether there is any conflict, et cetera.

COURTS RETALIATING AGAINST EMPLOYEES

The other thing is the alleged retaliation of some employees for whistle-blowing, if you would, on the charges that were made by court employees. It would be useful perhaps to state for the record whether any employees may be facing possible disciplinary action or dismissal since the letter was issued by Judge Hamilton saying that there will be no retaliation for any employees of the court giving information to anyone else that might be detrimental to the court administration.

COURT EMPLOYEES WHISTLE-BLOWER PROTECTION ACT

I am assuming that—I guess it would be useful to know whether you support the D.C. Court Employees Whistle-Blower Protection Act that was prompted by these allegations. I don't want to have a long explanation, but I thought I should offer it up since we have gotten some questions about this.

Do you have any comments?

COURTS CLAIM NO RETALIATION AGAINST EMPLOYEES

Judge WAGNER. A long time ago we sent you a copy, and I think we sent to you as well, a copy of a memorandum issued by the Joint Committee very early on that we would not tolerate any retaliation against anyone for cooperating in the audit.

Mr. MORAN. There has been no retaliation against anyone?

Judge WAGNER. I am not aware of anything like that. We do have a personnel policy and grievance process that I would hope our employees feel free to use.

Mr. MORAN. Okay. So there hasn't been any retaliation.

Judge WAGNER. I have no way of answering that kind of statement. I am not aware of any. I don't know about you, Judge Hamilton.

Judge HAMILTON. Well, I am certainly not aware of any retaliation. I am sensitive to whether or not there is any retaliation. I do not intend to countenance any type of retaliation. I have made it known that that is a policy of the Superior Court, and there are some actions, I believe, which are pending, some adverse personnel actions that are pending, and there are people who have said that those actions are retaliatory, and I intend to pursue that and find out whether or not that is the case and take whatever action is necessary to assure that they are not.

COURTS SUPPORT WHISTLE-BLOWER PROTECTION ACT

Now, I believe that the Whistle-Blower is good legislation. I don't have any problem with it at all. It is an additional assurance and protection to the employees of the court who do a very difficult job and in a very dedicated manner, and anything we can do to give them a feeling of protection and perception of protection and fairness I think is good for the overall court system.

WHISTLE-BLOWER—COURT ADMINISTRATIVE ORDERS AND MEMOS

[The following Superior Court "Administrative orders" and Joint Committee on Judicial Administration memorandum were supplied for the record:]

RECEIVED
JAN 28 4 38 PM '99
EXECUTIVE OFFICE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER NO. 99-09

WHEREAS, there is now in progress an audit by the United States General Accounting Office of the District of Columbia Courts, including the Superior Court; and

WHEREAS, the audit is being conducted by representatives of the General Accounting Office interviewing, among others, employees of the Superior Court and reviewing, among others, records, books, files ,and papers of the Superior Court.

NOW, THEREFORE, each employee of the Superior Court is hereby requested, authorized and ordered to fully cooperate with this audit by providing to any individual assigned by the General Accounting Office to participate in conducting the audit any requested information or access to any records, books, files or papers of the Superior Court, including copies of any documents contained in such records, books, files or papers.

SO ORDERED.

BY THE COURT
JANUARY 28, 1999

E. Hamilton
Eugene N. Hamilton
Chief Judge

Copies to:

ALL JUDGES & HEARING COMMISSIONERS
ALL EMPLOYEES
EXECUTIVE OFFICER
CLERK OF THE COURT
DIVISION DIRECTORS
DAVID LURIA, ESQUIRE, ATTORNEY ADVISOR
LETTY LIMBACH, LIBRARIAN

RECEIVED
JAN 28 4 38 PM '99
EXECUTIVE OFFICE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER NO. 99-10

All employees, other than the Register of Wills, personal law clerks, and secretaries of the Judges of the Superior Court of the District of Columbia, are reminded that the removal of any employee of the Superior Court by transfer, suspension, demotion or termination from their employment may, if requested, be reviewed by the Chief Judge of the Superior Court; and if determined to be inappropriate, set aside by the Chief Judge of the Superior Court.

Any employee, who might be so removed and feels that such removal is inappropriate, is invited and encouraged to seek review of such removal by the Chief Judge, and if determined to be inappropriate, set aside.

No employee of the Superior Court may interfere with, impede, discourage or retaliate against any employee for seeking review of any such removal.

SO ORDERED.

BY THE COURT
JANUARY 28, 1999

Eugene N. Hamilton
Chief Judge

Copies to:

All Judges
All Hearing Commissioners
All Employees
Executive Officer
Clerk of the Court
Division Directors
David Luria, Esquire, Attorney Advisor
Letty Limbach, Librarian

District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001

January 28, 1999

MEMORANDUM

To: All D.C. Court Employees

From: Joint Committee on Judicial Administration

Subject: Review of Court Operations by the U.S. General Accounting Office

The U.S. General Accounting Office (GAO), an independent agency of Congress, is reviewing the fiscal and personnel practices of the District of Columbia Courts. It is critical that all personnel cooperate fully in the audit by providing the GAO auditors with frank and honest answers to requests for information. We assure you that the Joint Committee will not permit retaliatory action to be taken against any employee for providing candid responses to the GAO auditors' requests for information.

Annice Wagner, Chair and
Chief Judge, D.C. Court of
Appeals

Eugene N. Hamilton, Chief
Judge, Superior Court of
the District of Columbia

Judge Michael W. Farrell
D.C. Court of Appeals

Judge Geoffrey Alprin
Superior Court of the
District of Columbia

Judge Nan Shuker
Superior Court of the
District of Columbia

Mr. MORAN. Very good, Judge.

CONFRONTATIONAL NATURE OF HEARING

Judges and Mr. Hammond and everyone involved with the court system, I would hope that we would not have another somewhat confrontational hearing on this. We have gotten a number of letters and calls and so on. There have been articles written. We try to pursue those, but we don't particularly have an ax to grind. I feel as though the court system does a good job under very stressful and demanding circumstances, and I don't want to be confrontational.

I think you have answered these questions. You were also aware of our concerns, the child abuse and neglect counsel particularly.

GAO FINDINGS ON COURT OPERATIONS

The GAO under Ms. Jarmon and Mr. Haughton and their colleagues have given us a very good report that I am confident you will want to read carefully in its entirety, but many of the allegations have been shown to be somewhat unfounded, if you will, although they have identified some serious situations that I think we are all——

Mr. ISTOOK. Such as allegations by the whistle-blowers, right?

Mr. MORAN. Right.

The GAO report, as I see it, is not a time bomb about to go off. It is a very moderate and responsible investigation as to the Court. There are no dramatic findings as I see them, although there are some concerns—the Anti-Deficiency Act being one. There are some others that I think when you get the final report you will want to address in their entirety. There will probably be questions next year about that, but I hope they are not of a confrontational manner.

This has been a transition period when there was a restructuring of the court system because of the D.C. Revitalization Act, I guess ultimately that was the source, when we broke up parts of the court system in D.C. for funding purposes and administration reasons.

COMMITTEE'S APPRECIATION OF GAO'S WORK

But I know GAO has done a very good job. I appreciate the fact that GAO has been here and their professionalism. I also appreciate the professionalism of the court system. I trust that in future years our questions will be somewhat less confrontational, if they have been close to that this year, and we respect all the hard work that you do day in and day out.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Moran. Let me make a couple of closing comments as we conclude the hearing. I do very much appreciate, Ms. Jarmon, the work of the GAO in going into difficult matters. I appreciate the work of the courts and the response you have made.

COMMITTEE EXPECTS EVERYONE TO BE HELD ACCOUNTABLE

I think everyone should recognize that when there are funding decisions to be made, staying within the budget, especially in the context of what has been going on with the District of Columbia for a number of years, the efforts of the city government, the control board and the Congress have certainly been trying to make it clear to all concerned that we are going to have a handle on the budget situation and make sure that everything runs properly, because that is one thing necessary not only for the fiscal health of the District, but, frankly, it spills over into public safety, it spills over into infrastructure and quality of life for everyone to know that it is an orderly, good, safe place for everyone.

So I think it is very important that everyone recognizes that we want everyone to be held accountable. Even though there are some concerns about, well, would something be done at one time but approved later, we all know the difference between having something approved at the time you do it and seeking approval after the fact.

I am not going to try to decide what the merits are. I know that further things are coming to us on a time line (see p. 590) and so forth, but I do think it is important that everyone within all levels of the District government recognize that we are serious about accountability. I think especially in the criminal justice system that is necessary so that the people with whom you must work are aware that you are seeking equal, fair and impartial enforcement of the laws. It is unfortunate that there has been some difficulty on it, but although others may have to dig deeper into whether anything happened that warrants any further action, for us on this particular subcommittee, our main duty is to look towards the future and make sure we don't have any sort of repetition; that we work with you in monitoring things, and if there is any difficulty that is surfacing now, we want to work with you and make sure that we prevent something from happening, rather than sitting around afterwards and talking about why did it happen, whose fault was it and so forth. We would rather be involved at the preventive level. I appreciate the information that has been developed today that hopefully will help us to do that.

Thank you all for taking your time this afternoon. As I mentioned earlier, I will have some other things to submit for the record to you. (see pp. 597–667)

ADJOURNMENT

Thank you very much. We are adjourned.

NO SPENDING PLAN

[See "Clerk's Note" on pp. 428–429 of this volume.]

District of Columbia Courts
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Ulysses B. Hammond
Executive Officer

MEMORANDUM

TO: All Judges, Hearing Commissioners, Clerks of Court, Division Directors, and Court Employees

FROM: Ulysses B. Hammond
Executive Officer

DATE: November 14, 1997

SUBJECT: Employee Compensation

On yesterday, Congress completed action on the District's fiscal year 1998 budget and sent it to the President for signature. The President is scheduled to sign the measure today. As the chief judges informed you at the Court's Orientation Session on the impact of the National Capital Revitalization Act, subsequent to congressional action on the budget, the Joint Committee on Judicial Administration met to address the issue of compensation for nonjudicial employees.

I am pleased to announce that at its November 13, 1997 meeting, the Joint Committee approved comparability of the District of Columbia Courts Compensation Schedule with the federal court's schedule, to be achieved over a two fiscal year period, provided adequate funding is appropriated. The first salary adjustment will be effective December 7, 1997 at seven (7) percent per annum, for all nonjudicial employees.

Happy Holidays!

c: Chief Judge Annice M. Wagner
Chief Judge Eugene N. Hamilton
Joint Committee on Judicial Administration

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 29, 1998

Mr. Ulysses B. Hammond
Executive Officer
District of Columbia Courts
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Hammond:

Thank you for meeting with my staff and me on Thursday, January 8 to discuss outstanding FY 1998 and FY 1999 District of Columbia Court budget issues.

As we discussed, the District of Columbia Courts cannot continue to incur obligations for the remainder of FY 1998 for the adult probation function. Currently, the Courts are incurring obligations at a rate that could exceed the FY 1998 appropriation of $108 million. To avoid a possible antideficiency, I am forwarding a revised FY 1998 apportionment that includes a new footnote indicating that the Courts should not incur additional obligations for the adult probation function after February 13, 1998 unless it receives reimbursement in advance of such obligations from the Trustee for Offender Supervision.

As you know, the FY 1998 District of Columbia Appropriations Act requires that the Courts submit to the President and the District of Columbia Committees monthly budget execution reports beginning in FY 1998. A budget execution report should therefore be submitted to the President and the Committees by February 13 on obligations incurred through the first quarter of FY 1998. Monthly budget execution reports should also be submitted beginning February 1, 1998 for the month of January.

I look forward to working with you through the year as we continue to effect the successful implementation of the Revitalization Act.

Sincerely,

Alan Rhinesmith
Deputy Associate Director
Housing, Treasury and Finance Division

Enclosure

D.C. COURTS

[See page 430, this volume.]

STATEMENT OF THE JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
IN THE DISTRICT OF COLUMBIA
ON THE DISTRICT OF COLUMBIA COURTS'
FISCAL YEAR 2000 BUDGET REQUEST

BEFORE THE SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA
APPROPRIATIONS, COMMITTEE ON APPROPRIATIONS,
U.S. HOUSE OF REPRESENTATIVES

MAY 18, 1999

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MAY 18, 1999

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to make this presentation in support of the budget request for the District of Columbia Courts for fiscal year 2000. Pursuant to D.C. Code § 11-1743 (1995), the Joint Committee on Judicial Administration in the District of Columbia (Joint Committee),[1] submits for your consideration on behalf of the District of Columbia Courts a total operating budget request for fiscal year 2000 of $131,646,000. In addition, the District of Columbia Courts request $17,370,000 in capital budget authority for fiscal year 2000.

The fiscal year 2000 operating budget requests for the Court of Appeals, Superior Court, Court System and Capital Plan will be discussed in greater detail later in this statement. Most of the requested increase is to meet technological and operational needs

[1] Pursuant to law, the Joint Committee is the policy-making body for the District of Columbia Courts. It is responsible for submission of the annual budget requests for the District of Columbia Courts, accounts, and auditing, procurement and disbursement, general personnel policies, and development of statistical and management systems, among other functions. By statute, five judges serve on the Joint Committee: the Chief Judge of the District of Columbia Court of Appeals, its chair; the Chief Judge of Superior Court; and one associate judge from the appellate court and two associate judges from Superior Court, who are elected annually by the judges of their respective courts.

of the Superior Court, particularly initiatives that address the needs of some of the District of Columbia's youngest citizens: abused and neglected children who need the protection of the court and juveniles who have regrettably come into contact with our juvenile justice system. Some of the requested increase is necessary to meet statutorily-mandated expenses, such as those under the Criminal Justice Act. And, some of the requested increase will assist the D.C. Courts in its efforts to achieve for non-judicial employees compensation levels that are comparable to those of Federal court employees who perform the same or comparable job responsibilities. Included in this budget request was authorization for 1,248 full-time equivalent positions (FTEs), representing only 15 positions more than those authorized in fiscal year 1999. We also seek restoration of 29 FTE positions inadvertently omitted from the Courts' FY99 appropriation. Therefore, the courts seek a total of 1,277 FTE positions in FY 2000.

We are informed that the Office of Management and Budget (OMB), on behalf of the President, supports $128,440,000 of the $131,646,000 in operating budget authority requested by the D.C. Courts, and $9,000,000 of the $17,370,000 in capital budget authority requested. While we appreciate OMB's support for those portions of the Courts' operating and capital budget requests, we must point out that the $3.206 million which is not included in OMB's recommendation for the operating budget includes funding for

such critical functions: (1) 60% of the funding needed to develop and begin implementation of an integrated justice information system; (2) nearly 40% of the funding needed for stipends for neutrals in the Superior Court's alternative dispute resolution program; (3) all of the funding necessary to replace the Criminal Division's Filing System; (4) 30% of the funding needed to support the court appointment of attorneys in criminal cases, and (5) all of the funds needed to replace equipment critical to maintaining court operations. Therefore, we urge your favorable consideration of these items in addition to those supported by the President.

Recognizing the need for continued fiscal restraint, but at the same time mindful of the continuing demands being placed upon the judicial branch for the fair and expeditious adjudication of cases, the Joint Committee approved a no-frills operating budget request for FY 2000 which will allow the Courts to meet their Constitutional and statutory responsibilities of addressing the matters which come within the jurisdiction of the Courts. The workload of the Courts is substantial, and it is increasing in some areas, as the subsequent sections of this submission will reflect.

The remainder of this statement is in four parts: (1) Part I, Budget Request for the District of Columbia Court of Appeals; (2) Part II, Budget Request of the Superior Court of the District of Columbia; (3) Part III, Budget Request for the Court System; and (4) Part IV, Capital Budget Request for the D.C. Courts. Each

section contains a summary of the work of the three entities and an explanation for the amount requested in the FY 2000 budget to perform that work efficiently.

Part I.

District of Columbia Court of Appeals

A. Overview

Congress established the District of Columbia Court of Appeals as the highest court of the District of Columbia in 1970. The court consists of a chief judge and eight associate judges. The cases before the court are determined by randomly selected, three-judge divisions, unless hearing or rehearing *en banc* is ordered. A hearing or rehearing before the court sitting *en banc* may be ordered by a majority of judges in regular active service. The court sits *en banc* only when consideration by the full court is necessary to maintain uniformity of its decisions or when the case involves a question of exceptional importance.[2]

As the highest court of this jurisdiction, the District of Columbia Court of Appeals is authorized to review all final orders and judgments and specified interlocutory orders of the Superior Court. The court also has jurisdiction to review decisions of administrative agencies, boards and commissions of the District government, and to answer questions of law certified by the Supreme

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[2] The *en banc* court consists of the judges of the court in regular active service, except that a retired judge may sit to rehear a case or controversy if he or she sat on the division at the original hearing. *See* D.C. Code § 11-705(d)(1995).

Court of the United States, a court of appeals of the United States, or the highest appellate court of any state. The court also reviews proposed rules of the trial court and promulgates its own rules and the rules of professional conduct for members of the District of Columbia Bar. The Bar of the District of Columbia is one of the largest in the country, with over 70,000 members. The court has the authority to approve the rules governing attorney disciplinary proceedings. Additionally, the court establishes rules governing the admission of members of the District of Columbia Bar and the unauthorized practice of law in the District.

B. Case Filings and Caseload

During 1998, 1,943 cases were filed in the Court of Appeals. This number represents the fifth time that case filings have exceeded 1,800. By comparison, 1,832 cases were filed in 1995, 2,008 in 1996, and 2,076 in 1997. During the seven years preceding 1995, the caseload had remained relatively constant, fluctuating only between a low of 1,515 in 1989 and a high of 1,701 in 1993. In relative terms, measured by the number of filed cases divided by population, the 1998 level of case filings is one of the highest in the nation.[3] Even in absolute terms, focusing only on the

[3] In *per capita* terms, the number of cases filed in the Court of Appeals ranged from 251 cases for each 100,000 residents in the District in 1989 to 392 cases for each 100,000 residents in 1997. (Statistics derived from the graphs and population tables appearing in *State Court Caseload Statistics: Annual Report 1989*, Graph 5, p. 29 (NCSC), See, *"Examining the Work of State Courts, 1997"*, p. 79, and statistics maintained by the Court of Appeals.)

number of cases filed, without regard to population, the caseload of the Court of Appeals exceeded the appellate caseloads reported by appellate courts in nineteen states.[4]

In addition to the 1,943 cases filed in 1998, as of January 1, 1998, there were 2,634 pending appeals, bringing the total number of cases on appeal during 1998 to 4,577. The number of motions related to the appeals has remained high, with 5,816 procedural motions (a 12% increase over 1997) and 1,978 substantive motions (a 4% increase over 1997) filed in 1998. Many parties file petitions for rehearing or rehearing en banc. In 1998, 165 such petitions were filed.

Qualitatively, more and more, the court is required to resolve cases of greater complexity and difficulty. In 1998, the court was required to resolve issues of first impression, constitutional questions affecting the community as a whole, as well as those involving private interests of the litigants, and difficult questions of statutory construction.

To assist the court in meeting some of the demands of its

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[4] In 1997, the following nineteen states reported lower case filings than the District of Columbia Court of Appeals: Alaska, Connecticut, Delaware, Hawaii, Idaho, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, South Carolina, Rhode Island, South Dakota, Utah, Vermont and Wyoming. See. *"Examining the Work of State Courts, 1997"*, p.79 (NCSC). (Statistics for 1998 have not yet been made available by the National Center for State Courts.)

caseload, I have continued to designate judges of the Superior Court to serve on a temporary basis on divisions of the court pursuant to D.C. Code § 11-707 (1995). Judicial productivity was high; the court disposed of 862 cases by opinions or memorandum opinions and judgments (MOJs) in 1998 (307 opinions and 555 MOJs). In addition, the court continued disposing of cases at an efficient pace. In 1998, the court's disposition rate was 98% (1,901 appeal dispositions compared to 1,943 appeal filings). With the exception of 1997, for which the court's disposition rate was 102%, the 1998 disposition rate was the highest achieved by the court since 1991. The number of dispositions is higher than the case resolutions reported by appellate courts in twenty states.[5]

In spite of record levels of appeal filings in 1995, 1996, and 1997, and a continued high level of appeal filings in 1998, the court continued to manage its caseload effectively. The efficiency of the court in rendering decisions on cases scheduled for argument or submission continued to improve. In 1998, the time between argument or submission to issuance of a decision decreased to 78 days, down from 82 days in 1997, and 100 days in 1996. The overall time on appeal, however, increased from 636 days to 714

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[5] In 1997, the following states reported fewer case resolutions than the Court of Appeals: Iowa, Alaska, Nebraska, North Dakota, Mississippi, Connecticut, South Carolina, Idaho, Utah, Hawaii, New Mexico, Wyoming, Montana, South Dakota, Maine, Nevada, New Hampshire, Rhode Island, Vermont and Delaware. See, *State Court Caseload Statistics* (1997), (NCSC), Table 2 (Statistics for 1998 have not yet been made available by the National Center for State Courts.)

days in 1998. A major contributor to the increase in overall time on appeal was the 32-day increase in the time between the completion of briefing to the argument or submission of appeals. A primary cause of this increase was the fact that the court operated with one judicial vacancy for all of 1998, and an additional vacancy for the last several months of 1998. Presidential nominations for these vacancies are pending Senate confirmation. We anticipate that these vacancies will be filled in the very near future. In addition, these vacancies coincided with other case processing improvements which resulted overall in more expeditious briefing and an increase in the number of cases ready to be heard.

C. Management and Technological Development

In response to its increasing caseload, the court has made management improvements and used its available resources to improve operating efficiency and to expedite the resolution of pending cases. In 1998, the following initiatives were undertaken to improve operations and case processing:

- The court made available to litigants in the Civil, Criminal and Family Divisions of the Superior Court information packets on the actions necessary to prosecute an appeal;

- The court began conducting status conferences in civil appeals to enhance timely processing of those appeals and to facilitate any possible settlement of the dispute that is the subject of the appeal;

- The court worked with the Office of the Appeals Coordinator of the Superior Court to develop procedures to improve the flow of

information to the Court of Appeals on the transcripts which are to be included in the record on appeal;

- The court converted its long-distance telephone service to FTS-2000 to take advantage of the discounted rates that are available to the federal government;

- The court began *sua sponte* expediting appeals in cases involving adoption and the termination of parental rights to ensure prompt decisions in disputes that affect the stability of the living environment of children who have been subjected to abuse and neglect; and

- The court, in cooperation with the Court Reporting Division, undertook initiatives to improve the timeliness of the completion and transmission of transcripts necessary for consideration of an appeal.

The court continues to utilize practices and technological improvements initiated in prior years which have enhanced efficiency. Among these are:

- Streamlined procedures for calendaring bar disciplinary cases in which the respondent concurs with the discipline recommended by the Board on Professional Responsibility;

- Simplified reporting requirements for appellants in cases that are stayed pending resolution of a motion in the trial court;

- Purchase of computer legal research services under a fixed-price contract; in the past the court had purchased this service on an hourly-rate basis;

- Distribution of information and forms useful to pro se appellants;

- Notification to counsel of expected time-frame for argument in appeals screened for the regular calendar, confirming readiness for

argument and avoiding potential scheduling conflicts;

- Division of calendars into categories based upon case complexity and consolidation of related cases to enable the court to manage its time more effectively;

- Speedier resolution of uncontested motions for non-dispositive procedural relief as a result of amendments to D.C. App. R. 27;

- Use of an on-line computer connection to the District of Columbia Bar to improve the court's ability to confirm bar membership status, address changes and attorney locator information; and

- Training sessions for attorneys appointed under the Criminal Justice Act and the Counsel for Child Abuse and Neglect Program to enhance the efficient prosecution of appeals by those users of the system.

Court of Appeals Budget Summary

In order to maintain its current operating level and to continue the court's efforts to address the significant disparity between the compensation rates for court employees and those of Federal employees performing comparable job responsibilities, the Court of Appeals requests an appropriation of $7,703,000, and 96 FTEs. This represents a decrease of $136,000 from the fiscal year 1999 approved budget of $7,839,000 and no increase in FTEs over fiscal year 1999. The fiscal year 2000 request is less than that approved by Congress for fiscal year 1999 because the Court of the Appeals deleted from its request $330,000 in funding for a non-recurring activity (replacement of the court's local area network computer system), and added back into the request $194,000 to fund a 4.4% pay comparability increase for the non-judicial staff of

the Court of Appeals. Non-judicial employees of the D.C. Courts are compensated, on average, approximately 10% less than Federal employees who perform jobs with the same or comparable responsibilities. The D.C. Courts have in the past 18 months taken steps to close the gap between the compensation of comparable Federal court employees and those of the D.C. Courts. The pay disparity, however, remains substantial. The authority requested to fund a 4.4% increase for non-judicial staff is the same percentage that we understand the President has proposed for Federal employees for fiscal year 2000.

Part II.

Superior Court of the District of Columbia

Overview

The Superior Court of the District of Columbia is a unified court with general jurisdiction over virtually all local legal matters. The court consists of divisions which provide for all local litigation functions including criminal, civil, juvenile, domestic relations, probate, tax, landlord and tenant, and some traffic cases. These divisions include the Civil Division, Criminal Division, Family Division, and the Probate and Tax Division. Judges of the court rotate to each division on a scheduled basis. There are fifty-nine active judges on the court, including the Chief Judge. The court is assisted in its work by judges in senior status and by fifteen hearing commissioners.

The Superior Court has a tremendous workload. During 1998, 159,460 new cases were filed or came to issue, and 24,366 cases were reactivated/certified-in/transferred, for a total of 183,826 new cases. In addition to these new cases, the Court began the year with 53,786 pending cases, for a total of 237,612 cases available for disposition.

In spite of the fact that overall new case filings for 1998 were at about the same level as 1997, new case filings in 1998 increased in certain critical areas of the court's operations: adoption filings increased 33%; child abuse and neglect filings increased 3%; guardianship filings increased 29%; mental health and retardation filings increased 10%; and landlord and tenant filings increased 4%. The greatest increases in the court's pending caseload in 1998 occurred in the D.C. misdemeanor caseload (which increased 61%), the traffic caseload (which increased by 38% in 1998) and the divorce and custody caseload (which increased 36% in 1998).

The Social Services Division Family Services pending caseload increased 4% during 1998. During that year, 3,348 youths were received in intake,[6] 890 juveniles entered probation supervision (85 in the Urban Services Program and 805 on regular probation) and

[6] The intake breakdown is as follows: 2,033 new juvenile clients; 940 juveniles who were already under supervision, but arrested in a new case; 375 juveniles placed in a diversion program at intake; and 473 children who had been subjected to child abuse.

165 children subject to child abuse were placed under supervision. At the end of 1998, there were 2,342 youths assigned to the Social Services Division. Also during 1998, the pending caseloads for the Child Guidance Center (137 clients) and the Family Counseling Center (235 clients) both continued to increase. The Child Guidance Center experienced an 83% increase, and the Family Counseling Center experienced a 14% increase.

In spite of its heavy workload in 1998, the Superior Court continued to dispose of cases at an efficient rate. While there were 183,826 new case filings and reactivations, cases certified in, and transfers, the court disposed of 183,099 cases. The Superior Court cannot control the demands of the citizens on the court. In order to continue to address all matters over which the court has jurisdiction, it is essential that adequate funding be provided.

Superior Court Budget Summary

In order for the Superior Court to function efficiently during fiscal year 2000, the Joint Committee has submitted a total budget request for the Superior Court in the amount of $81,001,000. The Court also seeks 15 additional FTE positions and the restoration of 29 FTE positions omitted from the 1999 appropriation for a FY 2000 total of 1,058 FTEs. An explanation of the reasons for the request by category is provided below.

Compensation Comparability

Compensation Adjustment (Non-Judicial), $2,220,000

In order to annualize the 3.6% cost-of-living adjustment that was effective in January 1999, and to provide funding for the 4.4% cost-of-living adjustment projected for January 2000, $2,220,000 is requested. This amount will assist the court in its effort to realize comparable pay for non-judicial employees with Federal court employees performing the same or comparable job responsibilities.

Information Technology

Juvenile Probation Automation, $555,000

The court needs to enhance the juvenile probation department's ability to track and treat juvenile offenders under supervision in the District, and improve its functional interface with operating divisions of the court, such as the Family Division, which are automated. Currently, routine management reports are produced by conducting time consuming and labor-intensive hand counts of cases and clients, often involving probation officers in administrative, off-line functions. Accordingly, it is crucial that the Social Services Division be provided with modern computer equipment and technology for case management, client monitoring and program improvements.

Integrated Justice Information System, $2,500,000

Ready access to comprehensive information on offenders and cases is essential to the Superior Court's ability to meet its

responsibilities to the community and to preserve public safety. The Superior Court's case management information system, which supports courtroom and related activities, consists of 18 separate databases that contain different data elements which are not linked or shared in a comprehensive manner. As a result, it is difficult for judicial officers to obtain information on different cases involving the same parties without time-consuming manual file searches and case reviews.

Information linkages between the court and other agencies in the criminal justice system are also limited. This means that the information technology systems of the court, the Metropolitan Police Department, the U.S. Attorney's Office, the Youth Services Administration, the Office of the Corporation Counsel, the Public Defender's Service and the Pretrial Services Agency are unable to communicate with one another. Therefore, the system's ability to track the detention status or placement of juveniles under court-imposed supervision, share or receive information about neglected children under supervision, locate children in foster care placements, or coordinate efforts concerning the status of probationers is seriously limited.

The Superior Court is in the process of conducting a requirements analysis with Byrne grant funds for an integrated justice information system. It is estimated that funds in the amount of $2,500,000 are needed to begin the next phase of the project, in which a contractor would be hired after a competitive bidding process to develop a comprehensive system design which is

customized to the court's need to communicate internally and externally. The system would be capable of handling a variety of functions including: individual case tracking; substance abuse test reporting; court docket management; aggregate statistical record-keeping and analysis; and performance management. The critical nature of this need and its impact on the criminal justice community in the District of Columbia is readily apparent. However, OMB has supported only 30% of the funding necessary for this important project. We strongly urge you to support full funding for the proposed integrated criminal justice information system.

Financial Operations Automation, $185,000

The court's Financial Operations Division is not fully automated, and many of its automated systems function as "stand alone," separate operating systems. As a result, the court cannot promptly respond to requests for financial information, postings of fines and fees, and some other general accounting functions. The court seeks to complete the automation and integration of all financial operations, and to install an electronic document management system.

Computer Software Requirements, $244,000

To achieve compatibility among workstations throughout the court, over 400 desktop computers require upgrading in their operating system (to Windows 98) and in the basic automation software used in the court (i.e., Microsoft Office 97).

Additionally, there are specialized software programs, such as statistics, project planning, design and graphics, which need to be upgraded. Software currently operating on the court's local area network (LAN) servers also require upgrading to remain compatible with the operational needs and requirements of the workstations functioning on the LAN and otherwise.

Operational Requirements

Crime Victims Program, 2FTE's $0

Authority is sought for two FTE's to support the District of Columbia's Crime Victim's Compensation Program, which has been under the authority of the court since its transfer from the D.C. Department of Human Services in December 1996. Since the Superior Court has operated the program, the backlog of 415 cases which were transferred has been eliminated; 400 new claims have been processed; $2 million in claims have been awarded to victims and their families; and the average case processing time has been reduced from a year under the D.C. Department of Human Services to approximately one month under the supervision of the Superior Court. For fiscal year 2000, two FTE's are requested to provide greater community outreach and increased public awareness (*CS-10, Victim Advocate*) and to meet the demands of an increasing caseload by processing cases more efficiently and timely and providing improved services to victims and their families (*CS-10, Claims Examiner*). No funding for the positions is required as the cost

will be offset by general revenues collected by the court, court-ordered payments to the Crime Victim's Fund, and reimbursement by the Victim's of Violent Crime Fund.

Domestic Violence Unit, 1 FTE, $50,000

One *CS-12 Attorney-Negotiator* (bi-lingual) is requested to convert the attorney-negotiator position funded through the Violence Against Women Act grant to a permanent position. Grant funding for the position is scheduled to expire in September 1999. Given the ever-increasing caseload in the Domestic Violence Unit, its limited staffing levels, and the need to continue to serve victims of domestic violence who bring their complaints to the unit it is necessary for the court to assume funding responsibility for this currently grant-funded position.

Child Support Program, 4FTE's,$39,000

In response to the President's welfare reform legislation, the court set high performance standards for child support operations and established new program elements which are being implemented in fiscal year 1999. To meet new federal requirements, a number of measures are required, including: administrative establishment of paternity and child support orders for approval by the court; assumption by the court and the Office of the Corporation Counsel of the federal and local tax intercept program; implementation of revised review and modification procedures; and effective use of license revocation as an enforcement tool. For

the court to meet its obligations and expected level of performance, additional staffing is required, reimbursable by the Federal government at 66%.

Interpreter Services, $100,000

The demand for foreign language interpreters and sign-language interpreters has increased annually, and last year rose from 4,191 to 4,450. Despite efforts by the court to limit the number of interpreters used on a daily basis, the cost of providing interpreters has exceeded the amount appropriated ($285,000) for the past two fiscal years by approximately $50,000 each year. Requests for sign-language interpreters are expected to rise as well. The U.S. Department of Justice, Civil Rights Division, has advised the Superior Court that pursuant to the Americans with Disabilities Act, the Office of Interpreting Services *must* provide sign language interpreters for hearing-impaired *spectators* at in-court proceedings. The Superior Court's interpreter services costs are expected to rise dramatically as a result of this requirement.

Jury Service Payments, $730,000

Petit and grand jurors serving in the Superior Court currently receive $30.00 per day if selected to serve on a trial. By fiscal year 2000, jurors in U.S. District Court for the District of Columbia, directly across the street from the D.C. Superior Court,

will be receiving $40.00 per day for jury service whether or not they are selected for a trial on the first day. Since potential jurors from both the Superior Court and the U.S. District Court are selected from the same jury pool of D.C. citizens and perform the same function, it is unfair to pay one group at a significantly higher rate than the other. Therefore, the Court seeks to increase jury service payments to $40.00 a day for jurors serving at trial.

Neutral Stipends, $375,000

Neutral stipends enable the Superior Court to maintain one of the most comprehensive and successful alternative dispute resolution programs in the country. Authority is sought for stipends for a new program launched with grant funds in fiscal year 1998, and for two other long-standing program components in which neutrals are not comparably compensated. First, in the new child protection mediation program, child abuse cases are co-mediated (i.e., two mediators) at the rate of $100 per mediator per session. Cases are typically resolved in one session. In fiscal year 1998 and part of fiscal year 1999 (i.e., during the pilot phase of the project), stipends are being paid from the Court Improvement Project grant. The court plans to expand the program to include child neglect cases as well as abuse cases, which would require an additional $300,000.

In the court's family mediation program, cases are co-mediated at the rate of $40 per mediator per session for up to seven sessions. The compensation schedule was originally designed

to encourage more expeditious case resolution, but in practice, family cases often require more than seven sessions to reach a mediated agreement. Revising the existing payment policy to compensate mediators for all work performed would require an additional $60,000.

Lastly, current policy requires the court to evaluate every neutral annually. This function is performed by the court's most experienced and proficient neutrals who are compensated only for the time spent *observing* a mediation session. They are not, however, compensated for the additional time spent completing evaluation forms, providing feedback to the evaluated neutral, and counseling them, if needed, on improved mediation methods. Compensation for this additional service to the court in the amount of $25 per evaluation is requested and would require an additional $15,000 in appropriation authority.

Child Abuse Services, $32,000

The Superior Court is responsible for supervising children who have been abused or neglected. During the past several years, child abuse complaints have grown dramatically, placing even greater demands on the court's social workers and probation officers responsible for supervising and managing these large caseloads. The court is requesting funding to purchase the services of Case Aides, who would assist court social workers with the following: transporting children to medical or school appointments; supervising visits between the children and their

parents (as ordered in 20% of the child abuse cases filed in Superior Court); and assisting or teaching families essential skills such as housekeeping and budgeting.

Juvenile Drug Court, $536,000

In fiscal year 1998, the Superior Court established a drug court for juvenile offenders with grant funds from the U.S. Department of Justice and the District's Local Law Enforcement Block Grant to address the increasing incidence of drug use among the city's juveniles. Current statistics indicate that 70% of all juveniles who enter the District's juvenile justice system test positive for at least one drug. Problems related to drug use include academic failure, anti-social behavior, family conflict, teen pregnancy and school drop-out. The court's Juvenile Drug Court intervenes in the lives of youth engaged in substance abuse through intensive supervision, comprehensive family services, mandatory drug and alcohol testing, drug treatment, regular court appearances before the Juvenile Drug Court Judge, and remedial education. As a result of these efforts, the court expects to reduce drug use and crime, reduce rates of commitment to juvenile institutions, and reduce overcrowded dockets in Juvenile Court. To continue this critical program beyond the two-year grant period, funding in the amount of $536,000 is needed.

Urban Services Program, $345,000

The Urban Services Program (USP), established by the court in

1995, is an urban-based correctional option for youths consisting of a highly-structured, year-long intensive supervision and retraining program which begins with a month long cycle of residential boot camp. The court seeks funding to operate three additional USP cycles in FY 2000. Contract services to be included are for boot camp consultants, food and health services, and related supplies and equipment.

Juvenile Electronic Monitoring, $50,000

The court's Electronic Monitoring Program, which monitored both adults and juveniles, was transferred to the Offender Supervision Trustee during fiscal year 1998 in the implementation of the Revitalization Act. Under a contractual agreement with the Trustee, the Superior Court's juvenile population continued to be electronically monitored during fiscal year 1998, and it is anticipated that the Offender Supervision Trustee will continue to provide such services in fiscal year 1999. Of necessity, the court seeks to implement its own electronic monitoring program for juveniles in fiscal year 2000, to be provided by contract at a cost of $50,000, annually.

Operational Support Requirements

Criminal Division Filing System, $160,000

Fifty-two (52) sliding filing units at approximately $3,000 each, including installation, are requested to replace old filing units in the "closed files" area. The current sliding units are

approximately 30 years old and have become a safety hazard for employees. The units are extremely heavy and difficult to move and because of their age often fall off the sliding track. Failure to replace these units put employees at risk for injury, and the continued wear and tear on the units will lead to a growing safety hazard. New units will help increase the number of closed files that can be kept on-site and enhance service to the public, court staff and judges by allowing instant access to more case files at the courthouse (e.g., approximately 1-2 years of files, which translates into about 20,000-30,000 case jackets). OMB has not supported this much-needed item.

Law Library Collection Maintenance, $50,000

The Superior Court Law Library collection maintenance system is in need of upgrading to keep pace with the demand and needs of users (e.g., attorneys, court staff, law clerks, etc.) Accordingly, funds are requested to acquire an automated collection maintenance system.

Equipment Replacement Schedule, $600,000

In fiscal year 1996, the Superior Court was appropriated $1,500,000 for equipment acquisition and replacement needs. During budget reductions in subsequent fiscal years, equipment replacement was virtually eliminated from the court's operating budget. As a result, the court currently has an inventory of minimally functioning equipment (e.g., 386 personal computers and word star

workstations) and broken equipment which ultimately cost the court more to maintain and repair. There is an urgent need to reinforce the court's infrastructure, including computers, photocopying and facsimile equipment, much of which, because of lack of funding, has not been serviced and/or replaced in nearly a decade.

During the past three years, the court established "help desks" in both the Administrative and Data Processing Divisions to provide day-to-day assistance to judicial officers and court staff experiencing breakdowns with computers and other equipment. Increasingly, the court has found that many of the problems encountered by the "help desk" staff could have been avoided had the court been able to institute routine maintenance or replacement of equipment. Accordingly, the court seeks to initiate a modest equipment replacement schedule to begin to address this need and to preserve its investment in computer and other equipment. In order to have sufficient funding to begin to execute a systematic equipment replacement schedule, $600,000 is requested.

The foregoing represents the best judgment of the members of the Joint Committee on the fiscal requirements for the Superior Court in fiscal year 2000 in order for it to be able to continue to meet efficiently its responsibilities for the administration of justice.

Part III - Court System

Overview

Pursuant to District of Columbia Code §11-1703, the Executive

Office of the District of Columbia Courts is responsible for the administration of the District of Columbia Court system and serves as the primary provider of administrative services for the District of Columbia Court of Appeals and Superior Court. The Court System consists of the Executive Office, Fiscal Office, Administrative Services, Personnel, Court Reporting and Recording, and the Center for Education, Training and Development. Among the primary responsibilities under the purview of the Executive Office is the Criminal Justice Act Program, Court Security, Facilities Management and Capital Improvements.

Court System Budget Summary

The fiscal year 2000 budget request for the Court System reflects its resource needs in the area of security, records management, facility operational maintenance, employee compensation and statutorily-mandated expenses. For fiscal year 2000, the Court System's appropriated budget request is $42,942,000 and 123 FTEs.

Statutorily-Mandated Expenses

Criminal Justice Act Program, $1,466,000

A funding increase for Criminal Justice Act Program expenses last occurred in 1995, when the budget level was established at $25,036,000. It is projected that by fiscal year 2000 $26,502,000 will be required to pay all claims received. This is $1,466,000 above the present level of funding. OMB has supported all except $466,000 of the requested increase. We urge the Congress to fully

support the court's funding request for this essential court function.

Workers' Compensation Expense, $5,000

With the passage of the "National Capital Revitalization and Self-Government Improvement Act of 1997," Public Law 105-33, the Courts, for the first time, became responsible for the employer's payment of federal workers' compensation expenses as set forth in Title 5 U.S.C. Sec. 8147(b). The U.S. Department of Labor rendered its first invoice to the D.C. Courts in the amount of $4,966.21, for the period July 1, 1997 through June 30, 1998. This payment is due 30 days after the fiscal year 2000 funds are available. Therefore, $5,000 is requested for this new mandatory expense.

Compensation Comparability

Compensation Adjustment (Non-Judicial), $286,000

In order to annualize the 3.6% cost-of-living adjustment which was made effective in January 1999, and to provide funding for the 4.4% cost-of-living adjustment projected for January 2000, $286,000 is requested. This amount will assist the court in its effort to achieve for non-judicial employees comparable pay with Federal employees performing the same or comparable job responsibilities.

Operational Requirements

Records Management, 1FTE, $35,000

A *CS-09 Records Manager* is requested to coordinate, track and support the retrieval of court records from the District Records

Center and the Federal Records Center in Suitland, Md. The position will assist the court in managing court records in an efficient and economical manner, and will coordinate training in basic filing methods, records disposition, disaster preparedness, and the retirement of court records.

Facility Design and Maintenance, 2FTE's, $72,000

As the Courts no longer receive assistance from the D.C. Department of Public Works, two positions are requested to support the Courts' facilities design and maintenance. The court needs a CS07, Draftsperson to support on-going facilities, space planning and security needs, and a CS0-9/11 HVAC Mechanic to respond to air conditioning, heating and other environmental requirements.

Court Security Contract, $300,000

The cost of courthouse security provided under contract by the United States Marshals Service has exceeded $3,000,000 annually for the last several years. In fiscal year 1998, the court's contract was for over $3.4 million. Annual rate increases for security officers are prescribed in the contract between the U.S. Marshal's Service and the security service provider, and are passed on to the Courts. During fiscal year 1998, nearly $270,000 was allocated for the rate increase. A similar amount can be anticipated in the coming fiscal year. The court is requesting additional funding for security services in fiscal year 2000 in the amount of $300,000.

Facility Management Expenses, $126,000

The cost of contracted facility maintenance is expected to amount to $2,640,000 in fiscal year 2000. These expenses include janitorial services, trash removal, electrical and plumbing repair, painting, and maintenance of elevators and escalators, fire alarms, security systems, environmental controls and other physical plant items. The cost of these services has increased annually, and this request will provide a 5% inflationary adjustment for FY 1999 and FY 2000.

Part IV - D.C. Courts Capital Budget Request

The D.C. Courts operate in buildings that range in age from 21 years old (the Moultrie Courthouse) to over 170 years old (Building D). The electrical, plumbing and heating, ventilation and air-conditioning (HVAC) Systems require constant maintenance and many aspects of these systems need to be replaced, not only to achieve greater efficiency in energy use, but also to maintain the functionality of some of these systems. In addition, as the needs of and services provided by the Courts have increased over the years, the Courts have virtually outgrown the building space currently occupied.

The D.C. Courts have available to it an ideal facility to address the Courts' space needs: 451 Indiana Avenue, N.W. This building is located in the heart of the court's current facilities, and is directly across the street from the main courthouse, the H.

Carl Moultrie I Courthouse. Constructed in 1820 for use as the first City Hall/Courthouse of the District of Columbia, the building is listed in the National Register of Historic Places as an outstanding example of Greek revival architecture. Building D, as 451 Indiana Avenue is identified in the Courts' inventory of buildings, was the first building devoted exclusively to Washington, D.C., in the municipal sense, as distinguished from Washington, D.C. "the Federal City," and for that reason, holds great significance to the historic development of the District of Columbia government.

Over six years ago, the D.C. Courts engaged an architectural firm, Bryant and Bryant, to study the issues involved in renovating Building D so as to include it as an efficient element in the space inventory of the D.C. Courts. At the time of the study, which was completed in 1993, Building D was used by the Courts, as well as other agencies of the District of Columbia government, specifically the Public Defender Service and the Office of Corporation Counsel. Within the last few months, the Public Defender Service has vacated the building; the Office of Corporation Counsel is expected to move its staff out of Building D by the end of this summer. The objective of this study was to determine the best approach for readapting the Old City/Hall Courthouse for use as a court building in order to meet the space requirements for the Courts, while preserving it historic character. After completing a survey of the Old City Hall/Courthouse and analyzing its design, it was determined that the simplest and least costly approach would be

restoration of the facility to maximize use of its original layout, take advantage of its historic character, and provide more efficient space. Four alternative approaches for re-use of the Old City Hall/Courthouse were considered, including criminal courtrooms, executive offices, civil functions, and D.C. Court of Appeals. The four alternatives were chosen for study because they represent areas of D.C. Court's space use which were in critical shortage or where expansion was anticipated, as identified in Administrative Division space requirements report.

Of the four alternatives, the D.C. Court of Appeals' option was proposed. The principal rationale which guided this selection are listed below:

- The available 80,916 square feet of space within Building D can be developed to accommodate the D.C. Court of Appeals.

- Space vacated by the D.C. Court of Appeals within the H. Carl Moultrie I building could be utilized to support other trial court needs within the main building. The availability of this additional space could take pressure off of currently strained facilities and promote greater efficiency in implementing trial court functions.

- The U.S. Court of Appeals and the Supreme Court of the District of Columbia were formerly housed in Building D. This provides historical precedent for returning Building D to judicial uses reflective of Pierre Charles L'Enfant's original intent for the site.

Building D is now in a serious state of deterioration. Each year that passes without commencement of this important project has, and will continue to result in escalation in the costs of restoring of this historic building. At the time of the 1993 study

by Bryant and Bryant, restoration costs were estimated to be approximately $16 million. In 1996, Bryant and Bryant estimated the costs of restoring that building to be approximately $35,000,000.

Congress approved in the D.C. Courts' fiscal year 1999 capital budget the expenditure of $230,000 to update the cost estimates for renovating 451 Indiana Ave., N.W. Through the General Services Administration, the District of Columbia Courts have contracted with another local architectural firm, Karn Charuhas Chapman & Twohey, to update the estimated cost for restoration of that building. The results of the study update are expected by the end of fiscal year 1999.

The Courts' fiscal year 2000 capital budget request includes $8,270,000 to begin the restoration project. We plan to use those funds to conduct the architectural and engineering design work, conduct asbestos removal, demolition of partitions and other barriers, roof repair, and upgrading mechanical, plumbing, and electrical systems. We believe that it is essential that this restoration project be funded in fiscal year 2000, not only to begin the process of restoring this landmark of the District of Columbia government, but also to address critical space needs of the District of Columbia Courts. Therefore, we urge this Subcommittee and the Congress to support the District of Columbia Courts' fiscal year 2000 capital budget for the full amount requested.

Conclusion

The court system in the District of Columbia is one of which this community and this nation can be proud. It was uniquely structured to meet the changing demands of this urban community and a large metropolitan area. Our courts are well-known around the nation, and indeed, around the world, attracting visiting judges, jsutices and other government officials seeking to improve their own justice systems. The goal of our courts is to administer justice in the most fair, accessible, timely, and cost-efficient manner. To that end, we are constantly re-examining and re-evaluating the operations of the court system and making changes which will accomplish these goals. We must count upon the Congress to provide the funding necessary to operate the court system in the manner that our American system of justice requires and that our citizens expect and deserve. Therefore, we urge you to provide full funding for the Courts of the District of Columbia.

Joint Committee on Judicial Administration
in the District of Columbia

Chief Judge Annice Wagner, D.C. Court
of Appeals, Chair
Chief Judge Eugene N. Hamilton, Superior
Court of the District of Columbia
Judge Michael Farrell
Judge Nan R. Shuker
Judge Geoffrey M. Alprin

Ulysses B. Hammond, Secretary to
Joint Committee

DISTRICT OF COLUMBIA
COURT OF APPEALS

FISCAL YEAR 2000 BUDGET REQUEST

F.Y. 1999 Appropriation (96 FTEs)	$7,839,000
Less Non-Recurring FY99 Budget Item (Primary Network Service Upgrades)	- 330,000
Adjusted FY99 Budget Base	$7,509,000
Requested Base Adjustments:	
Compensation Comparability (Non-Judicial)	194,000
F.Y. 2000 Budget Request (96 FTEs)	$7,703,000

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

FISCAL YEAR 2000 BUDGET REQUEST

F.Y. 1999 Appropriation (1,017 FTEs)		$72,419,000
Less Non-Recurring FY99 Item (Jury Mgmt System)		- 189,000
Adjusted FY99 Budget Base		$72,230,000
Requested Base Adjustments:		
Compensation Comparability (Non-Judicial)		+ 2,220,000
Information Technology		
Juvenile Probation Automation	$ 555,000	
Integrated Justice Information System	2,500,000	
Financial Operations Automation	185,000	
Computer Software Requirements	244,000	+ 3,484,000
Operational Requirements		
Crime Victims Program (2 FTEs)	$ -0-	
Domestic Violence Unit (1 FTE)	50,000	
Child Support Program (4 FTEs)	39,000	
Interpreter Services	100,000	
Juror Entitlement	730,000	
Neutral Stipends	375,000	
Child Abuse Services	32,000	
Juvenile Drug Court (5 FTEs)	536,000	
Urban Services Program	345,000	
Juvenile Electronic Monitoring	50,000	+ 2,257,000
Operational Support Requirements		
Criminal Division Filing System	$160,000	
Law Library Collection Maintenance	50,000	
Equipment Replacement Schedule	600,000	+ 810,000
F.Y. 2000 Budget Request (1,029 FTEs)*		$81,001,000

* The Court also requests restoration of 29 FTEs, for a total of 1,058 FTEs.

COURT SYSTEM

FISCAL YEAR 2000 BUDGET REQUEST

F.Y. 1999 Appropriation (120 FTEs)		$40,742,000
Less Non-Recurring FY99 Item (Telecommunications Disaster Recovery System)		- 90,000
Adjusted FY99 Budget Base		$40,652,000
Requested Base Adjustments		
Compensation Comparability (Non-Judicial)		+ 286,000
Statutorily-Mandated Expenses:		
Criminal Justice Act Program	$ 1,466,000	
Workers' Compensation Expense	5,000	+ 1,471,000
Operational Requirements:		
Administrative Services (3 FTEs)	$ 107,000	
Court Security Contract	300,000	
Facility Management Expenses	126,000	+ 533,000
F.Y. 2000 Budget Request (123 FTEs)		$42,942,000

APPENDIX

ITEMS IN THE DISTRICT OF COLUMBIA COURTS' FY 2000 BUDGET REQUEST THAT WERE NOT SUPPORTED BY THE PRESIDENT

- **Integrated Justice Information System.**
  Ready access to accurate and comprehensive information on offenders and cases is essential to the Superior Court's ability to meet its responsibilities to the community and to preserve public safety. The Superior Court's case management information system, which supports courtroom and related activities, consists of 18 distinct databases, which are not linked. It is difficult for judicial officers to obtain information on cases across different caseloads without time-consuming manual file searches and case reviews. The need for this information is increasing, as more cases require that a judicial officer know about an offender's prior experience and/or family history with the justice system (e.g., in domestic violence cases there is a need to know about the status of civil protection orders, whether there have been any child abuse charges, and the like).

  Information linkages between agencies in the criminal justice system are also limited. Therefore, the system's ability to track the detention status or placement of juveniles under court-imposed supervision, share or receive information about neglected children under supervision, locate children in foster care placements, or coordinate efforts concerning the status of probationers is seriously impaired.

  It is estimated that funds in the amount of $2,500,000 are needed to develop a comprehensive system design, focused on criminal and juvenile case processing and customized to the Court's need to communicate internally and externally. The system would be capable of handling a variety of functions including: individual case tracking; substance abuse test reporting; court docket management; aggregate statistical record-keeping and analysis; and performance management. The funds requested to conduct the system design for the integrated justice management system is $2,500,000. **The President did not support $1,535,000.**

- **Neutral Stipends.**
  Neutral stipends enable the Superior Court to maintain one of the most comprehensive alternative dispute resolution programs in the country. Authority is sought for stipends for a new program launched with grant funds in fiscal year 1998 and for two other long-standing program components in which neutrals are not comparably compensated. First, in the new child protection mediation program, child abuse cases are co-mediated (i.e., two mediators) at the rate of $100 per mediator per session. Cases are typically resolved in one session. In fiscal year 1998 and part of fiscal year 1999 (i.e., the pilot phase), stipends are being paid from the Court Improvement Project grant. After the pilot, the Court plans to expand the program to include child neglect cases in addition to abuse cases. As a result, 1,500 cases are

expected in fiscal year 2000, and an additional $300,000 will be needed for mediator stipends.

In the family mediation program, cases are co-mediated at the rate of $40 per mediator per session for up to seven sessions. The compensation schedule was originally designed to encourage expeditious case resolution, but in practice, family cases often require more than seven sessions to reach a mediated agreement. Revising the existing payment policy to compensate mediators for all work performed would require an additional $60,000.

Lastly, current policy requires annual evaluation of all neutrals. This function is performed by the Court's most experienced and proficient neutrals who are compensated only for the time spent *observing* a mediation session. They are not, however, compensated for the additional time spent completing evaluation forms, providing feedback to the evaluated neutral, and counseling them, if needed, on improved mediation methods. Compensation for this additional service in the amount of $25 per evaluation is requested and would require an additional $15,000. **The President did not support $145,000 of the amount requested.**

- **Criminal Division Filing System.**
  Fifty-two (52) sliding filing units at approximately $3,000 each, including installation, are requested to replace old filing units in the "closed files" area. The current sliding units are approximately 30 years old and have become a safety hazard. The units are extremely heavy and difficult to move, and because of their age, often fall off the sliding track. Failure to replace these units put employees at risk for injury. New units will help increase the number of closed files that can be maintained on-site and enhance service to the public, court staff and judges by allowing instant access to more case files at the courthouse (e.g., approximately 1-2 years of files, which translates into about 20,000-30,000 case jackets). The requested amount is $160,000. **The President did not support any funding for this request.**

- **Equipment Replacement Schedule.**
  In fiscal year 1996, the Superior Court was appropriated $1,500,000 for equipment acquisition and replacement needs. During budget reductions in subsequent fiscal years, equipment replacement was virtually eliminated from the Court's operating budget. As a result, the Court currently has an inventory of minimally functioning equipment (e.g., 386 personal computers and word star workstations) and broken equipment which ultimately cost more to maintain and repair. There is an urgent need to reinforce the Court's infrastructure, including computers, photocopying and facsimile equipment, much of which has not been routinely cleaned, serviced and/or replaced in nearly a decade.

  During the past three years the Court established "help desks" in both the Administrative and Data Processing Divisions to provide day-to-day assistance to judicial officers and court staff experiencing breakdowns with computers and other equipment. Increasingly, the Court has found that many of the problems encountered by "help desk" staff could have been avoided.

had routine maintenance or replacement of equipment been performed. Accordingly, the Court seeks to initiate a modest equipment replacement schedule to begin to address this need and to preserve its investment in computer and other equipment. In order to have sufficient funding to begin to execute a systematic equipment replacement schedule, $600,000 is requested. **The President did not support any funding for this request.**

- Criminal Justice Act Program.
  A funding increase for Criminal Justice Act Program expenses last occurred in 1995, when the budget level was established at $25,036,000. If the Court had received full funding during fiscal year 1998, $25,523,000 would have been expended for the CJA Program. It is projected that this level of cost will continue and that by fiscal year 2000 $26,502,000 will be required to pay all claims received. **This is $1,466,000 above the present level of funding. The President did not support $466,000 of this statutorily mandated expense.**

GAO REPORT ON FINANCES OF DC COURTS

[See "Clerk's Note" on pages 416, 429 and 431 this volume.]

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TELEPHONE:
(202) 225-2771

September 22, 1998

Mr. James F. Hinchman
Acting Comptroller General of
the United States
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Hinchman:

It has come to the Committee's attention that the District of Columbia Courts have ceased paying court-appointed attorneys for services rendered because of a shortage of funds. We understand that the attorneys are appointed for three programs within the Court's operations, namely (1) the Criminal Justice Act Program; (2) the Counsel for Child Abuse and Neglect Program; and (3) the Guardianship Program. We understand too, that funds were expended for pay raises in other departments of the Court's operations, in lieu of the payments of the court-appointed attorneys for the indigent.

The Committee believes this situation is serious and deserves to be thoroughly investigated. Accordingly, we would like the General Accounting Office to audit expenditures of the District of Columbia Courts related to this matter to determine whether or not the fiscal year 1998 appropriated funds have been spent according to the enacted budget and the D.C. budget justification presented to Congress. A comparison to the spending pattern of fiscal years 1996 and 1997 of those expenditures would also be informative for our purposes. The Committee is seeking the Court's justification for its actions in this matter and what is permitted by law.

The Committee further requests that the General Accounting Office conduct a review of the financial and personnel management practices of the D.C. Court's operations.

Because of the financial impact and hardship brought upon these attorneys as a result of the Court's actions, the Committee requests that this matter be conducted by GAO as quickly as possible. We appreciate all the efforts which can be put into this matter. Please direct any inquiries to Americo Miconi at 225-5338 of the Committee staff and Sue Hardesty at 225-4376 of Congressman Moran's staff.

Sincerely,

Charles H. Taylor
Chairman
Subcommittee on the
District of Columbia

James P. Moran
Ranking Member
Subcommittee on the
District of Columbia

Congress of the United States

Washington, DC 20515

January 26, 1999

Chief Judge Eugene N. Hamilton
District of Columbia Superior Court
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Judge Hamilton:

As you know, Congress asked for an audit by the General Accounting Office (GAO) of financial and personnel practices of the D.C. Superior Court. We have received reports that some court personnel have been reluctant to discuss their views on the financial and personnel management of the courts for fear that they would suffer retaliation. We make no judgment about these views, but feel that it is important for the GAO auditors to hear them. We are considering introducing legislation to offer retroactive whistleblower protection to employees of the Courts of the District of Columbia. However, in the meantime, we are writing to ask that you insure that employees need not fear retaliation for discussing their views with the GAO auditors.

We are especially cognizant of the key role the D.C. Superior Court plays in the revitalization of the District of Columbia; and we have no intention of interfering with the judicial workings of the court. However, the D.C. Superior Court receives federal funds, and it is our responsibility to be sure that those funds are properly managed. While you have staff responsible for the financial and personnel management of the court, as Chief Judge you are ultimately accountable for that management.

It is critically important that the people of the District of Columbia have confidence in the D.C. Courts. We believe that confidence would be well supported by an unequivocal assurance from you that the D.C. Superior Court is committed to sound financial and personnel practices, and that employees who may have information useful to the GAO auditors will not face retaliation.

Sincerely yours,

James P. Moran
Ranking Member, Appropriations
Subcommittee on the District of Columbia

Ernest J. Istook
Chairman, Appropriations
Subcommittee on the District of Columbia

Tom Davis
Chairman, Government Reform
Subcommittee on the District of Columbia

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United States General Accounting Office

GAO

Report to Congressional Requesters

September 1999

D.C. COURTS

Planning and Budgeting Difficulties During Fiscal Year 1998





GAO/AIMD/OGC-99-226



United States General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-283119

September 16, 1999

The Honorable Ernest J. Istook
Chairman
The Honorable James P. Moran
Ranking Minority Member
Subcommittee on the District of Columbia
Committee on Appropriations
House of Representatives

The Honorable Thomas M. Davis, III
Chairman
Subcommittee on the District of Columbia
Committee on Government Reform
House of Representatives

On May 18, 1999, we testified before the Subcommittee on the District of Columbia, House Committee on Appropriations, regarding the District of Columbia Courts' (DC Courts) financial operations in fiscal year 1998, its first year of operations with direct federal funding.[1]

In our testimony, we reported that DC Courts had experienced difficulties in planning and budgeting during this transition year. Our review of DC Courts records showed that it had potentially overobligated its resources, which could violate the Anti-Deficiency Act. Following our testimony, we provided to the Subcommittee on the District of Columbia, House Committee on Appropriations, a chronology of pertinent events related to the DC Courts appropriation and obligations for fiscal year 1998.[2] We also reviewed proposed deobligations submitted by DC Courts. This report (1) supplements our testimony, providing additional detail on our findings, and (2) transmits our recommendations to the Congress and DC Courts. Our objectives were to address the following questions, which were also discussed at the testimony:

1. What were DC Courts obligations for fiscal years 1996, 1997, and 1998?

[1]District of Columbia Courts: Financial Related Issues for Fiscal Year 1998 (GAO/T-AIMD/GGD-99-176).

[2]District of Columbia Courts: Chronology of Events Related to DC Courts' Appropriation and Obligations for Fiscal Year 1998 (GAO/AIMD-99-204R, June 7, 1999).

2. Did DC Courts have a spending plan for fiscal year 1998 and obligate funds in accordance with available resources?

3. Why did DC Courts defer payments to court-appointed attorneys from late July 1998 through September 1998, and were those payments made in fiscal year 1998 processed in accordance with policies and procedures?

During the course of our review, we also identified an issue regarding DC Courts' authority to spend money from the Crime Victims Fund for the Crime Victims Compensation Program.

Results in Brief

DC Courts incurred obligations of $115.4 million, $119 million, and $125.6 million in fiscal years 1996, 1997, and 1998, respectively. Fiscal year 1998 obligations reflect a different scope of activities than prior year obligations, primarily because of changes necessitated by the Revitalization Act of 1997. These changes included the transfer of a DC Courts function to another entity and increased costs of employee benefits during fiscal year 1998. DC Courts also gave its nonjudicial employees a 7-percent pay raise and assumed responsibility for judges' pension costs as part of its fiscal year 1998 appropriation for court operations.

DC Courts did not prepare and execute a budget based on amounts appropriated for fiscal year 1998. Records showed that throughout the year, DC Courts was aware that its spending was on pace to exceed available resources. However, rather than managing within its available funds, DC Courts incurred obligations in anticipation of receiving additional resources from the Congress and others to cover the difference.

Faced with an impending shortfall in operating funds, DC Courts officials deferred payments totaling $5.8 million owed to court-appointed attorneys and expert service providers during the last 3 months of fiscal year 1998. The Congress transferred $1.7 million in fiscal year 1998 funds to DC Courts that was used for deferred court-appointed attorney payments and authorized DC Courts to use the fiscal year 1999 appropriation to fund the remaining deferred amount of $4.1 million.

As of May 25, 1999, we found that DC Courts fiscal year 1998 obligations exceeded available resources by $4.6 million, in violation of the Anti-Deficiency Act. This funding shortfall reflected the $4.1 million in deferred payments to court-appointed attorneys that should have been recorded as fiscal year 1998 obligations and our assessment of

deobligations for fiscal year 1998 submitted by DC Courts. In addition, DC Courts treated $773,000 in interest—earned primarily on the bank balances from quarterly apportionments of its fiscal year 1998 appropriation—as an available budgetary resource for court operations without having legislative authority to do so. According to our overall evaluation, obligations and available funding for fiscal year 1998 were $125.6 million and $121 million, respectively.

In general, DC Courts processed vouchers for court-appointed attorneys and expert-service providers in accordance with established policies and procedures. However, its policies did not (1) include time frames for processing the vouchers and making payments or (2) require that judges document decisions to reduce claimed voucher amounts. Further, DC Courts did not have procedures for retaining data on vouchers reported as lost or missing. These deficiencies are of particular concern given that DC Courts became subject to the federal Prompt Payment Act in fiscal year 1999. Under this act, DC Courts could be required to pay interest on any voucher payment made more than 30 days after submission of a proper invoice.

In addition, DC Courts did not have the requisite authority to spend funds in the Crime Victims Fund account. DC Courts' records indicated that it spent about $1.8 million during fiscal year 1998.

This report includes recommendations to the Congress and DC Courts. In response to a draft of this report, DC Courts disagreed with our conclusions and the need for implementing three of our recommendations. They agreed to seek clarifying legislation to address two of our other recommendations. They did not directly address the other recommendations. Subsequent to DC Courts' response, the Conference Committee on the District of Columbia Appropriations Act, 2000 adopted provisions that, if enacted, would address four of the recommendations.

Background

The District of Columbia Court Reform and Criminal Procedure Act of 1970 (Court Reform Act) transferred jurisdiction over all local judicial matters to a unified court system for the District. This entity, known as DC Courts, includes

- the Superior Court, which is the trial court with general jurisdiction over virtually all local legal matters, including criminal, civil, juvenile, domestic relations, probate, and small claims cases, and

- the Court of Appeals, the highest court of the District of Columbia, which reviews all appeals from the Superior Court, as well as decisions and orders of D.C. government administrative agencies.

The Court Reform Act provided for the creation of a policy-making body for DC Courts, the Joint Committee on Judicial Administration. The Joint Committee, comprised of the two chief judges and three associate judges elected annually by the judges of the Superior Court and Court of Appeals, submits DC Courts' annual budget requests and is responsible for DC Courts' general personnel policies, accounting and auditing, procurement and disbursement, development and coordination of statistical and management information systems and reports, and other related administrative matters. The Joint Committee appoints the executive officer, who manages the day-to-day administrative and financial management of the Court System on the Committee's behalf. The fiscal officer, subject to the supervision of the executive officer, is responsible for maintaining accounting records and processing payments from the general appropriation.

Impact of the 1997 Revitalization Act on DC Courts

The Revitalization Act[2] changed DC Courts' funding process, nonjudicial employee compensation, and functional responsibilities. Under the Revitalization Act, the federal government took over certain financial responsibilities and roles previously held by DC Courts under the Court Reform Act. Some activities became federal government responsibilities, while others remained local government activities funded with federal dollars.

The Revitalization Act provides for direct federal funding of DC Courts. The Joint Committee submits the Courts' budget request to the Congress through the Director of the Office of Management and Budget (OMB). The District's fiscal years 1998 and 1999 appropriation acts contain a federal payment to the Joint Committee for operating DC Courts. The appropriation acts also require OMB to approve the apportionment of the federal payment to the Joint Committee on a quarterly basis for expenditures necessary to efficiently execute the functions vested in the courts.

[2]National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law No. 105-33, Title XI, 111 Stat. 712 (1997).

Judges and nonjudicial employees of DC Courts are treated as federal employees solely for the purposes of eligibility in the federal health and life insurance and workers' compensation plans. For nonjudicial employees, this eligibility extends to federal retirement plans as well. In fiscal year 1998, the federal government also assumed responsibility for administering the judges' retirement funds, and the DC Courts assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation.

The Revitalization Act also transferred the adult probation function from DC Courts to a new entity, the District of Columbia Court Services and Offender Supervision Agency (COSA),[4] with a requirement that COSA be certified as a federal agency by August 5, 2000. In the short term, the COSA Trustee, an independent officer of the D.C. government, manages all funds and personnel associated with the entity.

Court-Appointed Attorneys

DC Courts appoints and compensates attorneys to represent persons who are financially unable to obtain such representation on their own under three programs: (1) the Criminal Justice Act program (CJA),[5] (2) the Counsel for Child Abuse and Neglect (CCAN) program,[6] and (3) the Guardianship program.[7] Indigent persons who are charged with criminal offenses can obtain the assistance of court-appointed attorneys through CJA. In family proceedings where child neglect is alleged or where the termination of the parent and child relationship is under consideration and the parent, guardian, or custodian of the child is indigent, the child and/or parent, guardian, or custodian of the child can obtain the assistance of a court-appointed attorney through CCAN. The Guardianship program pays for the representation and protection of mentally incapacitated individuals and minors whose parents are deceased. In addition to legal representation, these programs offer indigent persons access to experts to provide services such as transcription of court proceedings, expert witness

[4]The Revitalization Act named the new federal agency the Offender Supervision, Defender and Court Services Agency, but it was renamed by the District of Columbia Courts and Justice Technical Corrections Act of 1998, Public Law No. 105-274, Section 7(c), 112 Stat. 2419, 2426, October 21, 1998.

[5]D.C. Criminal Justice Act of 1974, as amended, D.C. Code Ann. Secs. 11-2601 through 11-2608 (1981) (1995 Replacement Volume, 1999 Supp.).

[6]Neglect Representation Equity Act of 1984, as amended, D.C. Code Ann. Secs. 16-2304, 16-2326.1 (1981) (1997 Replacement Volume).

[7]D.C. Guardianship Protective Proceedings, and Durable Power of Attorney Act of 1986, as amended, D.C. Code Ann. Secs. 21-2001 through 21-2085 (1981) (1997 Replacement Volume).

testimony, foreign and sign language interpretation, and investigations and genetic testing.

Attorneys and expert-service providers who work on CJA, CCAN and Guardianship cases submit vouchers to DC Courts detailing time and expenses involved in working on a case. Following an administrative review and approval by the presiding judge or hearing commissioner, the voucher is forwarded to DC Courts, which prepares a list of payments to be made. The list is electronically submitted to the General Services Administration (GSA), which prepares and issues checks[8] paid from DC Courts' annual appropriation. During fiscal year 1998, DC Courts paid court-appointed attorneys at a rate of $50 per hour and reimbursed them for authorized expenses.

Crime Victims Compensation Program

A District law established the Crime Victims Compensation Program under DC Courts' jurisdiction before the Congress passed the Revitalization Act. The District law (1) identifies fines, fees, and other moneys for DC Courts to deposit into a Crime Victims Fund and (2) provides that compensation totaling up to $25,000 can be made from the fund to crime victims for economic loss. Payments can also be made for shelter, burial costs, or medical expenses.

Objectives, Scope, and Methodology

Our objectives were to (1) compare DC Courts' obligations for fiscal years 1996, 1997, and 1998, (2) determine whether DC Courts had a spending plan and obligated funds consistent with available resources in fiscal year 1998, and (3) determine why DC Courts deferred payments to court-appointed attorneys in fiscal year 1998 and whether payments that were made were processed in accordance with policies and procedures. To accomplish our objectives, we

- obtained and reviewed DC Courts' general ledger account balances and other financial information for fiscal years 1996, 1997, and 1998;
- obtained and analyzed DC Courts' budget requests, spending plans, and details supporting budget documentation for fiscal year 1998;
- obtained and reviewed financial information and correspondence between DC Courts, OMB, the Department of Justice, and the Congress;

[8]Prior to March 1998, this processing was done through the District's Financial Management System (FMS).

- obtained and compared court-appointed attorney payment information under CJA and CCAN for fiscal year 1998 and prior fiscal years;[9]
- reviewed policies and procedures for voucher payment and analyzed about 30,000 records in DC Courts' tracking and payment databases that represent fiscal year 1998 payments through July; and
- interviewed the Joint Committee on Judicial Administration; DC Courts' Executive Officer, Fiscal Officer, and Legal Counsel; CJA and CCAN program officials; officials in the Financial Operations Division who process voucher payments; officials from the Department of Justice, OMB, GSA and the COSA Trustee; officials from the District of Columbia's Department of Administrative Services; and court-appointed attorneys.

In order to compare budgeted and obligated amounts, we gathered financial information and analyzed obligations and funding resources reported by DC Courts. We used DC Courts' unaudited financial information,[10] which was compiled from various manual records and accounting and financial management systems, and held discussions with DC Courts officials to obtain additional clarification.

We did our work in accordance with generally accepted government auditing standards between October 1998 and May 1999. We requested comments on a draft of this report from the Joint Committee on Judicial Administration in the District of Columbia. The Joint Committee provided us with written comments that are discussed in the "DC Courts Comments and Our Evaluation" section and are reprinted in appendix I.

Reported Obligations for Fiscal Years 1996 Through 1998

DC Courts' records indicated that total obligations in fiscal years 1996, 1997, and 1998 were $115.4 million, $119 million, and $125.6 million, respectively. Fiscal year 1998 obligations reflect our adjustments, as discussed later, and a different scope of activity than the prior years' obligations. This is primarily due to changes resulting from the Revitalization Act of 1997.

[9]Our work on court-appointed attorneys focused on those appointed under the CJA and CCAN programs. The total payments of approximately $300,000 under the Guardianship program were not included since the amount was about 1 percent of the total payments to court-appointed attorneys and not deemed material to our review.

[10]On May 19, 1999, DC Courts awarded a contract to KPMG Peat Marwick, LLP, to perform the first financial statement audit of its operations. The audit was for the year ended September 30, 1998, as required under the Revitalization Act.

For example, the adult probation function was transferred from DC Courts to the District of Columbia Court Services and Offender Supervision Agency (COSA) in fiscal year 1998. While DC Courts no longer had operational responsibility for the adult probation function, it continued for several months to pay salaries and related costs on behalf of the COSA Trustee. In March 1998, the Trustee took over the payments for adult probation and subsequently reimbursed DC Courts $7.8 million for the costs DC Courts paid on the Trustee's behalf. These costs and the related reimbursements were included in DC Courts' fiscal year 1998 obligations and available funds.

Also as a result of the Revitalization Act, nonjudicial employees received federal benefits that increased DC Courts obligations for fiscal year 1998. DC Courts also assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation for court operations and gave its nonjudicial employees a 7-percent pay raise.

DC Courts' Spending Plan and Obligation of Funds

Prior to the decision to transfer the adult probation function to a new entity, DC Courts had requested $123.5 million to fund its fiscal year 1998 operations. When DC Courts received $108 million in its fiscal year 1998 appropriation, it was responsible for developing a spending plan to ensure that its obligations did not exceed available resources. However, DC Courts did not develop such a plan. It obligated funds throughout the year based on its expectation of receiving additional funds. While DC Courts received an additional $1.7 million in appropriated funds for the fiscal year, it did not receive all of the funding it anticipated. It also received $12.1 million in grants, interest, and reimbursements, including the $7.8 million reimbursement from the COSA Trustee, during the fiscal year.

Letters between DC Courts and OMB during fiscal year 1998 reflect DC Courts officials' expectations of receiving additional resources and OMB's concern that if DC Courts did not lower its rate of spending, its obligations would exceed available funds. For example, in an April 1998 letter, OMB advised DC Courts that it was incurring obligations at a rate that would necessitate a deficiency or supplemental appropriation. For their part, DC Courts officials continued to seek additional funds during their discussions with the COSA Trustee, the Department of Justice, and OMB.

By the end of the fiscal year, DC Courts' records showed that obligations exceeded available resources by about $350,000 for fiscal year 1998. Specifically, its records showed obligations of almost $122.2 million and

funds received of about $121.8 million. However, we found that adjustments needed to be made to those amounts:

- DC Courts deferred more than $4.1 million of court-appointed attorney payments that were eventually made with fiscal year 1999 funds but did not record these amounts as fiscal year 1998 obligations. Accordingly, we added this amount to DC Courts' reported fiscal year 1998 obligations.
- DC Courts treated interest earned primarily from quarterly apportionments of its appropriation as available budgetary resources for court operations. However, DC Courts did not have authority to spend this interest. For this reason, we reduced the amount that DC Courts reported as available resources for fiscal year 1998 by $773,000.

At our May 18 testimony, we reported that DC Courts' recorded obligations and available funding for fiscal year 1998 as adjusted were about $126.3 and $121 million, respectively, resulting in a potential overobligation of more than $5.2 million, in violation of the Anti-Deficiency Act.

Recently, DC Courts officials advised us that some obligations in their fiscal year 1998 records needed to be deobligated. DC Courts officials stated that these included amounts that the District should not have recorded as obligations, as well as amounts for services that were no longer anticipated. In May 1999, we evaluated more than $500,000 of the proposed $1 million in deobligations and determined that almost $200,000 represented obligations for fiscal year 1998 that were still valid. For example, in three cases, these amounts represented contracted services that had been rendered during fiscal year 1998 for which the contractor had not yet billed DC Courts. In addition, we identified almost $200,000 of unrecorded fiscal year 1998 obligations. These changes reduced DC Courts' overobligation for fiscal year 1998 by approximately $600,000, to about $4.6 million.

Adjustments to Fiscal Year 1998 Obligations and Resources

We found that DC Courts needed to increase its reported fiscal year 1998 obligations by more than $4.1 million to account for court-appointed attorney payments that had been deferred during fiscal year 1998 and not recorded as fiscal year 1998 obligations. DC Courts eventually made these payments with fiscal year 1999 funds as authorized by the District of Columbia Appropriations Act of 1999. However, this did not convert the deferred payments from fiscal year 1998 obligations to fiscal year 1999 obligations.

We also found that DC Courts needed to decrease its fiscal year 1998 budgetary resources because it had treated $773,000 of fiscal year 1998 interest income as an available budgetary resource for court operations without having explicit legislative authority to do so. DC Courts earned the interest primarily as a result of depositing quarterly apportionments of its appropriation for court operations in interest bearing accounts.[11] The District of Columbia Home Rule Act provides that no amount may be obligated or expended by a District government officer or employee unless the amount has been approved by an act of Congress and then only according to that act. Also, the Revitalization Act amended the Home Rule Act to expressly provide that moneys[12] received by DC Courts be deposited in the U.S. Treasury or the Crime Victims Fund.[13] These statutory provisions support the general proposition that when the Congress appropriates funds for DC Courts, it establishes an authorized program level beyond which DC Courts may not operate. Accordingly, DC Courts may not augment its appropriation without specific statutory authority to do so.

The Home Rule Act provisions are clear and comprehensive. The provisions apply to all amounts and moneys received by DC Courts, and they are overcome only by the Congress granting the specific authority needed. We are unaware of any statute that authorizes DC Courts to retain and spend interest earned on appropriations for court operations. Further, it undermines the Home Rule Act provisions and the general proposition they support to infer that when Congress required the Treasury to quarterly pay apportioned amounts to DC Courts, the Congress also authorized DC Courts to retain and spend the interest it earns. Accordingly, DC Courts was not authorized to retain or use this interest income and should have remitted it to the U.S. Treasury.

Anti-Deficiency Act

By combining the adjustments described above with DC Courts' reported obligation balances, we determined that DC Courts had overobligated its budgetary resources by $4.6 million. The Anti-Deficiency Act prohibits District government officers and federal officials from making

[11]For fiscal years 1998 and 1999, the District of Columbia Appropriations Acts required the Treasury of the United States to pay appropriations quarterly to the DC Courts based on quarterly apportionments approved by OMB.

[12]These generally refer to funds received from nonfederal sources, such as fines and fees.

[13]Section 450 of the Home Rule Act, as amended.

(1) obligations or expenditures in excess of amounts available in an appropriation or fund unless they are otherwise authorized to do so by law and (2) an obligation or expenditure in excess of an apportionment. Apportionments at increments throughout a fiscal year are intended to prevent obligations and expenditures at a rate indicating a necessity for a deficiency or supplemental appropriation. To the extent DC Courts overobligated its budgetary resources for fiscal year 1998, the overobligations violated the Anti-Deficiency Act.

Anti-Deficiency Act provisions constitute some of the fundamental financial management requirements for federal and District government activities subject to the congressional budget process.[14] The act's purpose is to ensure that agencies or activities funded by annual appropriations manage their affairs so as not to exhaust their appropriations before the end of the fiscal year and require additional funding for their annual operations. OMB and we have stated that officers or employees of the federal government subject to the Anti-Deficiency Act may not incur obligations against anticipated receipts, including supplemental appropriations requested but not yet enacted,[15] because such receipts may not be realized. For example, the Congress may not enact a supplemental appropriation in the amount requested by an agency.[16] The official having administrative control of the appropriation is required to establish regulations to ensure compliance with the Anti-Deficiency Act and to identify the reasons for any obligation or expenditure exceeding an apportionment.

The Anti-Deficiency Act requires the head of an agency to report immediately to the President and the Congress any violation of the act including all relevant facts and a statement of actions taken. OMB Circular A-34, Instructions on Budget Execution, provides additional guidance on information that the agency is to include in its report to the President. OMB instructs agencies to include the primary reason or cause for the overobligation, any extenuating circumstances, the adequacy of the system

[14]31 U.S.C. secs. 1341, 1342, 1349-1351, 1511-1519 (1994).

[15]B-230117-O.M., February 8, 1989, and OMB Circular No. A-34, sec. 21.4 (Rev., Nov. 7, 1997).

[16]OMB has made it clear that even in situations where OMB approves an apportionment request that would indicate the necessity for a supplemental or deficiency appropriation, it does not authorize the agency to exceed available resources. While an agency is required to submit a fully justified request for supplemental funding accompanying the deficiency apportionment request, OMB's approval of such an apportionment request does not commit OMB to recommend that amount to the President or transmit that amount to Congress. OMB Cir. No. A-34, sec. 33.2 (Rev., Nov. 7, 1997).

providing administrative control of funds, any changes necessary to ensure compliance with the Anti-Deficiency Act, and steps taken to prevent a recurrence of the same type of violation.

Violations of the Anti-Deficiency Act are generally the result of agencies incurring obligations of a discretionary nature in excess of available funding. An overobligation does not violate the Anti-Deficiency Act if it is, in the language of the act, otherwise authorized by law. However, no law explicitly authorized DC Courts to incur fiscal year 1998 obligations in excess of available resources. The argument that obligations for attorneys' fees in excess of available resources are "otherwise authorized by law" finds support on the grounds that these obligations are mandatory in nature. When a law establishes an appropriation or fund for the sole purpose of paying obligations of a mandatory nature, obligations in excess of available funding are not generally viewed as being in violation of the requirements of the Anti-Deficiency Act.[17]

While the obligations for court-appointed attorneys might reasonably be viewed to be of a mandatory nature, the critical issue for applying the Anti-Deficiency Act in this case is whether the overobligations were entirely attributable to the mandatory obligations for court-appointed attorneys and consequently authorized by law. This task is complicated by the fact that court-appointed attorney programs are financed as part of the general appropriation for court operations. Under these circumstances, DC Courts should have considered the impact that the mandatory aspect of the program would have on the appropriation and managed the residual amounts prudently so that total obligations did not exceed the total amount appropriated. In other words, having funds for mandatory activities included in a lump sum appropriation available for discretionary activities did not relieve DC Courts of its responsibility to manage discretionary spending to avoid exceeding available resources and violating the Anti-Deficiency Act.[18]

While DC Courts' overobligation of an appropriation that funds both mandatory and discretionary programs may not necessarily constitute an

[17]See 65 Comp. Gen. 4 (1985).

[18]"District officials must supervise and manage the District's financial transactions to insure that appropriations are not exceeded and the requirements of the Anti-Deficiency Act are met." B-262069, August 1, 1995 (the District would violate the Anti-Deficiency Act if its discretionary decisions on the Medicaid and Aid to Families with Dependent Children programs led to overobligating its lump sum appropriation for Human Support Services).

Anti-Deficiency Act violation, it at least creates a presumption of such a violation. To avoid violating the Anti-Deficiency Act, DC Courts would have to show that it took all reasonable steps to manage the account within the amounts appropriated and that any obligations in excess of available resources resulted from constitutional or statutory requirements.[19] To support this argument, the burden is on DC Courts to provide evidence of unanticipated mandatory spending and efforts undertaken to cut discretionary spending.

The actions of DC Courts during fiscal year 1998 do not demonstrate that the overobligation of the fiscal year 1998 account resulted from obligations that were beyond its control. For example, the $4.1 million in payments for court-appointed attorneys clearly was not deferred because it was unexpected—the fiscal year 1998 obligations for court-appointed attorneys were similar to those in fiscal year 1997 and the estimates for fiscal year 1998. Also, DC Courts granted a discretionary pay raise[20] that took effect after the fiscal year 1998 appropriation was enacted into law even though the appropriation was more than $15 million less than the amount DC Courts initially requested. Finally, DC Courts did not base its spending during most of fiscal year 1998 on the appropriation it received.

DC Courts officials have stated that they did not violate the Anti-Deficiency Act because a provision in the fiscal year 1999 appropriation act authorized DC Courts to make court-appointed attorney payments that had been deferred from fiscal year 1998. The DC Courts' view is that this provision authorized the deferral of these payments in fiscal year 1998 and allowed DC Courts to use fiscal year 1999 funds to liquidate these obligations, all without violating the Anti-Deficiency Act as long as DC Courts paid all fiscal year 1998 overobligations in accordance with the fiscal year 1999 appropriation act. We disagree with this view. The provision in the fiscal year 1999 appropriation act merely authorizes DC Courts to use fiscal year 1999 funds to pay obligations incurred in fiscal year 1998 and prior years for court-appointed attorneys. The fiscal year 1999 appropriation act had not been enacted when DC Courts deferred payments to court-appointed

[19]B-262069, August 1, 1995.

[20]On November 13, 1997, the Joint Committee on Judicial Administration approved comparability of the DC Courts compensation schedule with the federal court's schedule for nonjudicial employees, to be achieved over a 2 fiscal-year period, provided adequate funding was appropriated. The first salary adjustment of 7 percent became effective December 7, 1997, at a reported cost of almost $2.8 million for fiscal year 1998.

attorneys and, according to its records, overobligated fiscal year 1998 appropriations.

The Congress has long recognized that the timing of payments for court-appointed attorneys is not predictable and that claims attributable to a fiscal year may be submitted or approved after the end of the fiscal year when funds are no longer available. The provision in the fiscal year 1999 appropriation act addresses this problem by making fiscal year 1999 funds available for such payments without regard to when the obligations were incurred. It does not, as DC Courts suggested to us, authorize DC Courts to defer paying obligations already identified and ready for payment.

Further, if such a position were to prevail, it would undermine congressional control of DC Courts' appropriation. DC Courts has identified no limitations as a matter of law to its position that the provision is available whenever DC Courts' costs exceed resources, as long as only costs for court-appointed attorneys are deferred. This position, if accepted, would allow DC Courts to respond to dissatisfaction with its appropriation by deferring court-appointed attorney payments at any time or in any amount throughout a fiscal year. This could lead to spending for court operations in excess of what the Congress intended and shift significant costs for court-appointed attorneys to the next fiscal year, all without violating the Anti-Deficiency Act. The language and purpose of the provision in the fiscal year 1999 appropriation act and the Anti-Deficiency Act support no such interpretation.

To ensure that in the future appropriated funds intended for court-appointed attorneys are not used for other purposes, the Congress could make a separate appropriation to DC Courts for payments to court-appointed attorneys. This appropriation could be similar to that provided to federal courts each year to fund payments to court-appointed attorneys, in which funds remain available until expended.

Payments to Court-Appointed Attorneys

Throughout fiscal year 1998, it was clear that unless DC Courts modified its spending or received additional funds, it was facing a shortfall. By the third quarter, when DC Courts had not received the additional funds it anticipated, there were limited options available for addressing the projected shortfall. DC Courts officials considered furloughing employees and closing the courts for a period of time during the summer, as well as deferring court-appointed attorney and expert service provider payments. In May 1998, OMB officials advised DC Courts to reduce nonpersonnel

costs instead of furloughing employees or closing the courts to avoid an Anti-Deficiency Act violation. On July 24, 1998, DC Courts began deferring payments for court-appointed attorneys for the remainder of the fiscal year, and it eventually used fiscal year 1999 appropriations to pay most of those amounts. As part of its budget request, DC Courts had estimated $31.6 million for payments to court-appointed attorneys in fiscal year 1998, an amount that was similar to that in the previous year. As of July 1998, DC Courts had expended $25.8 million on court-appointed attorney payments.

Voucher Processing Procedures

We found that DC Courts processed voucher payments for court-appointed attorneys in accordance with its policies and procedures. However, these procedures did not address certain matters that were important to proper disposition of voucher claims, including

- time frames for making such payments,
- procedures for maintaining data on vouchers reported as missing, and
- procedures for notifying attorneys and expert-service providers when voucher amounts claimed were reduced.

Time Frames for Voucher Payments

For fiscal year 1998, DC Courts was not subject to the federal Prompt Payment Act or the District Quick Payment Act. However, the District's fiscal year 1999 appropriation[21] subjected DC Courts to the requirements of the federal Prompt Payment Act. Under the act, an entity that falls to pay promptly for goods and services accepted as satisfactory may be required to pay interest on amounts owed.

For fiscal year 1998, we analyzed payment timing from two different perspectives. First, we looked at the number of days from the vouchers first being submitted by the attorney or expert provider to the payment being made. Second, we looked at the number of days from the presiding judge or hearing commissioner approving the voucher for payment to the payment being made. Our analysis of DC Superior Courts' fiscal year 1998

[21]Public Law No. 105-277, sec. 162, 112 Stat. 2681-148 (Oct. 21, 1998).

paid voucher data[22] through July 1998 showed that 48 percent of these vouchers were paid within 30 days of being submitted. Ninety-four percent of the vouchers for court-appointed attorneys and expert service providers were paid within 30 days of the presiding judge's or hearing commissioner's approval.

We also reviewed DC Courts' implementation of the Prompt Payment Act in fiscal year 1999 as it applies to paying court-appointed attorneys. The purpose of the act is to encourage agencies to pay bills in a timely manner. If an agency fails to pay a bill by the "required payment date," interest begins to accrue. Except for situations not relevant here, the required payment date under the act is 30 days after receipt of a "proper invoice."[23] The Prompt Payment Act defines a proper invoice as one that contains or is accompanied by substantiating documentation required by regulation or contract that is necessary to permit the agency to approve the bill.[24]

On December 10, 1998, the Chief Judge of the Superior Court issued a memorandum to all judges and hearing commissioners stating that with regard to vouchers for CJA and CCAN payments, it had been determined that the date DC Courts receives a proper invoice is the date the authorizing judge or hearing commissioner approves the voucher. The Superior Court Trial Lawyers Association has raised concerns over this determination. We share their concern because if a proper invoice is "received" only when it is approved, DC Courts could avoid incurring interest on vouchers simply because the judge or hearing commissioner has not reviewed them. We understand that this matter is currently under discussion between DC Courts and the Superior Court Trial Lawyers Association.

As of June 1999, DC Courts did not have a mechanism for tracking vouchers from acceptance to due date to ensure that they were processed and paid in time and to avoid interest penalties. Further, the absence of policies or procedures for retaining data on the number of vouchers

[22]To perform our analysis on the timeliness of voucher processing, we used data DC Courts merged from databases in its voucher tracking and voucher payment systems. Court of Appeal cases and vouchers for court transcribers are not tracked in the voucher tracking system. Therefore, they are not a part of this analysis. We excluded some records because of missing or erroneous data in data fields. DC Courts was unable to explain completely the reasons for the missing or erroneous data.

[23]31 U.S.C. 3902 (b), 3903 (a) (1) (B) (1994).

[24]31 U.S.C. 3901 (a) (3) (1994).

reported as missing or the disposition of such vouchers created additional concern that a significant number of vouchers would not be paid until after the due date.

Lost or Missing Vouchers

Prior to and during our review, court-appointed attorneys claimed that filed vouchers were sometimes lost and had to be refiled. The DC Courts accounting manager responsible for voucher processing and payment estimated that out of over 4,000 vouchers processed each month, about 50 vouchers were reported as missing. However, the accounting manager did not have any specific information. The underlying causes of this problem could not be explained.

We noted that procedures in effect presented opportunities for vouchers to be misplaced or lost at two different stages during voucher processing. DC Courts date-stamps each voucher when it is received but does not maintain a log of these submissions. Further, DC Courts does not input voucher data into its tracking system until the voucher is audited for accuracy, a process that, according to the accounting manager, takes about 8 working days. Without logging in all vouchers upon receipt or immediately entering voucher data into the tracking system, DC Courts cannot ensure complete accountability for all vouchers. This increases the risk that vouchers lost or misplaced at this stage will not be recovered.

After a voucher is audited for accuracy, it is forwarded to the presiding judge or hearing commissioner for approval. Although DC Courts' voucher tracking system identifies the date of specific events, vouchers are hand-delivered to and from the judges' chambers, presenting additional opportunities for vouchers to be misplaced or lost.

Reduction of Voucher Amounts

During the final review of vouchers, the judge or hearing commissioner has the authority to reduce the amount of the voucher if he or she determines that some of the attorney's or provider's hours or expenses should be disallowed. DC Courts did not have procedures covering how judges or hearing commissioners were to document such decisions to the attorney or provider. However, DC Courts officials stated that this information was available to attorneys who requested it.

Our analysis of fiscal year 1998 paid voucher data showed that judges or hearing commissioners reduced voucher amounts in 9 percent of the cases, more than half of which involved reductions of $100 or less.

Crime Victims Compensation Program

During our review, we identified a matter that, while not affecting DC Courts' use of its fiscal year 1998 appropriation for court operations, needs to be addressed to provide DC Courts the requisite authority to make payments out of its Crime Victims Fund. A District law established the Crime Victims Compensation Program under DC Courts jurisdiction prior to the enactment of the Revitalization Act.[25] The District law provides that the fund may be credited with (1) appropriations made to it, (2) fines assessed on persons convicted of serious traffic or misdemeanor offenses, or persons convicted or pleading guilty or no contest to felony offenses, (3) amounts recovered by the District from offenders or third parties by subrogation to the victim's rights as a result of payments of claims to victims, (4) repayments of overpayments or false claims payments from claimants, and (5) amounts received from any source, including grants from the federal government, for the purpose of the fund. The District law provides that compensation totaling up to $25,000 from the fund can be made to crime victims for economic loss. Payments can also be made for shelter, burial costs, or medical expenses. DC Courts' records indicated that about $1.5 million in such payments plus almost $300,000 of administrative cost payments were made during fiscal year 1998 and that the balance of the fund at September 30, 1998, was about $6.8 million.

While the Revitalization Act amendment to the Home Rule Act supports the authority of DC Courts to deposit the fines, fees, and other money identified in the District law to the Crime Victims Fund, the Revitalization Act makes no mention of spending amounts deposited to the fund. Further, nothing in the language of the District's fiscal years 1998 or 1999 appropriation acts appropriates amounts from the Crime Victims Fund. Finally, we have not identified any other federal law authorizing payments from the fund. The District of Columbia Home Rule Act[26] states that no officer or employee of the District of Columbia government may obligate or spend an amount unless it is approved by an act of the Congress and then only according to that act. Accordingly, we conclude that DC Courts did not have the requisite legislative authority to make payments from the fund.

[25]The Victims of Violent Crime Compensation A· ' of 1996, D.C. Law 11-243, 44 DCR 1142, 2601 (April 9, 1997), D.C. Code Ann. Secs. 3-421 through 3-438 '998 Supp.).

[26]Section 446 of the Home Rule Act, as amended.

Conclusions

DC Courts experienced difficulties in planning and budgeting in fiscal year 1998, its first year of operations with direct federal funding. In a transition year in which DC Courts underwent changes to its functions and responsibilities, DC Courts' management did not properly execute its responsibility to operate within available resources. Appropriate recognition of obligations incurred and resources available and compliance with federal laws and guidelines addressing its financial management are crucial to improving DC Courts' performance in this area. In addition, DC Courts did not have complete information in its voucher tracking system to ensure that all submitted vouchers were promptly tracked, processed, and paid. Revised procedures in this area and improvements to its voucher tracking system could improve DC Courts' timeliness in making voucher payments and reduce the incidence of missing vouchers. Improvement in these areas has become critical in fiscal year 1999, now that DC Courts is subject to the federal Prompt Payment Act and may be required to pay interest on payments made more than 30 days after receipt of a proper invoice.

Recommendations to the Congress

If the Congress continues to require the U.S. Treasury to pay quarterly apportionments to DC Courts, we recommend that the Congress consider authorizing DC Courts to retain the interest earned and requiring DC Courts to include estimated interest in its annual budget request. This would alleviate the need for DC Courts and U.S. Treasury to process interest repayments to U.S. Treasury.

If the Congress wishes to ensure that appropriated funds intended for payment of court-appointed attorneys are not used for other purposes, we recommend that the Congress consider making a separate appropriation to DC Courts for payments to court-appointed attorneys.

Recommendations to DC Courts

We recommend that the Joint Committee on Judicial Administration

- perform all necessary investigation and reporting under the Anti-Deficiency Act related to DC Courts' overobligation of its fiscal year 1998 appropriation,
- transfer to the U.S. Treasury all interest earned on appropriated funds or seek legislative relief from repaying the interest that was improperly retained,

- issue guidance providing that interest is to be paid when vouchers containing or accompanied by all required substantiating documentation are not paid by the required payment date,
- establish procedures that require all vouchers to be logged and tracked immediately upon receipt, and
- seek legislation authorizing DC Courts to use the Crime Victims Fund to pay eligible claims under the Crime Victims Compensation Program.

DC Courts' Comments and Our Evaluation

In commenting on a draft of the report, DC Courts disagreed with our findings concerning

- its violation of the Anti-Deficiency Act in fiscal year 1998 and
- its use of interest earned on its appropriation as a resource to fund court operations.

In addition, DC Courts disagreed with our conclusions and the need for implementing three of our recommendations. They agreed to seek clarifying legislation to address two of our other recommendations. DC Courts did provide technical comments which we have incorporated as appropriate but have not reproduced in our report.

In several meetings with us and in a written statement submitted to us in May 1999, DC Courts stated that it disagreed with the legal basis for our conclusion that DC Courts violated the Anti-Deficiency Act by overobligating its budgetary resources by approximately $4.6 million in fiscal year 1998.[27] We considered DC Courts' position in preparing the draft of this report. In summarizing its position in its comments on our draft, DC Courts stated two principal reasons why its actions were in conformity with the Anti-Deficiency Act.

First, DC Courts asserted that because it has the authority to defer attorney payments under its appropriation act, its actions constitute an exception to the Anti-Deficiency Act. As discussed in detail in this report, we disagreed with DC Courts' position. We stated that the appropriation act provides authority to use current funds to pay prior year obligations and not the

[27]In our testimony on May 18, 1999, we reported that the amount of the potential overobligation was $5.2 million. Subsequent to our testimony, DC Courts provided us with proposed deobligations for fiscal year 1998. We reviewed the proposed deobligations in May 1999 and, as a result, revised the amount of DC Courts' overobligation for fiscal year 1998 to about $4.6 million.

authority to decide to defer paying obligations already identified and ready for payment. The Congress' granting of this authority in the fiscal year 1999 appropriation act (and prior years' acts) addressed the difficulty of attorney claims being submitted and approved in one fiscal year for services rendered in prior fiscal years and, therefore, being obligations chargeable to the prior fiscal years. This authority in the appropriation act is significant because without it, the fiscal year 1999 funds would not have been available to pay prior year obligations. DC Courts' comments do not address this basic tenet of appropriations law but rather commingle the separate issues of whether DC Courts may (1) overobligate its fiscal year 1998 appropriation to the extent of its attorney payments and (2) use its fiscal year 1999 appropriation to pay claims attributable to prior years.

Furthermore, we observed that DC Courts' position establishes no limits as a matter of law and would undermine congressional control. DC Courts characterizes the appropriation as providing authority to defer attorney payments from one year to the next only when confronted with extraordinary circumstances. However, it offers no statutory basis for limiting the asserted authority only to extraordinary circumstances. As discussed in our report, DC Courts is authorized to obligate funds for court-appointed attorneys in excess of available resources without violating the Anti-Deficiency Act if overobligations are solely attributable to mandatory spending as evidenced by (1) unanticipated spending for attorneys and (2) reductions in discretionary spending designed to keep total obligations within total resources. This authority is very different than the authority to defer attorney payments from one year to the next and spend the "saved" attorney payments on court operations that DC Courts attempts to read into the appropriation act.

Second, DC Courts asserts that the Anti-Deficiency Act allows for a deficiency or supplemental request for appropriations where (1) the enactment of new laws after budget requests are submitted to the Congress results in increased costs or (2) the government's continuation of essential functions for the safety of human life or the protection of property is required. DC Courts refers to 31 U.S.C. 1515 (b)(1)(A) and (B), a provision of the Anti-Deficiency Act. However, DC Courts' reliance on this provision is misplaced. Section 1515 is not an exception to the Anti-Deficiency Act's basic prohibition of obligating or spending in excess of or in advance of an appropriation. Rather, section 1515 is a statutory exception only to the general apportionment rule in 31 U.S.C. 1512, which prohibits apportioning funds at a rate indicating a deficiency or a need for a supplemental appropriation. This distinction is discussed in II GAO, Principles of Federal

Appropriations Law (GAO/OGC 92-13, December 1992, pp. 6-80 through 6-83). Further, OMB Circular A-34, sec. 33.2 (Rev. Nov. 7, 1997) makes clear that an apportionment indicating a deficiency or a need for supplemental appropriation does not guarantee the agency that OMB, the President, or the Congress will support the agency's request for supplemental funding. Even if DC Courts had met the conditions in section 1515(b) and received an apportionment indicating a need for supplemental funding, section 1515 provides no legal basis for DC Courts to obligate funds in excess of the amount appropriated.[28]

One of the themes running through DC Courts' comments is that DC Courts received inadequate funding and had limited options available for spending reductions. DC Courts asserts that our report needs more information on this matter because such information would make the report more complete and accurate and lead to different legal conclusions. In general, DC Courts' comments about the Revitalization Act, as well as its dealings with the Congress, OMB, and other executive branch entities over the funding it believes it should have received for fiscal year 1998, may be among the factors DC Courts could offer as extenuating circumstances that resulted in its violation of the Anti-Deficiency Act. However, none of the additional information DC Courts has offered affects our legal analysis of DC Courts' Anti-Deficiency Act violation. In this regard, DC Courts commented that our report "overstates the very limited relevance of a modest pay increase." However, we found that the discretionary pay raise was almost $3 million, or about 65 percent of DC Courts' $4.6 million overobligation of its resources in violation of the Anti-Deficiency Act.[29]

DC Courts also disagreed with our conclusion that it lacked the authority to retain and spend interest earned on the federal funds appropriated for

[28]DC Courts' reference to 31 U.S.C. 1515 is also misplaced for factual reasons. After passage of the Revitalization Act and before enactment of the District's fiscal year 1998 appropriation act, the President submitted a revised budget request to the Congress that reflected the Revitalization Act's changes. Accordingly, a request for supplemental funding under section 1515(b)(1)(A) could not be based on the Congress having passed a law affecting DC Courts after having received a budget request for DC Courts. Further, while DC Courts may have had funding difficulties in fiscal year 1998, those difficulties did not result, as section 1515(b)(1)(B) requires, from an "emergency." Finally, when OMB's last apportionment for the year to DC Courts was made in April 1998, OMB warned DC Courts that it needed to reduce its rate of spending to avoid violating the Anti-Deficiency Act.

[29]Our central point regarding the pay raise is that it represents discretionary spending that could have been postponed or eliminated. This is supported by the effective date of the pay raise, which was "subject to sufficient funds being available," and which was awarded after DC Courts knew that the Congress had authorized an appropriation for fiscal year 1998 that was over $15 million less than the amount requested.

court operations. As discussed in the report, our conclusion is based on the language of the Home Rule Act and the Revitalization Act consistent with basic principles of federal appropriations law. In contrast, DC Courts asserts that it may infer the authority to retain and spend the interest because the Congress "remained silent on the matter of interest" even though the Congress required the Department of the Treasury to make quarterly payments to DC Courts, and it was inevitable that DC Courts would deposit the payments in an interest-bearing account. DC Courts' view is contrary to the fundamental principle of appropriation law that prohibits an agency from augmenting its appropriation from other sources unless specifically authorized by law. Because nothing in the language of any act, or even legislative history, indicates that the Congress wanted DC Courts to retain and spend interest earned on fiscal year 1998 appropriations, we find no basis to impute to the Congress a grant of authority that overrides limitations found in law and grounded in principles of appropriations law. Accordingly, as discussed in this report, the interest should have been deposited to Treasury, as required by section 450 of the Home Rule Act as amended by the Revitalization Act.

During our review, we requested documentation from DC Courts regarding its preparation and execution of a spending plan tied to its fiscal year 1998 appropriation. We found that when DC Courts received an appropriation that was over $15 million less than it requested, it did not take immediate steps to cut planned spending to reflect the actual level of funding but rather proceeded with a discretionary pay raise and continued to spend at a rate that would necessitate a deficiency or a supplemental appropriation. Other than not filling vacant positions (which, according to DC Courts, cut almost $3 million in operational costs), DC Courts did not propose the necessary spending cuts until the third quarter of the fiscal year and only after requests for supplemental funding did not materialize. At that point, as DC Courts officials pointed out, their options to make spending cuts were limited.

DC Courts took exception to our discussion of the Prompt Payment Act in relation to its processing of payment vouchers because, as we noted in our report, DC Courts was not subject to the Prompt Payment Act until fiscal year 1999. We found it useful to refer to the Prompt Payment Act because in the absence of any legal requirements to make timely payments, it provided a recognized standard and DC Courts payments were made subject to the Prompt Payment Act beginning in fiscal year 1999.

DC Courts also stated that our report did not accurately characterize the nature of communications between DC Courts and both OMB and Members of Congress. However, this report and our previously issued testimony and chronology of events[30] fairly reflect all the relevant and critical documentation DC Courts provided to us. DC Courts did not include new or additional information in its comments that affects our legal positions and conclusions.

Subsequent Congressional Actions

Following the receipt of comments from DC Courts on a draft of this report and discussion of our recommendations with the House and Senate staff of the oversight and appropriations committees, the Conference Committee reported H.R. 2587, the District of Columbia appropriations bill for fiscal year 2000, on August 5, 1999.[31] If enacted as reported by the Conference Committee, H.R. 2587 would address four of our recommendations as follows:

- It addresses the recommendation that the Congress consider authorizing DC Courts to retain interest earnings and reflect estimated interest in its budget requests if the Congress continues to require the U.S. Treasury to pay quarterly apportionments to DC Courts. The proposed language eliminates the requirement that the U.S. Treasury pay the apportionments quarterly to DC Courts and requires all amounts to be quarterly apportioned by OMB, obligated, and expended in the same manner as funds appropriated to other federal agencies.[32] Thus, federal funds will remain with the Treasury until needed for authorized DC Courts activities, and disbursements for these authorized activities will be made directly from the Treasury. This change would eliminate the need for an interest-bearing bank account to handle the federal payment to DC Courts.
- It addresses the recommendation that the Congress consider making a separate appropriation to DC Courts for payments to court-appointed attorneys. The proposed language establishes a separate federal payment for "Defender Services in the District of Columbia Courts," specifically for making payments to court-appointed attorneys under the

[30]District of Columbia Courts: Chronology of Events Associated with DC Courts' Financial-Related Issues for Fiscal Year 1998 (GAO/AIMD-99-204R, June 7, 1999).

[31]H.R. Rep. 106-299.

[32]H.R. Rep. 106-299, at 3.

CJA, CCAN, and Guardianship programs, and requires that payroll and financial services be provided by GSA, which must submit monthly reports to the President and specific committees.[33]

- It addresses the recommendation that DC Courts pay the Treasury the interest already earned on prior federal payments. H.R. 2587 would authorize DC Courts to use up to $1.2 million of interest earned on the fiscal year 1999 federal payment to make certain payments to court-appointed attorneys for indigents.[34] Our recommendation that DC Courts pay the Treasury interest earned on the fiscal year 1998 federal payment remains unaffected.
- It addresses the recommendation that DC Courts request legislative authority to spend money in the Crime Victims Fund. Section 160(b)(1) of H.R. 2587 would authorize DC Courts to spend moneys properly deposited in the Crime Victims Fund for purposes authorized by the Crime Victims Act, as amended. In addition, section 160(e) of H.R. 2587 would ratify any payments made from the Crime Victims Fund on or after April 9, 1997, to the extent the amounts are authorized under the Crime Victims Compensation Act of 1996, as amended.

We are sending copies of this letter to Senator Kay Bailey Hutchinson, Chairwoman, Subcommittee on the District of Columbia, Senate Committee on Appropriations; Senator Richard Durbin, Ranking Minority Member, Subcommittee on the District of Columbia, Senate Committee on Appropriations, and Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs; Senator George Voinovich, Chairman, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs; and Representative Eleanor Holmes Norton, Ranking Minority Member, Subcommittee on the District of Columbia, House Committee on Government Reform. We are also sending copies to the Joint Committee on Judicial Administration, DC Courts, through the Honorable Annice Wagner, Chair; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and Grace Mastelli, Deputy Assistant Attorney General, Department of Justice. Copies will be made available to others upon request.

[33]H.R. Rep. 106-299 at 3-4.

[34]H.R. Rep. 106-299 at 3-4.

If you have any questions, please contact me or Steven Haughton at (202) 512-4476. Key contributors to this assignment were Marcia Washington, Lou Fernheimer, Jeffrey Jacobson, and Richard Cambosos.

Gloria L. Jarmon

Gloria L. Jarmon
Director, Health, Education, & Human Services
Accounting and Financial Management Issues

Appendix I

Comments From the District of Columbia Courts



District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001



July 29, 1999

Ms. Gloria L. Jarmon
Director, Health, Education & Human Services
Accounting and Financial Management Issues
Accounting and Information Management Division
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Jarmon:

The Joint Committee on Judicial Administration in the District of Columbia submits herewith its response to the Draft Report of the United States General Accounting Office to Congressional Requesters on the D.C. Courts' budgeting and planning during fiscal year 1998. We trust that GAO will give fair consideration to our response. It is our understanding that our response in its entirety will be made an attachment to GAO's final report. Please let us know if anything further is required.

Sincerely yours,

Annice Wagner, Chair
Joint Committee on Judicial Administration
in the District of Columbia

RESPONSE OF THE JOINT COMMITTEE ON JUDICIAL ADMINISTRATION IN THE DISTRICT OF COLUMBIA

TO THE
DRAFT REPORT OF THE UNITED STATES GENERAL ACCOUNTING OFFICE TO CONGRESSIONAL REQUESTERS

ON THE
DISTRICT OF COLUMBIA COURTS' BUDGETING AND PLANNING DURING FISCAL YEAR 1998

July 29, 1999

SUBMISSION TO THE GENERAL ACCOUNTING OFFICE
IN RESPONSE TO DRAFT REPORT ON DC COURTS
FISCAL YEAR 1998 FISCAL REVIEW

I. Summary

This submission responds to a draft report of the General Accounting Office (GAO), now entitled DC Courts, Planning and Budgeting Difficulties During Fiscal Year 1998 (Draft Report). The Courts appreciate the professionalism shown by GAO's team during this period of review. Nevertheless, as you know, we are compelled to bring to your attention any errors or omissions in the Draft Report, particularly those which will preclude complete and accurate responses to the questions posed by the Congressional requesters ("Requesters").

The principal flaws in the Draft Report which render its conclusions invalid on the central issues addressed are (1) the omission of critical facts essential to the fair application of the legal principles discussed, (2) inferences premised on insufficient or erroneous factual premises, and (3) erroneous legal conclusions which necessarily follow. Specifically, omitted from the Draft Report is information on the full magnitude of the budgetary shortfall for the Courts in FY 1998 brought about by the passage of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act),[1] the results of the cost-savings measures undertaken by the Courts throughout that fiscal year, the amounts required for the Courts to continue essential constitutional and statutory functions, and the limited options available for spending reductions in the face of the necessity for continuation of functions essential for the safety of human life or the protection of property. Without this omitted information, it is not possible for GAO to answer the three questions posed by the Congressional requesters, i.e. (1) "[w]hat were the Courts' obligations for fiscal year[]. . . . 1998; (2) did the D.C. Courts "have a spending plan for fiscal year 1998, and obligate funds consistent with available resources;" (3) why did the Courts defer payments to court-appointed lawyers between the latter part of July and September 1998.[2]

[1] Public Law No. 105-33, Title XI Stat. 712 (1997).

[2] See Draft Report, p. 2.

Moreover, because of these omissions, the conclusion reached by the GAO that the Courts potentially violated the Antideficiency Act, 31 U.S.C. § 1341 (ADA) cannot be justified, particularly where, as here, the omitted facts are relevant to that determination and to the applicability of specific statutory exceptions to the ADA.[3] See e.g. 31 U.S.C. § 1515(b)(1)(A) and (B). We recognize that the omission from GAO's Draft Report of much of the critical information concerning the costs to the Courts of performing essential functions during this unique transition year is attributable to the limitations placed on the scope of GAO's review. Nevertheless, a critical analysis of the facts and the law will reveal, we submit, that the Courts did not violate the Antideficiency Act, and we strongly recommend that the GAO reconsider its position on this issue in light of the information set forth in this response and the statement submitted to the GAO on May 6, 1999 (May Submission). At the very least, GAO should state candidly in its final report that it is unable to reach definitive conclusions concerning the Courts' efforts to operate under extraordinary circumstances, during a unique transition year, or regarding any alleged statutory violation, since many of the facts and circumstances related to the scope and genesis of FY1998 budgetary shortfall and the fiscal requirements for court operations following implementation of the Revitalization Act are not within the scope of GAO's review.[4]

In the remaining parts of this response, we address more fully the findings and conclusions in the Draft Report related to the Courts' obligations and spending during the fiscal crisis created as a result of implementation of the Revitalization Act, and the other findings related to the processing of vouchers for payment of court-appointed counsel under certain statutes. We are pleased that GAO found upon review that court-appointed attorneys are paid timely (94% within 30 days) and that vouchers are rarely lost (a loss rate of less than 1%). Implementation of the Courts' automated CJA/CCAN Voucher System later this year will address GAO's recommendation for logging and tracking vouchers. We recommend that the Draft Report be revised to include a more detailed explanation of the process by which the amount of payments for court-appointed attorneys is judicially determined, and we have offered suggested language for that purpose. Such information

[3] This issue is explained further in the next section of this response.

[4] See e.g. Draft Report, pp. 1, 15-18.

is necessary for a full understanding of how these obligations arise and why the Courts view them as claims only upon final determination of the amount payable and approval by a judicial officer. For your convenience, attachment 1 to this response identifies other specific changes which should be made in the Draft Report for accuracy or clarity.

II. Impact of the 1997 Revitalization Act on the D.C. Courts and the ADA

The Draft Report does not describe fully the facts concerning the budget crisis of FY 1998 resulting from the implementation of the Revitalization Act nor present a complete outline of the Courts' legal position. Therefore, we have provided the following additional narrative which we recommend for inclusion in the final report. We have combined in this response sections treated separately in the Draft Report, i.e., the impact of the Revitalization Act and the Anti-deficiency Act discussion, because the issues are related.[1]

In summary, it is the legal position of the Courts that they operated in conformity with the requirements of 31 U.S.C. § 1341 (a)(1) (the Antideficiency Act or ADA) in FY 1998 for two principal reasons. First, the deferral of payments for claims presented under the Criminal Justice Act of 1974, the District of Columbia Neglect Representation Equity Act of 1984, and the District of Columbia Guardianship Protective Proceedings and Durable Power of Attorney Act of 1986 (collectively referred to as CJA/CCAN) near the end of FY 1998, and the payment of those claims from the FY 1999 appropriations, was authorized by law. Second, the ADA allows for deficiency or a supplemental request for appropriations (1) where the enactment of new laws subsequent to the submission to Congress of budget estimates results in increased costs or (2) where the continuation by the government of essential functions for the safety of human life or the protection of property is required. See 31 U.S.C. § 1515 (b)(1)(A) and (B). The circumstances faced by the Courts in FY 1998 come within each of these statutory exceptions to the ADA.

The ADA provides that an officer or employee of the government may not involve the government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341 (a)(1)(B) (emphasis added). To constitute an ADA

[1] A more detailed account appears in the Courts' May submission.

exception, "the authority must be authority to incur the obligation in excess or advance of appropriation." See Principles of Federal Appropriations Law, 2d ed., at 6-53 (September 1992). In every year since fiscal year 1976, the year after the Courts assumed financial responsibility for payment of indigent criminal defendants' legal representation, Congress has authorized the Courts to pay claims for legal representation incurred in prior years out of the appropriation for a subsequent year. This cost-spanning proviso is essential to provide for flexibility because of the impossibility of budgeting for costs of legal representation where there is always a lag time between the time appointed counsel renders services, which can span years, and the time that the attorney's claim for services is presented and approved by the Courts.

The FY 1998 estimates for representation under CJA/CCAN, although insufficient, were close to projections; however, other extraordinary circumstances occurred in FY 1998 which resulted in a severe, unintended budgetary shortfall for the Courts. Specifically, the enactment of a new law, the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33 (Revitalization Act), subsequent to the submission of the budget estimates for the Courts, resulted in unanticipated increased costs of approximately $3 million.[4] In addition, the Revitalization Act transferred responsibility for adult probation supervision from the Courts to the District of Columbia Offender Supervision Trustee (Trustee), and an adjustment was made removing $20 million from the Courts' budget to the Trustee's budget, although the costs for adult probation had never exceeded $12 million.[5] The $8 million difference eliminated from the Courts' budget represented funding needed for other essential case processing functions. Thus, the FY 1998 appropriation unintentionally created a built-in shortfall of over $11 million. The Courts immediately responded to this shortfall in their budget through two major courses of action: (a) by adjusting to a spending plan with significantly reduced discretionary expenditures; and (b) by notifying Executive Branch officials, including the Office of Management and Budget (OMB), and

[4] Under the Revitalization Act, the Courts were responsible for paying for additional costs for Federal benefits for employees whose status was converted under the Act, as well as the costs of contracting with the General Services Administration for payroll and disbursement services.

[5] The FY 1998 Appropriation of approximately $108 million included $5 million that was designated as a payment through the Courts into the judicial retirement plan. Thus, the appropriation for operating costs was equivalent to roughly $103 million, $20 million less than was originally requested by the Courts and supported by Congress.

subsequently, the relevant Congressional committees in an effort to obtain a supplemental appropriation to correct what most of the affected and responsible entities acknowledged to be an unintended error. Initially, the Courts and executive branch officials seemed to believe that no Congressional action would be required to address this situation once the OMB, the Trustee, and the Courts agreed upon the extent of the underfunding of the Courts and the overfunding of the Trustee. In the meantime, the Courts succeeded in reducing discretionary expenditures by over $3 million. Other relief would not come until later. The Office of Management and Budget (OMB), the Trustee, and other Executive Branch officials agreed that the transfer of funds from the Courts to the Trustee was excessive, and ultimately, $2.8 million was transferred back to the Courts ($1.1 million through a grant on August 7, 1998, and $1.7 million pursuant to Congressional legislation on October 8, 1998, PL. 105-245 [H.R. 4060] Section 507. In addition, Congress authorized the payment of $4.1 million in FY 1999 for the payment of claims under CJA/CCAN for the prior year.

Although the Courts reduced spending in an effort to meet this exigency, as a practical matter, it was impossible to make up the full $11 million and at the same time continue essential constitutionally and statutorily mandated functions. Confronted with these extraordinary circumstances, the Courts, among other measures, requested a supplemental appropriation on March 13, 1998 as contemplated by 31 U.S.C. § 1515 (b)(1). The Courts' budget estimates had been submitted before the passage of the Revitalization Act, and there were increased costs which were not included in the submission as a result, thus making applicable § 1515 (b)(1)(a). The constitutional and statutory functions, in the Courts' opinion, constitute the types of governmental functions which may continue where there is a budgetary shortfall in the interest of the protection of the public health and safety as provided for in 31 U.S.C. § 1515 (b)(1)(B). Under these provisions of the U.S. Code, the necessity for a deficiency or supplemental budget request does not violate the ADA.

Because of the size of the unintended budgetary shortfall, the Courts were confronted with a situation where only two alternatives were available to cover the enormous gap and avoid expenditures beyond the FY 1998 appropriation: (1) the furlough of Court employees which would result in the disruption of critical essential court functions; or (b) the deferral of payment of certain court-appointed attorney costs in accordance with a long-standing ADA exception. It was the

judgment of Court officials that a furlough of employees from the Courts would be detrimental to the administration of justice, and therefore the health and safety of the community. In addition, OMB had instructed the Courts not to effect savings through personnel costs.

When it appeared during FY 1998 that relief would not be achieved in time to avoid a deficiency, the Court officials determined that they were compelled to utilize another statutory exception to the ADA. As indicated above, this statutory exception has appeared in every D.C. Appropriations Act since 1976. It allows for claims for counsel fees approved in one fiscal year to be paid in a subsequent fiscal year. The legislative history of the District of Columbia Appropriations Act, 1976 (Pub. L. No. 94-333) reflects that the reason Congress authorized the payment for legal representation in prior fiscal years out of a subsequent year's appropriation was to cover a budgetary shortfall from the prior year. The written statement of Arnold Malech, the Executive Officer for the D.C. Courts at the time, states the following with respect to the request for the authority which Congress granted:

> As a result of the vastly increased number of criminal prosecutions in the local courts this calendar year, all of these branches of the District government have recognized that the budget estimate for the first year was quite inadequate and have agreed upon the substantially larger figure requested for this purpose in fiscal year 1976, with the recommendation that the subcommittee will include in the appropriation bill it reports out, a proviso that will enable the District to charge against such appropriation whatever sums are needed to pay vouchers approved by the courts for services rendered pursuant to appointments in the prior fiscal year.

District of Columbia Appropriations for 1976: Hearings on H.R. 13965, Subcommittee on District of Columbia Appropriations, 94th Cong. 222 (1975).

In FY 1998, the Courts were confronted with comparable unforeseen and extraordinary circumstances. It was in order to avoid an ADA violation that the Courts used this statutory exception to cover the severe budgetary shortfall. Nothing in the legislative history of the succession of Appropriations Acts since 1976 (including the FY 1999 Act, Pub. L. No. 105-277, section (e), repeating this authorization) states or implies that the Courts may not cover a shortfall in funds or budget estimates through utilization of this provision. This authority to pay prior years' obligations from the current year provides the legal authorization, referenced in the statute, for payment in a subsequent year without violating ADA. *See* 31 U.S.C. § 1341 (a)(1)(B).

The Courts' position on this issue does not logically extend to a conclusion that the Courts could have spent the entire appropriation on operations and deferred all the court-appointed attorney

costs. It simply means that, when confronted with extraordinary circumstances as outlined above, the statutory framework allows the Courts a means by which to address the exigency without violating the ADA, in this case, until legislative actions could be taken to remedy this shortfall.

The Draft Report overstates the very limited relevance of a modest pay increase granted non-judicial employees early in FY 1998 to the budget shortfall. The report states that the Courts provided employees with a 7% pay increase. (Draft Report, p. 3.) At the time of the increase, the average differential between the Courts' pay scale and federal rates of pay was more than 18%. Court officials had reason to believe that funding would be available to cover the modest cost impact. Therefore, following nearly a decade of no salary increases, the Courts did provide non-judicial employees a 7% pay increase in FY 1998, but the fiscal impact of this raise amounted to only a 5.7% increase because it did not become effective until December 7, 1997, three months after the commencement of the fiscal year. The cost of the pay raise could not begin to cover the enormous budgetary gap or alter the requirement for the deferral of payments for certain CJA/CCAN services. Therefore, it is misleading to convey the impression that it was this modest salary increase for employees which brought about the conditions which necessitated the deferral of CJA/CCAN payments during the latter part of FY 1998. This impression should be corrected.

While the Courts do not claim that the cause of the shortfall nullifies the prohibitions in the Antideficiency Act, a fair understanding of the Courts' response requires a full presentation of the facts underlying the origin of the crisis and the magnitude of the shortfall. As is clear from our May Submission, as well as from the facts outlined herein, the Courts did in fact "take all reasonable steps to manage the account within the amounts appropriated." It was simply impossible to continue essential court operations and avoid an ADA violation without deferring payments in the only area specifically authorized by law.

III. The Courts' Response to the FY 1998 Budget Crisis

On page 3 of its Draft Report, the GAO states that "DC Courts did not prepare and execute a budget based on amounts appropriated for fiscal year 1998," and on page 11 reiterates that "DC Courts did not develop such a plan." The Draft Report goes on to state that after learning that their appropriation would result in a substantial shortfall for its anticipated obligations, the Courts

continued to authorize expenditures in FY 1998 in the expectation that they would receive supplemental funding.[5] These statements fail to take into account that the Courts adopted a series of measures in an attempt to respond immediately to the FY 1998 budgetary crisis, and imply that the Courts failed to act responsibly in accordance with their legal obligation to authorize expenditures only within the limits of their appropriation. In fact, the Courts *did* adjust their spending plans during FY 1998 as a result of the unanticipated shortfall in the appropriation. As described in the May Submission, the Courts reduced discretionary expenditures by a total of more than $3 million. This fact and other information should be included in the final report.

Although a large portion of the budgetary shortfall was absorbed through cost-savings measures instituted by the Courts throughout the year, it was not possible to effect savings sufficient to make up for a shortfall of more than $11,000,000. The Courts' budget supports functions and activities that are largely mandatory in nature. In the Superior Court, for example, over 75% of the FY 1998 budget ($52,196,000 of $68,813,000) was allocated for pay for judicial and non-judicial personnel. Indeed, out of the Courts' total appropriation, only 19% comprises non-personnel services, and one-half of these amounts are used for statutorily mandated fees and services (e.g. interpreter services and witness and juror fees). Thus, the Courts could not responsibly have relied solely on a reduction in discretionary expenditures to cure the unanticipated FY 1998 shortfall. For this reason, the Courts immediately sought other ways to help correct the unintended underfunding.

One important measure was to identify immediately the nature of the problem for the Administration and Congress and to secure a much justified adjustment. The Draft Report does not accurately characterize the nature of the communications between the Courts and both the OMB and members of Congress during FY 1998. The report states that these letters "reflect[] DC Courts officials' expectations of receiving additional resources." (Draft Report, p. 11). This statement ignores the content and tone of these letters, which were designed to raise a warning flag to the OMB and to Congress that, through no fault of their own, the Courts were faced with a severe funding crisis that could only be solved by one or more unusual and difficult measures, one of which was to

[5] *See* Draft Report, pp. 11-12.

receive a supplemental appropriation. It was simply not the case, and it is not accurate to imply, that the Courts waited for the problem to be solved for them. The Courts adopted a number of active cost-reduction measures, and based on directives received from the OMB, stopped just short of the ultimate such measure, namely, a furlough of its full-time employees with the consequential result of disruption of essential governmental functions.

Members of the Joint Committee and the Executive Officer and his staff spent a significant amount of time working with the Administration, the Congress and the Trustee throughout the year to address these funding issues and to secure the adjustments which ultimately came, but too late to avoid the extreme action which the Courts were forced to take. The Courts did receive some modest relief in the form of transfers from the Trustee. Towards the end of FY 1998 and at the beginning of FY 1999, $2.8 million was returned to the Courts from the Trustee: $1.1 million in August 1998, which allowed the Courts to function through the end of the fiscal year, and $1.7 million in October 1998 which allowed the Courts to pay some of the deferred court-appointed attorney claims. Nevertheless, absent a complete supplemental appropriation, the Courts were faced with only two measures that could alleviate the funding crisis: (a) to furlough employees, and (b) to defer payment on certain CJA/CCAN services. The Office of Management and Budget directed the Courts not to use personnel costs (furloughs) to make up the FY 1998 budgetary shortfall. Consequently, the Courts, at the end of July 1998, reluctantly implemented the only remaining option, deferral of payments to court-appointed attorneys.

The Courts and the community benefit greatly from the dedication of these CJA/CCAN lawyers, who continued to provide quality services for indigent clients under the CJA, CCAN and Guardianship Program during the Courts' 1998 fiscal crisis. However, as further explained below and in the May Submission, the Courts rightfully decided that the only lawful way to deal with the budgetary shortfall in FY 1998 was to defer certain payments related to these services until FY 1999. Therefore, the Courts respectfully request the GAO to modify its Draft Report to include a full account of the active cost reduction measures immediately adopted by the Courts in response to the shortfall in the appropriation.

IV. Adjustments for CJA/CCAN Payments

The Draft Report adds the $4.1 million of CJA/CCAN costs that were paid by the Courts in FY 1999, in accordance with the Courts' FY 1999 Appropriation, to the Courts' FY 1998 obligations.[1] GAO provides as reason for this adjustment that these amounts were not unexpected, and therefore, the Courts had no right to defer them for payment in FY 1999. Based on this adjustment, the Draft Report concludes that DC Courts must investigate and report an "apparent over-obligation of its fiscal year 1998 appropriation." Draft Report, p. 27. In taking this position, the GAO does not address the extensive legal analysis of the CJA/CCAN appropriation provided in the May Submission. While acknowledging that Congress has long recognized the unpredictability of CJA/CCAN payments, and that this unpredictability has led Congress consistently to enact the CJA/CCAN proviso and thereby to allow current year funds to be used to make payments relating to CJA/CCAN services rendered in a prior year, the Draft Report imposes an additional requirement which has never existed in the CJA/CCAN proviso. The ability to use a current year's CJA/CCAN appropriation for CJA/CCAN services rendered in a prior year has never been conditioned upon the level of the prior year's services being "unexpected." Instead, the CJA/CCAN proviso has, in every year since its 1976 inception, allowed for the payment of prior year CJA/CCAN costs irrespective of the level of those costs or their relation to the prior year's appropriation.

The Draft Report also overlooks the fact, which was discussed in the May Submission, that the time at which CJA/CCAN claims are submitted or approved does not explain the need for the CJA/CCAN proviso in the Courts' annual appropriation. Late claims can be paid out of the funds for the year in which the services were rendered, if such funds were not fully depleted. If they were fully depleted, then *necessarily* the CJA/CCAN costs must either have been a violation of the Antideficiency Act, or, by virtue of the CJA/CCAN proviso, must constitute an *exception* to the Antideficiency Act. Because the CJA/CCAN proviso has been enacted in every DC Courts' appropriation since 1976, it is clear that the only accurate reading of the law is that it constitutes an *exception to the Antideficiency Act.*

[1] *See* Draft Report, p. 12.

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The Draft Report parses the intent of Congress much too finely. In effect, the report states that, by enacting the CJA/CCAN proviso, Congress authorizes funds for costs relating to services performed in a prior year for which all funds were already obligated, but that this *authorization* does not *entitle* the Courts to defer payment of those costs. But it simply is not reasonable for there to be authority to do something but no right to do it. The clear import of the traditional CJA/CCAN proviso, therefore, gave both the authority and the right to the DC Courts to defer these payments.[10] If that were not the case, Congress clearly could have so indicated. It *did* not in FY 1999, nor did it in any of the prior appropriations containing the CJA/CCAN proviso.

In support of its unwillingness to see a deferral right contained in the CJA/CCAN proviso, the report argues that such a right would "undermine Congressional control of DC Courts' appropriations." (Draft Report, p. 20). The argument here is that the CJA/CCAN proviso, properly understood, would allow the Courts to defer *all* CJA/CCAN payments from one year to the next in order to use funds designated for those costs for other projects, and that this right would therefore undermine Congressional control of the Courts' budget. This argument is wrong, for two obvious reasons. First, Congress does not generally require agencies to spend specific funds on specific portions of their budgets, even if the formal budget submitted in the appropriation process itemizes certain expected expenditures. *See* May Submission, p. 24. Second, Congress can easily reverse this normal rule whenever it wishes—as it in fact did by specifically identifying the funds the Courts could spend on CJA/CCAN costs from its FY 1999 appropriation—and this Congressional reversal in no way contradicts the natural and necessary meaning of the CJA/CCAN proviso.

The specific level of CJA/CCAN costs is therefore not a prerequisite for use of the CJA/CCAN proviso unless Congress has expressly required that certain appropriated funds be used *only* for CJA/CCAN expenditures (as was done in FY 1999, but *not in FY 1998, nor in earlier years).* Nevertheless, it is also worth emphasizing that the Draft Report does not fairly characterize the level of CJA/CCAN expenditures in FY 1998. The report states that the level was "similar to those in fiscal year 1997 and the estimates for fiscal year 1998." In fact, as of mid-year in FY 1998,

[10] The Draft Report notes in footnote 21, page 19, that the FY 1999 Appropriation was passed after the Courts deferred the CJA/CCAN payments. This fact in no way detracts from either the ability of the DC Courts to rely on the traditional CJA/CCAN proviso, or from the clear endorsement of this reliance that actually was contained in the FY 1999 Appropriation.

the level of CJA/CCAN expenses was $16.9 million, indicating an annual level of obligations that would be up to $3 million more than in FY 1997, and up to $6 million more than in FY 1996. While the ultimate level incurred in FY 1998 may not have represented a significant increase from the prior two years, the report is wrong to ignore the fact that at the time the Courts were forced to decide how to deal with their budgetary shortfall, there were very good grounds for concluding that a deferral of CJA/CCAN costs could in no way be avoided. At any rate, these costs are inherently unpredictable, and therefore, pose a greater risk to the Courts' budget even in a normal years. In a crisis year, such as FY 1998, the unpredictability of the CJA/CCAN costs and the necessity of avoiding a furlough of permanent employees combine to make use of the CJA/CCAN proviso entirely reasonable and justified.

Finally, the Draft Report did conclude, in accordance with the findings it had expressed to DC Courts throughout the audit, that CJA/CCAN payments were made "in accordance with established policies and procedures." Draft Report, p. 4. While the Draft Report makes certain suggestions for improving the documentation of these expenditures, it does not allege any failure to comply with policies and procedures. This point needs emphasis in the Draft Report, rather than being de-emphasized by inclusion in a lengthy and inconclusive discussion of recommended improvements in the administration of the CJA/CCAN programs.

Thus, based on reasons set forth more fully in the May Submission, the DC Courts respectfully request GAO to reconsider its assertion that the Courts had no right to defer $4.1 million in costs associated with CJA/CCAN services from FY 1998 to FY 1999. This deferral was in direct keeping with the traditional CJA/CCAN proviso, and was endorsed by Congress in the FY 1999 Appropriation.

V. Interest

Based on the express terms of an act of Congress, the DC Courts received quarterly payments from the United States Treasury in FY 1998, and each payment was approved by the OMB. The lawfulness of the receipt of these quarterly appropriations is not in doubt, nor is the lawfulness of the retention or expenditure of these amounts. However, because the Home Rule Act provides that the Courts cannot spend funds other than those approved for the Courts by an act of Congress, the

GAO surmises in the Draft Report that the Courts had no right to deposit these quarterly apportionments into interest-bearing accounts, and should transfer all interest so earned back to the U.S. Treasury from whence came the underlying appropriation. (*See* Draft Report, pp. 14, 27.)

While the Courts' ability to obligate or expend funds is limited by the Home Rule Act to amounts authorized by Congress, it is a substantial leap from that rule—which prevents the Courts from seeking alternative funding sources that lie beyond Congressional control—to a rule that prohibits the Courts from earning interest on funds that Congress gave the Courts prior to expenditure and using such interest to pay court expenses. Congress clearly authorized the payment of the Courts' appropriations in quarterly apportionments in advance of actual expenditures. It was a natural, if not inevitable, consequence that the Courts would have derived some interest income from the manner in which Congress directed that payments be made. Given the inevitability of such interest, if Congress intended for such interest to be paid back to the U.S. Treasury, there would have been some indication to that effect. Having remained silent on the matter of interest, and given that Congress must have understood that the "time value" of the funds it advanced to the Courts, the natural interpretation of the statutory scheme is that any interest received remains with the Courts. The present circumstances are quite distinguishable from other circumstances in which GAO has in the past concluded that interest earned by an agency must be returned to the Treasury.

Moreover, as the Draft Report acknowledges, the amendment to the Home Rule Act added by the Revitalization Act, which provides that "moneys received by DC Courts be deposited in the United States Treasury or the Crime Victims Fund," refers "to funds received from non-federal sources, such as fines and fees." (*See* Draft Report, p. 14, n. 12). The thrust of this provision is in keeping with the spirit of the Home Rule Act, which requires that the Courts remain under the fiscal control of Congress—a principle which is in no way compromised by taking the natural and unsurprising step of depositing quarterly advances made in accordance with the express will of Congress into interest-bearing accounts. The small amount of interest that resulted was neither a threat to Congressional control, since it was implicit in the quarterly advances, nor a material alteration of the Courts' operating budget, of which it represented less than .75%.

For these reasons, which are elaborated upon in the May Submission, the Courts request the GAO to revise its Draft Report to reflect that the interest earned on the quarterly advances

constituted funds obtained in accordance with Congressional will and not in violation of the legal obligations of the DC Courts. However, in light of GAO's position, the Courts are seeking legislation to authorize specifically the use of any interest earned on its appropriation for court operations.

VI. Additional Specific Responses

Following are the Courts' summarized responses to additional specific points in the different sections of the Draft Report.

A. **Results in Brief**

* As explained above, the 7% pay increase was in fact only a 5.7% pay increase.

* For fiscal year 1998, the Courts' available resources included Title IV-D and Title IV-E of the Social Security Act reimbursements, Trustee reimbursements, D.C. Department of Human Services reimbursements, and interest earned on quarterly apportionments. These funding sources were included in the Courts' FY 1998 spending plans prepared for the Office of Management and Budget (OMB), beginning in March and April 1998, and approved by OMB officials.

* According to court records, the D.C. Courts' obligations for fiscal year 1998 exceeded available resources by $4.1 million, reflected by the deferred payments to court-appointed attorneys, which were within the Courts' authority.

* The GAO correctly notes that "...D.C. Courts processed vouchers for court-appointed attorneys and expert-service providers in accordance with its policies and procedures." Draft Report, p. 21. In fact, the GAO found that 94% of all attorney claims were paid within 30 days of judicial approval and that very few, if any, CJA or CCAN vouchers were "lost" in the system. The GAO also found that judges or hearing commissioners reduced voucher amounts in only 9% of the cases, and that more than half of such reductions were of $100 or less. The Courts' performance in this area suggests that the GAO's concerns about the lack of policies regarding time frames and judicial documentation of voucher reductions are not warranted. Nevertheless, the Courts' performance in

this area will be enhanced with the implementation, later this year, of an automated CJA/CCAN voucher tracking and monitoring system which has been under development at the Courts for several years.

B. Impact of Revitalization Act

* It is misleading to make the following statement without clarifying that it only relates to the transfer of the adult probation function from the D.C. Courts to the Offender Supervision Agency: "[u]nder the Revitalization Act, the federal government took over certain financial responsibilities and roles previously held by D.C. Courts under the Court Reform Act. Some activities became federal government responsibilities, while others remained local government activities funded with federal dollars." Draft Report, pp. 5,6.

* It is also important for the GAO to clarify that while the Revitalization Act transferred the adult probation function, including all funds and personnel to the Trustee, the D.C. Courts continued until March 1998 to incur all personnel costs and most operating costs for adult probation. Moreover, the Courts continue to this day to incur many adult probation costs for which the Trustee continues to reimburse the Courts.

C. Court-Appointed Attorneys

* While the GAO's description is generally accurate, it should be noted that *all* parties in child abuse and neglect cases, including children as well as their parents, either individually or as a couple, are entitled to CCAN representation.

D. D.C. Courts' Spending Plan and Obligation of Funds

* During fiscal year 1998, the D.C. Courts and the General Services Administration prepared and transmitted spending reports (S.F. 133 reports) to the Congress on a monthly basis, beginning December 31, 1998, in compliance with the reporting requirements prescribed in the fiscal year 1998 Appropriations Act.

* At the request of the Office of Management and Budget the D.C. Courts developed and updated spending plans and incurred obligations in accordance with those plans, including the use of interest earned on appropriations. It is, therefore, misleading for the GAO to state that the "DC Courts did not develop such a plan." Draft Report, p. 11.

* It is also misleading for the GAO to state that the Courts "obligated throughout the year based on its expectation of receiving additional funds." Draft Report, p. 11. On the contrary, the Courts instituted cost savings measures throughout fiscal year 1998, which enabled the Courts to reduce its budgetary shortfall from $11 million to $6.9 million by year's end.

* There was extensive contact and communication between the D.C. Courts and the Office of Management and Budget during the 1998 fiscal year, in contrast to the description provided by the GAO. Telephone conversations and meetings occurred routinely and frequently, and the OMB assured the Courts that the budget shortfall would be addressed. Throughout FY 1998, the OMB representatives discussed with the Courts what they termed "various funding vehicles" available in order to secure additional funds for the Courts, and worked toward that end.

* When the close-out of FY 1998 was completed, court records showed available resources of $121.8 million and obligations of $121.6 million – with $4.1 million in court-appointed attorney claims deferred and payment authorized from the FY 1999 appropriation. There are no other obligations outstanding for fiscal year 1998.

E. Adjustments to Fiscal Year 1998 Obligations and Resources

* There is no basis for adjusting the Courts' FY 1998 obligations and resources. Since Congress directed the Courts to pay the $4.1 million in court-appointed attorney deferrals from its FY 1999 appropriation, these charges must be, and have been, recorded as FY 1999 obligations.

* Further, as noted previously, the Office of Management and Budget was advised and sanctioned the Courts' use of interest income as an available resource from which to pay FY 1998 obligations.

Therefore, this adjustment by the GAO is also unjustified.

* The statutory provisions of the Home Rule Act and the Revitalization Act do not, as suggested by the GAO, "support the general proposition that when the Congress appropriates funds for DC Courts, it establishes an authorized program level beyond which D.C. Courts may not operate." Draft Report, p. 14. The Courts annually operate several million dollars in excess of appropriations in order to support the federal Title IV-D and Title IV-E programs, for which the Courts are reimbursed.

F. Payments to Court-Appointed Attorneys: Voucher Processing Procedures

* GAO found that the D.C. Courts processed voucher payments in accordance with its policies and procedures. This positive finding is buried in the Draft Report, as the report focuses instead on what the Courts do not do. Specifically, the GAO reports that the Courts do not have: timeframes for making payments; procedures for maintaining data on missing vouchers; and procedures for advising attorneys when vouchers are reduced.

* The fact is that GAO found that the Courts process 94% of the CJA/CCAN vouchers within 30 days of the judicial officers' approval. Although the development of timeframes might be a valuable exercise, it is certainly not required given the Courts' excellent performance in this area.

* Discussion and comments regarding the federal Prompt Payment Act and its implementation by the Courts should be excluded from this report. As stated in The Report on page 22, "For fiscal year 1998, D.C Courts was not subject to the federal Prompt Payment Act or the District Quick Payment Act." Therefore, this issue is outside the scope of GAO review. Further, it improper for GAO to speculate on the Courts' adherence or ability to adhere to the mandates to which the Courts were clearly not subject.

* Regarding a mechanism for tracking vouchers from acceptance to the due date, it should be noted that the D.C. Courts have been developing an automated voucher tracking and monitoring system

which will maintain information on vouchers from the time they are issued to the time they are paid. The new system is expected to be completed and implemented this calendar year, and will give the Courts the ability to better project future CJA/CCAN expenses. It will also assist the Courts in determining the status of vouchers have been identifying their location.

• While the GAO criticizes the Courts for not having "procedures covering how judges or hearing commissioners were to report [the decision to reduce payments] to the attorney or provider" (Draft Report, p. 25), none are required. The GAO found that judicial officers reduced voucher amounts in only 9% of all cases, with over half of the reductions being for $100 or less. There is no statutory requirement that judges must notify claimants of payment adjustments and, in practice, adjustments are so infrequently made that it is not a significant issue. Such information can and is made available to attorneys, upon request.

G. Crime Victims Compensation Program

• The GAO reports that there is no federal law authorizing the Courts to make payments to crime victims from the Crime Victims Fund. However, when the program was transferred to the Courts from the D.C. Department of Human Services, in March 1997, the U.S. Justice Department assisted with the transfer and advised the Courts that the transfer of authority was adequate.

VII. Conclusions

1. It is unfair and incorrect for the GAO to reach the conclusions stated in the Draft Report without recognizing that the primary cause of the FY 1998 "difficulties in planning and budgeting" was the severe underfunding of the D.C. Courts resulting from the deduction of $8 million from their appropriation that was not properly attributable to the adult probation function. It is likewise incorrect, as we have demonstrated, to conclude that the Courts even "potentially" violated the Antideficiency Act.

2. The D.C. Courts' management properly executed its responsibility in FY 1998, it

implemented cost savings measures, sought supplemental funding, and worked tirelessly with administration officials to remedy the error which resulted in the D.C. Courts' underfunding. The temporary deferral of payments for CJA/CCAN services, while regrettable, was both lawful and undertaken in complete good faith.

3. While the Courts are always looking for ways to enhance the processing of court-appointed attorney vouchers, and are currently completing the development of an automated system, there is no basis from which to determine that the Courts need to revise procedures in this area. As the GAO learned, court-appointed attorneys are paid timely by the Courts (94% are paid within 30 days of judicial approval), their claims are seldom reduced (91% of the vouchers are paid in full), and vouchers are rarely lost (less than 1% loss rate). The implementation of the Courts' automated CJA/CCAN Voucher System later this year will address GAO's recommendation regarding the logging of vouchers, as the new system will track vouchers from the date of issuance.

4. Given GAO's position, the Courts intend to seek clarifying legislation to specifically authorize the Courts to use interest earned on its appropriation.

5. Given GAO's position, the Courts intend to seek clarifying legislation to specifically authorize the Courts to authorize payment of eligible claims from the Crime Victims Fund.

6. Finally, the Courts have already investigated, and analyzed the GAO's allegation of a possible ADA violation. As explained in its May Submission, and elaborated on in this Response, the Courts did not violate the ADA in deciding to defer payment for certain CJA/CCAN services, nor in earning interest on certain quarterly apportionments of its appropriation. Nevertheless, the Courts have already prepared formal letters to the President and to both Houses of Congress, in

accordance with OMB Circular A-34, § 22.8,[11] that will be sent in the event that a final GAO Report continues to allege a possible violation of the ADA. These letters will discuss the disagreement between the Courts and the GAO, and will directly attach the May Submission, and will also likely reference this Response to the Draft Report, in an effort to ensure that the position of the Courts is well understood.

[11] The Courts believe they have already substantially complied with any reporting obligation that might apply by virtue of OMB Circular A-34, through its several letters to the OMB, the Counsel to the President, and relevant members of each House of Congress. Nevertheless, the Courts have prepared the letters described above in order to provide full information to the President and Congress should GAO continue to assert a possible ADA violation.

DC COURTS—GAO REPORT ON TIME LINE AND COMMUNICATIONS

[See pages 447 and 493 this volume.]

GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-281408

June 7, 1999

The Honorable Ernest J. Istook
Chairman
The Honorable James P. Moran
Ranking Minority Member
Subcommittee on the District of Columbia
Committee on Appropriations
House of Representatives

Subject: District of Columbia Courts: Chronology of Events Associated with DC Courts Financial-Related Issues for Fiscal Year 1998

When we testified before your Subcommittee on May 18, 1999, you requested that we provide a timeline of events and communications related to the District of Columbia Courts' (DC Courts) fiscal year 1998 financial issues, as a supplement to the information provided in our testimony.[1]

To respond to your request, the enclosure provides a chronology of events containing data on points made in our testimony. The events included date from June 15, 1997, when the District of Columbia Financial Responsibility and Management Assistance Authority transmitted the DC Courts budget submission to the Congress, through October 21, 1998, when DC Courts received its fiscal year 1999 annual appropriation from the Congress.

We shared a draft of this chronology with DC Courts officials and incorporated their comments as appropriate.

We are sending copies of this letter to Representative Thomas Davis, Chairman, and Representative Eleanor Holmes Norton, Ranking Minority Member, Subcommittee on the District of Columbia, House Committee on Government Reform; Senator Kay Bailey Hutchinson, Chairwoman, Subcommittee on the District of Columbia, Senate Committee on Appropriations; Senator Richard Durbin, Ranking Minority Member, Subcommittee on the District of Columbia, Senate Committee on Appropriations, and Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs, and Senator George Voinovich, Chairman, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs. We are also sending copies to

[1]District of Columbia Courts: Financial Related Issues for Fiscal Year 1998 (GAO/T-AIMD/OGC-99-176, May 18, 1999).

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the Honorable Annice Wagner, Chairwoman, Joint Committee on Judicial Administration, DC Courts; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and Grace Mastelli, Deputy Assistant Attorney General, Department of Justice. Copies will be made available to others upon request.

If you have any questions, please contact me or Steven Haughton at (202) 512-4476. Key contributors to this assignment were Marcia Washington, Lou Fernheimer, and Richard Cambosos.

Gloria L. Jarmon
Director, Health, Education, & Human Services
Accounting and Financial Management Issues

Enclosure

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Chronology of Events Associated With DC Courts Financial-Related Issues for Fiscal Year 1998

6-15-97	The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) transmitted to the Congress the District's fiscal year 1998 budget submission, which included the Authority's recommendation that DC Courts be funded at $117.8 million. It also contained DC Courts' budget request of $123.5 million, including a proposed 3 percent pay raise for nonjudicial employees.
8-5-97	President Clinton signed the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act). Under the Revitalization Act, DC Courts was to receive direct federal funding from the Congress. The act directed changes in DC Courts employee benefits and transferred responsibility for the adult probation function from DC Courts to the DC Court Services and Offender Supervision Agency (COSA) Trustee.
8-14-97	The President submitted to the Congress proposed amendments to the fiscal year 1998 appropriations requests to provide resources for the implementation of the Revitalization Act. The proposed amendments contained $123 million for DC Courts operations, including up to $2 million for the Truth-in-Sentencing Commission.
9-4-97	The Deputy Attorney General, Department of Justice, testified on the Revitalization Act before the House Appropriations Subcommittee on the District of Columbia. At this hearing, he stated that DC Courts estimated the cost of the adult probation function at $7 million.
9-9-97	The Senate Appropriations Committee reported S.1156 recommending funding of $116 million for operation of DC Courts for fiscal year 1998, including up to $750,000 for the Truth-in-Sentencing Commission.

(In October 1997, a Department of Justice Revitalization Task Force estimated the cost of the adult probation function at about $20 million. According to a member of the Task Force, the estimate was submitted to the office of Management and Budget (OMB) and relevant Congressional Subcommittees.)

10-6-97	The House Appropriations Committee reported H.R. 2607 recommending funding of $121 million for court operations and an additional $2 million for the Truth-in-Sentencing Commission.
10-9-97	The House amended and passed H.R. 2607 authorizing funding of $121 million for DC Courts and up to $2 million for the Truth-in-Sentencing Commission.
10-28-97	DC Courts Executive Officer was informed by a Department of Justice official that DC Courts' fiscal year 1998 appropriation would be $108 million, including judges' pension costs.

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(DC Courts officials told us that they wrote to and met with OMB and Department of Justice officials regarding the cost of the adult probation function during the months of October and November 1997).

11-9-97 The Senate amended and passed H.R. 2607 authorizing funding of $108 million for DC Courts, including pension costs and up to $750,000 for the Truth-in-Sentencing Commission.

11-12-97 The House agreed to the Senate amendment to H.R. 2607 authorizing funding of $108 million for DC Courts, including pension costs and up to $750,000 for the Truth-in-Sentencing Commission. The House also made an additional amendment to H.R. 2607 and disagreed with a Senate amendment to H.R. 2607.

11-13-98 The Senate agreed to the House amendment to H.R. 2607 and receded from the Senate amendment disagreed with by the House.

11-14-97 DC Courts Executive Officer issued a memo to court employees stating that at a November 13, 1997, meeting, the Joint Committee on Judicial Administration approved comparability of DC Courts compensation schedule with the federal court's schedule, to be achieved over 2 fiscal years, provided adequate funding was appropriated. DC Courts estimated the cost of the pay raise at $2.9 million. The first salary adjustment was to be effective December 7, 1997, at 7 percent per annum, for all nonjudicial employees.

11-19-97 The President signed the District's Fiscal Year 1998 Appropriation Act (Public Law 105-100), which provided $108 million for DC Courts' fiscal year 1998 funding, including pension costs and up to $750,000 for the Truth-in-Sentencing Commission.

12-7-97 DC Courts' 7 percent pay raise became effective. DC Courts Fiscal Officer later calculated the actual cost of this pay raise at almost $2.8 million for fiscal year 1998.

12-11-97 DC Courts submitted an analysis to OMB projecting a $9.5 million shortfall for fiscal year 1998.

12-17-97 DC Courts confirmed an agreement with the COSA Trustee that 171 full-time equivalents would be transferred from DC Courts to the COSA Trustee, and estimated the cost of the adult probation function at $11.5 million.

12-24-97 The COSA Trustee estimated the cost of the adult probation function at $18.3 million and informed OMB that $1.7 million should be transferred from the COSA Trustee's appropriation to DC Courts (see October 7, 1998).

(In December 1997, OMB proposed a settlement between DC Courts' estimate of $11.5 million and the COSA Trustee's estimate of $18.3 million. OMB proposed $16 million as

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the cost of the adult probation function. We have not identified any action resulting from the proposal.)

1-29-98	OMB advised DC Courts that it could not continue to incur obligations for the adult probation function without reimbursement. It further stated that DC Courts was incurring obligations at a rate that could exceed the fiscal year 1998 appropriation, and risked a violation of the Anti-Deficiency Act if it continued to pay salaries and expenses for the adult probation function.
2-13-98	In a letter to OMB, DC Courts projected a $8.3 million budget deficit and informed OMB that most of its operations would have to be discontinued by the end of the fiscal year unless substantial supplemental resources were received.
2-27-98	The DC Courts and the COSA Trustee executed a Memo of Understanding (MOU). The MOU identified the adult probation employees to be transferred and other terms and conditions.
3-2-98	A letter from the COSA Trustee to DC Courts noted the transfer of over $5.9 million to DC Courts in reimbursement for adult probation costs incurred by DC Courts and estimated for the remainder of the 2nd quarter of fiscal year 1998. Between March and June of 1998, DC Courts received additional net reimbursements totaling $1.9 million from the COSA Trustee for the 3rd and 4th quarters of fiscal year 1998.
3-13-98	DC Courts requested $8.3 million in supplemental funding for fiscal year 1998 in a letter to the Director of OMB. The letter stated that the request was based on the $8 million over-estimation of the annual cost of the adult probation function, $3 million in unanticipated costs associated with implementing the Revitalization Act, and $300,000 for emergency costs caused by a court fire, less $3 million that DC Courts planned to absorb through cost containment measures. DC Courts also sent letters to the Chairman of the Subcommittee on the District of Columbia, Senate Committee on Appropriations, the Chairman of the Subcommittee on the District of Columbia, House Committee on Appropriations, and the Ranking Minority Member of the Subcommittee on the District of Columbia, House Committee on Government Reform and Oversight, asking for assistance in securing the supplemental funding.
4-2-98	OMB advised DC Courts that it was operating at a rate that if continued through the remainder of the fiscal year, would necessitate a deficiency or a supplemental appropriation of about $8 million. OMB also requested that DC Courts submit a spending plan by April 10, 1998, that demonstrated how it would utilize the balance of its available resources at a rate that would ensure continuity of essential functions throughout the fiscal year.
4-15-98	DC Courts submitted a spending plan to OMB and stated that drastic reductions would be required to operate without supplemental funding of

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over $8 million. These planned reductions consisted primarily of over $5 million from the furlough of employees for 26 business days.

5-4-98 Based on a request from OMB for a revised spending plan, DC Courts provided a plan reflecting the reduction of nonpersonnel costs, principally the deferral of payments to court-appointed attorneys.

5-21-98 A letter to DC Courts from OMB underscored its concern that DC Courts was operating at a rate that if continued through the remainder of the fiscal year, would necessitate a deficiency or supplemental appropriation of over $8 million. OMB also stated that DC Courts' adjusted plan should maintain personnel spending at current levels, assure the projected level of personnel obligations, and reduce nonpersonnel spending.

(DC Courts officials told us that they met in May and June with OMB officials in an attempt to secure additional funding.)

7-24-98 DC Courts stopped making payments to court-appointed attorneys.

7-29-98 DC Courts sent a letter to a staff member of the Subcommittee on the District of Columbia, House Committee on Government Reform and Oversight, stating that budgets for court-appointed attorney payments had not been depleted and that DC Courts would continue making these payments to the extent feasible.

8-2-98 DC Courts' letter to OMB outlined cost reduction measures taken, including the deferral of payments to court-appointed attorneys estimated at over $5 million through the end of the fiscal year.

8-6-98 DC Courts requested Byrne Grant funding of $6.7 million for court-appointed attorney payments, court personnel expenses, and Year 2000 (Y2K) remediation from the Department of Justice.

8-24-98 DC Courts received a Byrne Grant totaling $1.1 million from the Department of Justice that was to be used for court personnel expenses and Y2K remediation.

10-7-98 The Fiscal Year 1999 Energy and Water Development Appropriations Act transferred to DC Courts' fiscal year 1998 appropriations account from the COSA Trustee's fiscal year 1998 account $1.7 million to be used solely to pay court-appointed attorneys for obligations deferred from fiscal year 1998.

Enclosure

10-21-98	The District of Columbia Appropriations Act of 1999 (Public Law 105-277) appropriated $121 million to DC Courts for operations for fiscal year 1999. Of the amount appropriated, the act provided that not more than $31.9 million may be used for payments to court-appointed attorneys for fiscal year 1999. The Conference Committee report accompanying the act directed DC Courts to immediately pay all obligations for court-appointed attorneys carried over from fiscal year 1998 ($4.1 million) using other funds from its fiscal year 1999 appropriation.

(916266)

RESPONSES OF THE DISTRICT OF COLUMBIA COURTS TO QUESTIONS SUBMITTED BY THE DISTRICT OF COLUMBIA SUBCOMMITTEE OF THE HOUSE COMMITTEE ON APPROPRIATIONS

See pages 487 and 493 this volume.

Question 1. As I understand, section 11242(b) of the Revitalization Act (PL 105-33) requires a financial statement audit of the DC Courts. What is the status of the FY 1998 financial statement audit?

Answer. The audit contract was awarded to KPMG LLP on May 19th and work commenced immediately. The contract requires completion of the audit within 90 days after the award date.

Question 2. The FY 1999 DC Appropriations Act capped the amount of payments to counsel for indigents under 2 programs -- Counsel for Child Abuse and Neglect (CCAN program) and the Criminal Justice Act (CJA program) at $31.9 million. The conference report directed the courts to pay all obligations carried over from FY 1998 and prior years using funds other than that provided under the cap.

a. Did the courts absorb or charge the $4.1 million carry-over in FY 1998 obligations against the cap or was the $4.1 million charged against other appropriated amounts? - If charged against the cap, please explain why.

b. The courts revised spending plan for FY 1999 (as of 3/31/99) shows that the courts will reach the cap on the CCAN program in May and the cap on the CJA in August. The spending plan indicates that funding requirements for the remainder of the fiscal year will be provided either through reprogrammings or the use of refunds and reimbursements.

-Have the courts identified potential sources of funding within its budget to provide funding through reprogramming to the CCAN and CJA programs?
-What are the sources of refunds and reimbursements that could provide funding for CCAN and CJA?

c. If the courts do not receive additional amounts through reprogramming, reimbursements, or refunds, will you have to defer payments to attorneys for indigents in FY 1999?

Answer.

a. The $4.1 million carry-over was charged against other appropriated amounts.

b. The March Spending Plan (as of 3/31/99) was in error with respect to the source of funding for these programs. The April and May Spending Plans (as of 4/30/99) accurately reflect that the full appropriated amounts of $6,900,000 and $25,036,000 have been set aside for the CCAN and CJA programs, respectively. However, it appears that CJA claims are being presented and approved at a rate which may exceed the cap set by Congress. Therefore, the Courts may be

required to seek Congressional authority in order to make payments in fiscal year 1999 in excess of the cap set by Congress for these payments.

The Courts expect to receive refunds and reimbursements, in the amount of approximately $4 million during fiscal year 1999. The primary sources are the following:

- Title IV-D of the Social Security Act program
- Title IV-E of the Social Security Act program
- Reimbursement from Court Services and Offender Supervision Agency for the District of Columbia
- Crime Victims Compensation Fund/ reimbursement for payroll expenses

c. The Courts have allocated the full amount earmarked in the FY 1999 appropriation to the CJA and CCAN programs. We are not relying on reprogramming, reimbursements or refunds to fund these programs up to the full amount specified in the appropriation. Moreover, in the fourth quarter, the CJA and CCAN appropriated apportionments will be set aside in a separate sub-account for disbursements. If the Court receives Congressional authority to make payments in excess of the CJA cap set by Congress, reprogramming will be necessary to pay these claims.

Question 3. Is it the DC Courts legal position that any over-obligations that may have occurred in FY 1998 did not constitute Anti-Deficiency violations because the over-obligations were paid with the FY 1999 appropriation?

- If yes, is it the logical extension of the DC Courts legal position that the DC Courts could have spent the entire appropriation on operations and deferred all the court-appointed attorney costs?

Answer. In summary, it is the legal position of the D.C. Courts that they operated consistent with the requirements of 31 U.S.C. § 1341(a)(1) (the Anti-deficiency Act or ADA) in FY 1998 for two principal reasons. First, the deferral of payments for claims presented under the Criminal Justice Act of 1974, the District of Columbia Neglect Representation Equity Act of 1984, and the District of Columbia Guardianship Protective Proceedings and Durable Power of Attorney Act of 1986 (collectively referred to as CJA/CCAN) near the end of FY 1998 and the payment of those claims from the FY 1999 appropriations was authorized by law. Second, the ADA allows for deficiency or a supplemental request for appropriations (1) where the enactment of new laws subsequent to the submission to Congress of Budget estimates results in increased costs or (2) where the continuation by the government of essential functions for the safety of human life or the protection of property is required. See 31 U.S.C. § 1515 (b)(1)(A) and (B). The circumstances faced by the Courts in FY 1998 come within each of these statutory exceptions to the ADA.

The ADA provides that an officer or employee of the government may not involve the government "in a contract or obligation for the payment of money before an appropriation is

made **unless authorized by law.**" 31 U.S.C. § 1341(a)(1)(B)(emphasis added). To constitute an ADA exception, "the authority must be authority to incur the obligation in excess or advance of appropriation." See Principles of Federal Appropriations Law, 2d ed., at 6-53 (September 1992). In every year since fiscal year 1976, the year after the Courts assumed financial responsibility for payment of indigent criminal defendants' legal representation, Congress has authorized the Courts to pay claims for legal representation incurred in prior years out of the appropriation for a subsequent year. This cost-spanning proviso is essential to provide for flexibility because of the difficulty of budgeting for costs of legal representation where there is frequently a lag time between the time appointed counsel renders services, which can span years, and the time that the attorney's claim for services is presented and approved by the Court.

The estimates for legal representation under CJA/CCAN, although insufficient, were close to projections; however, other extraordinary circumstances occurred in FY 1998 which resulted in a severe, unintended budgetary shortfall. Specifically, the enactment of a new law, the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub.L.No. 105-33 (Revitalization Act), subsequent to the submission of the budget estimates for the Courts, resulted in unanticipated increased costs of approximately $3 million.[1] In addition, the Revitalization Act transferred responsibility for adult probation supervision from the Courts to the District of Columbia Offender Supervision Trustee (Trustee), and an adjustment was made removing $20 million from the Courts' budget to the Trustee's budget, although the Courts' experience and budgeted costs indicated that the Courts operated adult probation for only approximately $12 million.[2] The $8 million difference eliminated from the Courts' budget represented funding needed for other essential case processing functions. Thus, the FY 1998 appropriation unintentionally created a built-in shortfall of over $11 million. Although the Courts implemented various cost savings measures in an effort to meet this exigency, as a practical matter, it was impossible to make up the full $11 million and at the same time continue essential constitutionally and statutorily mandated functions. Confronted with these extraordinary circumstances, the Courts, among other measures, requested a supplemental appropriation on March 13, 1998 as contemplated by 31 U.S.C. § 1515 (b)(1). Here, the Courts' budget estimates were submitted before the passage of the Revitalization Act, and there were increased costs which were not included in the submission as a result, thus, making applicable § 1515 (b)(1)(A). The constitutional and statutory functions, in the Courts' opinion, constitute the types of governmental functions which may continue where there is a budgetary shortfall in the interest of the protection of the public health and safety as provided for in 31 U.S.C. § 1515

[1] Under the Revitalization Act, the Courts were responsible for paying for additional costs for Federal benefits for employees whose status was converted under the Act, as well as the costs of contracting with the General Services Administration for payroll and disbursement services.

[2] The Office of Management and Budget (OMB), the Trustee, and other executive branch officials agreed that the transfer of funds from the Courts to the Trustee were excessive, and ultimately, $2.8 million was transferred back to the Courts ($1.1 million through a grant on August 7, 1998, and $1.7 million pursuant to Congressional legislation on October 8, 1998, PL. 105-245[H.R. 4060] Section 507. In addition, Congress authorized the payment of $4.1 million in FY 1999 for the payment of claims under CJA/CCAN for the prior year.

(b)(1)(B). Under these provisions of the U.S. Code, the necessity for a deficiency or supplemental budget request does not violate the ADA.

When it appeared during FY 1998 that relief would not be achieved in time to avoid a deficiency, the Court officials determined that they were compelled to utilize another statutory exception to the ADA. As indicated above, this statutory exception has appeared in every D.C. Appropriations Act since 1976. It allows for claims for counsel fees approved in one fiscal year to be paid in a subsequent fiscal year. The legislative history of the District of Columbia Appropriations Act, 1976 (Pub. L. No. 94-333) reflects that the reason Congress authorized the payment for legal representation for prior years out of a subsequent year's appropriation at that time was to cover a budgetary shortfall from the prior year. The written statement of Arnold Malech, the Executive Officer for the D.C. Courts at the time, states the following with respect to the request for the authority which Congress granted:

> As a result of the vastly increased number of criminal prosecutions in the local courts this calendar year, all of these branches of the District government have recognized that the budget estimate for the first year was quite inadequate and have agreed upon the substantially larger figure requested for this purpose in fiscal year 1976, with the recommendation that the subcommittee will include in the appropriation bill it reports out, a proviso that will enable the District to charge against such appropriation whatever sums are needed to pay vouchers approved by the courts for services rendered pursuant to appointments in the prior fiscal year.

District of Columbia Appropriations for 1976: Hearings on H.R. 13965, Subcommittee on District of Columbia Appropriations, 94th Cong. 222 (1975).

In FY 1998, the Courts were confronted with comparable unforeseen and extraordinary circumstances. It was in order to avoid an ADA violation that the Courts used this statutory exception to cover the severe budgetary shortfall. Nothing in the legislative history of the subsequent Appropriations Acts (including the FY 1999 Act, Pub. L. No. 105-277, section (c) repeating this authorization) implies that the Courts may not cover a shortfall in funds or budget estimates through utilization of this provision. This authority to pay prior years' obligations from the current year provides the legal authorization, referenced in the statute for payment in a subsequent year, without violating the ADA. *See* 31 U.S.C. § 1341 (a)(1)(B). Any other interpretation would render that authority meaning less. *See J. Parreco & Son v. Rental Housing Comm'n,* 567 A.2d 43, 46 (D.C. 1989) (citing *United States v. Brown, 333 U.S. 18, 27 (1948); United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543 (1940)*(other citations omitted)(referencing the maxim that statutes not be construed so as to lead to absurd consequences which the legislature could not have intended).

The Courts' legal position on this issue does not logically extend to a conclusion that the Courts could have spent the entire appropriation on operations and deferred all the court-appointed attorney costs. However, confronted with extraordinary circumstances as outlined above, the statutory framework allowed the Courts a means by which to address the exigency

without violating the ADA, in this case, until legislative action could be taken to remedy this shortfall, which ultimately occurred.[3]

Question 4. During the hearing on May 18,1999, the Committee asked who the DC Courts consider as being responsible for complying with the requirements of the Anti-Deficiency Act as they apply to the DC Courts, including the DC Court of Appeals, the Superior Court, and the Court System. The Committee would appreciate a clarification of the courts' response as to the specific position or positions responsible.

Answer. The Joint Committee on Judicial Administration in the District of Columbia (Joint Committee) has ultimate responsibility for accounts and auditing and procurement and disbursement. D.C. Code § 11-1701 (b)(1) and (b)(2). The Joint Committee is comprised of the Chief Judge of the D.C. Court of Appeals, an associate judge of that court, the Chief Judge of the Superior Court of the District of Columbia and two associate judges of that court.

The Executive Officer of the District of Columbia Courts is responsible for the administration of the D.C. Court system subject to the supervision of the Joint Committee regarding the matters set forth in D.C. Code § 11-1701(b) which include accounts and auditing and procurement and disbursement. D.C. Code § 11-1703.

The Fiscal Officer is "responsible for the budget of the court system and for the accounts of the courts, subject to the supervision of the Executive Officer." D.C. Code §11-1723(a)(1). The Fiscal Officer is responsible for receiving, safeguarding, and accounting for all fees, costs, payments and deposits of money and for approval of vouchers and internal auditing of the accounts of the courts. D.C. Code § 11-1723(a)(2) and (3).

Question 5. Please provide the Committee with a copy of the courts' policies, procedures and regulations in effect during fiscal year 1998 as they relate to compliance with the Anti-Deficiency Act.

Answer. For decades, the Courts have utilized a process of "fund certifications" and periodic, internal financial status reports, containing to-date costs and full fiscal year projections. During fiscal year 1998, the Courts employed standard budgeting and accounting procedures to monitor compliance with the Antideficiency Act. In addition, in FY 98, the Courts also developed "spending plans" as requested by the Office of Management and Budget. Using these procedures and reports, the Courts have been able, without exception, to operate within their authorized levels of funding. The "National Capital Revitalization and Self-Government Improvement Act of 1997" amended D.C. Code Section 11-715 to provide that " All expenditures of the courts shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the Joint Committee. All such expenditures shall be paid out of moneys

[3] See note 2, *supra.*

appropriated for such purposes of the court." Accordingly, the Joint Committee designated certifying officers[4] to regulate the Courts' expenditures.

Question 6. In FY 1998, the D.C. Courts received a $108 million appropriation. In FY 1999, the Courts received $121 million. For FY 2000, the D.C. Courts are requesting $131 million for operating expenses. At the same time, the Courts are no longer responsible for the adult probation function, domestic violence, or judges' pension costs.

- How do you explain these budget increases in light of fewer functions?

Answer. The District of Columbia Courts are confronted with increasingly complex cases and legal issues to resolve in the most efficient, impartial and effective manner possible. This requires the Courts to enhance case processing mechanisms and employ technology, where possible, to ensure that productivity remains high and that the public is provided with quality service. The Courts' FY 2000 budget request of $131 million reflects the need to enhance technological infrastructure and improve operational efficiencies, which will prepare the Courts for communications in the next century. For example, in the FY 2000 budget request, the Courts have included $2,500,000 to begin the design and installation of an integrated case management system which will not only enhance judicial decision-making and ensure public safety, but also will benefit the entire criminal justice system in the District of Columbia. The Courts have requested funding to fully automate the juvenile probation department and financial operations, as well as to upgrade computer software for Year 2000 compliance.

In addition, the Courts seek nearly $1,000,000 in funding to provide increased community supervision and drug rehabilitation for juvenile offenders, and have requested another $1,000,000 to increase the fee paid to jurors and to provide small stipends to volunteer mediators who help the court resolve disputes. The Courts also seek to cover increases in several mandatory costs, including those for indigent defense, as well as inflationary increases in the costs of security services and facility maintenance. The Courts' FY 2000 budget request reflects the reality of doing business in the next century.

The Revitalization Act, while relieving the Courts of some expenses, did impose additional costs. For example, the cost of personnel benefits increased by $1,910,000, and the contract with the General Services Administration for the Courts' payroll added a cost of

[4] The duties of the certifying officer include responsibility for: (1) the existence and correctness of the facts recorded in the certificate or otherwise stated in the voucher (for payment of vendor costs) or its supporting papers, including the correctness of computations on such voucher, and for the legality of the proposed payment under the appropriation or fund involved; (2) making good to the United States or to the District of Columbia the amount of any illegal, improper, or incorrect payment resulting from any false, erroneous, or misleading certification made by him/her as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

$357,000 (FY 1998 amounts). The Courts are also bearing the cost of various services formerly provided by agencies of the D.C. government. For example, this year, we are requesting two FTE's to perform facility design and maintenance, services that the Department of Public Works provided previously.

Although the Courts have been relieved of the adult probation function and judicial pension costs, the bulk of the Courts' workload comes from the cases filed each year. On average, over 3,500 intrafamily cases, 3,300 criminal misdemeanor cases, and 300 child support cases involving domestic violence are filed with the Superior Court annually. Domestic violence case processing remains a court function, and the caseload is growing. The Revitalization Act relieved the court only of the probation supervision and treatment responsibilities associated with domestic violence.

During the past several years the Court of Appeals has experienced a record number of case filings, with nearly 2,000 appeals filed in 1998. The Superior Court had 156,820 new cases filed in 1998, and averages over 13,000 filings each month. According to the National Center for State Courts, the D.C. Court of Appeals has more case filings than 20 state appellate courts, and the Superior Court ranks first in the nation in case filings per capita.

Although some caseloads have declined at the Courts during the past year (e.g., the criminal caseload is down 9% overall), caseloads continue to increase in a number of areas. For instance, civil cases increased 3.5% (e.g., landlord & tenant and small claims); criminal special proceedings were up 4.4%; adoption cases rose 33%; child abuse and neglect cases increased nearly 3%; mental health and retardation cases were up 10%; and probate cases rose nearly 3%.

Question 7. Are the D.C. Courts planning changes to their voucher processing and payment system for court-appointed attorneys?

- *If yes, are the changes being made to prevent interest penalties under the Prompt Pay Act?*

Answer. The District of Columbia Courts are in the process of implementing an automated CJA/CCAN monitoring and tracking system which has been designed specifically to assist the Courts in maintaining comprehensive, automated information on all indigent counsel vouchers. Currently, vouchers are issued by the Superior Court's CCAN Office and the Public Defender Service's CJA Office. The present automated system tracks vouchers only after they have been submitted for payment. The new automated system that is being installed will assist the Courts in tracking vouchers from the time of issuance and will enhance the Courts' ability to project potential expenses for indigent representation.

Question 8. It is our understanding that the Child Support account has not been reconciled since May 1998. What is preventing the reconciliation and when do you anticipate having the account reconciled?

Answer. The District of Columbia Corporation Counsel is the Title IV(D) administrator. That office contracts for the computer system which manages the Child Support system, and in that capacity, controls the assigned duties and performance of the contractor. In April 1998, the Corporation Counsel converted the Child Support program to the Unisys system. Both before and since the conversion to Unisys, the Courts have requested that a checkbook ledger function, which includes bank reconciliation capability, be installed. The Office of the Corporation Counsel expects that the checkbook ledger function will be available and operational in the next several months.

Question 9. Are all of your systems Y2K compliant? Have you established business continuity and contingency plans? Do you plan to conduct end-to-end testing of your systems to ensure uninterrupted delivery of services? If your systems are deemed compliant, have they undergone independent validation and verification?

Answer. According to schedules developed by the Courts' Administrative and Data Processing Division in consultation with our contractors, by the end of June, nearly 90% of the Courts' mission-critical systems will be compliant, and the Courts are on schedule to achieve full Y2K compliance of these remaining systems by the end of August 1999. The District of Columbia Courts' efforts to address Y2K compliance have been underway for nearly three years, and in that period the Courts have undertaken a number of activities to ensure that critical systems will be Y2K compliant. After conducting tests and upgrading, as necessary, independent service providers determined that the Courts' elevator and escalator systems, environmental control systems and photocopying and facsimile equipment were Y2K compliant. Currently underway are efforts to bring into compliance approximately 25 additional mission-critical systems, including telecommunications, court security and information technology in the Superior Court and the Court of Appeals.

Specifically with respect to remediation and testing, work is underway to replace the courthouse telecommunications system by the end of July. Additionally, negotiations are underway with a contractor to update courthouse security by July. In the area of information technology, the Court of Appeals, with funds appropriated in the Courts' fiscal year 1999 budget, is upgrading its computer hardware and software. One of the by-products of this system upgrade will be full Y2K compliance. Full system configuration, installation, programming and training are on schedule to be completed by the end of August. In the Superior Court, conversion efforts involve mainframe, local area network and personal computer-based functions. The Court's mainframe was upgraded last year and is compliant. New file servers for the local area network system were purchased and installed this year which are Y2K compliant. Also this year, a sample of the Court's inventory of personal computers was tested by an independent contractor to determine which models would be compliant. As a result of this assessment, 200 personal computers and accompanying software were determined to be needed in the Superior Court to replace those which are not Y2K compliant. After consulting with GSA on baseline costs for the replacement of these computers and negotiating the best package price with vendors on the GSA schedule, the equipment was purchased and is currently being installed at the Court. According to an installation schedule developed by the Data Processing Division, all equipment is expected to be in place by the end of August 1999. Lastly, of the Court's 21 mission-critical, mainframe-

based information systems, thirteen of them have been remediated either by Court staff or the Court's contractor, and all have begun to undergo testing by the contractor. Two of the remediated applications, including one covering a wide range of court functions such as adoption, civil actions and domestic violence, have completed testing and have been certified as compliant by the contractor. The remaining systems are scheduled for final testing and certification by the end of June.

Contingency plans will include prioritization of any affected systems, an evaluation of the essential services to be provided should a contingency plan need to be employed, the criteria to be used in evoking the contingency plan, the system remedies to be used (e.g., roles and responsibilities of affected offices) and criteria for recovering lost information and returning to normal operations. Current mainframe contract services include thorough system testing, remediation of critical systems to ensure they remain operational in the year 2000 and development of the core of a contingency plan. In addition to the tests underway on mainframe applications, the Court has conducted a test of the older version of its mainframe systems software in the unlikely event it needs to be used as a back-up in the year 2000 to the new, compliant mainframe software which is currently operational. It has been determined that the older version of the software will execute, if needed, in the year 2000.

System engineers have verified that courthouse environmental controls are compliant. Literature available from the manufacturer describing the hardware and software indicate the same. Elevators and escalators have been certified by the manufacturer. Portions of the telecommunications system that have been completed to date have been verified as compliant by the installer and the Court's Telecommunications Manager. The security system will be similarly verified once the contractor has completed installation and testing. In the information technology area, mainframe system program code has been examined by staff or contractors to locate areas of Y2K significance. Remediation, if needed, occurs during this examination. The resulting, modified code is examined again by analysts to verify the appropriateness of the correction. The program is then recompiled and subjected to rigorous testing (i.e., baseline, regression and compliance tests) with simulated data. Each test is reviewed and authorized by the Court's programming staff in consultation with key users of the application. Upon successful testing, the application is identified as compliant and certified by the contractor.

Question 10: Do you plan to have all of your Y2K activities completed by September 30, 1999? If not, are you requesting funding in your FY 2000 budget for this purpose?

Answer. Yes, the D.C. Courts expect to have all Y2K compliance activities completed by September 30, 1999. Unless there are unforeseen contingencies which involve additional cost, the Courts do not anticipate requesting funding in its fiscal year 2000 budget for Y2K compliance.

Question 11: How many child abuse cases are being adjudicated through the alternate dispute resolution program and what are the guidelines for using this program in lieu of regular court proceedings?

Answer. Mediation, as a form of alternative dispute resolution used in the Courts, is an informal and confidential process in which an impartial third party facilitates a discussion of interests and issues. In the area of child abuse and neglect, parties in mediation address family needs and services to be provided, as well as issues related to the adjudication of neglect. Recognizing the important role that mediation might play in helping to expedite permanency for children, both the Health and Human Services Administration, through its Court Improvement Program, and "Adoption 2002: The President's Initiative On Adoption and Foster Care, Guidelines for State Legislation Governing Permanence for Children," asked states to study the feasibility of employing alternative dispute resolution techniques as a method for expediting permanency. Presently, about half of the states either have implemented or are investigating the development of such programs.

The D.C. Courts' Child Protection Mediation Program, like other alternative dispute resolution (ADR) mechanisms, seeks to build a consensus to reach an outcome in a more efficient manner than through litigation. In Child Protection cases, the products of the case are a "stipulation" that the abuse or neglect occurred and a plan for rehabilitative services for the family. Criminal charges may be pursued by the U.S. Attorney's Office outside of this forum.

Child Protection Programs have two federally mandated goals: first and foremost, protection of the best interest of the child and, second, reunification of the family (if possible). The service plan—whether reached through mediation or imposed by a judge—includes placement of the child, services for the child (e.g. counseling, special education) and services for the parents (e.g. anger management classes, parenting classes, job training).

The D.C. Courts' Child Protection Mediation pilot program ran from April 1998 to April 1999, funded by a grant. In developing the pilot program, the Courts examined a number of child protection ADR programs around the country, incorporating the best aspects of these programs. All cases are screened so that parties who lack capacity to participate or where domestic violence issues predominate, are not allowed to enter mediation. In the pilot program, of the 88 eligible referrals, 40 cases were assigned to mediation. More than half of the mediated cases reached a full agreement, and 89% reached at least partial agreement. The Courts are currently analyzing the program and expect to make some adjustments prior to permanent implementation.

In the cases selected for mediation, the mediation session replaced the normally scheduled status hearing, although at any point in the mediation, or in the case of an unsuccessful mediation, the parties could stop the proceedings and request and receive a status hearing. All other Court proceedings remained in place irrespective of whether a case had been designated for mediation. At the conclusion of mediation, if an agreement was reached, it was presented to the judge for approval.

Question 12. Please provide detailed information on your request for funding for the integrated justice information system. Is there a model for the system? What are the financial estimates for the completion of the system? What is the time frame for completion of the system?

Answer. The Superior Court has requested $2.5 million in FY 2000 federal appropriations to support the second phase of the Integrated Justice Information System initiative, System Design. During this phase, the Court will retain expert consultants to develop a comprehensive design plan for a court-wide integrated information system. With full funding, the Court will be able to complete the System Design on an accelerated basis and move swiftly into the Development Phase. The Court's goal is to fully implement a court-wide integrated information system within three years. In order to meet this goal, the System Design Phase must be completed within one year. Given the complexity of the Court's existing information technology environment, which consists of 18 separate mainframe databases serving 10 major operating divisions and 7 administrative divisions, as well as the lack of automation entirely in some critical Court operations, such as Juvenile Supervision and Treatment, the Court must commit substantial resources to obtain a completed design plan within twelve months. The estimated total cost of the System Design Phase is $3 million; however, the Court expects to receive approximately $500,000 in grant funds to fund the Integrated Justice Information System project in FY 2000, and therefore, requests the remaining $2.5 million in appropriations.

With FY 1998 and FY 1999 grant funds, the Court is presently undertaking a Requirements Analysis which will determine the specific needs and capabilities of the integrated system. The results of the Requirements Analysis will enable the Court to develop more detailed technical specifications and cost estimates for each remaining phase of the Integrated Justice Information System initiative. There is not, at the present time, a pre-existing system or model under consideration by the Court for the proposed integrated system. In January 1999, the Court received technical assistance from experts affiliated with the National Court Information Systems Technical Assistance Project. Information obtained through that process indicated that the total project cost for the Integrated Justice Information System initiative, from inception through final testing and implementation (Phase IV) within three years, may be as high as $8 million. Accordingly, the Court is working with the following project plan:

Phase	Estimated Cost	Completion Date
Requirements Analysis	$350,000 (Grant-Funded)	October 1999
System Design	$2.5 million	October 2000
System Design	$500,000 (Grant-Funded)	October 2000
System Development	$3 million	June 2000-October 2001
Testing & Implementation	$2 million	October 2002

Additional information on the Superior Court's Integrated Justice Information System initiative is provided at Attachment 1.

Question 13. How many employees of the DC Courts are paid with non-appropriated funds (e.g., Federal grants or other sources) in FY 1998, FY 1999, and estimated for FY 2000? Please provide the source and purpose of the grants.

Answer. There are 155 employees of the DC Courts paid (fully or partially as indicated below) with non-appropriated funds in FY 1998 and FY 1999. 146 employees are estimated to be paid in FY 2000. The source and purpose of the grants are as follows:

DC COURTS DIRECT FEDERAL GRANTS

Department of Justice - Juvenile Mentoring Program (JUMP)

Purpose of the grant: The purpose of the JUMP grant is to provide a one-on-one mentoring and guidance service to render support for abused and neglected children, ages 8-14, referred by court social workers.

Positions Funded: 2

Fiscal Years Funded: FY 1998, FY 1999, and FY 2000

Department of Justice Office of Justice Programs – Drug Court Implementation Initiatives

Purpose of the grant: The Superior Court of the District of Columbia shall establish a drug court for male and female non-violent, drug-abusing juveniles that have committed misdemeanors and certain felony crimes.

Positions Funded: 2

Fiscal Years Funded: FY 1999 and FY 2000

Department of Justice Office of Justice Programs – Time Dollar Youth Court

Purpose of the Grant: The Superior Court of the District of Columbia will convert their existing youth court from an isolated demonstration program to the cornerstone of a community justice system.

Positions Funded: 1
Fiscal Years Funded: FY 1999 and FY 2000

DC COURTS SUB-GRANTEE FEDERAL GRANT

District of Columbia Office of Grants Management and Development - Domestic Violence Project

Purpose of the Grant: The funding from this grant shall be used to hire an attorney to conduct negotiations for the District of Columbia Courts Domestic Violence Unit.

Position Funded: 1

Fiscal Years Funded: FY 1998 and FY 1999

District of Columbia Office of Grants Management and Development – Crime Victim Advocate

Purpose of the Grant: Funds awarded under this program are to utilize the services of a crime victim advocate to provide services to victims of violent crimes who may be eligible for crime victim compensations.

Positions Funded: 1

Fiscal Years Funded: FY 1998 and FY 1999

District of Columbia Office of Grants Management and Development – Juvenile Drug Court

Purpose of the Grant: The Superior Court shall implement a voluntary twelve (12) months court supervised comprehensive treatment program for non-violent delinquent minors who are drug dependent in an effort to reduce juvenile criminal activity.

Positions funded: 5

Fiscal Years Funded: FY 1998 and FY 1999

OTHER GRANT

State Justice Institute – Employee Mediation Program

Purpose of the Grant: The District of Columbia Courts Standing Committee on Fairness and Access propose to develop an Employee Mediation Program for resolving disputes involving racial or ethnic bias issues.

Positions Funded: 2

Fiscal Years Funded: FY 1998 and FY 1999

DC COURTS SUB-RECIPIENT ENTITLEMENT PROGRAM

The DC Courts are a sub-recipient of two Federal entitlement programs (Title IV(D) and Title IV(E)) that are funded by the US Department of Health and Human Services. These entitlement programs reimburse a portion of the compensation and benefit costs for employees who provide services to the respective programs.

District of Columbia Office of the Corporation Counsel – Title IV(D) Child Support Case Processing

Purpose of the grant: The goal of the Child Support Enforcement Program is to ensure that both parents financially support their children. The child support program provides four services: locating non-custodial parents, establishing paternity, establishing child support obligations and entering child support orders.

Positions Partially Reimbursed: 111

Fiscal Years Funded: FY 1998, FY 1999 and FY 2000

District of Columbia Child and Family Services Agency – Title IV(E) Program

Purpose of the grant: The grant is to benefit and promote family well-being for children who were subjected to abuse and/or neglect in their homes or children who have been adjudicated delinquent.

Positions Partially Reimbursed: 25

Fiscal Years Funded: FY 1998, FY 1999 and FY 2000

DC COURTS CRIME VICTIMS COMPENSATION REIMBURSEMENT

The DC Courts are reimbursed for the Crime Victims Staff's compensation and benefit costs from the Crime Victims Compensation Fund.

Purpose of the Grant: The Crime Victims Staff provide services to citizens who are victims of violent crimes and may be eligible for crime victim compensations.

Positions Reimbursed: 5

Fiscal Years Funded: FY 1998, FY 1999 and FY 2000

Question 14. How many new permanent programs have been established by the DC Courts after first being funded with non-appropriated funds (e.g., Federal grants or other sources)?

Answer. There have been 4 new permanent programs established in the DC Courts after first being funded with non-appropriated funds.

Question 15. Please explain in detail what the overhead costs are in administering the Crime Victims Fund and are the overhead costs paid from the Crime Victims Fund?

Answer. During FY 1997, all revenues of the Crime Victims Fund were used to compensate victims and their families while administrative costs were paid by the Superior Court. The program paid a total of $378,507 for 136 approved claims. The one-time cost to set up the program (furniture, equipment and supplies), estimated at $46,850, was paid by the Court. Operational costs (personnel and other administrative costs), estimated at $184,319, were paid by the Court and by a grant from the Victims of Crime Act (VOCA) through the D.C. Office of Grants Management (to support the Victim Advocate position).

Set-up costs	46,850
Administrative costs paid by VOCA	7,681
Administrative Costs paid by the Court	184,319
TOTAL	$ 238,850

During FY 1998, when the Crime Victims Fund had sufficient resources, its operational costs were paid from the Fund, augmented by the VOCA grant:

Personnel	$282,732
Other (victims fair, bank charges, conferences/training)	7,933
VOCA grant for the Victim Advocate position	32,995
TOTAL	$ 323,660

During FY 1998, an additional amount of $5,640 was paid from the Crime Victims Fund to consultants to update the software and database used to operate the Program. This amount is a one time expense and is not part of the regular overhead.

The Courts anticipate that operational costs for the Crime Victims Fund will continue to be paid out of the resources of the Fund.

Question 16. According to your budget request, the Crime Victims Fund has paid $2 million in claims to victims and their families. In FY 1998, $8 million was deposited into the fund. How are funds in excess of those paid out to victims used?

Answer. The balance is maintained in a collateralized/interest bearing account awaiting future crime victims' claims.

Question 17. As you know, H.R. 858 would grant employees of the DC Courts whistleblower protections similar to the protections available to District government employees. What is the DC Courts' current policy regarding reporting waste, fraud, abuse, and mismanagement, and protecting whistleblowers? What are the views of the DC Courts toward legislation granting whistleblower protection to DC Court employees?

Answer. The D.C. Courts encourage the reporting of waste, fraud, abuse and mismanagement, and for example, include on applications for marriages and bar admissions information on where individuals may make such reports. Career service employees are protected from retaliatory actions through Comprehensive Personnel Policies which establish the grounds upon which court supervisors and managers may impose corrective action and a grievance procedure for processing employee complaints. Corrective actions against an employee can be taken only for legitimate reasons and not for any improper reason such as retaliation against an employee for engaging in protected activity. Considerable protection is also afforded employees in this area under the First Amendment of the U.S. Constitution.[5] In addition, in this jurisdiction, public policy may afford a cause of action to an employee who claims retaliation for speaking out on matters of public interest before the legislature. *See Carl v. Children's Hospital,* 702 A.2d 159 (D.C. 1997)(en banc). If it appears that additional protections are required, the Joint Committee can modify the Courts' Personnel Policies to address the issue more explicitly. *See* D.C. Code § 11-1701(b)(1).

Speaking generally, the Courts have no objection to affording employees additional protection against illegal action. However, the Courts take no position on H.R. 858.

Question 18. Please provide detailed information on any internal cases that are pending with any court employees who are alleging that they are being retaliated against in violation of protections normally provided by Whistleblowers Acts.

Answer. We know of no adverse actions, cases or appeals in which an employee claims to be a victim of retaliation for whistleblowing activities. One court employee claims to be such a victim, but no adverse action has been taken against him.

Question 19. How do the DC Courts characterize the goals and performance expectations of its Personnel Office? Are those goals and performance expectations strictly administrative in nature, such as keeping Official Personnel Files up to date, or do they include policy setting and advisory services also?

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[5] See Isidore Silver, Public Employee Discharge and Discipline, § 15.2 at 15.5-15.6.

Answer. The Personnel Division is responsible for implementation of personnel policies adopted by the Joint Committee on Judicial Administration and for maintenance of official personnel records of employees. It develops and implements programs that enable the Courts to attract and employ staff with skills needed to achieve operational goals and objectives. The Director of Personnel is a permanent member of the Personnel Advisory Committee, which reviews and makes recommendations on personnel management policies. The Personnel Office provides advisory services on issues involving employee/management relations, classification, employee recruitment and selection, employees' pay and benefits, the Americans with Disability Act, the Civil Rights Acts of 1964 and 1990, the Uniform Guidelines on Employee Selection of 1978, the Age Discrimination in Employment Act, the Family and Medial Leave Act.

Question 20. Currently, an employee serving as acting Director heads the Office of Personnel. The Office has not had a permanent Director for close to a year. Why has an acting Director been in this position for this period? What are your plans to fill this position with a permanent appointee? Are you having difficulty attracting qualified candidates? Do your plans include considering applicants from outside the D.C. Courts?

Answer. The former Director of Personnel resigned his position with the Courts in August 1998. The person currently serving as acting Director of Personnel is the Deputy Director of Personnel. She has been employed by the Courts since 1981 and has been Deputy Director since 1988. She has a Masters Degree in Education and Human Development and is very knowledgeable about D.C. Courts Personnel Policies, procedures and processes.

An acting Director has been in the position for this period for several reasons. A search for Director was conducted in January 1999. However, the background check on the number one candidate presented some concerns and the person was not offered the position. The remaining pool of applicants was not sufficiently strong in the areas of expertise required for the position. The salary range of the position limits the Courts' competitiveness to attract candidates with the required level of experience and knowledge.

The Courts continue to recruit and advertise nationwide to fill the position of Director of Personnel. The vacancy announcement, which is open until filled, is not limited to court employees.

Question 21. We understand that when considering pay raises recently, you compared salary levels of your employees to those at comparable grade levels in the Federal courts. This points out the importance of the position classification process, including the need for accurate position descriptions to ensure that the DC Courts employees are performing work comparable to their Federal counterparts. The Committee understands that the DC Courts' policy is to review position classifications periodically but that the DC Courts have not systematically conducted a comprehensive review within the last 10 years. Please describe the DC Courts' classification program, including the steps that will be taken to ensure that all positions are routinely reviewed and updated as necessary.

Answer. Attached (Attachment # 2) is the Courts' classification program. The D.C. Courts' Personnel Policy 705 requires that "[a] classification survey shall be conducted periodically and shall be accomplished either by surveying all positions or by surveying a representative number of positions." Over the past 10 years, reorganizations, new positions, positions review, new programs, grievances, job analysis, desk audits and reclassification requests have afforded the Personnel Division opportunities to review representative samples of court positions on an ongoing basis.

Most of the Courts' operations-related positions are in the 945 Series. The classification definition of Clerk of the Courts 945 Series reads "[t]his series includes all classes of positions the duties of which are to administer, supervise, or perform clerical, administrative, and related work in connection with proceedings instituted before courts of justice under the jurisdiction of the District of Columbia Government or of a department or independent establishment in the executive branch of the United States Government, and in connection with the business operations of such courts." A comparison of Federal Court benchmark positions and similar positions in the D.C. Courts was done as part of the process in determining the salary increase in 1997. Attached (Attachment #3) is a chart showing a sample of comparable positions. The Personnel Division maintains copies of US Court benchmark position descriptions. Most of the 945 Series clerical and supervisory positions have similar duties to US District Court operation positions, though the titles may be different.

In 1995, a job analysis was conducted on 945 Series non-supervisory positions at grades 4, 5, 6, & 7 levels and the grade four file clerk position to establish a more efficient promotion process. All related position descriptions were reviewed and discussed with managers to determine their accuracy, before developing qualification criteria and selection instruments. Major job categories in the Courts, other than the 945 Series, are administrative support services (contracting, facility maintenance, and communications); financial operations; social services (probation officers, social workers, and clinical psychologists); computer; personnel; and miscellaneous administrative and clerical. Positions in all of these categories have also been reviewed. Recently, a position and salary review was conducted on US Court judicial secretaries and private legal secretaries to examine the comparability of the D.C. Courts judicial secretary salary scale.

Question 22. We understand that the objective of the DC Courts' performance management policy includes providing employees with a written evaluation on an annual basis and those career employees are to be evaluated on the anniversary dates of their appointments or promotions. Has this policy been followed? How do you ensure that managers and supervisors are evaluating employees annually? Have the DC Courts recently ordered supervisors to give employees performance evaluation without regard for your policy requiring that employees be evaluated on their anniversary dates? What is the Personnel Office's role in oversight? Please provide data showing the number and percent of all employees who received written performance evaluations in each of the past three years.

Answer. Personnel Policy 900, Performance Management, states that "[t]he objective of this policy is to provide a fair and consistent and job-related performance management system that

shall provide employees with regular performance feedback year round and a written evaluation on an annual basis." A component of the system includes "a requirement that a performance evaluation be conducted on each employee's anniversary date."

An inventory of all Superior Court and Court System employees' Official Personnel Folders (OPF) was conducted in December 1998 to determine compliance with Personnel Policy 900. Each OPF of every career service, temporary and grant funded employee was reviewed to determine each employee's most recent performance evaluation. The most recent performance evaluations found in the Official Personnel Folders of the 1,009 Superior Court and Court System non-judicial employees (FTE's, temporary and grant funded) on the Personnel Services Schedule dated January 6, 1999 was 60 (6%) for 1996 and 135 (13.4%) for 1997.

To remediate this low compliance rate, Court managers and supervisors were directed to give all non-judicial Courts employees a performance evaluation for 1998 resulting in 843 (83.5%) submissions of written performance evaluations. Since this initiative, the Personnel Division has implemented a compliance review procedure. Quarterly, division directors receive a list of employees whose anniversary dates fall within the quarter and for whom no written performance evaluations have been received by the Personnel Division. A second reminder will be sent to division directors concurrent with the next quarterly compliance report. A copy will be forwarded to the Clerks of Court and the Executive Officer.

Question 23. Regarding EEO, in the Federal government, regulations require agencies to review, evaluate, and control managerial and supervisory performance in such a manner as to insure a vigorous enforcement of EEO. Do you evaluate the performance of your managers and supervisors with regard to EEO? How do the DC Courts go about making such evaluations and informing the managers and supervisors of the results? Do you include EEO as a rating element on the performance evaluation forms of managers and supervisors? If you do not, what is the position of the DC Courts on the notion of making EEO a rating element?

Answer. The Courts promptly investigate any and all EEO complaints. Although not a permanent element in the performance plan, the Courts' Personnel Corrective Action Policy 1001 (2)(b) specifically identifies the violation of EEO regulations, including engaging in sexual harassment as a Level II – Illegal Behavior/ Serious Misconduct offense. The D.C. Courts have no objection to including an EEO element to supervisory and managerial performance evaluation plans.

Question 24. We understand that you have drafted a specific policy on sexual harassment. How long has that policy been in draft? Why have your EEO policies been missing a policy on sexual harassment since at least 1993?

Answer. Under the District of Columbia Courts Comprehensive Personnel Policies (Rev. June 5, 1997), No. 1001.2. and 1002.3, an employee is subject to disciplinary action, including suspension, demotion or recommendation for termination, for "willfully violating Equal Employment Opportunity regulations, including engaging in sexual harassment as defined in Federal and District laws." In addition, the Courts' Personnel Policies prohibit discrimination

based on sex in employment, development, advancement and treatment of employees (Policy No. 600), which is deemed to include sexual harassment, and provides a procedure for processing complaints for such conduct. See *id.*, No. 600-603.[6] Although these policies are deemed to address sexual harassment in the workplace,[7] in December 1998, the Executive Officer and the Personnel Advisory Committee drafted (and the Joint Committee is considering) a sexual harassment policy.

Question 25. Your draft affirmative employment program plan, which is to cover the current fiscal year through fiscal year 2001, identifies the "underutilization" of certain minorities and women. According to the draft, underutilization is defined as having fewer minorities and/or women in a particular job group than would be expected by their availability in the relevant labor market. There is, according to the draft, underutilization of Asian, Hispanic, and female employees are underutilized in the critical job group of "Executives, Officials, and Managers". What are you going to do to correct the underutilization that you have identified, especially in the management job group?

Answer. Employment Opportunities for Female Candidates Within the DC Courts: In 1990, 32% of the "Executives, Officials and Mangers" and 40% of the "Professional" positions were filled by women. These rates have risen to 42% and 54% in 1998. The Courts continue to employ recruitment strategies designed to identify, recruit and select highly qualified females for positions within the "Executives, Officials, and Mangers" category by advertising positions publicly, by maintaining recruitment sources specifically targeting female populations, and by utilizing standardized and fair selection and promotion procedures which are gender neutral.

Latino Employment Opportunities Within the D.C. Courts: The Courts have employed intensive recruitment strategies for identifying and selecting Latino candidates, including the following: vacancy announcements posted with over 100 Latino recruitment sources; participation in five Hispanic job fairs per year; advertisement of vacancies in three Hispanic community newspapers; the designation of certain targeted positions for bilingual (Spanish speaking) candidates only (particularly in probation and social services and at key "public service" counters); and review and analysis of Latino recruitment by the "Standing Committee on Fairness and Access to the District of Columbia Courts in 1997-98."

Asian Employment Opportunities Within the D.C. Courts: To address the underutilization of Asians, the Courts' "Standing Committee on Fairness and Access," identified 33 specifically Asian recruitment sources. Positions are posted to those sources weekly, in

[6] These provisions were included as early as November 30, 1992.

[7] Title VII of the Civil Rights Act of 1964 addresses and prohibits sex discrimination in the workplace. Although the Civil Rights Act does not specifically refer to sexual harassment, the Supreme Court has determined that the law was intended to cover broadly any disparate treatment of men and women in the workplace, including cases of sexual harassment. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

addition to over three hundred other job sites. Standardized, fair and valid selection procedures are utilized for employment and promotion decisions at all grade levels within the D.C. Courts.

Question 26. The Committee has received various communications in which employees of the D.C. Courts allege that managers and supervisors display inconsistency and unfairness in imposing corrective actions on employees for unacceptable behavior. What processes do the DC Courts use to help ensure consistency in corrective actions on employees for unacceptable behavior? What processes do the DC Courts use to help to ensure consistency in corrective actions? What office is responsible for providing general oversight to avoid disparate treatment?

Answer. The District of Columbia Courts Comprehensive Personnel Policies are "intended to ensure fair treatment." *See* Policy No. 1000 (Attachment #4). The policies differentiate between two levels of misconduct – Level I (Violations of Court Rules and Policies) and Level II (Illegal Behavior/Serious Misconduct) and lists a series of penalties, with the most severe reserved for the most serious offenses.

The Personnel Division is available to assist managers and supervisors in deciding which penalty is appropriate for employee behavior warranting corrective action. When consulted, the Personnel Division reviews corrective actions taken for similar offenses by other managers and supervisors and the circumstances that led a manager to conclude that one penalty was more appropriate than another. Managers and supervisors may also consult with their respective division directors, Clerks of Court and the General Counsel's Office.

Question 27. Your personnel policy manual includes policies and procedures for imposing corrective actions on employees for unacceptable behavior and for employees to appeal such actions before they are taken. Whenever the recommended corrective action is a suspension for 3 or more days, demotion, or termination, the employee may request a hearing when appealing the proposed action. According to your policy, the Courts' Executive Officer is required to submit to the employee two names of proposed hearing officers, and the Executive Officer's choices for hearing officers may or may not be employees of the DC Courts. The employee is then to choose one of the two names to hear the case. Regarding this process, what has been the usual source for hearing officers in these kinds of cases? Do you believe the perception of fairness or impartiality among employees is affected when management controls the list of hearing officers? Please explain your answer. Have you explored alternative approaches for identifying and assigning hearing officers?

Answer. For approximately ten years, the source for hearing officers for adverse action appeals has been a list of retired Federal administrative judges available to hear cases. These hearing officers have considerable experience in labor and employment law and no connection to the D.C. Courts. Unlike most government agency employees, D.C. Courts employees do have some choice in the selection of the hearing officer. Because no employee or attorney in recent memory has challenged the quality of a hearing or the fairness of a hearing officer, it appears that the employees are satisfied with the impartiality of the hearing officers. Therefore, the Courts have not explored other alternatives for identifying hearing officers.

Question 28. The Committee understands that the Courts' Executive Officer acting for the D.C. Courts has the authority to immediately remove, without cause, an excepted service employee. How many excepted service employees report to the Executive Officer and what percent of the D.C. Courts excepted service positions is under the Executive Officer? Is the number of excepted service positions under the Executive Officer typical when compared to other courts? We also understand that the Executive Officer designates managerial positions that will be graded at JS-14 and above upon consultation with the Director of Personnel. How many and what percent of the D.C. Courts' managerial positions have been designated by the Executive Officer?

Answer. Of 1,096 non-judicial employees of the D.C. Courts, 3.4% or 38 positions have been designated by the Joint Committee on Judicial Administration as Excepted Service based on the "confidential or policy–determining character" of the positions (Personnel Policy 500). Less than one third of those Excepted Service positions, that is, 13 positions or 1.2% of total D.C. Courts positions are under the authority of the Executive Officer for the Court System. For comparison, the Director of the Administrative Office of the U.S. Courts may except "positions of a confidential or policy-determining character, not to exceed four percent of the authorized positions of the Administrative Office." Public Law 101-474, Oct. 3, 1990.

The Courts personnel inventory contains a total of 173 managerial positions. Of those, the Executive Officer since 1971 has fixed the rate of compensation of 60 positions at JS-14 or above.[8]

Question 29. What is the D.C. Courts' policy regarding outside employment (including activities such as real estate sales, etc.) of employees including managers? What protections are in place to protect employees from being intimidated /coerced/pressured by their peers and/or supervisors involved in outside employment/businesses from purchasing or otherwise supporting the outside employment? Please provide the committee with a list showing the number of D.C. Court employees, by grade level, who have outside employment.

Answer. Attached is the District of Columbia Courts' Comprehensive Personnel Policies 1330, 1370, and 1392 regarding outside employment (Attachment #5). Violation of these policies result in Corrective Action ranging from letters of warning to suspension. Continued violation may result in termination. Except for speaking engagements, teaching activities, writing for publications, and private transcription services from Court Reporters, the Courts do not require reporting of outside employment. Therefore a comprehensive list of employees with outside employment is not available.

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[8] D.C. Code § 11-1726 (as amended by section 11246(b)(1) of Pub. L. 105.33) states: "In the case of non-judicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of compensation of such employees without regard to Chapter 51 and subchapter III of chapter 53 of title 5, US Code. Any rates so established shall be subject to the limitation on pay fixed by administrative action in section 5373 of such title."

Question 30. Please provide a list of offices renovated in each of the last 3 fiscal years and the cost to renovate each office.

Answer. See following chart.

Answer.

OFFICE RENOVATIONS
Fiscal Year '97'

ROOM #	LOCATION	COMPANY NAME	DESCRIPTION	AMOUNT	P.O. NUMBER
4242	Domestic Violence	Ava Construction	Renovation for New Domestic Violence Office	$25,000.00	600078
4242	Domestic Violence	D.I.R.	Installed 400 sq.ft. of Carpet/Removed old Carpet	$11,196.00	600112
4242	Domestic Violence	Keystone Plus Construction	Renovation	$ 2,999.00	600203
6000	Court of Appeals	ITC Development	Renovation of Public Office, ADA Improvements and Security Post	$158,990.00	FMPU7061

Fiscal Year '98'

ROOM #	LOCATION	COMPANY NAME	DESCRIPTION	AMOUNT	P.O. NUMBER
49/Moultrie Building	Courtroom	Highland Renovations	Construction in jury room for courtroom	$6,090.00	801215
Jones Cottage	Boot Camp	A & K Painting	Painted building interior to address health and safety concerns	$24,899.00	800126

FISCAL YEAR '99'

ROOM #	LOCATION	COMPANY NAME	DESCRIPTION	AMOUNT	P.O. NUMBER
*Lawyer's Lounge	Moultrie/C-Street	Court Staff	Renovation of Lawyer's Lounge	Estimate $6,000.00	N/A

Question 31. The Committee had a recent experience where a congressional employee's Federal income tax refund was garnisheed for child support payments although the employee, Gerald E. Scott (D-029995) had made the payment but the DC Courts had failed to properly record the payment. The child support payment by the employee was made through the payroll deduction method in August 1996, and the Federal tax refund garnished was in March 1999, 30 months or 2 and one-half years after the employee made the payment through payroll deductions. Mr. Scott encountered considerable difficulty with the DC Courts and needed assistance in getting the DC Courts to correct the problem it had created.

- *Please explain why this occurred; where the funds were for over 30 months; how many similar instances have occurred in the last 3 years; and what internal system adjustments have been made by the DC Courts to avoid similar occurrences in the future.*

Answer. On August 6, 1996, Gerald E. Scott's payment of $479 was posted by a Finance Office employee to the following account: D-299-85. Mr. Scott's actual case number, however, was D-299-95, where the last two digits represent the year the case was filed. This was a human error in typing the case number. The $479 in question was distributed to the custodial parent in the 1985 case.

The error was not brought to the Court's attention until recently, when Mr. Scott's taxes were being intercepted by the Office of the Corporation Counsel's Child Support Enforcement Division. This office researched the error, located the misapplied funds and properly gave credit to Mr. Scott. At the same time, this office communicated with the Office of the Corporation Counsel's Child Support Enforcement Division which, on April 29, 1999, released the taxes that had been intercepted.

Every effort is made by the Courts to prevent payments from being applied to the wrong account. Each of the more than 20,000 child support payments made every month at the Courts is treated with individual attention. Fortunately, mistakes occur in less than one tenth of one percent of the postings.

To help avoid similar occurrences in the future, the Courts are now using a new computer system that relies more on social security number than case number and displays the obligor's name during the posting process. The Courts are also providing more training for staff on these issues and are exploring automated methods to post payments, such as electronic funds transfers.

RESPONSES OF THE DISTRICT OF COLUMBIA COURTS TO FOLLOW UP AND NEW QUESTIONS SUBMITTED BY THE DISTRICT OF COLUMBIA SUBCOMMITTEE OF THE HOUSE COMMITTEE ON APPROPRIATIONS

Question 2a(1). What "other appropriated amounts" were used to pay the $4.1 million carry-over? For what purpose was the $4.1 million originally budgeted and why was the amount not used for that purpose?

a. Is the $4.1 million carry-over reflected in the Courts' financial records as an FY 1998 obligation or as an FY 1999 obligation?

b. Please update the chart prepared 9/15/8 by the DC Courts (copy enclosed) showing the summary and monthly payments for the CJA, CCAN, and Guardianship programs for fiscal year 1998.

c. How much of the $25,036,000 set aside for the FY 1999 CJA program and the $6,900,000 set aside for the FY 1999 CCAN program will be spent solely for vouchers received and approved in FY 1999 and for the $4.1 million carried over from FY 1998?

d. If not included in the set aside amounts, how is the $4.1 million carried over from FY 1998 accounted for in the DC Courts financial records and books?

Answer.

2a(1) As directed by the Conference Report to the FY 1999 Omnibus Appropriation Act, the D C. Courts paid the $4.1 million in deferred court appointed attorney claims from other funds from the appropriation, not the $31,936,000 set aside to pay FY 1999 CCAN and CJA claims.

The funds were originally budgeted for several purposes, which were deferred or limited to enable the Courts to pay the deferred court appointed attorney claims. Primarily, funds came from deferral of the non-judicial employee compensation comparability pay adjustment. In addition, hiring was frozen in the Superior Court, reducing the number of FTEs during FY 1999 by 5.6%. Training and travel were severely limited. Data processing expenditures were limited. Implementation of the automated jury management system was deferred. The Social Services Division purchased fewer contractual services for juvenile delinquents. These cost saving measures were necessitated by the requirement that the $4.1 million for attorneys be paid from other appropriated funds. (House Report 105-825.)

a. The $4.1 million carry-over is reflected as an FY 1999 obligation.

b. The updated chart is attached. (Attachment #1)

c. None of the funds set aside for the FY 1999 CJA and CCAN programs were spent to pay the $4.1 million in claims deferred from FY 1998. Current projections indicate that the entire $25,036,000 set aside for the FY 1999 CJA program will be spent solely on the FY 1999 CJA program and that approximately $6,200,000 of $6,900,000 set aside for the FY 1999 CCAN program will be spent solely on the FY 1999 CCAN program.

d. See answer to question 2(a)(1)a and attachment #2, the Courts' Spending Plan for the month of June 1999.

Question 2b(1). Your answer to question 2b states that the Courts expect to receive refunds and reimbursements, in the amount of approximately $4 million during fiscal year 1999 from 4 primary sources.

a. Please provide the actual amounts received in each of the 4 categories in each of the last 3 full fiscal years and projected for FY 1999.

b. Specific to the FY 1999 reimbursement from the Court Services and Offender Supervision Agency, what specific items do you expect to be reimbursed for and in what amounts.

Answer.

a. Reimbursement amounts received from the four primary reimbursement sources, FY 1996 – FY 1998 actual and FY 1999 estimate, follow.

	FY 1996	FY 1997	FY 1998	FY 1999 Est.
Title IV-D	$1,699,000	$1,783,950	$1,995,332	$2,250,000
Title IV-E	368,241	433,337	532,965	554,000
Offender Supervision Trustee			7,822,782	1,258,346
Crime Victims Comp. Fund (Administrative Costs)			278,598[1]	280,000

b. A copy of the "Department of Justice Reimbursement Agreement Between Agencies," which details the reimbursements from the Court Services and Offender Supervision Agency, is attached. (Attachment #3)

[1] Additional Crime Victim Fund administrative expenses were paid directly from the Crime Victims Compensation Fund.

Question 14a. Please provide information (purpose; FTE's; annual funding level; year first funded with non-appropriated funds; and year first funded with appropriations) for fiscal years 1996, 1997, 1998, and 1999 for the 4 new permanent programs established in the DC Courts after they were first funded with non-appropriated funds.

Answer.

The 4 permanent programs that were established by the D.C. Courts after having been first funded with non-appropriated funds are:

(1.) Urban Services Program

Purpose: The Model Community Alternatives Intervention Program for Youthful Offenders grant was received from the Department of Justice in 1995. The purpose of the grant was to provide and develop alternatives to youthful incarceration.

Positions Funded: 7 additional positions established with grant, 16 staff reassigned

Annual Funding Level: currently approximately $2,000,000 (23 staff at approximately $1,000,000 & contractual services at $1,000,000). The program operated with some grant funding from FY 1995 – FY 1997, and became entirely funded by appropriations in FY 1998.

FY 1996	$554,196 non-appropriated
FY 1997	$130,878 non-appropriated; $2,086,000 appropriated
FY 1998	$2,147,932 appropriated ($574,000 reimbursed by Trustee)
FY 1999	$1,950,318 appropriated ($236,000 reimbursed by Trustee)

(2.) Employee Mediation Program

Purpose: The Employee Mediation Program was established in FY 1997 with grant funding received from the State Justice Institute. The purpose of the grant was to develop an employee mediation program for resolving disputes involving racial or ethnic bias issues, as proposed by the District of Columbia Courts Standing Committee on Fairness and Access.

Positions Funded: 1 in FY 1997, 2nd position added in mid-FY 1998

Annual Funding Level: currently approximately $170,000

FY 1997	$32,006 non-appropriated, $29,271 appropriated
FY 1998	$11,227 non-appropriated, $69,855 appropriated
FY 1999	$42,325 non-appropriated, $128,004 appropriated

(3.) Crime Victims Compensation Program

Purpose: The Crime Victims Compensation Program was transferred to the Courts from the D.C. Department of Human Services in December 1996. The purpose of the program is to provide compensation and services to victims of violent crime who may be eligible for crime victim compensation.

Positions Funded: 5 staff reimbursed by Crime Victims Fund, 1 staff member funded by Crime Victim Advocate Grant from the D.C. Office of Grants Management.

Annual Funding Level: currently approximately $320,000, all non-appropriated

FY 1998	$311,593 non-appropriated ($278,598 reimbursement, $32,995 grant)
FY 1999	$320,000 non-appropriated ($280,000 reimbursement, $40,000 grant)

(4.) Probation and Parole Resource Center (PPRC)

The Courts' Social Services Division, in conjunction with the District's Board of Parole and Alcohol and Drug Abuse Services Administration (ADASA) obtained a grant from the U.S. Department of Health and Human Services to develop and implement a highly structured, non-residential, community-based, day reporting drug treatment program (PPRC). The grant funding for PPRC expired in FY 1994. The program was transferred from the Courts to the Offender Supervision Trustee with the implementation of the Revitalization Act during FY 1998.

Question 31a. Your answer to question 31 states that the $479 payment made by Gerald E. Scott to the DC Courts was erroneously posted to a different account and "... was distributed to the custodial parent..." with a different account number. You also state that Mr. Scott's account has now been properly credited for the $479 payment.

a. Please explain the source of funds used to properly credit Mr. Scott's account.

b. Regarding the erroneous payment to the custodial parent with the different account number, has the Court recovered the $479 from that custodial parent and if so when and in what form (i.e., personal check, cash, bank money order, etc.) If not, please explain.

Answer.

a. The Court created an accounts receivable in the child support account in order to credit Mr. Scott's account. Upon recovery of the $479, the accounts receivable will be satisfied.

b. As stated in the June 24, 1999, response, Mr. Scott's payment had erroneously been posted to an account which differed from his account by one digit.

The Courts are attempting to recover the money from the parent who received it by mistake. A letter was sent requesting return of the funds, but the parent has not yet responded. Efforts are being made to collect the money.

Question 32. In your June 21, 1999 letter to the Committee you state that ". . . it is anticipated that obligations for the CJA will exceed the amount authorized by approximately $1,000,000.".

a. Please provide a chart by month for FY 1999 showing the amounts obligated and the amounts disbursed for the CJA program, the CCAN program, and the Guardianship program.

b. In your June 21, 1999 letter you state that "It is anticipated that there will be unexpended Child Abuse and Neglect (CCAN) funds plus savings. . .". In your answer to question 2n transmitted June 24, 1999, you state ". . . the courts will reach the cap on the CCAN program in May. . .".

- Please explain how you are able to have unexpended CCAN funds available for reprogramming in FY 1999 if the cap is reached on the CCAN program in May 1999?

Answer.

a. Fiscal Year through June 1999 expenditures for the CJA, CCAN and Guardianship programs follow. (See attachment #2 for projected expenses for July – September, 1999). Included below are payments for FY 1999 claims (CJA and CCAN paid from the $25,036,000 and $6,900,000, respectively) and payments for claims deferred from FY 1998 (paid from other funds in the Courts' appropriation).

	CJA	CCAN	Guardianship
October 1998*	$ 3,183,486	$ 908,763	$ 57,858
November 1998*	5,019,522	893,925	110,140
December 1998	2,318,504	532,814	20,067
January 1999	2,430,399	452,751	38,288
February 1999	1,545,043	506,049	38,707
March 1999	3,128,170	626,515	78,853
April 1999	2,378,988	657,567	35,749
May 1999	1,256,783	520,257	46,104
June 1999	2,517,100	655,019	49,967
Totals (through June 1999)	$23,777,995	$5,753,660	$475,733

* FY 1998 deferrals of $4.1 million were the first claims processed for payment in FY 1999, as follows: $3,063,000 in CJA payments in October 1998; $938,000 in CCAN payments in October and early November 1998; and $99,000 in Guardianship payments in October and early November 1998.

b. It should be noted that the Courts' June 24 submission does not state that ". . . the courts will reach the cap on the CCAN program in May. . . " In fact, we currently project that the CCAN level of funding will be more than adequate for FY 1999. (See attachment #2)

	Total Paid FY To 9/15/98	Payments Pending 9/15/98	Payments Pending 9/30/98
Criminal Justice Act Program	$21,082,961	$4,115,362	$4,440,000
Counsel for Child Abuse & Neglect Program	4,443,800	1,173,236	1,270,000
Guardianship Program	287,962	80,925	90,000
Combined Totals	$25,814,723	$5,369,523	$5,800,000*

	Criminal Justice Act Program	Counsel for Child Abuse and Neglect Program	Guardianship Program
October 1997	$ 3,181,410	$ 516,679	$ 14,763
November 1997	2,199,873	345,500	43,792
December 1997	2,085,176	529,781	48,480
January 1998	2,471,573	416,554	26,439
February 1998	1,975,281	496,316	16,224
March 1998	2,198,501	555,472	10,231
April 1998	1,906,487	433,839	18,305
May 1998	2,710,685	546,456	42,877
June 1998	1,729,462	345,146	24,438
July 1998	677,314	258,057	42,413
August 1998	-0-	-0-	-0-
September 1998 **	1,324,138	375,788	-0-
TOTALS	$22,459,900	$4,819,588	$ 287,962

* = Amounts subsequently reduced by the $1.7 million provided in Public Law 105-245, effective October 8, 1998.

** = Payments made from $1.7 million provided in Public Law 105-245, effective October 8, 1998.

Attachment #1

DISTRICT OF COLUMBIA COURTS — REVISED - THROUGH 6/30/99
FISCAL YEAR 1999 SPENDING PLAN
Thousands (000)

	Oct. '98 to May '99	June	July	1999 Aug.	Sept.	Totals
Court of Appeals						
Personnel Comp.	2,932	353	422	408	408	4,523
Personnel Benefits	448	56	62	62	62	690
Travel & Trans. of Persons	5	1	1	1	---	8
Rent, Comm. & Utilities	60	---	4	3	---	67
Printing & Reproduction	29	11	---	---	---	40
Consulting & Other Serv.	340	6	539	539	539	1,963
Supplies & Materials	136	---	1	1	---	138
Acquis. of Capital Assets	111	293	2	2	2	410
TOTALS	4,061	720	1,031	1,016	1,011	7,839
Superior Court						
Personnel Comp.	30,808	3,939	3,888	3,888	3,888	46,411
Personnel Benefits	5,762	751	743	746	746	8,750
Travel & Trans. of Persons	83	-12	2	2	5	80
Transportation of Things	7	---	1	---	---	8
Rent, Comm. & Utilities	2,074	79	40	36	---	2,229
Printing & Reproduction	226	10	14	---	---	250
Counsel for Child Abuse & Neglect Program - F.Y. '99	4,161	655	462	461	461	6,200
- '98 Deferred	938*					938*
Consulting & Other Serv. (other than CCAN)	9,132	98	478	478	479	10,665
Guardianship Program-'98 Deferred	99*					99*
Supplies & Materials	692	-35	25	10	8	700
Acquis. of Capital Assets	288	2	10	---	---	320
TOTALS	54,280	5,487	5,665	5,631	5,587	76,650
Court System						
Personnel Comp.	3,420	455	450	450	451	5,226
Personnel Benefits	642	87	84	84	83	980
Travel & Trans. of Persons	23	---	2	---	---	25
Rent, Comm. & Utilities	1,239	400	214	200	200	2,253
Printing & Reproduction	25	---	20	15	---	60
Criminal Justice Act Program - F.Y. '99	18,198	2,517	2,000	1,161**	1,160**	25,036**
- '98 Deferred	3,063*					3,063*
Consulting & Other Serv.(other than CJA)	1,536	1,587	254	254	254	3,885
Supplies & Materials	459	3	1	1	1	465
Acquis. of Capital Assets	15	1	2	---	---	18
TOTALS	28,620	5,050	3,027	2,165	2,149	41,011
OPERATING BUDGET GRAND TOTALS	86,961	11,257	9,723	9,251	8,398	125,500***
CAPITAL BUDGET	4,434	53	2,000	513	---	7,000

* = Deferrals which total $4.1 million.

** = CJA claims are currently projected to exceed the appropriated maximum by approximately $1 million above the current $25,036,000 funded and congressionally capped figure. Projected CJA claims will exceed the cap by $439,000 in August and $561,000 in September, for a total of $1,000,000.

*** = $121 million appropriated plus $4.5 million in reimbursements. (These reimbursements have increased since May 31 as a result of additional amounts due and/or received from the Offender Supervision Trustee and the Office of Corp. Counsel.)

Attachment #2

U.S. Department of Justice
Reimbursement Agreement Between Agencies

Bar Code

Provider Agency			Customer Agency	
Provider Cost Center / RCN	RCN Description		Customer Number	Customer Alias: CSOSA
Provider Contact: Mr. Ulysses B. Hammond	Phone: 202-879-1700		Customer Contact: Karin Francesche11i	Phone: 202-220-5700
Name: D.C. Superior Court			Name (if billing address is different, specify on reverse side.): Court Services & Offender Supervision Agency	
Address: 500 Indiana Avenue, NW, Room C-480			Address: 633 Indiana Avenue, Suite 1374	
City: Washington	State: DC	Zip: 20001	City: Washington	State: DC / Zip: 20004

This Agreement shall become effective on October 1, 1998 and shall continue through September 30, 1999.

Brief explanation of work or services to be performed and basis for determining cost:

The Court Services and Offender Supervision Agency (CSOSA) will reimburse the District of Columbia Courts for space occupied in Court operated facilities, as well as space-related charges, including phone usage and postage, based on the rates indicated in the attached FY 1999 Reimbursement Schedule.

A Payment of $151,642.52 for the Domestic Violence Staff's Salaries and Benefits was made on March 16, 1999, and payment for the remaining $489,030, indicated in the Y-T-D Reimbursement Column on the Attached FY 1999 Reimbursement Schedule, was made on May 5, 1999.

The payment for the remaining portion of the estimated amount of this agreement, $617,673.12, is scheduled to be issued on June 30, 1999. As part of the FY 1999 close out, CSOSA and the Courts will work together to reconcile the estimates contained in the FY 1999 Reimbursement Schedule with actual billings to determine whether any additional funds are due the Court or to be refunded to CSOSA.

(Attach additional sheet for continuation of explanation, if necessary.)

Estimated amount: $ 1,258,345.82

(Customer agency will indicate account to be charged. Federal agencies will be billed OPAC, except for the OBDs, USMS & DOD.)

Agency Location Code	Appropriation Symbol	Cost Center/SOC to be Charged	YregDoc (for OBD and USMS only)
		Various, See attached	

(See reverse side of form.)

Approved for Provider Office	Approved for Customer Office
Organization: District of Columbia Superior Court	Organization: Court Services and Offender Supervision Agency
Signature: [signature]	Signature: John A. Carver by RPAW
Name: Ulysses B. Hammond	Name: John A. Carver
Title: Executive Officer, D.C. Courts	Title: Trustee

FORM DOJ–216
OCTOBER 1993

Attachment #3

Reimbursement to District of Columbia Courts for Adult Probation Support
FY 1999 Reimbursement Schedule
(Current as of June 24, 1999)

Description	Annual Estimate	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Y-T-D Reimbursements	Remaining Balance	Comments
Domestic Violence Staff								
Salaries	120,012.50	120,012.50	0.00	0.00	0.00	120,012.50	0.00	
Benefits	31,630.02	31,630.02	0.00	0.00	0.00	31,630.02	0.00	
Total, Domestic Violence Staff	151,642.52	151,642.52	0.00	0.00	0.00	151,642.52	0.00	Reimbursement for 2.7 pay periods.
Building B/409 E St., NW								Adult Probation occupies 43,700 sq. ft. (including shared space) or 49% of Building B. This amount is not expected to change in FY99, although some staff will be moved out. Estimate based on MOU with the District for occupancy at $6.59 per sq. ft. which includes a 1% fee. Telephone services are based on 49% of phone charges per month; June through September costs based on average costs for the first 8 months of the fiscal year. Postage assumes $50 per person.
Occupancy Charge:								
Utilities								
Security								
Custodial Services								
Total, Occupancy Charge	287,983.00	71,995.75	71,995.75	71,995.75	71,995.75	143,991.50	0.00	
Telephone Services	42,188.30	10,506.73	10,305.66	10,828.84	10,547.07	23,400.00	0.00	
Postage	6,500.00	1,625.00	1,625.00	1,625.00	1,625.00	3,250.00	0.00	
Total, Building B/409 E Street, NW	336,671.30	84,127.48	83,926.41	84,449.59	84,167.82	170,641.50	0.00	
Courthouse/500 Indiana Ave., NW								During FY99, Adult Probation will occupy approximately 1,200 sq. ft. in the Moultrie Courthouse. Estimate is based on MOU with the District for occupancy at $6.59 per sq. ft. which includes a 1% fee. Telephone services are based on $30 per position per month; postage assumes $50 per position.
Occupancy Charge:								
Utilities								
Security								
Custodial Services								
Total, Occupancy Charge	7,908.00	1,977.00	1,977.00	1,977.00	1,977.00	3,954.00	0.00	
Telephone Services	3,960.00	990.00	990.00	990.00	990.00	1,980.00	0.00	
Postage	550.00	137.50	137.50	137.50	137.50	275.00	0.00	
Total, 500 Indiana Ave., NW	12,418.00	3,104.50	3,104.50	3,104.50	3,104.50	6,209.00	0.00	
1418 Good Hope Road, SE								Adult Probation occupies 100% of this facility, or 6,835 sq. ft. Effective FY99, CSOSA assumed the rent, utilities, custodial services and security costs for the AFU. Phone services based on monthly bills; May through September costs based on average costs for the first 7 months of the fiscal year. Postage assumes $50 per person.
Telephone Services	13,822.29	3,179.34	3,712.49	3,474.88	3,455.58	5,400.00	0.00	
Postage	1,350.00	337.50	337.50	337.50	337.50	675.00	0.00	
Total, 1418 Good Hope Road, SE	15,172.29	3,516.84	4,049.99	3,812.38	3,793.08	6,075.00	0.00	

Description	Annual Estimate	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Y-T-D Reimbursement		Remaining Balance	Comments
1707 Kalorama Road, NW									Adult Probation occupies 50% of this facility, or
Rent	69,000.00	17,250.00	17,250.00	17,250.00	17,250.00	34,500.00		0.00	9,440 sq. ft. of 18,880 sq. ft. Property estimates based
Property Tax	5,271.00	1,317.75	1,317.75	1,317.75	1,317.75	2,635.50		0.00	on information provided by the Court. Phone services
Utilities	6,000.00	1,500.00	1,500.00	1,500.00	1,500.00	3,000.00		0.00	based on 50% of monthly bills; May through September
Security	54,378.35	13,592.59	13,592.59	13,592.59	13,592.59	33,250.00		0.00	costs based on average costs for the first 7 months of the
Custodial Services	12,762.00	3,190.50	3,190.50	3,190.50	3,190.50	6,381.00		0.00	fiscal year. Postage assumes $50 per person.
Telephone Services	7,857.19	1,867.97	1,899.70	2,125.23	1,964.30	1,980.00		0.00	
Postage	550.00	137.50	137.50	137.50	137.50	275.00		0.00	
Total, 1707 Kalorama Road, NW	155,810.54	38,856.30	38,888.04	39,113.56	38,952.63	82,021.50		0.00	
401 New York Ave., NE									Adult Probation occupies 66.6% of this facility, or
Rent	179,953.63	44,988.41	44,988.41	44,988.41	44,988.41	89,976.82		0.00	approx. 8,380 sq. ft. of 12,583 total available sq. ft.
Property Tax	3,330.00	832.50	832.50	832.50	832.50	1,665.00		0.00	Property estimates based on information provided
Utilities (No additional charge)	0.00	0.00	0.00	0.00	0.00	0.00		0.00	by the Court. Phone services based on 66.6% of monthly
Security	72,421.30	18,105.33	18,105.33	18,105.33	18,105.33	33,375.00		0.00	bills; June through September costs based on average
Custodial Services	22,598.71	5,649.68	5,649.68	5,649.68	5,649.68	11,299.36		0.00	costs for the first 8 months of the fiscal year. Postage
Telephone Services	21,376.94	5,206.65	5,352.74	5,479.32	5,344.23	4,500.00		0.00	assumes $50 per person.
Postage	1,200.00	300.00	300.00	300.00	300.00	600.00		0.00	
Total, 401 New York Ave., NE	300,880.59	75,076.57	75,228.65	75,355.23	75,220.14	141,416.18		0.00	
1401 Brentwood Parkway, NE									Adult Probation occupies 40% of the space assigned
Security	39,893.18	16,924.38	16,924.38	6,044.42	0.00	0.00		0.00	to the Court at the Hamilton School. Effective May 10, 1999,
Custodial Services	0.00	0.00	0.00	0.00	0.00	0.00		0.00	CSOSA assumed 100% of the costs for phone services, and
Telephone Services	8,947.81	2,025.58	2,292.99	2,392.28	2,236.96	0.00		0.00	security. Hamilton School does not charge for utilities.
Postage	1,000.00	250.00	250.00	250.00	250.00	0.00		0.00	Court to advise if there is a charge for custodial services.
Total, 1401 Brentwood Parkway, NE	49,840.99	19,199.96	19,467.37	8,686.70	2,486.96	0.00		0.00	Phone services based on actual billings for first 7 months;
									May through September estimates based on average costs.
									Postage assumes $50 per person.
Urban Services Program									
March/April Cycle	117,954.80	0.00	117,954.80	0.00	0.00	82,667.00		0.00	Based on the Court's FY99 contract with North American
June/July Cycle	117,954.80	0.00	0.00	117,954.80	0.00	0.00		0.00	Family Institute for 2 cycles ($117,954.80 each).
Total, Urban Services Program	235,909.60	0.00	117,954.80	117,954.80	0.00	82,667.00		0.00	Adjustment made to June 30, 1999, payment for first
									cycle amount owed.
GRAND TOTAL	$ 1,258,345.82	$ 375,524.17	$ 342,619.75	$ 332,476.77	$ 207,725.13	$ 648,672.70		$ -	

D.C. Superior Court
Integrated Justice Information System:

Project Overview

I. Introduction

The Superior Court of the District of Columbia faces increasing challenges in its mission to provide the citizens of the nation's capital with an efficient and effective forum for the administration of justice due to the lack of modern information management capabilities. The Court presently maintains eighteen separate mainframe databases which were designed, some as long as fifteen or twenty years ago, to manage particular types of cases processed in separate operating divisions and units of the Court. Although the majority of these systems run on the same platform and contain many identical data elements, they are not integrated and users must interface with multiple systems in order to obtain complete information about a party or case. Redundant data entry by court staff in different operating divisions undermines data quality and is a wasteful and costly use of limited staff resources. Front-line staff report that the systems are not user-friendly by today's standards, and administrators are dissatisfied with the systems' inability to produce useful management reports and handle critical data queries. Further, the systems are highly customized and idiosyncratic, as is typical of older systems, and therefore are difficult to maintain and train staff to use. Ultimately, judicial decision-making is negatively impacted by the lack of access to accurate, timely and complete data at critical junctures in the criminal justice process. The Court's fragmented information technology infrastructure also limits its ability to obtain or share information electronically with other District Government agencies, impeding the criminal justice system's ability to deliver seamless and timely services to District citizens.

The lack of integration of the Court's present automated information systems, and lack of automation entirely in some divisions, makes it extremely difficult to identify persons who are involved in multiple cases processed in different divisions of the Court. For example, in order to determine whether a defendant in a domestic violence case is also a party to a child abuse or child custody case, court staff must access three separate systems, the domestic violence database, the juvenile and neglect database, and the domestic relations database. Since the databases are not linked or shared, the user must separately query each of them. Further, there is no single identifier that is universally and permanently associated with an individual upon his or her contact with the Court. Rather, case numbers are assigned to every *case* filed within a particular operating division or unit using an alpha-numeric code which reflects the division or unit where the case was filed (alpha code) and the chronological order and year filed (numeric code). As a result, a criminal defendant who also has pending child neglect and child support cases would have three separate case numbers, as each of these matters is handled in a different division of the Court. Likewise, a youth appearing in Court on a delinquency charge may have previously been in the abuse and neglect system, and therefore have two case numbers which, under the present system, are not associated with one another.

ATTACHMENT # 1
(see question # 12)

Similarly, the Court cannot readily identify members of the same family who appear in Court in different cases. Judges are often faced with having to make critical decisions quickly, such as whether a neglected child should be removed from the home and placed with an adult family member, without adequate access to important information such as whether the proposed family member has a criminal record, or is a known substance-abuser. Again, there is no common identifier to associate cases in which one or more parties are related to persons involved in other cases at the Court.

Adding to the problem of identifying related cases, the Court's Family Division maintains caseload data in three separate systems, which are not linked or shared. Cases involving juveniles and abused and neglected children, are contained in the Juvenile Information System Records Access (JISRA) database. Domestic relations cases, which include divorce, custody and related matters, are maintained in a domestic relations section of the Court's Civil Division database. Finally, child support and paternity cases, are entered into the District's Child Support Computer System, which is administered by the Office of the Corporation Counsel.

There are an increasing number of cross-division initiatives in Superior Court which are hampered by the Court's inadequate intra-agency data-sharing capability. These initiatives, such as Adult Drug Court, Juvenile Drug Court, and Child Protection Mediation, were implemented by the Court to address special needs and require the cooperative sharing of information among several divisions of the Court. For example, Child Protection Mediation Program officials cannot readily determine whether children in these cases have siblings who are or have been involved in other abuse and neglect cases at the Court.

Among the court divisions most impeded by the lack of a modern computing system is the Social Services Division, which is the District of Columbia's Juvenile Probation Department. The Social Services Division has little automation, with the few computers currently in operation unable to handle even routine office functions such as word-processing and e-mail. Probation officers maintain hand-written records of their contacts and visits with probationers, and the Division cannot produce management reports without time-consuming, labor-intensive hand counts of clients and cases. Perhaps most troubling, the Division is severely limited in its ability to supervise thousands of juvenile offenders who are released into the community, or provide appropriate and timely treatment and support services to the children and families referred to the Division for counseling, substance abuse and other health-related assessments, drug treatment and education, and related services.

Finally, the lack of *inter*-agency integration, and common identifiers and data standards among agencies, makes it difficult for the Court and other agencies to identify and track criminal offenders from their initial contact with the justice system at arrest, during pretrial detention or community release and supervision by other agencies, through court processing, to the post-disposition phase. The Court's Criminal Information System (CIS), for example, does not update directly into the city's Criminal Justice Information System (CJIS), thereby delaying the availability of disposition data to other criminal justice agencies. Alternatively, the Court

cannot readily determine if an individual brought into Court on a felony criminal charge has existing traffic or D.C. ordinance violations, as the Metropolitan Police Department does not assign Police Department Identification Numbers (PDID numbers) to these cases. In order to obtain complete information about an individual or family's involvement with the Court, users must spend considerable time searching the Court's multiple databases for related cases which are not linked by a common identifier and do not employ a systematic methodology for establishing relatedness with an adequate degree of confidence.

The Court's Social Services Division (Juvenile Supervision & Treatment) is especially affected by the lack of inter-agency data-sharing capabilities of the Court and other District Government agencies. For example, the Division cannot track the detention status or placements of juveniles under the court-imposed supervision of the Youth Services Administration, or readily locate the whereabouts of children in foster care placements managed by the Department of Human Services, or communicate effectively with the D.C. Public Schools regarding children who are exhibiting truancy, substance abuse, or other high-risk behavior, or monitor court-ordered conditions of probation concerning school attendance by juvenile probationers.

At present, inter-agency data-sharing capabilities in the District of Columbia's justice system agencies are either non-existent or consist of batch data dumps or some limited real-time transfers. This situation grows more tenuous as federal mandates for data-sharing within regional jurisdictions and nationally increase. In addition, the District's criminal justice agencies are increasingly implementing inter-agency initiatives designed to enhance public safety and reduce crime. The success of such initiatives over time will depend greatly on these agencies' ability to share information swiftly and accurately. Lastly, the District's immediate proximity to suburbs in the bordering states of Virginia and Maryland enhances the need for an information system that can easily communicate with other governmental entities outside of the District's governing structure

To address these problems, the Court has launched the Integrated Justice Information System Project, or IJIS. The broad vision for IJIS is to create an integrated computer information system that will support the Court in achieving its mission to provide efficient and impartial resolution of disputes and full access to justice for the citizens of the District of Columbia.

II. Goals and Objectives

The IJIS project seeks to advance the Court's achievement of the following goals:

Goals

- **Enhance public safety,** by increasing the availability of accurate, timely and complete criminal offender data to justice system agencies and individual decision-makers, including

police offices, prosecutors and defense attorneys, judges, court employees, pretrial supervision, probation and parole officers, and corrections staff.

- **Provide fair and swift justice** to citizens of the District of Columbia, through faster case processing, enhanced judicial decision-making, and greater coordination with other agencies.

- **Improve services to families and youth,** by enhancing the Court's ability to identify and respond holistically to cases involving the same individual or family, and monitor court-ordered treatment and support services for abused and neglected youth, victims of spousal violence, at-risk and delinquent juveniles, and others.

- **Enhance public trust and confidence in the justice system,** through improved service delivery, expanded public access, increased accountability to the public, and more efficient use of public resources.

The Superior Court has established the following objectives to guide implementation activities for the IJIS project:

Objectives

- Eliminate or minimize redundant data collection by court staff across and within operating divisions and units of the Court.

- Improve data accuracy, timeliness, and completeness by standardizing data elements and implementing streamlined and technologically advanced data entry procedures.

- Reduce paperflow across and within operating divisions by maximizing electronic data-sharing and updating business practices to reflect new technological capabilities.

- Improve identification of related cases (individuals and families) to facilitate efficient and effective case processing, provide swifter linkage of individuals and families to needed support services, and enhance judicial decision-making.

- Enhance caseflow management by modernizing business practices to reflect new technologies.

- Improve scheduling/calendar management to provide more efficient case processing and reduce waiting time in court for external court customers, such as law enforcement personnel, attorneys, litigants, and members of the public.

- Enhance data-sharing and coordination with other justice system agencies to provide seamless delivery of services and efficient use of public resources.

- Improve management reports to provide enhanced decision-support for court executives and managers.
- Consolidate current applications to maximize operating efficiencies.
- Enhance public access to court information and services by increasing the availability of electronically-accessible information on court operations and services to the public.

III. Integrated System Features

The integrated information management system will enable the Court to share information electronically across multiple operating divisions, provides judges with timely access to critical data, & permit inter-agency data-sharing with other District criminal justice agencies. The integrated system will be designed to feature:

- Unique identifier codes for individuals & families
- Single point of data entry
- Conformance to modern data standards & improved data accuracy
- Automatic data transfers & updating
- Expanded ad hoc query capability & decision support
- Automated calendaring, scheduling & noticing of parties
- Integrated financial transactions associated with case processing
- Automation of Court Social Services – Juvenile Supervision & Treatment
- Compatibility with future technologies – electronic filing, scanning & imaging, fingerprint identification, etc.

IV. Project Plan

The IJIS Project will be implemented in several phases, with the goal of creating a court-wide integrated system within three years, as shown below.

Phase	Estimated Cost	Completion Date
Requirements Analysis	$350,000 (Grant-Funded)	October 1999
System Design	$2.5 million	October 2000
System Design	$500,000 (Grant-Funded)	October 2000
System Development	$3 million	June 2000-October 2001
Testing & Implementation	$2 million	October 2002

DISTRICT OF COLUMBIA COURTS

POSITION CLASSIFICATION SYSTEM

PERSONNEL DIVISION

ATTACHMENT # 2
(see question # 21)

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DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

POSITION CLASSIFICATION	POLICY NO. 700

700 Policy. The Executive Officer is responsible for assuring that a position classification plan is prepared and maintained for nonjudicial positions by occupational groups, series, class, and grade according to similarities and differences in duties, responsibilities and qualification requirements. The Joint Committee on Judicial Administration, upon its own initiative or upon the recommendation of the Executive Officer, may amend the position classification plan, in whole or in part, at any time.

The position classification plan will be used by the Executive Officer to establish grades and rates of pay for all nonjudicial employees in an equitable manner by the application of recognized classification principles. The objective of the plan is to attain equal pay for substantially equal work based upon complexity of assignment, assigned duties, responsibilities, and the qualification requirements of positions.

701 Management Role. The Executive Officer and each of the Chief Judges are responsible for ensuring that positions established are necessary for the operations of the Courts, form the most efficient and most economical organizational structure for accomplishing assigned functions, and are so organized that maximum utilization is made of the highest skills of each employee.

702 Role of the Personnel Division. The classification staff of the Personnel Division receives requests for classification services. The requests may involve positions which have been recently created or changed. Most classification recommendations can be accomplished through position review. Position review is the evaluation and classification of the written position description as certified by the supervisor. The supervisor submits the new or revised position description along with a "Request for Personnel Action" to the Personnel Division. The personnel specialist classifies the position in accordance with the position classification standards adopted by the Court. The Personnel Division will provide technical and advisory assistance to management in preparation of position descriptions, position alignment and organizational development.

703 Desk Audits. A desk audit is a fact finding interview conducted at the employee's work site. The purpose of the desk audit is to verify the accuracy of the position description of what significant work is being done, and should describe how the work is done and the effects of the completed work. Information obtained from the desk audit is verified with the supervisor.

DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

POSITION CLASSIFICATION — POLICY NO. 700

If a change in title, series, and/or grade is deemed warranted, by the division head, a revised position description is to be submitted to the Personnel Division along with a "Request for Personnel Action" for evaluation, classification and recommendation which will be forwarded to the Executive Officer.

704 Request for Desk Audit. An employee may request, in writing, a desk audit through his/her supervisor. The supervisor shall forward the request to the Director of Personnel, with comments, including reasons for requesting the desk audit. The applicable Chief Judge and the Executive Officer shall determine whether a desk audit is warranted.

705 Classification Survey. A classification survey is a review of existing positions to determine if changes should be made in position descriptions. A classification survey shall be conducted periodically and shall be accomplished either by surveying all positions or by surveying a representative number of positions. Survey operations include: performing position reviews; conducting desk audits; and analyzing organizational structures and staffing patterns.

706 Classification Grievance. Every nonjudicial employee shall have the right to grieve the classification of his/her position under Policy No. 1100, Grievances.

CLASSIFICATION AUTHORITY OF THE EXECUTIVE OFFICER

By the authority of Public Law 91-358, Subchapter II. - Court Personnel, §11-1726, the Executive Officer shall fix the rates of compensation of non-judicial employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Under this authority the Executive Officer shall designate managerial positions that will be graded at CS-14 and above upon consultation with the Director of Personnel. Executive Office staff shall be classified through the same method. Non-judicial positions CS-13 and below shall be classified through the reference and application of appropriate Office of Personnel Management's General Schedule Position Classification Standards and U. S. Courts benchmark positions for positions of similar responsibility, duty and difficulty.

SUPERVISORY GRADE EVALUATION FOR NONJUDICIAL POSITONS GRADE CS-13 AND BELOW

The Office of Personnel Management's Supervisory Grade-Evaluation Guide shall be used in determining grades for supervisory positions grade CS-13 and below. This guide provides definitions of supervisory positions along with standardized grading criteria.

Supervisory positions are involved in the direction of subordinate employees in the performance of work, with accountability to Court management for the quantity and quality of the work done and for assuring efficient and economical work operations. Supervisory functions include a range of duties and responsibilities for planning, organizing and reviewing work, and administering personnel matters.

Supervisory positions are basically responsible for:

- assigning, directing and reviewing the work of subordinate employees;
- planning and providing training and development of employees;
- evaluating employees' work performance;
- recommending selections, promotions, awards, disciplinary -actions, and separations;
- planning, scheduling and coordinating work operations;
- solving problems related tot he work supervised;
- determining material, equipment, and facilities needed; and
- explaining and gaining employee support for Court policies and goals.

The Guide is primarily used to evaluate positions that supervise three or more employees. It includes factors with point values that determine the number of grades to be added to the base level of work in assessing a final supervisory grade. Following are the grading factors:

Factor I: Base Level of Work Supervised

The base level of work is determined by identifying the different kinds of work performed by subordinate employees. This factor measures the highest level of non-supervisory work under the direct or indirect supervision, when:

a. it represents a significant portion of the total work of the unit;
b. it constitutes more than half the work of at least two of the full-time positions supervised; and
c. twenty-five percent or more of the subordinate employees are at least at that level.

Factor II: Kind and Degree of Supervision Exercised

This factor measures the work planning and organization performed by the supervisor; assignment and review of the work performed in the unit; supervisory personnel functions and the full and final technical responsibility for the work.

Factor III: Scope and Variety of Operations

This factor identifies the total number of employees supervised and different kinds of work other than support, performed within the unit.

Factor IV: Special Additional Responsibilities

This factor is only used when the position is responsible for supervision of special situations, such as shift operations; fluctuating work force or constantly changing assignments; physical dispersion of the work force; and special staffing considerations.

Point values are assigned to the various degrees of responsibility for elements under Factor II, III, and IV. Using a conversion table, the total points are converted to the number of grades to be added to the base-level grade for a final supervisory grade determination.

WORK LEADER GRADE EVALUATION GUIDE

The Work Leader Grade Evaluation Guide is used to determine the grade of positions, which serve as intermediaries between line staff and supervisors. These positions, as regular and recurring part of their assignments, lead three or more employees in accomplishing the work of the unit. Work leaders also perform regular non-supervisory work that is usually the same kind and level as that done by the employees led.

Work leaders are responsible to their supervisors for assuring that work assignments for the unit are completed. Examples of duties of work leaders include:

- distributing and balancing the workload among employees;
- assuring timely accomplishment of the assigned workload;
- instructing employees in specific tasks and job techniques; and
- insuring written instructions, reference materials and supplies are provided to the unit;
- assisting with performance planning and evaluation; and
- serving as supervisor in his/her absence.

Under this standard, leader positions are classified one grade above the highest level of non-supervisory work led. The number of workers or any other supervisory factor does not affect the grade of a lead position.

The Personnel Division shall use, when appropriate, OPM's Factor Evaluation System (FES) to classify non-supervisory positions CS-13 and below. The Office of Standards Development for the Office of Personnel Management has developed classification standards using the factor ranking method. FES standards include information related to: series definition, occupational information, titling, evaluating or grading positions, Factor Level Descriptions, and benchmark position descriptions.

Position descriptions shall be written in the FES format consisting of a brief listing of the major duties followed by a description of those duties in terms of the nine FES evaluation factors. The nine FES factors are as follows:

Knowledge Required by the Position: the kind and level of knowledge and skills are needed and how e they are used in performing the work.

Supervisory Controls: how the work is assigned; what the employee's responsibility is for carrying out the work; and how the work is reviewed.

Guidelines: the kind of guidelines used in doing the work and how much judgment is needed to use them.

Complexity: the nature of the assignment; what the employee considers when deciding what must be done; and how difficult and original are the employee's actions or responses.

Scope and Effect: the purpose of the work and the impact of the work product or service.

Personal Contacts: the people contacted and the conditions under which the contacts take place.

Purpose of Contacts: purpose of contacts and the conditions or circumstances surrounding the contacts.

Physical Demands: the nature of physical demands placed on the employee.

Work Environment: the physical surroundings in which the employee works and any special safety regulations or precautions the employee must observe to avoid mishaps or discomfort.

Individual positions are evaluated by comparing the position description, factor by factor, with the appropriate factor level. Point values are assigned for each factor, totaled and converted to the appropriate grade.

SECRETARY GRADE CHART

SUPERVISOR'S TITLE AND GRADE	SECRETARY'S GRADE
Clerk of the Court	CS-11
Division Director, CS-16	CS-10
Division Director, CS-15	CS-09
Deputy Director, CS-15	CS-08
Deputy Director, CS-14	CS-07
Branch Chief or other Supervisor, CS-13	CS-06

COMPARISON OF D. C. COURTS AND U. S. DISTRICT COURT COMPARABLE POSITIONS

ATTACHMENT # 3
(see question # 21)

D. C. Courts Position	Grade	U.S. District Court Position	Grade	General Schedule Equivalent Grade and Salary
Probation Officer	JS-12	Probation Officer	CL-28	GS-12
Probation Assistant	JS-6	Probation Clerk	CL-23	GS-6
Grand Juror Specialist	JS-11	Jury Administration Clerk	CL-27	GS-11
File Clerk/Court Aide	JS-4	Records & Reproduction Clerk	CL-22	GS-4
Secretary to Division Dir.	JS-9	Secretary to Unit Head	CL-25	GS-9
General Counsel	JS-14	Staff Attorney	CL-30	GS-14
Calendar Clerk	JS-7	Calendar Clerk	CL-27	GS-11
Courtroom Clerk	JS-9	Courtroom Clerk	CL-27	GS-11
Docket Clerk	JS-6	Docket Clerk	CS-25	GS-9
Librarian	JS-11	Librarian	CL-28	GS-12
Library Technician	JS-8	Library Technician	CL-25	GS-9
Intake Clerk	JS-6	Intake Clerk	CL-24	GS-8
Appeals Coordinator	JS-8	Appeals Processing/Docket Clerk	CL-25	GS-9
Case Manager*	JS-11	Case Administrator	CL-25	GS-9

Note: Shaded areas indicate D. C. Courts positions which are graded lower than comparable positions in the U. S. District Court.
***Indicates D. C. Courts position which is graded higher than comparable position in the U. S. District Court.**

DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

CORRECTIVE ACTION AND APPEAL POLICY . **POLICY NO. 1000**

1000 Policy. Court supervisors and managers have the authority to impose a corrective action against an employee when the employee's behavior warrants an official action. It is the intent of this policy to ensure fair treatment.

Non-judicial employees are entitled to appeal corrective actions issued to them by their supervisors or by other court officials. The appeal must be made in a timely manner and in accordance with the procedures provided in this policy.

This policy does not apply to Excepted Service Employees or probationary employees.

1001 Employee Behavior Warranting Corrective Action: There are three categories of employee behavior that warrant corrective action: (1) time and attendance abuse; (2) misconduct; and (3) failure to meet performance expectations.

1. Time and Attendance Abuse: This category is composed of, but not limited to, periodic or continuous failure to:

   a) adhere to established tour of duty schedule, including arrival and departure schedules and lunch hours;

   b) arrange for prior approval of leave;

   c) comply with supervisor's request for verification of emergency medical (sick) leave; and

   d) notify one's supervisor in a timely manner in the event of tardiness.

2. Misconduct: Misconduct includes, but is not limited to, behaviors that are violations of court rules and policies and/or illegal. Level I offenses consist of violations of court rules and policies; and Level II offenses consist of illegal behavior.

   Level I - Violations of Court Rules and Policies include, but are not limited to:

   a) unauthorized use of court vehicles and property;

   b) utilization of court personnel for personal purposes;

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ATTACHMENT # 4
(see question # 26)

c) insubordination, including, but not limited to, failure to follow oral or written directives;

d) engaging in political activities which are prohibited by Federal law, District of Columbia law and/or Court policy;

e) collection or solicitation activities prohibited under Policy 1330;

f) violating court policy that dictates behavior of court personnel while on court property or representing the courts in an official capacity;

g) verbally abusing and/or threatening any individual on court property or in relation to official duty;

h) breaching security procedures, including but not limited to, contact with prisoners; and

i) divulging or misusing confidential or proprietary information obtained by reasons of the employee's official duties.

Level II - Illegal Behavior/Serious Misconduct include, but are not limited to:

a) submitting false travel, payroll or purchase vouchers or falsifying, destroying, mutilating or altering court documents or records, including but not limited to, court employment or promotional applications, personnel actions, time records, court jackets or their contents;

b) willfully violating Equal Employment Opportunity regulations, including engaging in sexual harassment as defined in Federal and District laws;

c) violation of Policy 1350 - Gifts and Entertainment;

d) causing loss or damage to court property through willful or grossly negligent action;

e) theft of, or occurring on, court property;

f) physically assaulting any individual on court property or in relation to official duties;

g) smoking tobacco products on court premises;

h) consuming or being under the influence of alcohol or illegal drugs on court premises or while on official duty; and

i) conviction of a criminal offense, employee criminal conduct and conduct posing a risk to persons or property as provided in Policy 1008.

3. Performance that Does Not Meet Expectations: Performance that is not meeting expectations as outlined in the employee's job elements and standards or which has such a detrimental impact on the court that it cannot be addressed through Policy 900 - Performance Management.

1002 Corrective Actions Available to Managers and Supervisors. The following corrective actions represent official actions that can be utilized by a supervisor when an employee has demonstrated time and attendance abuse, misconduct and/or job performance that does not meet expectations. The corrective actions are listed from the least to most severe. It is not necessary to exhaust a lesser penalty before imposing a more severe penalty.

1. Time and Attendance Abuse:

a) placing an employee on a non-approved leave status (absent without official leave) may be done at any time;

b) letter of warning;

c) letter of reprimand;

d) leave restriction (a written plan implemented by management which sets forth the conditions on which leave may be taken);

e) recommendation for one or two day suspension;

f) recommendation for three or more days suspension;

g) recommendation for demotion; or

h) recommendation for termination.

2. Level I - Misconduct:

a) letter of warning;

b) letter of reprimand;

c) recommendation for one or two day suspension;

d) recommendation for three or more days suspension;

e) recommendation for demotion; or

f) recommendation for termination.

3. Level II - Serious Misconduct/Illegal Behavior:

a) recommendation for one or two day suspension;

b) recommendation for three or more days suspension;

c) recommendation for demotion;

d) institution of procedures and remedies as provided by Personnel Policy 1008; or

e) recommendation for termination.

4. Performance that Does Not Meet Expectation: (Refer to Policy 900 section 909)

a) letter of warning;

b) letter of reprimand;

c) denial of step increase;

d) recommendation for one or two day suspension;

e) recommendation for three or more day suspension;

f) recommendation for demotion; or

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g) recommendation for termination.

1003 Corrective Action Procedure for a Penalty of a Two-Day Suspension or Less. Any court supervisor can impose AWOL, letters of warning and reprimand, and leave restrictions and recommend suspension. Authority to suspend an employee for two days or less rests with the division director, the applicable Clerk of the Court, or the Executive Officer. Any corrective action under this policy shall be recommended or imposed within 30 days after the supervisor or division director has learned of the offense.

In determining the corrective action to be taken, supervisors may consider, among other relevant factors, the following:

1. time remaining in the evaluation period (Refer to Policy 900);
2. prior corrective actions imposed on the employee for the same or similar behaviors and the time period separating each imposition. (Supervisors may consider corrective actions issued during the last five years);
3. severity of the behavior; and
4. impact of the behavior on court operations.

Any corrective action recommended or imposed must be in writing, provided to the employee and must address the following:

1. specific action to be taken;
2. clear description of the offense or behavior;
3. any corrective actions previously imposed;
4. any effect the behavior has had on court operations;
5. the employee's right to review materials;
6. the employee's right to request reconsideration or appeal in accordance with Policy 1004;
7. any referral to the Court Employee Assistance Program; and
8. the court official to whom the employee is to submit his/her response.

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DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

CORRECTIVE ACTION AND APPEAL POLICY . POLICY NO. 1000

1004 Appeal Procedure for a Corrective Action of a Two-Day Suspension or Lesser Penalty. The following is the procedure to request reconsideration or appeal of a corrective action other than a decision to suspend for three days or more, demote, or terminate:

1. The employee shall deliver within five days of receiving notification of a corrective action his/her written request for reconsideration to the supervisor who issued the corrective action. The employee shall state the reasons for the request.

2. The supervisor shall, within five days, make a decision on the employee's request for reconsideration. The supervisor shall forward written notice of his or her decision to the employee with a copy to the division director or the appropriate court official. If the supervisor fails to respond within the allotted five days, does not grant the relief requested, or denies the request for reconsideration, the employee may within five days file a written appeal to the division director or the appropriate court official.

3. The division director shall have up to five days after receipt of the appeal from the employee to render a decision.

4. An employee who has been suspended for two days or less may request a review of the decision by the applicable Clerk of the Court or the Executive Officer. The applicable Clerk of the Court or the Executive Officer shall, within 15 work days, inform the employee, in writing, of his or her decision to uphold the sanction, rescind, remand, or reduce the sanction, or decline to review the decision of the division director. The applicable Clerk of the Court or the Executive Officer shall ensure that the written decision is transmitted to the employee personally or by certified mail-return receipt requested.

   At the request of the employee or at his/her own discretion, the appropriate Chief Judge may review a final decision of the Executive Officer to suspend for two days or more, demote or terminate the employee. Any such request by the employee must be made in writing within five (5)days of receipt of the final decision of the Executive Officer or Clerk of the Court.

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5. Where a division director is the official initiating the corrective action, the Clerk of the appropriate Court shall perform the duties of the division director under this policy. Where a Clerk of the Court or the Deputy Executive Officer is the official initiating the corrective action, the Executive Officer shall perform the duties of the division director under this policy.

1005 Corrective Action Procedure for Recommendation of Suspension for Three Days or More, Demotion or Termination. Only the applicable Clerk of the Court or the Executive Officer can suspend an employee for three days or more, demote and/or terminate an employee for cause. A supervisor or other appropriate court official initiates the process by recommending suspension, demotion, or termination in writing to the employee's division director. The recommendation shall be made within 30 days after the supervisor has learned of the offense. The recommendation is to include the following information:

1. the recommended action: suspension, demotion or termination;

2. a clear description of the offense or behavior;

3. any corrective action already imposed;

4. the effect the behavior has had on court operations;

5. the employee's right to review materials;

6. any recommendation for changing the employee's duty status during the notification period; and

7. any referral to the Court Employee Assistance Program.

The division director or appropriate court official has ten work days to issue to the employee written notification of the proposed action and provide the employee an opportunity to submit a written response. The notification shall include the following:

1. a statement of the offense or behavior;

2. the corrective action proposed which may be the same, more or less severe than that recommended;

3. the employee's duty status during the review period;

4. the employee's right to review the material upon which the recommendation is based;

5. the employee's right to have a representative at his/her own expense;

6. the employee's right to take up to eight hours administrative leave to prepare a written response;

7. the date on which the employee's response is due, which is ten work days from the day after the receipt of the division director's proposed action; and

8. the court official to whom the employee is to submit his/her response.

After an evaluation of the employee's response, or after the ten work days have expired without response, the division director or appropriate court official shall decide whether to proceed. If the decision is to proceed with the proposed action, the division director or appropriate court official shall within ten days after the expiration of the employee's response deadline forward to the applicable Clerk of the Court or the Executive Officer the recommendation and all pertinent supporting documents. Copies of the division director's or appropriate court official's recommendation shall be forwarded to the supervisor, the employee, and to the Director of Personnel.

The applicable Clerk of the Court or the Executive Officer shall have 15 work days from the receipt of the division director's or the appropriate court official's recommendation to make a decision, unless remanded for further information. The Clerk of the Court or the Executive Officer may determine, after consultation with the division director or appropriate court official, to impose a more severe penalty than that recommended. If the Clerk of Court or the Executive Officer decides to impose a more severe penalty than recommended, the employee may respond within ten days after notification of the determination.

The final decision shall be made in writing to the division director, with copies to the supervisor, the employee, and the Director of Personnel.

Upon receipt of the decision of the applicable Clerk of the Court or the Executive Officer, the division director shall impose, formally, in writing, the suspension, demotion, or termination indicating the date the action is to take effect. Imposition may

occur within 24 hours. Copies of the correspondence imposing the suspension, demotion, or termination shall be sent to the employee, the supervisor and the Director of Personnel Division.

All written notifications, recommendations, and decisions shall be transmitted to the employee by personal service or by certified mail, return receipt requested.

1006 Submission of Corrective Action Correspondence. A copy of any corrective action imposed or recommended shall be forwarded to the Director of Personnel to be filed in a secure folder available to the Division Director, the employee, the employee's supervisor and selecting officials for final stages of the promotional process.

1007 Appeal of a Suspension for Three Days or More, Demotion or Termination. The process for appealing a suspension of three days or more, demotion or termination is as follows:

1. The employee shall deliver his/her appeal in writing to the Executive Officer within fifteen days from receipt of the notification to suspend for three days or more, demote, or terminate. The appeal shall state the basis for the appeal and whether a hearing officer is desired. The appeal may be submitted by the employee personally or by a personal representative. The filing of an appeal shall not stay the imposition of the corrective action.

2. Within twenty days from receipt of the appeal, the Executive Officer shall do one of the following:

   a) if a hearing is not requested, decide the appeal without a hearing; or

   b) if a hearing is requested, grant the relief requested without arranging for a hearing; or

   c) arrange for a hearing.

Failure of the employee to cooperate in the hearing process, such as failure to respond to notice of the hearing, shall result in denial of the appeal.

3. Selection of the Hearing Officer:

   a) The Executive Officer shall submit to the employee two names of proposed hearing officers. The

Executive Officer's choices for hearing officers may or may not be employees of the Courts. Court employees proposed must be employed at a CS rating of 12 or above and not have acted in a supervisory capacity over or worked in the same division as the employee.

b) The employee shall have two days to select a hearing officer.

c) The Executive Officer shall select the hearing officer if after three days the employee has not responded.

4. Scheduling the Hearing:

a) The Executive Officer shall arrange for the hearing to take place no later than 45 days from the date of the selection of the Hearing Officer.

b) The Executive Officer shall notify the employee by certified mail, return receipt requested or by personal service the date, time and place of hearing, the name of the Hearing Officer, and a summary of how the hearing shall be conducted. Notification must be made at least ten days before the hearing. Any requests for postponing the hearing shall be decided by the Executive Officer.

5. Conduct of the Hearing:

a) All testimony shall be under oath or affirmation. The Hearing Officer is authorized to administer the oath or affirmation.

b) The hearing shall be recorded electronically. A party may request a transcript at her/his expense.

c) Attendance at the hearing shall be limited to those permitted by the Hearing Officer, subject to the provisions of these rules. The hearing is not open to the public.

d) The employee shall have the right to be present at the hearing, with a representative provided at his/her own expense. The employee or

representative shall have the right to present evidence, witnesses and to cross-examine witnesses.

e) The employee shall present his/her case first unless otherwise directed by the Hearing Officer.

f) Witnesses may be presented by the parties or the Hearing Officer. However, witnesses may not be compelled to appear.

g) The Hearing Officer shall decide on the relevance and admissibility of evidence. The Hearing Officer shall not apply the rules of evidence strictly, but may exclude witnesses or matters which are irrelevant, immaterial or unduly repetitious.

6. Witnesses:

a) Witnesses who are court employees shall be in duty status during any court hours they are participating in a hearing and supervisors shall provide for those employees to be available.

b) Witnesses shall remain free from restraint, coercion, or reprisal before, during and after testimony before a Hearing Officer. Any employee who attempts to influence testimony through coercive means shall be subject to corrective action.

c) No employee will be required to be a witness.

7. Record of the Hearing: The record of the hearing shall consist of all documents, papers, or other physical material accepted by the Hearing Officer, as well as the official recording of the hearing. Documents, papers, and physical objects which were denied admission by the Hearing Officer shall not be part of the official record of the hearing, but shall be attached to it and identified properly. Records shall be maintained in the Executive Office for three years.

8. Scope of the Hearing Officer's Review: The Hearing Officer shall review the Clerk of the Court or the Executive Officer's decision to suspend, demote or terminate the employee. The Hearing Officer shall

examine the procedural and legal justifications of the decision including, but not limited to:

a) the facts and circumstances surrounding the misconduct of deficient job performance;

b) previous corrective actions received by the employee; and

c) whether the sanction imposed was within the authority and discretion of the applicable Clerk of the Court or the Executive Officer.

d) the Hearing Officer can recommend reversal or modification of the sanction imposed only if the hearing officer finds that:

1) the sanction was not legally justified or effectuated in substantial compliance with these procedures; or

2) management abused its discretion in imposing the sanction.

Absent one or the other of these findings, the Hearing Officer shall not substitute his/her judgment for that of management.

9. Report of the Hearing Officer: The report shall be submitted no later than 30 days after the hearing or after the record of the hearing is officially closed by the hearing officer. The report shall provide findings and recommendations relating solely to the recommendation for suspension, demotion, or termination and the grounds made by the employee for appealing the decision made.

10. Final Decision: The Executive Officer shall consider the record and the recommendation of the Hearing Officer and shall within fifteen days render a written decision which shall be transmitted to the appropriate parties. If the Executive Officer rejects the recommendation of the Hearing Officer, he/she shall state the reasons for so doing based on the record developed. The Executive Officer shall insure that the written decision is transmitted to the employee personally or by certified mail-return receipt requested.

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11. Corrective Action Initiated by the Executive Officer: Where the Executive Officer is the official initiating the corrective action, the appropriate Chief Judge shall substitute as the individual who shall perform the acts of the Executive Officer required by this policy.

1008 Employee Criminal Conduct and Conduct Posing a Risk to Persons or Property.

1. When an employee is charged with a felony or with a crime which may have a detrimental impact upon the employee's ability to perform his or her duties, or when in the judgment of the applicable Clerk of the Court or the Executive Officer, as appropriate, retention of an employee in active duty status may be detrimental to the interests of the Court, injurious to any individual, or may result in damage to the Courts' property, the applicable Clerk of the Court or the Executive Officer may immediately place the employee in a non-duty status with pay.

2. When a judicial officer makes a determination that there is probable cause to believe that the employee has committed the crime with which he or she is charged, or when the employee waives the right to a probable cause determination, or when the employee has been indicted, whichever occurs first, the applicable Clerk of the Court or the Executive Officer shall notify the employee that he/she will be placed in a non-duty status without pay.

3. An action to terminate the employee shall be brought as soon as practicable after the employee has been convicted. If, for whatever reason, the charges are dismissed as to the employee or the employee is acquitted, an action to terminate may still be brought against the employee if there is reasonable cause to believe that the employee has committed the offense with which he or she was charged or for related misconduct.

4. Any action brought against an employee under this policy shall be implemented as follows: The notice to terminate the employee shall be instituted by the applicable Clerk of the Court or the Executive Officer. The employee shall have ten days from the date of

receipt of this notice to make a response thereto. The employee's employment status shall not be changed during this ten day period.

5. The applicable Clerk of the Court or the Executive Officer shall have the right to accept or reject the employee's resignation made at any point in time after the employee is placed on non-duty status under the terms of this Policy.

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DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

COLLECTIONS AND SOLICITATIONS ON COURT PROPERTY	POLICY NO. 1330

1330 Policy. Solicitors and collectors may not conduct such operations upon court property or within court buildings, absent expressed authorization by the Joint Committee on Judicial Administration. Nonjudicial employees are prohibited from participating in unauthorized solicitation and collection efforts during normal business hours of the courts. Employees of the District of Columbia Courts are prohibited from selling other products on court property.

ATTACHMENT # 5
(see question # 29)

DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

CONDUCT AND CONDITIONS OF OUTSIDE EMPLOYMENT AND OTHER ACTIVITIES	POLICY NO. 1370

1370 Policy. Court employees may not engage in any outside employment or other activity which is not compatible with the performance of their duties and responsibilities as court employees. Activities which are not compatible with court employment include, but are not limited to the following:

a) engaging in outside employment, private business activity, or other interest which may reflect adversely on the court, or which may become a source of criticism or embarrassment to the court.

b) engaging in any outside employment, private business activity, or interest which permits an employee, or others, to capitalize on the his /her official title or position:

c) directing or requesting subordinate employees to perform during regular working hours any personal services not related to official court functions:

d) maintaining financial or economic interest in, or serving, with or without compensation, as an officer or in any other capacity in an outside organization if there is a likelihood that such organization may be involved in an official court action or decision taken or rendered by the employee.

e) serving in a representative capacity or as an agent or attorney for any outside organization involving any matter before the D.C. Courts; or

f) engaging in any outside employment, private business or other interest which is in violation of a Federal, State or District statute or ordinance.

1371 Consultative Activities. Consultative or advisory services which are not related to an employee's official function and responsibilities are considered non-court activities and are permitted unless performed during a regular tour of duty or, the service otherwise interferes with the discharging of the employee's official court functions and responsibilities.

1372 Speaking Engagements. Nonjudicial court employees may not accept an invitation to speak before any group or gathering as an official representative of the courts without first obtaining the approval of the Executive Officer.

DISTRICT OF COLUMBIA COURTS
JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

CONDUCT AND CONDITIONS OF OUTSIDE EMPLOYMENT AND OTHER ACTIVITIES	POLICY NO. 1370

1373 Teaching Activities. Nonjudicial employees who wish to engage in teaching activities must receive written approval from the Executive Officer before engaging in such activity. This activity must not be performed during the employee's regular tour of duty, nor shall it interfere with the discharging of the employee's official court function or responsibilities.

1374 Writing for Publication. Nonjudicial employees shall not submit for publication any articles, pamphlets, books or similar items which pertain to the D.C. Courts, its functions, its officers its judges, or it employees, without first obtaining the approval of the Executive Officer.

1375 Practice of Law. Judges, hearing commissioners, law clerks, judges' secretaries and nonjudicial employees shall not engage in the practice of law while employed by the District of Columbia Courts.

1376 After Termination of Employment. After termination of employment with the District of Columbia Courts, a nonjudicial employee, judicial secretary or law clerk may not practice as an attorney in connection with any case he/she was involved in while in the employ of the courts.

JOINT COMMITTEE ON JUDICIAL ADMINISTRATION
PERSONNEL POLICIES

FINANCIAL DISCLOSURE	POLICY NO. 1390

1390 District of Columbia Financial Disclosures Report. Nonjudicial employees at the GS-15 level and above shall file with the Chairman of the Joint Committee on Judicial Administration a confidential financial disclosure statement. The contents of the disclosure statement shall not be open to inspection by anyone other than the person filing the report except on order of the Joint Committee on Judicial Administration. Financial disclosure statements shall be filed on or before May 15th of each year in a manner prescribed by the Joint Committee on Judicial Administration. Willful failure to file or filing a false or fraudulent statement constitutes grounds for dismissal.

1391 Ethics in Government Act. Financial Disclosure Report:

a) Judicial employees who perform adjudicatory functions or non-judicial employees who are compensated at or in excess of the minimum rate for Grade 16 of the General Schedule, 5 U.S. Code 5332 must file a financial disclosure report.

b) Each report must include the items of information required by public law 95-521 with respect to reporting individual, spouse and dependent children.

c) Filing the Report.

(1) The report must be filed annually by May 15th for the period covering the previous calendar year for all reporting individuals who held office or were employed for 60 days or more during the previous calendar year.

(2) The report must be filed within 30 days after retirement from office or employment.

(3) The report must be filed within 30 days of assuming a position in the judicial system.

1392 Annual Report of Transcript Production and Income of Court Reporters.

On or before May 15 of each year, each court reporter shall certify and file a report with the Executive Officer of the District of Columbia Courts, containing:

a) the number of pages of transcript produced;

b) the total fees from all Superior Court transcript sources; and

c) the net income from the production of Superior Court official transcripts (total fees less expenses).

The information is be reported on the form entitled "Annual Report of Transcript and Income of Court Reporters," Form No. EO-16 (4-76).

Each required report shall be submitted to the Executive Officer in a sealed envelope bearing the legend, "Annual Report of Transcript Production and Income of Court Reporters," the name of the individual filing the report, and the year for which the report is filed. The contents of the annual report shall not be open to inspection by anyone other than the person filing it, except by order of the Joint Committee on Judicial Administration. The intentional failure to file, or the filing of a false or fraudulent report, shall constitute grounds for removal from office.

RESPONSES TO QUESTIONS SUBMITTED BY CONGRESSMAN JAMES P. MORAN

See page 487 this volume.

Question 1. Over the past three years, the two courts appear to have enjoyed increasing budgets and declining caseloads. In fiscal year 1998, the two courts received $108 million; in fiscal 1999, $121 million, and have requested $131 million for fiscal 2000. The courts continue to request increases despite the fact that they have been relieved of several financial responsibilities including adult probation, domestic violence, and judges' pensions.

- *Given encouraging news about a declining crime rate, has the caseload declined in recent years? Could you provide the committee with a breakout for the past three years of the Courts' case loads?*

Answer. Although much has been made of declining crime rates in recent years, it has not necessarily translated into reduced caseloads at the District of Columbia Courts. For example, while 9% fewer criminal cases were filed at the Superior Court in 1998 than in 1997 (43,576 vs. 47,949), the number of filings in 1998 exceeded criminal case filings in 1996 (41,461). In addition, even though overall criminal filings decreased 9% this past year, criminal special proceedings filings were up 4.4%. Superior Court caseloads have risen in a number of other areas as well. Specifically, from 1997 to 1998: adoption case filings rose 33%; landlord & tenant and small claims cases increased 4% and 5%, respectively; domestic violence and child abuse & neglect case filings are each up nearly 3%; mental health & mental retardation cases have increased by 10%; and probate case filings have risen 3% overall (with guardianships up by 29%). The D.C. Court of Appeals has experienced a record number of case filings during the last several years, with more than 2,000 appeals filed in both 1996 and 1997. A copy of the Courts' caseloads for the past three years is attached. (See Attachment #6)

While the District of Columbia Courts were relieved of the adult probation function and judicial pension costs, domestic violence case processing remains primarily a Court function and represents a growing caseload for the court. Each year, on average, over 3,500 intrafamily cases, 3,300 criminal misdemeanors, and 300 child support cases involving domestic violence are filed with the Superior Court.

The District of Columbia Courts are confronted with increasingly complex cases and legal issues to resolve in the most efficient, impartial and effective manner possible. This requires the Courts to enhance case processing mechanisms and employ technology, where possible, to ensure that productivity remains high and that the public is provided with quality service. The Courts' FY 1999 appropriation of $121 million and FY 2000 request of $131 million reflect the Courts' need to enhance technological capabilities and improve operational efficiencies, which are costly but necessary, as discussed previously in response to Committee Question 6.

Question 2. The GAO audit found that 94 percent of the vouchers for court-appointed attorneys were paid within 30 days of the presiding judge's or hearing commissioner's approval and 83 percent of these vouchers were paid within 60 days of the date submitted.

- *What is the lag time between when vouchers are received by the court via the U.S. Postal Service or other delivery service, officially recorded as submitted, and processed for approval?*

- *It is my understanding that the court does not start the 30-day clock ticking on the Prompt Payment Act until the judicial officer has approved the voucher. What mechanism could be established to ensure that there are no delays between the time a voucher is received by the court via the U.S. Postal Service or other delivery service and the time it is finally approved for payment?*

Answer. The vouchers are received in the Courts' Financial Operations Division and a "fees examination" is performed within 10 calendar days. The voucher is then sent by internal messenger mail to the presiding judicial official in the case for payment approval consideration. In the Superior Court, the judge or hearing commissioner reviews the voucher and assesses whether the information provided and compensation claimed by the attorney accurately and fairly reflects the attorney's representation in the case. In making a decision on compensation claims, the judge considers factors such as the number of parties represented, the number of issues in the case, the complexity of the case and the number of hours reasonably expended and the quality of representation. Most are returned to the Financial Operations Division, by internal messenger mail, within a week after receipt by the judicial official. Only upon judicial approval is the voucher considered valid and complete.

Within 10 calendar days after the return of the approved voucher to the Financial Operations Division, approved vouchers are batched weekly and payment data electronically transmitted to the General Services Administration (GSA) in Kansas City for processing.

GSA issues the payment within four business days after the data is transmitted.

Question 3. Could you explain the courts new proposal to establish "quality control" measures to ensure adequate representation of criminal defendants.

- *If court-appointed attorneys have already been approved by the courts, why must they now submit to a new requirement to provide their qualifications and credentials?*

- *Where is the need for this quality control requirement? How many cases of ineffective assistance (Strickland cases) have been indicated in the past year?*

- *Some of these attorneys perceive this new requirement as a form of harassment and intimidation. How would you characterize this new requirement?*

Answer. The District of Columbia Superior Court has established a program to ensure the adequate representation of criminal defendants in major felony cases. This program is called the "CJA Felony I Appointment Plan." The focus of the plan was limited to serious, major felony cases in which the government devotes significant resources. The Court sought to ensure that corresponding resources and skills are devoted to indigent defendants. Numerous ineffective assistance claims are routinely filed annually. However, because of the manner in which these matters are appealed, the Court does not track such claims by issue.

This Plan has been studied and devised over a number of years. In February 1993 the District of Columbia Bar formed a special committee to "examine and evaluate issues arising between the Superior Court Bench and court-appointed counsel; to provide a forum for the discussion of these issues; and to submit its proposal and recommendations for resolving these issues." In December 1993 the Special Committee released its report (the Muse Report). The Muse Report made a number of recommendations, including the establishment of a pilot program for appointing counsel to Felony I and Accelerated Felony cases.

Following the recommendation made in the Muse Report, Superior Court Chief Judge Eugene N. Hamilton met with the presidents of the Bar Association and the Superior Court Trial Lawyers Association and a representative of the Public Defender Service and selected representatives to serve on an Appointment Committee. The Appointment Committee was formed in May 1994, to develop a plan to implement a certification program for all attorneys seeking appointment to Felony I and Accelerated Felony cases under the Criminal Justice Act (CJA).

The Appointment Committee set the following goals:

(1) To provide a system where indigent defendants charged with serious criminal matters are ensured that they will receive competent, qualified, and professional legal representation, and

(2) To provide a system of attorney appointment where the only factor considered when making appointments is whether an attorney is qualified to handle Felony I and Accelerated Felony cases, and to ensure that this question is addressed in an objective fashion.

The Appointment Committee reviewed numerous materials, statistics, plans and proposals and conducted many interviews over a lengthy period. The Committee discussed the factors relevant to representation in Felony I and Accelerated Felony cases. The Committee published its report for comment and received comments from members of the Bar and the Bench. In establishing criteria to qualify for appointment to Felony I cases, the Appointment Committee concluded that D.C. Bar Admission and sufficient experience in serious felony jury trials, supported by judicial attestations as to the competence of the representation, should be the only criteria necessary. The Committee's Final Report was adopted by the Joint Committee on Judicial Administration.

Question 4. The Public Defender Service has a very good reputation and may be viewed as a model for many States to copy. One possible explanation for its success, however, may be in its light caseload. Unlike most States, it is able to choose its cases and refer all others to the court-appointed attorneys. More than 90 percent of the cases are assigned court-appointed counsel. With tighter budget constraints and fewer resources, it may be fair to ask if equal protection under the law is being applied equitably in the District's courts.

- *Could you provide me with a rough estimate on the number and percentage of cases where counsel is provided by the Public Defender Service? Could you provide me with the same estimates where counsel is provided by the court-appointed attorneys?*

- *Are their billable hours the same? Are their investigators and support staff paid at comparable levels?*

Answer. Cases in which PDS provides representation include criminal matters (U.S. misdemeanors and felonies), juvenile, mental health and appeals cases. Private attorneys, paid under the Criminal Justice Act, provide representation in criminal (U.S. misdemeanors and felonies), juvenile, D.C. misdemeanor, traffic, mental retardation and appeals cases. On the average, approximately 20,000 cases are handled by CJA attorneys each year, including approximately 900 appeals. PDS handles approximately 2,400 cases annually.[9] By conservative estimate, in 1998, CJA attorneys provided representation in approximately 89.3% (20,000 of 22,400) of the court appointed cases and PDS attorneys provided representation in 10.7% (2,400 of 22,400) of these cases.

PDS attorneys are salaried employees who do not receive overtime compensation. According to PDS the average hourly rate for PDS attorneys is approximately $35 as compared to the CJA hourly billing rate of $50. It should be noted that CJA attorneys who practice in federal courts are retained at $75 per hour. Currently, CJA investigators are compensated at $10 per hour. The average hourly rate for PDS investigators, including benefits, is approximately $17.71. PDS also advised that there is no way to determine differences between support staff employed by CJA attorneys and those at the Public Defender Service because there is no set compensation rate for CJA support staff.

At the Courts' request, the Public Defender Service has provided the attached response to this question. (Attachment #7).

Question 5. It has recently been brought to my attention that District judges are required to make public only non-financial information from their financial disclosure form, honorariums and business and charitable affiliations. Unlike Federal judges, information on gifts, liabilities and investment and trust income do not have to be made available to the public.

[9] This figure excludes traffic and D.C. misdemeanor cases because these type of cases are not typically handled by PDS.

Is there a reason why DC court judges, unlike their Federal counterparts, do not have to disclose information on gifts, liabilities and investment and trust income?

Would you support amending the District's financial statement requirements to make information on non-investment income, gifts, liabilities and investment and trust income available to the public?

Answer. Since the enactment by Congress of the D.C. Court Reform and Criminal Procedure Act of 1970, D.C. Code § 11-1530 has required that annual financial disclosure statements be made by the judges of the D.C. Courts to the D.C. Commission on Judicial Disabilities and Tenure. Such statements include information on, "gifts, liabilities and investment and trust income," among other information. The disclosure requirements for judges contained in D.C. Code § 11-1530 is derived, along with the rest of the language in this code section, from Rule XLIV of the Standing Rules of the Senate in effect at the time the Court Reform Act was passed.[10]

The information is subject only to limited inspection by the judge filing the statement, members of the Commission and a special court convened to review a removal order issued by the Commission. D.C. Code § 11-1530(b)(1).

With the passage of the Ethics in Government Act of 1978, Pub. L. No. 95-521 (hereinafter "the 1978 Act"), judges of the D.C. Courts were also required to make financial disclosure reports under the provisions of that law. Congress recognized the duplication of reporting requirements applicable to the judges of the D.C. Courts, and, as part of the District of Columbia Judicial Efficiency and Improvement Act of 1986, Pub. L. No. 99-573, it exempted judicial officers and employees of the D.C. Courts from the financial disclosure provisions of the 1978 Act. Congress specifically acknowledged its intent to eliminate this duplication. S. Rep. No. 477, 99th Cong., 2nd Sess. 5 (1986); H.R. Rep. No. 326, 99th Cong., 1st Sess. 4 (1985).

The D.C. Courts do not object to the disclosure of financial information to the same extent, and in the same form as required currently of federal judges.

Question 6: It is our understanding the courts are receiving pro-bono lobbying assistance from members of the D.C. Bar on both its budget and on the "District of Columbia Court Employees Whistleblower Protection Act" (H.R. 858) that the House passed earlier this year.

- *Are any members of the D.C. Bar or are D.C. law firms providing pro-bono lobbying assistance on the courts' budget request or on the D.C. Court Employees Whistleblower Protection Act?*

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[10]. Wesley S. Williams, Jr., District of Columbia Courts Reorganization, 1970, 59 Gen. L. J. 477, 520-21 (1971) (Mr. Williams was counsel to the Senate Committee on the District of Columbia). Under paragraph 2 of Rule XLIV (Attachment # 8) such information is sealed.

- *Do any of these attorneys have cases before the courts?*

- *Does this create at least the appearance of a potential conflict of interest?*

Answer. Members of the bar are not providing such *pro bono* services to the Courts. However, as you know, members of the legal profession have a traditional role in working toward improving the administration of justice and the court system. *See e.g.* D.C. Code § 11-744; D.C. Bar R. 1. As the President of the D.C. Bar pointed out in a recent issue of the Washington Lawyer,:[a]s members of the legal profession, we each bear a special responsibility for safeguarding our justice system, and each of us has a special stake in promoting its well-being." In that connection, members of the bar and voluntary bar associations over the years have advocated for adequate funding for the D.C. Courts and for other changes in the system and the administration of justice. One of the voluntary bar associations announced its use of *pro bono* legal services in its efforts to secure adequate funding for the Courts and to ensure an independent court system. We are not aware of anyone contending that these types of activities on behalf of the court system create a conflict or the appearance of a conflict for individual judges who hear cases in which legal representation is provided by Bar members who participate individually or through their organizations in such traditional activities.

Question 7: It has been brought to my attention that one court employee who has cooperated with the GAO auditors may be targeted for retaliation or even dismissal by his or her superiors. When I met with Chief Judge Hamilton last February he assured me in person and in writing that employees should have no fear of retaliation by their superiors for cooperating with the GAO auditors. I appreciate and trust the sincerity of these assurances.

- *To your knowledge are there any employees who may be facing possible disciplinary action or dismissal action by the courts.*

- *Have any of these employees claimed they are being retaliated against for cooperating with GAO?*

Answer. There are Court employees who are facing possible disciplinary action or dismissal action by the courts for job-related performance and attendance issues. To our knowledge, none of the employees in this category have claimed retaliation for cooperating with GAO.

Question 8. Do you support the "District of Columbia Court Employees Whistleblower Protection Act" (H.R. 858) that the House passed earlier this year?

Answer. The D.C. Courts encourage the reporting of waste, fraud, abuse and mismanagement, and for example, include on applications for marriages and bar admissions information on where individuals may make such reports. Career service employees are protected from retaliatory actions through Comprehensive Personnel Policies which establish the grounds upon which court supervisors and managers may impose corrective action and a grievance procedure for processing employee complaints. Corrective actions against an employee can be taken only for legitimate reasons and not for any improper reason such as retaliation against an employee for engaging in

protected activity. Considerable protection is also afforded employees in this area under the First Amendment of the U.S. Constitution.[11] In addition, in this jurisdiction, public policy may afford a cause of action to an employee who claims retaliation for speaking out on matters of public interest before the legislature. *See Carl v. Children's Hospital,* 702 A.2d 159 (D.C. 1997)(en banc). If it appears that additional protections are required, the Joint Committee can modify the Courts' Personnel Policies to address the issue more explicitly. *See* D.C. Code § 11-1701(b)(1).

Speaking generally, the courts have no objection to affording employees additional protection against illegal action. However, the Courts take no position on H.R. 858.

[11] See Isidore Silver, Public Employee Discharge and Discipline, § 15.2 at 15.5-15.6.

COURT OF APPEALS STATISTICS

Table 5

FILINGS BY CATEGORY & RATIO TO DISPOSITIONS

	1996	*1997*	*1998*
Pending Jan. 1	2,443	2,671	2,634
Filings:			
Criminal	703	717	766
Civil	705	649	451
Family	225	243	249
Agency	119	196	139
Special Proceedings	130	148	230
Bar	126	123	108
Total	2,008	2,076	1,943
Reinstated	3	16	15
Available for Disposition	4,454	4,763	4,592
Total Dispositions	1,783	2,129	1,901
Pending Dec. 31	2,671	2,634	2,694
Ratio Dispositions/Filings	88.8%	102.5%	97.8%
Applications for Allowance of Appeal	28	23	25

Table 6

DISPOSITIONS BY METHOD

	1996	*1997*	*1998*
Opinion	368	323	307
Memorandum Opinion and Judgment	504	526	555
Judgment Without Opinion	105	349	77
Order	806	931	962
Total	1,783	2,129	1,901

Table 7

MOTIONS & PETITIONS

	1996	*1997*	*1998*
Procedural Motions	4,528	5,179	5,816
Substantive Motions	1,613	1,907	1,978
Petitions for Rehearing/Rehearing En Banc	203	209	165

Table 8

CRIMINAL APPEALS AS A PERCENT OF CONVICTIONS AFTER TRIAL

	1996	*1997*	*1998*
Conviction After Trial	1,007	1,066	879
Criminal Appeals Filed	703	717	766
Percent Appeals to Convictions	69.8	67.3	87.1

ATTACHMENT # 6
(see Mr. Moran's question # 1)

Table 13

SUPERIOR COURT

NEW CASE FILINGS[a]

	1996	1997	1998	% Change 1997-1998
Civil Division				
Civil Actions	10,078	9,954	9,920	-0.3
Landlord & Tenant	57,141	55,289	57,361	3.7
Small Claims	24,869	24,324	25,447	4.6
Total	92,088	89,567	92,728	3.5
Criminal Division				
Felony Preindictments	10,877	9,833	9,035	-8.1
U.S. Misdemeanors	15,461	19,147	18,435	-3.7
D.C. Misdemeanors	4,785	7,027	4,985	-29.1
Special Proceedings	3,217	3,130	3,267	4.4
Traffic	7,121	8,812	7,854	-10.9
Total	41,461	47,949	43,576	-9.1
Domestic Violence Unit				
Intrafamily	496	3,412	3,516	3.0
Family Division				
Divorce/Custody/Misc.	3,929	4,078	4,009	-1.7
Adoption	332	413	549	32.9
Intrafamily	2,959	-	-	-
Juvenile	4,012	3,395	3,080	-9.3
Abuse & Neglect	1,616	1,639	1,685	2.8
Mental Health/Retardation	1,446	1,589	1,746	9.9
Total	14,294	11,114	11,069	-0.4
Child Support Program[b]				
Paternity/Child Support/ Reciprocal Support[c]	3,294	3,593	2,963	-18.3
Probate Division				
Formal Probate	1,649	1,531	1,645	7.4
Small Estates	626	666	606	-9.0
Conservatorships	-	-	-	-
Guardianships	92	79	102	29.1
Interventions	269	280	313	11.8
Trusts	26	28	15	-46.4
Foreign Proceedings	160	165	146	-11.5
Total	2,822	2,749	2,827	2.8
Tax Division				
Civil Cases	510	365	168	-54.0
Criminal Cases	6	3	-	-100.0
Total	516	368	168	-54.3
Grand Total	154,971	158,752	156,820	-1.2
Monthly Average	12,914	13,229	13,068	-1.3

[a] New cases filed with the court during the year.
[b] Established in August 1998 with cases transferred from the Family Division.
[c] Aggregate figure only available for these specific caseloads.

MULTI-DOOR DISPUTE RESOLUTION ACTIVITY

Table 41

CIVIL DISPUTE RESOLUTION PROGRAM

	1996	*1997*	*1998*	*% Change 1997-1998*
MEDIATION				
Cases Referred	3,658	3,427	2,887	-15.0
Cases Closed	2,549	2,573	2,137	-16.0
Cases Settled	1,060	893	734[a]	[a]
Settlement Rate	42%	35%	34%[a]	[a]
TAX				
Cases Referred	454	477	417	-12.6
Cases Closed	454	477	417	-12.6
Cases Settled	329	346	297	-14.2
Settlement Rate	72%	73%	71%	-2.0
PROBATE				
Cases Referred	-	25	19	-24.0
Cases Closed	-	25	19	-24.0
Cases Settled	-	14	12	-14.0
Settlement Rate	-	56%	63%	7.0
ARBITRATION				
Cases Referred	836	779	853	9.0
Cases Closed	893	765	792	3.0
Cases Settled	428	413	300[b]	[b]
Settlement Rate	48%	54%	338%[b]	[b]

[a] Number/percentage of cases closed which settled after notification of the session or at the mediation session. These figures do not include those cases which settled 30 days after mediation, as did the numbers reported for 1997. Due to unavailability of data, the settlement rate for 1998 is underreported.

[b] Number/percentage of cases closed which settled after assignment to arbitration or upon receiving the arbitration award. These figures do not include those cases which settled 30 days after arbitration, as did the numbers reported for 1997. Due to unavailability of data, the disposition rate for 1998 is underreported.

Table 42

INTAKE & REFERRAL ACTIVITY

	1996	1997	1998	% Change 1997-1998
Type of Dispute:				
Small Claims	523	834	336	-59.7
Landlord & Tenant	183	547	244	-55.4
Domestic Relations	989	992	728	-26.6
Other	826	1,250	354	-71.7
Total Number of Clients Assisted	2,521	3,623	1,662	-54.1

Table 43

SMALL CLAIMS MEDIATION PROGRAM

	1996	1997	1998	% Change 1997-1998
MEDIATION				
Mediations Scheduled	1,764	1,619	1,773	9.5
Mediations Completed	1,764	1,619	1,773	9.5
Agreements Reached	890	747	746	-0.1
Agreement Rate[a]	50%	46%	43%	-3.0

[a] Agreements reached as percent of mediations completed.

Table 44

FAMILY MEDIATION PROGRAM

	1996	1997	1998	% Change 1997-1998
Cases Opened	475	477	647	36.5
Mediations Completed	371	392	331	-15.6
Agreements Reached	144	142	136	-4.2
Agreement Rate[a]	39%	36%	41%	5%

[a] Agreements reached as percent of mediations completed.

SOCIAL SERVICES ACTIVITY

Table 53

JUVENILE SUPERVISION ACTIVITY

	1996	1997	1998	% Change 1997-1998
INTAKE				
Pending Jan. 1	916	702	427	-39.2
Cases Assigned	3,942	3,377	2,033	-39.8
Total	4,858	4,079	2,460	-39.7
Cases Disposed	4,156	3,652	2,054	-43.8
Pending Dec. 31	702	427[a]	406	-4.9
DIAGNOSTIC				
Pending Jan. 1	269	210	181	-13.8
Cases Assigned	728	632	575	-9.0
Total	997	842	756	-10.2
Cases Disposed	787	661	578	-12.6
Pending Dec. 31	210	181	178	-1.7
DIVERSION[b]				
Pending Jan. 1	na	205	230	12.2
Cases Assigned	330	242	375	55.0
Total	330	447	605	35.3
Cases Disposed	125	217	218	0.5
Pending Dec. 31	205	230	387	68.3
SUPERVISION				
Pending Jan. 1	782	1,028	781[c]	-24.0
Cases Assigned	1,139	1,031	890	-13.7
Total	1,921	2,059	1,671	-18.8
Cases Disposed:				
Cases Closed	794	1,190	810	-31.9
Cases Committed	99	75	85	13.3
Total	893	1,265	895	-29.2
Pending Dec. 31	1,028	794	776	-2.3

[a] Decreases are attributed to a new counting system implemented in the Intake Unit during 1997.

[b] The method of counting this caseload was changed in January 1996.

[c] Figure adjusted.

Table 54

CHILD ABUSE SUPERVISION ACTIVITY

	1996	1997	1998	% Change 1997-1998
INTAKE				
Pending Jan. 1	6	2	11	450.0
Cases Assigned	359	458	473	3.3
Total	365	460	484	5.2
Cases Disposed:				
Cases Closed	29	33	45	36.4
Cases Transferred Out	334	416	422	1.4
Total	363	449	467	4.0
Pending Dec. 31	2	11	17	54.5
DIAGNOSTIC				
Pending Jan. 1	197	286	351	22.7
Cases Transferred In	334	406	413	1.7
Total	531	692	764	10.4
Cases Disposed	245	341	482	41.3
Pending Dec. 31	286	351	282	-19.7
SUPERVISION				
Pending Jan. 1	245	228	249	9.2
Cases Transferred In	91	139	165	18.7
Total	336	367	414	12.8
Cases Disposed	108	118	146	23.7
Pending Dec. 31	228	249	268	7.6
Total Pending Dec. 31	516	611	567	-7.2

Table 55

DOMESTIC RELATIONS DIAGNOSTIC CASELOAD

	1996	1997	1998	% Change 1997-1998
Pending Jan. 1	30	24	18	-25.0
Cases Assigned	68	57	99	73.7
Total	98	81	117	44.4
Cases Closed	74	63	89	41.3
Pending Dec. 31	24	18	28	55.6

4) The Public Defender Service has a very good reputation and may be viewed as a model for many States to copy. One possible explanation for its success, however, may be in its light caseload. Unlike most States, it is able to choose its cases and refer all others to the court-appointed attorneys. More than 90% of the cases are assigned court-appointed counsel. With tighter budget constraints and fewer resources, it may be fair to ask if equal protection under the law is being applied equitably in the District's courts.

Question:

- Could you provide me with a rough estimate on the number and percentage of cases where counsel is provided by the Public Defender Service? Could you provide me with the same estimates where counsel is provided by the court-appointed attorneys?

Response:

The Court has sole responsibility for appointing attorneys under the Criminal Justice Act ("CJA"). See D.C. Code 11-2602 (1981); Stanton v. Chase, 497 A.2d 1066,1067 (1985). Staff of the Public Defender Service's Criminal Justice Act office assist the court in administering the appointment process by maintaining records on attorney eligibility and providing information to the court that is relevant to the appointment process. PDS does not choose its own cases; rather, both Public Defender and CJA attorneys take cases to which they are appointed by the court. See id.; D.C. Code 11-2602; 1-2702; Plan for Furnishing Indigent Defense Representation.

The congressionally created indigent defense delivery system in the District of Columbia established the Public Defender Service as criminal law "experts," who are expected to provide representation in primarily the most complex matters and to provide training and support services to private attorneys who accept cases under the CJA. PDS attorneys cannot practice law beyond the representation they provide to PDS clients. In 1998, of the cases where PDS is statutorily authorized to provide representation, PDS attorneys were appointed to roughly 60% of the homicide cases; 21% of all felony cases; 11% of the misdemeanor cases; and 16% of the juvenile cases. The numbers and percentages are as follows:

PDS/CJA APPOINTMENT COMPARISONS[1]

	Felonies	Murder Cases SUBSET OF FELONIES	Misdemeanors	Juveniles	Totals
PDS	1420 - 21.19%	92 – 60%	690 - 10.60%	213 - 16.24%	2323
CJA	5281 - 78.81%	60 – 30%	5817 – 89.39%	1098 - 83.75%	12196
Total	6701	152	6507	1311	14519

[1] Total figures exclude District, Traffic, no-papered and stand-in cases. State of current PDS technology is such that database reflects primarily case assignments made from the lock-up list and do not reflect all appointments through other sources.

ATTACHMENT # 7
(see Mr. Moran's question # 4)

To the extent that the question is aimed at evaluating the distribution of costs, it should be noted that PDS may provide services either directly or indirectly in cases where the attorney appointed to the case is a CJA attorney. For example, PDS attorneys often represent CJA attorneys' clients in drug court hearings and parole matters and often provide sample documents and/or other assistance to CJA attorneys in particular cases.

Question:

- Are their billable hours the same? Is their investigator and support staff paid at comparable levels?

Response

PDS attorneys are salaried employees who do not receive overtime compensation. The average hourly rate for PDS attorneys is approximately $35 as compared to the CJA hourly billing rate of $50. If the salary estimation is based upon a conservative, but more realistic figure of the minimum sixty hours per week that attorneys actually work (as compared to a forty-hour workweek), the average hourly PDS attorney rate drops to $24. Comparing only the costs of in-court time of, for example, a homicide trial which averages ten days, legal representation provided by PDS would be $2,080 less than representation provided by a private attorney. While this does not account for the many hours of preparation required before and during trial, it is illustrative of the lower PDS attorney costs for a case of this type.

Currently, CJA investigators who need not have any training in investigative techniques and practices are compensated at $10 per hour. The average hourly rate for PDS investigators (who undergo rigorous and extensive on-going training), including benefits, is approximately $17.71, but when adjusted for a typical 60-hour workweek averages only $11.81 per hour.

There is no way to determine differences between support staff employed by CJA attorneys and those at the Public Defender Service because there is no set compensation rate for CJA support staff. It is known, however, that PDS support staff salaries are lower than counterparts at federal agencies and, generally, in the private sector where similar functions are performed.

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES.

Sec.
11-2601. Plan for furnishing representation of indigents in criminal cases.
11-2602. Appointment of counsel.
11-2603. Duration and substitution of appointments.
11-2604. Payment for representation.
11-2605. Services other than counsel.
11-2606. Receipt of other payments.
11-2607. Preparation of Budget.
11-2608. Authorization of appropriations.
11-2609. Authority of Council.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation —

(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which such person faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole in custody as a material witness, or seeking collateral relief, as provided in —

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill);

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs. (1973 Ed., § 11-2601; Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(116), 108 Stat. 713.)

Cross references. — As to representation of indigents by Public Defender Service, see § 1-2702.

As to right to counsel in Family Division proceedings, see § 16-2304.

Section references. — This section is referred to in § 11-2607.

Effect of amendments. — Public Law 103-266 amended (1) to remove gender-specific references.

Appropriations approved. — Public Law 103-334, 108 Stat. 2577, the District of Columbia Appropriations Act, 1995, provided that funds appropriated for expenses under § 11-2601 et seq. for the fiscal year ending September 30, 1995, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

Underlying purpose of this section is to insure that persons charged with crimes in the

District of Columbia who are financially unable to obtain an adequate defense are provided with legal representation. Thompson v. District of Columbia, App. D.C., 407 A.2d 678 (1979).

Implementation plan is mandatory in application; that is, in all criminal cases specified under this section an accused who appears in court without counsel shall be informed that he has the right to be represented by appointed counsel if he is financially unable to obtain counsel, and it is the duty of the court or the Criminal Justice Act office to determine whether a person appearing without counsel is eligible for representation. Gregory v. United States, App. D.C., 393 A.2d 132 (1978).

Appointment of counsel not mandatory. — On its face, this section appears to be mandatory; however, if this section is read together with § 11-2602, it becomes apparent that mandatory appointment of counsel for every defendant in every prosecution was not what Congress intended. Section 11-2602 prescribes separate procedures for two different situations, the first where counsel must be assigned, and the second where counsel may be assigned in the exercise of the discretion of the court. Olevsky v. District of Columbia, App. D.C., 548 A.2d 78 (1988).

Either the court or its authorized representative may make findings of eligibility. Gregory v. United States, App. D.C., 393 A.2d 132 (1978).

Subparagraph (3)(A) of this section incorporates, implicitly, an "interests of justice" standard for trial court scrutiny of a prisoner's request for legal assistance. Jenkins v. United States, App. D.C., 548 A.2d 102 (1988).

Amount of appointee's compensation. — The judges of the Superior Court administer this chapter and determine the amount of compensation each appointee will receive. Thompson v. District of Columbia, App. D.C., 407 A.2d 678 (1979).

Appeals. — Because the request for counsel and a § 23-110 motion are part of the same package, the question in every case is not whether the denial of the request for counsel is appealable as a final order in its own right but whether it is appealable as a collateral order before entry of a final order on the § 23-110 motion itself. Jenkins v. United States, App. D.C., 548 A.2d 102 (1988).

Postconviction or collateral relief. — There is no constitutional right to appointment of counsel to develop and pursue postconviction relief. Nor is there commonly a statutory basis entitling a criminal defendant whose conviction has been affirmed on direct appeal to have counsel appointed to pursue collateral relief. Jenkins v. United States, App. D.C., 548 A.2d 102 (1988).

Cited in Harling v. United States, App. D.C., 387 A.2d 1101 (1978); In re A.S.W., App. D.C., 391 A.2d 1385 (1978); Pierce v. United States, App. D.C., 402 A.2d 1237 (1979); Willcher v. United States, App. D.C., 408 A.2d 67 (1979); In re Willcher, App. D.C., 447 A.2d 1198 (1982); Marshall v. District of Columbia, App. D.C., 456 A.2d 28 (1982); Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984); Stanton v. Chase, App. D.C., 497 A.2d 1066 (1985); Cloutterbuck v. Cloutterbuck, App. D.C., 556 A.2d 1082 (1989); Thompson v. Thompson, App. D.C., 559 A.2d 311 (1989); Robinson v. United States, App. D.C., 565 A.2d 964 (1989); FTC v. Superior Court Trial Lawyers Ass'n, 293 U.S. 411, 110 S. Ct. 768, 107 L. Ed. 2d 851 (1990); Doe v. United States, App. D.C., 583 A.2d 670 (1990); Lee v. United States, App. D.C., 597 A.2d 1333 (1991); In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

§ 11-2602. Appointment of counsel.

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he or she has the right to be represented by counsel and that counsel will be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent that person. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all

cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which such person may request the appointment of counsel. (1973 Ed., § 11-2602; Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, §§ 1(b)(117)-(119), 108 Stat. 713.)

Section references. — This section is referred to in § 11-2603.

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

References in text. — "This Act," referred to in the last sentence of this section, appears in the original but probably should read "this chapter."

Appointment of counsel under this section is judicial act, and judicial immunity protects the trial judges from tort claims arising from actions taken pursuant to these appointments. Stanton v. Chase, App. D.C., 497 A.2d 1066 (1985).

Criteria for appointment of counsel. — In order to demonstrate a need for the appointment of counsel to pursue collateral relief, a petitioner usually must satisfy the same criteria that would entitle the petitioner to a hearing on a § 23-110 motion under Pettaway v. United States, 390 A.2d 981, 984 (D.C. 1978); under *Pettaway*, a prisoner is not entitled to a hearing on a § 23-110 motion if the motion, (1) is "palpably incredible' (though not merely 'improbable')," or (2) "fails to state a claim," i.e., the assertions, even if true, would not entitle the prisoner to relief under § 23-110, or (3) is "'vague and conclusory,'" i.e., the "prisoner does not present a factual foundation in some detail." Doe v. United States, App. D.C., 583 A.2d 670 (1990).

Appointment of counsel not mandatory. — On its face, § 11-2601 appears to be mandatory; however, if § 11-2601 is read together with this section it becomes apparent that mandatory appointment of counsel for every defendant in every prosecution was not what Congress intended. This section prescribes separate procedures for two different situations, the first where counsel must be assigned, and the second where counsel may be assigned in the exercise of the discretion of the court. Olevsky v. District of Columbia, App. D.C., 548 A.2d 78 (1988).

Events triggering the right to counsel. — The possibility of imprisonment as a punishment for eventual violation of a civil protection order is too remote as of the time the order is entered to trigger a right to counsel. Clouterbuck v. Clouterbuck, App. D.C., 556 A.2d 1082 (1989).

Sentence not determinative of right to counsel. — Given the remedial character of the Criminal Justice Act, it was not the intent of Congress that the right to counsel should depend on the sentence eventually imposed by the trial judge, or that the judge should be permitted to dispense with providing legal representation for a poor defendant after the fact, by not sentencing him to prison. Olevsky v. District of Columbia, App. D.C., 548 A.2d 78 (1988).

Multiple convictions. — Where an indigent defendant is convicted in a single trial of several offenses, and was deprived of his right to have counsel appointed with respect to one or more of them, then all the convictions are subject to reversal. Olevsky v. District of Columbia, App. D.C., 548 A.2d 78 (1988).

Postconviction relief. — Since neither the constitution nor any other law requires appointment of counsel for purposes of pursuing § 23-110 relief, this section makes clear that any appointment of counsel for that purpose is entrusted to the sound discretion of the trial court. Jenkins v. United States, App. D.C., 548 A.2d 102 (1988); Doe v. United States, App. D.C., 583 A.2d 670 (1990).

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978); Gregory v. United States, App. D.C., 393 A.2d 132 (1978); Willcher v. United States, App. D.C., 408 A.2d 67 (1979); Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984); Lee v. United States, App. D.C., 597 A.2d 1333 (1991).

§ 11-2603. Duration and substitution of appointments.

A person for whom counsel is appointed shall be represented at every stage of the proceedings from such person's initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If

at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom such person had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings. (1973 Ed., § 11-2603; Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(120), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Congressional intent. — By this section, Congress intended to give persons tried in the Superior Court for the District of Columbia the same right to appointment of counsel as those persons would have if they had been tried in the United States District Court for the District of Columbia. Corley v. United States, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Federal statute used for guidance in construction of section. — The District of Columbia Court of Appeals will look to the interpretation of 18 U.S.C. § 3006A for guidance in determining the construction of this section since it was based on that federal provision. Corley v. United States, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Attorney may not be removed arbitrarily. — Once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and his counsel, although gross incompetence or physical incapacity of counsel or contumacious conduct that cannot be cured by a citation for contempt may justify the court's removal of an attorney even over the defendant's objection. Harling v. United States, App. D.C., 387 A.2d 1101 (1978).

Or for mere disagreement over conduct of defense. — Mere disagreement as to the conduct of a defense is not sufficient to permit the removal of any attorney. Harling v. United States, App. D.C., 387 A.2d 1101 (1978).

Petition for writ of certiorari covered by section. — The assistance of compensated counsel in preparation of a petition for writ of certiorari is within the intent and coverage of this section's representation "through appeals." Corley v. United States, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Frivolous petition for rehearing en banc. — This section does not compel the court to appoint new appellate counsel to prepare a frivolous petition for a rehearing en banc. Wise v. United States, App. D.C., 522 A.2d 898 (1987).

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978); Willcher v. United States, App. D.C., 408 A.2d 67 (1979); Henson v. United States, App. D.C., 563 A.2d 1096 (1989), cert. denied, 493 U.S. 1083, 110 S. Ct. 1142, 107 L. Ed. 2d 1047 (1990).

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of $50 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the following maximum amounts:

(1) $1300 for misdemeanor cases;

(2) $2450 for felony cases; and

(3) $1300 for post-trial matters if the underlying case was a misdemeanor or $2450 for post-trial matters if the underlying case was a felony.

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, such person may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915 (a) of title 28, United States Code. (1973 Ed., § 11-2604; Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 2, 30 DCR 5411; Aug. 6, 1993, D.C. Law 10-11, § 201, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 201, 40 DCR 5489; June 13, 1994, Pub. L. 103-266, § 1(b)(121), 108 Stat. 713.)

Cross references. — As to compensation of attorneys in neglect and termination of parental rights proceedings, see § 16-2326.1.

Section references. — This section is referred to in §§ 6-2506, 11-2603, and 16-2326.1.

Effect of amendments. — Section 201 of D.C. Law 10-25 substituted "at a fixed rate of $50 per hour" for "at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the rate of $35 per hour" in (a); substituted "$1,300" for "$900" in (b)(1) and (3); and substituted "$2450" for "$1700" in (b)(2) and (3).

Public Law 103-266 amended (f) to remove gender-specific references.

Temporary amendments of section. — Section 201 of D.C. Law 10-11 substituted "at a fixed rate of $50 per hour" for "at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the rate of $35 per hour" in (a); substituted "$1,300" for "$900" in (b)(1) and (3); and substituted "$2450" for "$1700" in (b)(2) and (3).

Section 601(b)(5) of D.C. Law 10-11 provided that for services rendered as a result of court appointments made on or after October 1, 1993, Section 201 shall apply as of October 1, 1993.

Section 701(b) of D.C. Law 10-11 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 201 of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

Section 601 of D.C. Act 10-32 provides for application of the act.

Legislative history of Law 5-44. — Law 5-44, the "District of Columbia Criminal Justice Act Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-128, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 20, 1983 and October 4, 1983, respectively. Signed by the Mayor on October 11, 1983, it was assigned Act No. 5-69 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-11. — D.C. Law 10-11, the "Omnibus Budget Support Temporary Act of 1993," was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

Legislative history of Law 10-25. — D.C. Law 10-25, the "Omnibus Budget Support Act of 1993," was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

Application of Law 5-44. — Section 4(a) of D.C. Law 5-44 provided that the act shall apply to services rendered as a result of court appointments made after January 31, 1984.

Application of Law 10-25. — Section 601(b)(5) of D.C. Law 10-25 provided that for services rendered as a result of court appointments made on or after October 1, 1993, section 201 shall apply as of October 1, 1993.

Intent of this section is that attorneys appointed thereunder be reasonably and fairly compensated. Thompson v. District of Columbia, App. D.C., 407 A.2d 678 (1979).

Judicial discretion determines a claim under this section. Thompson v. District of Columbia, App. D.C., 407 A.2d 678 (1979).

Rate of compensation. — This section is written in terms of maximums and does not establish a specific rate of compensation. Thompson v. District of Columbia, App. D.C., 407 A.2d 678 (1979).

Entitlement to compensation. — Court appointed counsel who investigate possible ineffectiveness of trial counsel are entitled to compensation pursuant to this section. Doe v. United States, App. D.C., 583 A.2d 670 (1990).

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978); Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984); In re Allen, 120 WLR 2721 (Super. Ct. 1992); In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

§ 11-2605. Services other than counsel.

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed $375 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by such person to a person under this subsection shall not exceed $750, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case. (1973 Ed.,

§ 11-2605; Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 3, 30 DCR 5411; June 13, 1994, Pub. L. 103-266, § 1(b)(122), 108 Stat. 713.)

Cross references. — As to compensation of attorneys in neglect and termination of parental rights proceedings, see § 16-2326.1.

Section references. — This section is referred to in §§ 6-2506, 11-2606, and 16-2326.1.

Effect of amendments. — Public Law 103-266 amended (c) to remove gender-specific references.

Legislative history of Law 5-44. — See note to § 11-2604.

Subsection (a) is identical to 18 U.S.C. § 3006A (e)(1) which provides for defense-related services in the federal district courts. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Reason for ex parte proceeding. — The requirement that eligibility and need for a defense service be determined in an ex parte proceeding affords the defendant an opportunity to present his request to the trial court without prematurely disclosing the merits of his defense to the prosecution. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Counsel should state facts giving rise to need for services. — Although subsection (a) does not require that an application be accompanied by a supporting memorandum, defense counsel should state in the application or a memorandum the facts giving rise to a defendant's need for a particular defense service, thereby affording the trial court an opportunity to weed out frivolous requests without the need for a hearing. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Psychiatric assistance in preparing insanity defense comes within subsection (a). Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Purpose of psychiatric expert under subsection (a) is to assist defense counsel in determining whether there is a basis for a substantial defense of sanity and in preparing and presenting such a defense if after examination it appears justified. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Defendant does not always have the right to a psychiatrist under subsection (a). Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

A court need not appoint a psychiatrist if there is absolutely no reason to think that a plea of insanity would be successful or if a reasonable attorney would not pursue an insanity defense. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

The court may deny a request for a psychiatrist under subsection (a) if the defendant has received sufficient psychiatric assistance from other sources to develop an adequate defense. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

A court may deny a request under this section on the basis that the defendant already had received sufficient psychiatric assistance to prepare his defense. Dobson v. United States, App. D.C., 426 A.2d 361 (1981); In re Morrow, App. D.C., 463 A.2d 689 (1983).

Concern of court in evaluating request for appointment of psychiatrist. — In evaluating the request for appointment of a psychiatrist under this section the court is not concerned with the ultimate question of whether or not the defendant was sane at the time of the offense, but rather whether the evidence of mental disorder is such that a reasonable attorney would pursue an insanity defense. Dobson v. United States, App. D.C., 426 A.2d 361 (1981).

Factors trial court should consider in evaluating request for psychiatrist. — In determining whether psychiatric assistance is necessary, the trial court should consider the defendant's prior psychological history, any reports concerning his mental state, the opinion of those who have had an opportunity to view him, the record and the judge's own evaluation of the defendant's demeanor. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978); Dobson v. United States, App. D.C., 426 A.2d 361 (1981).

In making the determination of whether the services of a psychiatric expert are "necessary for an adequate defense," the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978); Dobson v. United States, App. D.C., 426 A.2d 361 (1981).

Character of expert psychiatric services provided under this section. — This section goes beyond provisions such as § 24-301(a), which provides for a mental examination pursuant to an order of the court, in that a psychiatric expert appointed under this section is not primarily an aide to the court but can be a partisan witness, and his conclusions and opinions need not be reported to either the court or the prosecution. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

The task of a § 24-301(a) expert essentially is to provide the court, in a neutral and detached manner, with an evaluation of the accused's competency to stand trial or of defendant's sanity at the time of the commission of

the offense. In contrast, the expert under subsection (a) of this section acts as a consultant to the defendant, not to the court, and his main purpose is to help determine whether there is a reasonable basis for an insanity defense. Dobson v. United States, App. D.C., 426 A.2d 361 (1981).

$300 limit absent showing by counsel. — Unless defense counsel can show in his application some justification for payments in excess of $300, the trial court should limit compensation to that amount. Gaither v. United States, App. D.C., 391 A.2d 1364 (1978).

Deference must be given to judgment of counsel, but this does not prevent the trial court from exercising its discretion. In re Morrow, App. D.C., 463 A.2d 689 (1983).

Services of chemist. — Trial court did not abuse its discretion in refusing appellant's request for appointment of a chemist to assist the defense in a case where the defendant was convicted of possession of cocaine, possession with intent to distribute marijuana and two counts each of possession of heroin, unlawful ammunition and unregistered firearms. Berry v. United States, App. D.C., 528 A.2d 1209 (1987).

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978); Wilson v. United States, App. D.C., 403 A.2d 333 (1979); White v. United States, App. D.C., 451 A.2d 848 (1982); Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984); Robinson v. United States, App. D.C., 565 A.2d 964 (1989); In re Allen, 120 WLR 2721 (Super. Ct. 1992).

§ 11-2606. Receipt of other payments.

(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a defendant or respondent shall be fined not more than $1,000 or imprisoned not more than one year, or both. (1973 Ed., § 11-2606; Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2.)

Section references. — This section is referred to in § 11-2603.

Congressional intent. — Congress clearly sought to make illegal the request or acceptance of a fee by a court-appointed attorney from his client, except where the court has first found the defendant financially able to bear the cost or funds are found to be available for payment. Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Subsection (b) is not unconstitutionally vague. Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Terms of subsection (b) put a reasonable person on notice that certain conduct is deemed criminal. Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Subsection (b) must be read in conjunction with subsection (a) of this section. Subsection (b) is the penalty provision for conduct proscribed by subsection (a). Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Proof of scienter not necessary for disciplinary sanction. — In a matter of attorney discipline, not criminal conviction under subsection (b) of this section, with its requirement of proof of scienter, it is altogether reasonable to expect attorneys appointed under the Criminal Justice Act to reflect upon their duties, and seek informed advice, well before acting in this area latent with the potential of dishonesty for personal gain. In short, whether respondent's conduct was reckless or somewhat less blameworthy, it trenched upon the statutory ban in a manner that justifies the issuance of an informal admonition. In re L.R., App. D.C., 640 A.2d 697 (1994).

Seeking dual compensation not re-

quired for violation. — Trial court properly refused to instruct the jury that a defendant-attorney must have sought dual compensation in order to be convicted of violating this section. Gregory v. United States, App. D.C., 393 A.2d 132 (1978).

Extent of payment ban an appellate services or ancillary trial motions. — It is a perfectly natural reading of this section to hold that it bars acceptance of payment from a defendant for services performed in the very same case in which the attorney has been appointed to represent the defendant free of charge — whether these services are appellate or include the filing of an ancillary motion in the trial court. In re L.R., App. D.C., 640 A.2d 697 (1994).

Extent of payment ban on motion to reduce sentence. — This section prohibits conditioning the filing of a motion to reduce sentence in the same criminal case upon payment from the client attorney initially was appointed to represent. In re L.R., App. D.C., 640 A.2d 697 (1994).

Entitlement to compensation commences when the lawyer undertakes representation of an eligible client, not after he discharges his legal duties. Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Violation of subsection (b) inherently involves moral turpitude. — Since the unlawful solicitation of money from an indigent client by an attorney appointed under the Criminal Justice Act, in violation of subsection (b) of this section, is always a fraud on the client who is entitled to legal services free of charge and on the judicial system, a violation of subsection (b) of this section falls squarely within the definition of an offense inherently involving moral turpitude, thus warranting disbarment under § 11-2503(a). In re Willcher, App. D.C., 447 A.2d 1198 (1982).

Statutory violation presumptively prejudicial to administration of justice. — Conduct that violates subsection (a) of this section is presumptively prejudicial to the administration of the Criminal Justice Act system, if for no other reason than because of the belief it likely will instill in the defendant that the quality of his representation may yet depend upon gathering together funds to compensate the attorney whom he has not selected. Whether or not this leads to an actual falling out between attorney and client and the need for reappointment by the court is incidental. In re L.R., App. D.C., 640 A.2d 697 (1994).

Instruction on entitlement to compensation proper. — Where attorney prosecuted for violating this section knew that the Criminal Justice Act office had found the defendant eligible for representation, that a document reflecting that determination was before the court and that he would be compensated for his services if he submitted a voucher when the case was completed, the jury could have found him "entitled" to receive compensation within the meaning of this section, and the court did not err in instructing to that effect. Gregory v. United States, App. D.C., 393 A.2d 132 (1978).

Instruction clarifying crime charged. — Where defendant was charged with a violation under subsection (b) of this section, a judge's instruction including a quoting of subsection (a) of this section was not in error and was helpful in clarifying the crime charged. Willcher v. United States, App. D.C., 408 A.2d 67 (1979).

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1979); In re Dwyer, App. D.C., 399 A.2d 1 (1979); In re McBride, App. D.C., 602 A.2d 626 (1992).

§ 11-2607. Preparation of Budget.

The joint committee shall prepare and annually submit to the Mayor of the District of Columbia, in conformity with section 1743 of this title, or to the Mayor's successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (1973 Ed., § 11-2607; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(123), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 substituted "Mayor" for "Commissioner," and substituted "the Mayor's successor" for "his successor" to remove gender-specific references.

References in text. — Section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in this section, appears as § 445 of the Appendix to this title.

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978).

§ 11-2608. Authorization of appropriations.

There are hereby authorized to be appropriated, out of any moneys in the Treasury credited to the District of Columbia, such funds as may be necessary for the administration of this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended. (1973 Ed., § 11-2608; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531.)

Legislative history of Law 1-69. — Law 1-69, the "Criminal Justice Supervisory Board Act of 1978," was introduced in Council and assigned Bill No. 1-211 which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on February 24, 1976 and March 9, 1976, respectively. Signed by the Mayor on March 29, 1976, it was assigned Act No. 1-102 and transmitted to both Houses of Congress for its review.

Cited in In re A.S.W., App. D.C., 391 A.2d 1385 (1978).

§ 11-2609. Authority of Council.

Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter. (1973 Ed., § 11-2609; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2.)

References in text. — Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in this section, is codified in § 1-233(a)(4).

ciprocal disciplinary proceeding for attorneys found guilty of misconduct in another jurisdiction, providing the reciprocal procedure satisfies constitutional requirements. In re Richardson, App. D.C., 692 A.2d 427 (1997).

Cited in In re Borders, App. D.C., 665 A.2d 1381 (1995); In re Fogel, App. D.C., 679 A.2d 1052 (1996); Rider v. United States, App. D.C., 687 A.2d 1348 (1996); In re Tucker, App. D.C., 689 A.2d 1214 (1997); In re Wiley, App. D.C., 697 A.2d 406 (1997).

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES.

Sec.
11-2604. Payment for representation.
11-2607. Preparation of Budget.
Sec.
11-2608. Authorization of appropriations.
11-2609. [Repealed.]

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

Appropriations approved. — Public Law 104-194, 110 Stat. 2356, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under § 11-2601 et seq. (the District of Columbia Criminal Justice Act, 88 Stat. 1090; Pub. L. 93-412) for the fiscal year ending September 30, 1997, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

When appointment is necessary. — Having determined that a hearing on a motion attacking conviction was necessary, the court was obligated to appoint counsel to represent defendant at that hearing. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

§ 11-2602. Appointment of counsel.

Postconviction relief.

Having determined that a hearing on a motion attacking conviction was necessary, the court was obligated to appoint counsel to represent defendant at that hearing. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

Failure to waive right to counsel. — Where there was nothing in the record showing that defendant was either informed of his right to counsel or that he waived that right, defendant was denied his statutory right to be represented by counsel during the hearing on his first motion. For that reason the first hearing was a nullity and did not serve as a bar to a successive § 23-110 petition. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of $50 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 805, 42 DCR 3684.)

Effect of amendments.

D.C. Law 11-52 substituted "$48" for "$50" in the first sentence of (a).

Emergency act amendments.

For temporary amendment of section, see § 505 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 805 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 1001(b) of D.C. Act 11-44 provided that § 505 of that act shall expire on October 1, 1995.

Section 1701(b) of D.C. Act 11-124 provided that § 805 of that act shall expire on October 1, 1995.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Expiration of § 805 of Law 11-52. — Section 1701(b) of D.C. Law 11-52 provided that § 805 of the act shall expire on October 1, 1995.

§ 11-2605. Services other than counsel.

Counsel should state facts giving rise to need for services.

Although post-trial investigative services are allowable under subsection (a), where defendant failed to make the required showing that the services were necessary, it was not an abuse of discretion to deny a request for those services. Gresham v. United States, App. D.C., 654 A.2d 871, cert. denied, 516 U.S. 854, 116 S. Ct. 155, 133 L. Ed. 2d 99 (1995).

§ 11-2607. Preparation of Budget.

The joint committee shall prepare and include in its annual budget requests for the District of Columbia court system estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (1973 Ed., § 11-2607; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(123), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(a).)

Effect of amendments.

Section 11262(a) of Pub. L. 105-33, 111 Stat. 760, rewrote the section.

§ 11-2608. Authorization of appropriations.

There are authorized to be appropriated through the State Justice Institute such sums as may be necessary to pay for representation by private attorneys and related services under this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended. (1973 Ed., § 11-2608; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(b).)

Effect of amendments. — Section 11262(b) of Pub. L. 105-33, 111 Stat. 760, rewrote the section.

§ 11-2609. Authority of Council.

Repealed. August 5, 1997, 111 Stat. 760, 105 Pub. L. 33, § 11262(c)(1).

CHAPTER 27. PUBLIC DEFENDER SERVICE.

Sec.
1-2701. Redesignation of Legal Aid Agency as Public Defender Service.
1-2702. Persons who may be represented; appointment of private attorneys; determination of financial eligibility.
1-2703. Board of Trustees.
1-2704. Director and Deputy Director; appointment; duties; membership in bar required.
1-2705. Employment of attorneys and other personnel; compensation; private practice by attorneys not permitted.
1-2706. Annual report and audit.
1-2707. Appropriation; public grants and private contributions.
1-2708. Transition provisions.

§ 1-2701. Redesignation of Legal Aid Agency as Public Defender Service.

The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereafter in this chapter referred to as the "Service"). (July 29, 1970, 84 Stat. 654, Pub. L. 91-358, title III, § 301; 1973 Ed., § 2-2221.)

§ 1-2702. Persons who may be represented; appointment of private attorneys; determination of financial eligibility.

(a)(1) The Service is authorized to represent any person in the District of Columbia who is a person described in any of the following categories and who is financially unable to obtain adequate representation:

(A) Persons charged with an offense punishable by imprisonment for a term of 6 months, or more;

(B) Persons charged with violating a condition of probation or parole;

(C) Persons subject to proceedings pursuant to Chapter 5 of Title 21 (Hospitalization of the Mentally Ill);

(D) Persons for whom civil commitment is sought pursuant to Title III of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. § 3411 et seq.) or the provisions of §§ 24-601 to 24-611;

(E) Juveniles alleged to be delinquent or in need of supervision;

(F) Persons subject to proceedings pursuant to § 24-527 (relating to commitment of chronic alcoholics by court order for treatment);

(G) Persons subject to proceedings pursuant to § 24-301 (relating to confinement of persons acquitted on the ground of insanity); or

(H) Persons incarcerated in District of Columbia corrections facilities, not including community residential facilities or community-based corrections facilities, in administrative matters related to their incarceration before any court or administrative body.

(2) The Service shall not represent an inmate in a suit for damages against the District of Columbia or its employees for conduct within the scope of their employment, nor shall it represent an inmate in a suit in which the payment of attorney's fees or costs is sought against the District of Columbia

or its employees for conduct within the scope of their employment. Representation may be furnished at any stage of a proceeding, including appellate, ancillary, and collateral proceedings. Not more than 60 per centum of the persons who are annually determined to be financially unable to obtain adequate representation and who are persons described in the above categories may be represented by the Service, but the Service may furnish technical and other assistance to private attorneys appointed to represent persons described in the above categories. The Service shall determine the best practicable allocation of its staff personnel to the courts where it furnishes representation.

(b) The Service shall establish and coordinate the operation of an effective and adequate system for appointment of private attorneys to represent persons described in subsection (a) of this section, but the courts shall have final authority to make such appointments. The Service shall report to the courts at least quarterly on matters relating to the operation of the appointment system and shall consult with the courts on the need for modifications and improvements.

(c) Upon approval of its Board of Trustees, the Service may perform such other functions as are necessary and appropriate to the duties described above.

(d) The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the court in its discretion shall require. Whoever in providing this information knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. (July 29, 1970, 84 Stat. 654, Pub. L. 91-358, title III, § 302; 1973 Ed., § 2-2222; Dec. 10, 1987, D.C. Law 7-52, § 2(a), (b), 34 DCR 6891.)

Cross references. — As to representation of indigents generally, see § 11-2601 et seq. As to right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

Legislative history of Law 7-52. — Law 7-52 was introduced in Council and assigned Bill No. 7-173, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-85 and transmitted to both Houses of Congress for its review.

Service to represent involuntary mental illness patient. — The Public Defender Service should be appointed to represent a patient who has been involuntarily detained on the grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. In re Barnard, 455 *P.2d 1370 (D.C. Cir.* 1971).

Alleged ineffectiveness of Service Attorney. — If a real conflict of interest exists as to whether the alleged ineffectiveness of a Public Defender Service trial attorney may have reached constitutional proportions the Service may be permitted to withdraw as appellate counsel. However, the Service is not entitled to carte blanche authority to withdraw from the appellate handling of a case which was tried by another of its attorneys simply by stating that "ethical considerations" are present. Angarano v. United States, App. D.C., 329 A.2d 453 (1974).

A specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. Angarano v. United States, App. D.C., 329 A.2d 453 (1974).

Cited in United States v. Bryant, 471 F.2d 1040 (D.C. Cir. 1972), cert. denied, 409 U.S. 1112, 93 S. Ct. 923, 34 L. Ed. 2d 693 (1973).

§ 1-2703. Board of Trustees.

(a) The powers of the Service shall be vested in a Board of Trustees composed of 11 members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b)(1) Members of the Board of Trustees shall be appointed by a panel consisting of:

(A) The Chief Judge of the United States District Court for the District of Columbia;

(B) The Chief Judge of the District of Columbia Court of Appeals;

(C) The Chief Judge of the Superior Court of the District of Columbia; and

(D) The Mayor of the District of Columbia.

(2) The panel shall be presided over by the Chief Judge of the District of Columbia Court of Appeals (or in his absence, the designee of such Judge). A quorum of the panel shall be 4 members.

(3) Four of the 11 members of the Board of Trustees shall be non-attorneys and shall be residents of the District of Columbia.

(4) Judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees.

(5) The term of office of a member of the Board of Trustees shall be 3 years. No person shall serve more than 2 consecutive terms as a member of the Board of Trustees. A vacancy in the Board of Trustees shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The trustees of the Legal Aid Agency for the District of Columbia in office on the date of enactment of this chapter shall serve the unexpired portions of their terms as trustees of the Service.

(d) For the purposes of any action brought against the trustees of the Service, they shall be deemed to be employees of the District of Columbia. (July 29, 1970, 84 Stat. 655, Pub. L. 91-358, title III, § 303; 1973 Ed., § 2-2223; Mar. 6, 1979, D.C. Law 2-155, § 2, 25 DCR 6986; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 17.)

Legislative history of Law 2-155. — Law 2-155 was introduced in Council and assigned Bill No. 2-241, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 28, 1978, it was assigned Act. No. 2-322 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accord-

ingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Jones v. Public Defender Serv., 553 F. Supp. 1031 (D.D.C. 1983), aff'd, 720 F.2d 215 (U.S. App. 1983); Sims v. District of Columbia, App. D.C., 531 A.2d 648 (1987).

§ 1-2704. Director and Deputy Director; appointment; duties; membership in bar required.

The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. (July 29, 1970, 84 Stat. 656, Pub. L. 91-358, title III, § 304; 1973 Ed., § 2-2224; Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Cited in Jones v. Public Defender Serv., 553 F. Supp. 1031 (D.D.C. 1983), aff'd, 720 F.2d 215 (U.S. App. 1983).

§ 1-2705. Employment of attorneys and other personnel; compensation; private practice by attorneys not permitted.

(a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director, but shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person. (July 29, 1970, 84 Stat. 656, Pub. L. 91-358, title III, § 305; 1973 Ed., § 2-2225; Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740; Dec. 10, 1987, D.C. Law 7-52, § 2(c), 34 DCR 6891.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-612.16 and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-2704.

Legislative history of Law 7-52. — See note to § 1-2702.

Cited in Sims v. District of Columbia, App. D.C., 531 A.2d 648 (1987).

§ 1-2706. Annual report and audit.

(a) The Board of Trustees of the Service shall submit a fiscal year report of the Service's operations to the Congress of the United States, to the chief judges of the federal courts in the District of Columbia and of the District of Columbia courts, and to the Mayor of the District of Columbia. The report shall include a statement of the financial condition of the Service and a summary of services performed during the year.

(b) The Board of Trustees shall annually arrange for an independent audit to be prepared by a certified public accountant or by a designee of the Administrative Office of the United States Courts. (July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title III, § 306; 1973 Ed., § 2-2226.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-2707. Appropriation; public grants and private contributions.

(a) For the purpose of carrying out the provisions of this chapter, there are authorized to be appropriated for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary to implement the purposes of this chapter. Such sums shall be appropriated for the judiciary to be disbursed by the Administrative Office of the United States Courts to carry on the business of the Service. The Administrative Office, in disbursing and accounting for such sums, shall follow, so far as possible, its standard fiscal practices. The budget estimates for the Service shall be prepared in consultation with the Mayor of the District of Columbia.

(b) Upon approval of the Board of Trustees, the Service may accept public grants and private contributions made to assist it in carrying out the provisions of this chapter. (July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title III, § 307; 1973 Ed., § 2-2227.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-2708. Transition provisions.

All employees of the Legal Aid Agency for the District of Columbia on the date of enactment of this chapter shall be deemed to be employees of the Service and shall be entitled to the same compensation and benefits as they are entitled to as employees of the Legal Aid Agency for the District of Columbia. (July 29, 1970, Pub. L. 91-358, title III, § 308; 1973 Ed., § 2-2228.)

PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS UNDER THE DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

I. Provision for furnishing counsel.
II. Administrative organization.
III. Determination of need for counsel.
IV. Appointment of counsel.
V. Compensation.
VI. Investigative, expert and other services.
VII. Forms.
VIII. Effective date.

Index follows Rules.

Pursuant to the provisions of the District of Columbia Criminal Justice Act of 1974 (Pub. L. 93-412), the Joint Committee on Judicial Administration has adopted the following Plan for the adequate representation of any person, otherwise financially unable to obtain adequate representation, who is within the scope of either the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Pub. L. 91-358, 84 Stat. 473), or both.

I. Provision for furnishing counsel.

This Plan provides for the furnishing of legal services by the Public Defender Service of the District of Columbia, and for the appointment of private attorneys and law students to represent the remainder of the persons there listed. Since the duty of affording legal services properly rests on the Bar of the District of Columbia, all qualified members of the Bar will be expected to comply with such Plan including the answering of such questionnaires as may be propounded thereunder. Appointments under this Plan are not a matter of right, and will be made only with due regard to the experience and qualifications of the individual attorney.

II. Administrative organization.

A. *Supervisory functions.* 1) Joint Committee of [on] Judicial Administration. The Joint Committee on Judicial Administration shall oversee the operation of this Plan.

2) Complaints. Whenever a judge receives a complaint prior to trial relating to the performance of counsel which he is unable to adjust by informal methods, he may refer the matter to the office of Bar Counsel under the general jurisdiction of the Disciplinary Board [Disciplinary Division] of the District of Columbia Bar. Such counsel shall investigate the complaint and render a report to the judge with such recommendations as the counsel deems appropriate.

In the event that a judge considers that an attorney should be removed from the central file of Criminal Justice Act attorneys, he shall refer such report to a committee of judges (active or retired) to be appointed by the Joint Committee, which shall have the authority upon consideration of such report to terminate the eligibility of an attorney for appointment in future cases. The committee may also, in its discretion, refer the report and its findings to Bar

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Counsel for further consideration in accordance with rules applicable [to] the Disciplinary Board [Disciplinary Division].

All proceedings, investigations, recommendations and reports shall be confidential unless waived by the attorney, except the decision of the committee of judges to terminate the eligibility of an attorney for future appointments.

B. *Public Defender Service and the appointment system.* 1) In order to provide the courts with a larger panel of qualified members of the Bar upon which to draw for the defense of indigent defendants, the Joint Committee shall mail to all members of the Bar of the District of Columbia residing in the metropolitan area who are not government employees, a questionnaire concerning their qualifications to act as defense counsel in criminal and juvenile delinquency cases. Such questionnaires shall require of the recipients to provide information as follows: (a) Whether the attorney wishes to volunteer to act as defense counsel in criminal or juvenile delinquency cases, (b) whether such attorney would or would not be prepared to waive any compensation, (c) the number of appointments such attorney would be willing to accept during any 1 calendar year, and (d) an inquiry of senior partners in law firms to determine whether those partners are willing to designate on a projected basis 4 months in advance, 1 or more firm members or associates who will be made available for appointment to criminal cases where such appointment will not foreseeably conflict with other responsibilities.

No attorney shall be appointed to cases in excess of the number specified in his reply to the questionnaire. Appointments shall be made only of attorneys who volunteer, unless the Joint Committee shall hereafter amend this Plan.

2) On the basis of the information obtained by such questionnaires, the Public Defender Service shall develop and maintain a central file of attorneys for appointment in the proceedings covered by the Plan. The central file shall contain information concerning the experience and other qualifications of all attorneys, not government employees, who are members of the Bar of the District of Columbia, engaged in the practice of law in the metropolitan Washington area. From this file the Public Defender Service shall develop panels of attorneys for the Superior Court to receive appointments in the proceedings covered by this Plan. The active administration and coordination of this Plan shall be lodged in the Public Defender Service but the power of appointment shall reside in the trial court. The Court of Appeals shall develop a panel for appointments of attorneys for appeals.

3) Appointments shall be arranged to insure full use of the attorneys of the Public Defender Service, and qualified law students participating in clinical programs.

4) The panels of attorneys developed for the Superior Court shall be periodically reexamined by the Public Defender Service to insure that such panels are kept current. The Court of Appeals shall ensure the currency of its panels.

5) The Public Defender Service shall screen and make recommendations concerning all requests by attorneys for voluntary removal from the appointment panels. A final determination in cases involving removal will be rendered by the court(s). (Amended, Oct. 18, 1993.)

Editor's note. — The Criminal Justice Act, referred to in the first sentence in the second paragraph of section A.2, is the Act of September 3, 1974, 88 Stat. 1089, Pub. L. 93-412.

III. Determination of need for counsel.

A. *When appearing before Court in criminal or juvenile proceeding.* In every criminal case in which a person is charged with a felony or misdemeanor or other offense involving the possibility of imprisonment, or with juvenile delinquency or in need of supervision, or with a violation of probation, and appears without counsel, the Court shall advise the person that he has the right to be represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and if he is financially unable to obtain counsel.

In all cases, it shall be the duty of a judge or hearing officer to determine whether a person is financially unable to obtain adequate representation. All statements made by a person in such an inquiry shall be either (1) by affidavit sworn to before a judge, a hearing officer, a court clerk, or his deputy, or a notary public, or (2) under oath in open court before a judge or hearing officer.

B. *Counsel for person arrested when representation is required by law.* Where a person arrested has been represented by counsel before his presentation before the Court under circumstances where such representation is required by law, his counsel may subsequently apply for approval of compensation. If the Court finds such a person was financially unable to obtain an adequate defense at the time the representation was furnished, and that such representation was required by law, compensation will be allowed to cover out-of-court time expended by the attorney during the arrest period. If the person represented is unavailable at the time counsel applies to the Court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the Court for approval based on the arrestee's financial condition at the time the services were rendered, and a showing that such representation was required by law.

C. *Other appointments.* The Court may proceed as under Section A supra to make an appointment of counsel for a person other than one described in B, above, as provided for in Section 11-2601 of the District of Columbia Code.

In all cases where the appointment of counsel is discretionary, persons shall be advised that counsel may be appointed to provide representation in the event of financial inability, and the Court shall in all cases advise persons that the assignment of counsel may be requested. Application for the appointment of counsel shall be addressed to the Court and shall demonstrate (1) that the interests of justice require that counsel be appointed and (2) that such person is financially unable otherwise to obtain representation. If a person is not before the Court, the Court may, with or without requiring the personal appearance of the person for such purpose, act on the basis of an application alone, or the application as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the person. The Court may authorize such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

D. *Redetermination of need.* If at any time after the appointment of counsel, the Court finds that a person is financially able to obtain counsel or to make

partial payment for representation, he may terminate the appointment of counsel, order that any finds [funds] available to the person be paid as provided in the District of Columbia Criminal Justice Act, or take other appropriate action. In the event that funds are ordered paid to the appointment attorney, the amount so paid shall be deducted by the Court in determining the total compensation to be paid such attorney.

If at any time after his appointment, counsel has reason to believe that a person is financially able to obtain counsel or to make partial payment for counsel, he shall advise the Court which appointed him that there is a question concerning the person's right to appointed counsel. The Court may conduct a hearing to determine the person's financial status, but shall not require the appointed attorney to disclose confidential information concerning his client's financial status if the attorney states that such information might be incriminating to the person. The Court may appoint, where appropriate, separate counsel to represent the person for purposes of any hearing to determine the person's right to have appointed counsel.

If at any stage of the proceedings, the Court finds that a person is financially unable to pay counsel whom he had retained, or to obtain other counsel, the Court may appoint counsel in accordance with the general procedure set forth in this Plan. An attorney thus appointed may claim compensation for services rendered after the date of his appointment. The Court will ordinarily not appoint the same attorney who was previously retained.

Editor's note. — The District of Columbia Criminal Justice Act, referred to in the first sentence of section D, is the Act of September 3, 1974, 88 Stat. 1089, Pub. L. 93-412.

IV. Appointment of counsel.

Upon finding, in a proceeding within the scope of sections A or C of Title III of this Plan, that a person is financially unable to obtain adequate representation, the Court shall promptly appoint counsel to represent the person. The Court may appoint counsel in proceedings within the scope of section F of Title III and approve representation furnished pursuant to section B of Title III. In appointing such counsel, the Court shall appoint a Public Defender Service attorney, a private attorney or law student selected from the appropriate panel as approved by the Court. A person shall not have the right to select his appointed counsel from the Public Defender Service, from a panel, or the nature of the case in making an appointment, nor from appointing any attorney on any panel without regard to the usual procedures in exceptional cases as justice may require.

The Court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In an extremely difficult case, where the Court finds that it is in the interest of justice to appoint 2 attorneys to represent 1 defendant, and so states in its order, 2 attorneys may be appointed.

Appointed counsel shall, unless excused by order of Court, continue to act for the person throughout the proceedings. In cases where an appeal is available as of right, trial counsel appointed hereunder shall advise the person of this right to appeal and of his right to counsel on appeal. If requested to do so by the person, counsel shall file a timely notice of appeal and shall continue to

represent the person unless or until he is relieved by the District of Columbia Court of Appeals.

If appointed counsel wishes to be relieved prior to the termination of the proceedings in the trial court, he shall communicate his request, in writing, to the judge before whom the case is then pending. Such request shall reflect that a copy of the request has been served on his client.

In the interests of justice, the Court before whom a case is pending may substitute 1 appointed counsel for another at any stage of the proceeding, except that counsel to handle the appeal shall be appointed by the appellate court.

Editor's note. — The reference to section F of Title III in the second sentence in the first paragraph of this Title is incorrect, as Title III has no section F.

V. Compensation.

A. *Individual payments under this Plan.* Payment of fees and expenses to counsel appointed under this Plan, and payment for investigative, expert, and other services incurred pursuant to Title IV hereof, shall be made in accordance with such rules and regulations and guidelines, as have been or may be prescribed from time to time by the Superior Court and/or the District of Columbia Court of Appeals, and in accordance with the policies of the Fiscal Officer of the District of Columbia Courts. Upon approval of claims for compensation, they shall be forwarded to the Fiscal Officer of the District of Columbia Courts for payments.

B. *Schedule of maximum fees for counsel.* The following fees are hereby prescribed:

1) Maximum hourly rate for counsel. The maximum hourly rate for attorneys shall not exceed the hourly scale established by the provisions of D.C. Code § 11-2604(a).

2) Maximum amounts for counsel. The maximum compensation to be paid to an attorney shall not exceed the maximum amounts established by D.C. Code § 11-2604(b). For representation of a defendant before the Family Division, the maximum compensation shall not exceed the maximum established in D.C. Code § 11-2604(b)(2), above, for a felony for each attorney in cases in which acts are charged which would constitute felonies if committed by an adult, and the maximum established in D.C. Code § 11-2604(b)(1), above, for a misdemeanor for each attorney in cases involving persons in need of supervision and in which only acts which would constitute misdemeanors if committed by an adult are charged. For representation on appeal in cases involving a felony or misdemeanor conviction, or a finding of juvenile delinquency on the basis of acts, which, if committed by an adult, would constitute a felony or misdemeanor, or in cases involving persons adjudicated in need of supervision, the maximum compensation shall not exceed the maximum established in D.C. Code § 11-2604(b) for an appeal for each attorney.

The maximum provided in the last sentence of [18 U.S.C. § 3006A(d)(2)] is established as the maximum for each attorney in each court for any of the following representations:

(a) A post-trial motion made after entry of judgment,

(b) A probation revocation proceeding,

(c) A review of disposition proceeding in the Family Division,

(d) A parole revocation proceeding,

(e) Representing a material witness,

(f) Representing a person seeking relief under D.C. Code [§] 16-1901 or D.C. Code [§] 23-110.

(g) Representing a person where the Sixth Amendment to the Constitution requiring the appointment of counsel or for whom, in a case in which he faces a loss of life or liberty, any District of Columbia law requires the appointment of counsel,

(h) Extradition proceedings, and

(i) Representing a person in proceedings pursuant to D.C. Code [§] 24-302 or Chapter 5 of Title 21 of the District of Columbia Code (hospitalization of the mentally ill).

Representation of a person on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

If 1 attorney represents 2 or more persons whose appeals are heard together, the attorney's total compensation shall not exceed the statutory maximum for 1 person, unless the case involves extended or complex representation.

An appointed attorney may claim compensation for services furnished by his partner or associate within the maximum compensation allowed.

3) Waiving maximum counsel fees. Payment in excess of any maximum amount provided in subpart 2 of section B above, may be made for extended or complex representation whenever such payment is necessary to provide a fair compensation. Any such request for excess compensation shall be submitted by the attorney for approval by the Chief Judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the Chief Judge of the Court of Appeals upon recommendation of the presiding judge in the case.

C. *Payment for services other than counsel.* 1) Previously approved services. Where counsel has received prior authorization for services, the maximum which may be paid per person so authorized shall not exceed $300 exclusive of reimbursement for expenses, other than for reporter's transcript of proceedings, reasonably incurred, unless payment in excess of that limit is certified and approved by the presiding judge in the case, as necessary to provide fair compensation for services of an unusual character or duration.

2) Services furnished without prior request. The total cost of all services obtained without prior authorization may not exceed a total of $150 and expenses reasonably incurred. Waiver of such limit is not provided for in this Plan. No counsel may incur, without prior authorization, any expense for court reporter's transcript of proceedings.

D. *Time limitation on claims.* No claim for compensation or reimbursement will be honored unless filed within 60 days of the termination of the representation, provided that if the 60th calendar day falls on a weekend or holiday, the due date will be the court day immediately following the 60th calendar day.

E. *Travel outside metropolitan area.* Attorneys appointed to represent indigent persons who incur expenses for travel in connection with such representation outside the Washington, D.C. metropolitan area (i.e., the City of Washington, D.C., the counties of Montgomery and Prince George's in the State of Maryland, the counties of Arlington and Fairfax and the City of Alexandria in the State of Virginia) without prior approval of the Court shall not be reimbursed for such travel expenses. (Amended, Oct. 18, 1993.)

Editor's note. — The bracketed reference to 18 U.S.C. § 3006A(d)(2) in B of this Title was inserted by the Publisher.

VI. Investigative, expert and other services.

A. *Upon request.* Counsel (whether or not appointed under the District of Columbia Criminal Justice Act) for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his case may request such services in an ex parte application before a judge. Upon finding, after appropriate inquiry in such ex parte proceeding, that the services are necessary, and that the person is financially unable to obtain them, the Court shall authorize counsel to obtain the services. The judge may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by law.

B. *Without prior request.* A counsel, appointed under the District of Columbia Criminal Justice Act, may obtain, subject to later review, investigative, expert, or other services except for reporter's transcript of proceedings without prior authorization, if necessary for an adequate defense. The total cost of services obtained without prior authorization however, may not exceed a maximum of $150 and expenses reasonably incurred, and no greater amount may be authorized regardless of the number of persons used or the character of services. A sworn application may be made by counsel to the Court for the ex parte review by the judge and for ratification of such expenses. Such expenditures without prior Court authorization are not favored, and in addition to showing that such expenditures were "necessary for an adequate defense" and that the person was financially unable to obtain them, the application for ratification must show why proper authorization could not have been obtained.

C. *Quality of services.* The Court will in all cases hold counsel accountable to obtain only qualified investigators or experts.

Editor's note. — The District of Columbia Criminal Justice Act, referred to in the first sentences in sections A and B, is the Act of September 3, 1974, 88 Stat. 1089, Pub. L. 93-412.

VII. Forms.

Where standard forms have been approved by the Superior Court and/or the District of Columbia Court of Appeals, such forms shall be used by the court(s), the Public Defender Service and counsel. Additional forms and records may be prescribed by the court(s).

Editor's note. — Title VII of the Plan, above, was originally numbered Title VIII, but was renumbered for the sake of internal consistency.

VIII. Effective date.

This plan shall take effect on the 29th day of November, 1974.

APPROVED BY:

/s/ Gerard S. Reilly
Chief Judge, District of Columbia Court of Appeals

/s/ Fred L. McIntyre
Associate Judge, Superior Court of the District of Columbia

APPENDIX Continued

pline Respondent by issuing a private reprimand. (Maryland BC Docket 84 67-09 5, May 29, 1984)

Respondent's misconduct must be balanced against the purposes of the disciplinary process. The Board's recommendation for public censure, based on the circumstances, is clearly excessive. An informal admonition is, in my opinion, a more appropriate sanction.

/s/ Ann Cuningham
ANN CUNINGHAM

Date: January 4, 1985

John J. STANTON, Appellant,

v.

Carl W. CHASE, Appellee.

No. 81-233.

District of Columbia Court of Appeals.
Submitted March 12, 1985.
Decided Aug. 29, 1985.

Slander action was dismissed by the Superior Court, District of Columbia, Tim Murphy, J., and plaintiff appealed. The Court of Appeals, Pryor, C.J., held that Deputy Chief of Criminal Justice Act office was insulated by judicial immunity from liability for alleged misstatements regarding plaintiff attorney's professional disciplinary status made to judge in private meeting in response to judge's request for information for purpose of assigning attorneys to represent indigent clients.

Affirmed.

1. Judges ⇐36

Judicial immunity will protect a judge from liability for a given act, if act was not taken in clear absence of all jurisdiction and if act was judicial act.

2. Judges ⇐36

For purpose of judicial immunity, a "judicial act" is one which is normally performed by judge and one performed in relation to parties dealing with judge in his judicial capacity.

See publication Words and Phrases for other judicial constructions and definitions.

3. Judges ⇐36

Appointment by superior court judges of counsel under the Criminal Justice Act [D.C.Code 1981, § 11-2602] is a "judicial act" as to which immunity applies.

4. Courts ⇐55

Judicial immunity extends to other officers of government whose duties are related to the judicial process, particularly those court employees performing ministerial functions at direction of judge.

5. District and Prosecuting Attorneys ⇐10

Deputy Chief of Criminal Justice Act office who allegedly made factual misstatements about another attorney's professional disciplinary status to judge in private meetings held solely for purpose of assigning attorneys to represent indigents under Criminal Justice Act [D.C.Code 1981, § 11-2602] was insulated by judicial immunity from liability for slander.

John J. Stanton pro se.

Inez Smith Reid, Corporation Counsel, and John H. Suda, Principal Deputy Corporation Counsel, Charles L. Reischel, Deputy Corporation Counsel, Lutz Alexander Prager and Karen J. Krueger, Asst. Corporation Counsel, Washington, D.C., were on brief, for appellee.

Before PRYOR, Chief Judge, and NEWMAN and TERRY, Associate Judges.

PRYOR, Chief Judge:

In this case, appellant John J. Stanton alleges that appellee Carl W. Chase slandered him on two occasions in statements made to trial judges of the Superior Court. Both of appellee's allegedly slanderous statements were made in private meetings with the trial judges, held for the purpose of assigning attorneys to represent indigent clients under the Criminal Justice Act (hereinafter the CJA) D.C.Code §§ 11-2601 *et seq.* (1981 & 1982 Supp.). In the trial court, appellee made a motion to dismiss appellant's complaint, which was granted. On appeal, appellant claims that the trial court erred in granting the motion. We find that appellee's statements here fall within the scope of judicial immunity which is accorded persons performing ministerial functions at the direction of a judge in furtherance of a judicial act. Consequently, we conclude that the statements were absolutely immune and the motion to dismiss was properly granted.

I

The CJA was enacted "to insure that persons charged with crimes in the District of Columbia who are financially unable to obtain an adequate defense ... are provided with legal representation." *See Thompson v. District of Columbia*, 407 A.2d 678, 680 (D.C.1979) (citation omitted). Counsel furnishing representation under the CJA are selected from panels designated and approved by the court. *See* D.C.Code § 11-2602 (1981). Under the CJA, the court has sole responsibility for the appointment of counsel to represent persons financially unable to obtain representation. *Id.*

Appellee, Carl W. Chase, is Deputy Chief of the Criminal Justice Act Office of the District of Columbia Public Defender Service (hereinafter CJA Office). As Deputy Chief of the CJA Office, Mr. Chase is authorized to maintain records concerning attorneys eligible to participate in the CJA program, and to receive information from such attorneys on their availability to accept cases. In addition, Mr. Chase is required to confer with judges, as needed, to assist them in the appointment of counsel. Mr. Chase's role in these conferences is to respond to the requests of the assigning judge for information on matters such as clients needing representation, the availability and background of attorneys approved for CJA appointment, and any logistical problems posed by the assignment of a particular attorney to a given case. The conferences between Mr. Chase and trial judges concerning the appointment of CJA attorneys are private.

Appellant, Mr. John J. Stanton, is an attorney who has represented indigent clients under the CJA. On February 15, 1983, this court's Board of Professional Responsibility (the Board) recommended that appellant be suspended from the practice of law for one year and one day for neglecting, and opposing the interests of, two of his CJA clients. *See In re Stanton*, 470 A.2d 272, 273-81 (D.C.1983), *cert. denied*, — U.S. —, 104 S.Ct. 2347, 80 L.Ed.2d 821 (1984) (hereinafter *Stanton I*). Also on February 15, 1985, the Board, in two additional cases, recommended that appellant be suspended from the practice of law for sixty days for neglect of legal matters and failure to seek the lawful objectives of two clients. *See In re Stanton*, 470 A.2d 281, 283-92 (D.C.1983), *cert. denied*, — U.S. —, 104 S.Ct. 2347, 80 L.Ed.2d 821 (1984) (hereinafter *Stanton II*).[1] On November 30, 1983, this court adopted, accepted, and approved the Board's recommendation, and suspended Mr. Stanton from the practice of law for one year and one day. *Stanton I, supra*, 470 A.2d at 272-73 (one-year and one-day suspension); *Stanton II, supra*, 470 A.2d at 282 (sixty-day suspension).

1. The Board recommended that this sixty-day suspension run concurrently with the one year and one day suspension in the companion case.

Appellant's complaint, filed eight days *before this court issued its decisions in Stanton I and Stanton II*, alleged that appellee slandered him on two occasions after the Board had recommended his suspension. Both of appellee's allegedly slanderous statements were made to Superior Court judges in private conferences concerning the appointment of attorneys to CJA cases. One allegedly slanderous statement was made on February 26, 1983, when appellee is claimed to have told a Superior Court judge that appellant was ineligible for CJA appointment because he had already been suspended. The second was on April 23, 1983, when appellee allegedly made a similar remark to a second Superior Court judge. Appellant claims that he protested the first alleged false statement to appellee. While appellant *does not claim that he was deprived of any right to represent indigent persons under the CJA as a result of appellee's allegedly* false statements, he asserts that the second statement "was deliberately and maliciously intended to injure [him] in his profession and lower him in the estimation of the judicial community." Appellant sued appellee in his individual capacity for damages in the amount of ten thousand dollars.

Appellee moved to dismiss appellant's complaint, or in the alternative, for summary judgment. Appellee's motion to dismiss was granted without a hearing. This appeal followed.

II

Appellant claims that the trial court erred in granting appellee's motion to dismiss. In support of his position, he argues that appellee's statements were not absolutely privileged, and that under a qualified privilege, the factual allegations in his complaint were sufficient to defeat a motion to dismiss. We disagree because we find that appellee's statements were indeed absolutely privileged under the doctrine of judicial immunity as extended to certain court personnel.

The doctrine of judicial immunity is deeply engrained in the law in this country. As early as 1872, the Supreme Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347, 20 L.Ed. 646 (1872).

[1, 2] In general, judicial immunity will protect a judge from liability for a given act if two conditions are met. First, the act must not have been taken in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) (citation omitted). Second, the act must be a "judicial act." *Id.* at 360-62, 98 S.Ct. at 1106-1108. *Sparkman* outlined the contours of a "judicial act" as follows:

> The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.

Id. at 362, 98 S.Ct. at 1107-1108.

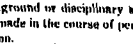
[3] Under this two factor analysis, it is clear that the appointment by Superior Court judges of counsel under the CJA is a judicial act. Under the CJA, only the trial court is authorized to appoint attorneys to represent indigent clients. *See* D.C.Code § 11-2602 (1981). Thus, this is a function "normally performed by a judge." *Stump v. Sparkman*, *supra*, 435 U.S. at 362, 98 S.Ct. at 1107-1108; *see also Slavin v. Curry*, 574 F.2d 1256, 1263-64 (5th Cir.1978) (judge's alteration of trial transcript a judicial act because selection and supervision of court reporters a function assigned to judges under Texas law), *overruled on other grounds, Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). Moreover, in the private meetings at issue, Mr.

Chase was certainly aware that he was dealing with the assigning judges in their judicial capacity as the persons solely authorized by statute to appoint CJA counsel. Because the appointment of counsel under the CJA was a judicial act, therefore, judicial immunity protected the trial judges from tort claims arising from actions taken pursuant to these appointments.

[4] The case law has recognized that the protection of judicial immunity is not confined only to judges. Rather, judicial immunity "extends to other officers of government whose duties are related to the judicial process." *Barr v. Mateo*, 360 U.S. 564, 569, 79 S.Ct. 1335, 1338, 3 L.Ed.2d 1434 (1959); *see also Waits v. McGowan*, 516 F.2d 203, 207 (3d Cir.1975) (immunity extended to investigator for Public Defender Service because function directly related to the judicial process); *Sullivan v. Kelleher*, 405 F.2d 486, 487 (1st Cir.1968) (judicial immunity extended to clerk of court); *Aguero v. Mundy*, 330 F.2d 868, 870 (9th Cir.1964) (judicial immunity extended to clerks, bailiffs, and court reporters because duties "clearly" related to judicial process), *cert. denied*, 379 U.S. 867, 85 S.Ct. 137, 13 L.Ed.2d 70 (1964); *Acevedo v. Pima County Adult Probation Department*, 142 Ariz. 319, 322, 690 P.2d 38, 41 (1984) (probation officers, in preparing and submitting presentence reports to the court, have absolute immunity because presentence report is an integral part of judicial sentencing process); *cf. In re Nace*, 490 A.2d 1120, 1124 (D.C.1985) (under court rule, Bar Counsel has absolute immunity from disciplinary complaint). In particular, judicial immunity has been extended to court employees performing ministerial functions at the direction of a judge. *See, e.g., Slotnick v. Garfinkle*, 632 F.2d 163, 166 (1st Cir.1980) (judicial immunity extended to court clerk in filling out commitment papers because carrying out official directives of judge); *Smith v. Rosenbaum*, 460 F.2d 1019, 1020 (3d Cir.1972) (court clerk has immunity for performance of ministerial acts mandated by statute); *Baldwin v. Chagnon*, 345 F.2d 601, 604 (9th Cir.1965) (bailiff, acting at direction of judge, is part of "the body of the court" and "is entitled to the protection of the judicial immunity which surrounded the whole court").[2]

[5] The facts of this case fall squarely within the scope of judicial immunity which is accorded persons performing ministerial functions at the direction of the judge in furtherance of a judicial act. Here, appellee's allegedly slanderous statements were made to judges in private meetings held solely for the purpose of assigning attorneys to represent indigent persons under the CJA. Appellee's role in these meetings was to supply, upon request, information to the trial judges to assist them in the performance of the judicial act of appointing CJA attorneys. In supplying the requested information, therefore, appellee was performing a ministerial function at the direction of a judge. Accordingly, judicial immunity insulates appellee from liability for any factual misstatements about appellant's background or disciplinary status he may have made in the course of performing this function.

Affirmed.



2. Courts have also extended judicial immunity to persons performing quasi-judicial or discretionary functions delegated by the court. *See, e.g., T & W Investment Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir.1978) (judicial immunity for court appointed receivers); *Byrne v. Kysar*, 347 F.2d 714, 716 (7th Cir.1965) (members of court appointed medical commission have judicial immunity because performing a quasi-judicial function), *cert. denied*, 383 U.S. 913, 86 S.Ct. 902, 15 L.Ed.2d 668 (1966).

92d Congress, 1st Session . . . Senate Document No. 92-1

SENATE MANUAL

CONTAINING THE

STANDING RULES, ORDERS, LAWS, AND RESOLUTIONS AFFECTING THE BUSINESS

OF THE

UNITED STATES SENATE

JEFFERSON'S MANUAL, DECLARATION OF INDEPENDENCE, ARTICLES OF CONFEDERATION, CONSTITUTION OF THE UNITED STATES, ETC.

Prepared by GORDON P. HARRISON
and JOHN P. COHEN

Under the Direction of the

COMMITTEE ON RULES AND ADMINISTRATION
UNITED STATES SENATE
NINETY-SECOND CONGRESS

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ATTACHMENT # 8
(see Mr. Moran's question # 5)

[43] ## RULE XLIII [1]

POLITICAL FUND ACTIVITY BY OFFICERS AND EMPLOYEES

[43.1] 1. No officer or employee whose salary is paid by the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to any assistant to a Senator who has been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who is compensated at a rate in excess of $10,000 per annum if such designation has been made in writing and filed with the Secretary of the Senate. The Secretary of the Senate shall make the designation available for public inspection.

[43.2] 2. This rule shall take effect sixty days after adoption.

[44] ## RULE XLIV [1]

DISCLOSURE OF FINANCIAL INTERESTS

[44.1] 1. Each Senator or person who has declared or otherwise made known his intention to seek nomination or election, or who has filed papers or petitions for nomination or election, or on whose behalf a declaration or nominating paper or petition has been made or filed, or who has otherwise, directly or indirectly, manifested his intention to seek nomination or election, pursuant to State law, to the office of United States Senator, and each officer or employee of the Senate who is compensated at a rate in excess of $15,000 a year,

[1] S. Jour. 247, 90-2, Mar. 22, 1968.

shall file with the Comptroller General of the United States, in a sealed envelope marked "Confidential Personal Financial Disclosure of _____
(Name)
_____", before the 15th day of May in each year, the following reports of his personal financial interests:

(a) a copy of the returns of taxes, declarations, statements, or other documents which he, or he and his spouse jointly, made for the preceding year in compliance with the income tax provisions of the Internal Revenue Code;

(b) the amount or value and source of each fee or compensation of $1,000 or more received by him during the preceding year from a client;

(c) the name and address of each business or professional corporation, firm, or enterprise in which he was an officer, director, partner, proprietor, or employee who received compensation during the preceding year and the amount of such compensation;

(d) the identity of each interest in real or personal property having a value of $10,000 or more which he owned at any time during the preceding year;

(e) the identity of each trust or other fiduciary relation in which he held a beneficial interest having a value of $10,000 or more, and the identity if known of each interest of the trust or other fiduciary relation in real or personal property in which the Senator, officer, or employee held a beneficial interest having a value of $10,000 or more, at any time during the preceding year.

If he cannot obtain the identity of the fiduciary interests, the Senator, officer, or employee shall request the fiduciary to report that information to the Comptroller General in the same manner that reports are filed under this rule;

(f) the identity of each liability of $5,000 or more owed by him, or by him and his spouse jointly, at any time during the preceding year; and

(g) the source and value of all gifts in the aggregate amount or value of $50 or more from any single source received by him during the preceding year.

[44.2] 2. Except as otherwise provided by this section, all papers filed under section 1 of this rule shall be kept by the Comptroller General for not less than seven years, and while so kept shall remain sealed. Upon receipt of a resolution of the Select Committee on Standards and Conduct, adopted by a recorded majority vote of the full committee, requesting the transmission to the committee of any of the reports filed by any individual under section 1 of this rule, the Comptroller General shall transmit to the committee the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. When any sealed envelope containing any such report is received by the committee, such envelope may be opened and the contents thereof may be examined only by members of the committee in executive session. If, upon such examination, the committee determines that further consideration by the committee is warranted and is within the jurisdiction of the

committee, it may make the contents of any such envelope available for any use by any member of the committee, or any member of the staff of the committee, which is required for the discharge of his official duties. The committee may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Comptroller General shall report to the Select Committee on Standards and Conduct not later than the 1st day of June in each year the names of Senators, officers, and employees who have filed a report. Any paper which has been filed with the Comptroller General for longer than seven years, in accordance with the provisions of this section, shall be returned to the individual concerned or his legal representative. In the event of the death or termination of service of a Member of the Senate, an officer or employee, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year of such death or termination of service.

[44.3] 3. Each Senator or person who has declared or otherwise made known his intention to seek nomination or election, or who has filed papers or petitions for nomination or election, or on whose behalf a declaration or nominating paper or petition has been made or filed, or who has otherwise, directly or indirectly, manifested his intention to seek nomination or election, pursuant to State law, to the office of United States Senator, and each officer or employee of the Senate who is compensated at a rate in excess of $15,000 a year, shall file with the Secretary of the Senate, before the 15th day of May in each year, the following reports of his personal financial interests:

(a) the accounting required by rule XLII for all contributions received by him during the preceding year, except that contributions in the aggregate amount or value of less than $50 received from any single source during the reporting period may be totaled without further itemization; and

(b) the amount or value and source of each honorarium of $300 or more received by him during the preceding year.

[44.4] 4. All papers filed under section 3 of this rule shall be kept by the Secretary of the Senate for not less than three years and shall be made available promptly for public inspection and copying.

[44.5] 5. This rule shall take effect on July 1, 1968. No reports shall be filed for any period before office or employment was held with the Senate, or during a period of office or employment with the Senate of less than ninety days in a year; except that the Senator, or officer or employee of the Senate, may file a copy of the return of taxes for the year 1968, or a report of substantially equivalent information for only the effective part of the year 1968.

WEDNESDAY, JUNE 16, 1999.

HEALTH CARE INITIATIVES FOR D.C.

WITNESSES

GREGORY M. McCARTHY, DIRECTOR, OFFICE OF POLICY AND EVALUATION, OFFICE OF THE MAYOR
MARLENE N. KELLEY, M.D., INTERIM DIRECTOR, D.C. DEPARTMENT OF HEALTH
PAUL OFFNER, D.C. MEDICAID DIRECTOR
JOHN A. FAIRMAN, CHIEF EXECUTIVE OFFICER, D.C. HEALTH AND HOSPITALS PUBLIC BENEFIT CORPORATION

CHAIRMAN ISTOOK'S OPENING REMARKS

Mr. ISTOOK. Good morning. The Committee will come to order. Excuse me for not banging the gavel. I think it is in the other room. So, if you are okay with not being traditional and not having the gavel to start, we will begin.

I am Chairman Istook. I am happy to have everyone here this morning.

Before we proceed with the hearing, my colleague, Mr. Cunningham, has an announcement about something going on today, he wanted to be sure to note.

CONGRESSMAN CUNNINGHAM'S REMARKS—CANCER SURVIVOR

Mr. CUNNINGHAM. Something very exciting. I am a cancer survivor, and have worked with Dr. Varmus and Dr. Klausner of NIH. I did a cancer town hall meeting in my district, and found for example, that African Americans have a much higher incidence in prostate cancer.

We have been working with the Mayor's office and the chairman, and also Chairman Porter of the House Labor-HHS Appropriations Subcommittee, and we are going to have a large medical town hall meeting in Washington, D.C., something that has been remiss for a long time. It is going to take place sometime in September, and we will let every office know. The Mayor will let people know. We are also planning on doing one later, a series of these, one for women's issues like breast cancer, ovarian cancer, those kinds of things, just to get the information out.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Cunningham.

HEALTH CARE INITIATIVES

We are meeting this morning to receive testimony on health programs in the District of Columbia. The FY 2000 budget compiled by the Mayor and the Council and approved by the control board contains a number of new initiatives and increased funding for parts of the health care program in the District.

Of course, we want to be assured that recipients of these services are getting the full benefit of all dollars being spent, and we are always concerned and want to make sure that taxpayers' money is not being mismanaged and is being used in the best way. So we want to be sure we know what is being done to ensure compliance with all applicable laws and regulations and to provide the best possible health services to those that are entitled to them.

The order in which we expect to hear from witnesses is, first from Mr. McCarthy, the Director of Policy and Evaluation in the Mayor's office; second from Dr. Kelley, the Interim Director of the Department of Health; then Mr. Offner, Director of the District's Medicaid Program; and then Mr. Fairman, Chief Executive Officer of the D.C. Health and Hospitals Public Benefit Corporation.

Mr. Moran, the ranking member, has been delayed. So I will allow him, if he wishes, to make any opening statement later on in the process of the hearing.

WITNESSES SWORN

Before we begin to receive testimony, we do have the practice of swearing all witnesses to testify, so, I would, ask each of the witnesses to stand and raise your right hand.

Do you solemnly swear or affirm that the testimony and information you present to this subcommittee today shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MCCARTHY. I do.

Dr. KELLEY. I do.

Mr. OFFNER. I do.

Mr. FAIRMAN. I do.

Mr. ISTOOK. Thank you. I appreciate it.

First, we will begin before any questions with the opening statements from the witnesses in the order that I mentioned before.

PREPARED STATEMENT OF GREGORY MC CARTHY

I always invite the witnesses—since we do have your prepared statements and the full text of those will be put in the record, frankly I invite you to deviate from your prepared statement to be able to flesh things out in whatever you think are the best terms or even to expand further because the full written statement will automatically be put in the record.

[The prepared statement of Gregory McCarthy follows:]

Statement of Gregory McCarthy

Director, Office of Policy and Evaluation

Executive Office of the Mayor
District of Columbia

Health Care Priorities for Washington, DC

Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives

June 16, 1999

Chairman Istook, Representative Moran, Committee members, thank you for the opportunity to speak today about Mayor Williams' vision for health care in the District of Columbia. The Mayor's initial budget submission to the City Council earlier this year launched a spirited citywide debate on the future of health care in the District. Today I will briefly outline the Mayor's vision; summarize some critical events since the original submission; and relay to you plans to forge a citywide consensus on how to proceed.

The administration has three broad goals:

- dramatically reduce the number of uninsured District residents
- build primary care capacity in currently underserved areas
- strengthen the health care delivery system

Obviously, these are broad and ambitious goals, but they do translate into more specific accomplishments around which the Mayor hopes to develop a citywide consensus, including:

- increased access to insurance coverage for District residents
- expanded access to primary and critical health care services such as substance abuse treatment, medications for persons living with HIV/AIDS, and trauma services
- improved quality of care with strengthened oversight of managed care plans
- revitalization of the health care safety net for those who remain uninsured or underinsured
- reduced burden of uncompensated care costs on providers and employers
- redirection of grant funds currently being spent on direct service delivery to finance health prevention, promotion, and intervention activities
- increased competitiveness of the District-based health care sector, supporting the effort to maintain and increase one of the District's largest employment sectors

The Mayor remains firmly committed to a strong safety net system and to refocusing the system on patients rather than institutions – while ensuring equitable access to health care for all geographic and economic sectors of the city. Of course, this will mean allowing

institutions to maneuver in a market that is increasingly becoming more competitive. It also means having health care institutions that are strong and viable, particularly those that serve the uninsured and lower income populations. Despite the fact that we spend one-fifth of the District's budget on health care, there are still 80,000 uninsured people. Ample resources exist in our public health care system to cover more people, and we must not lose sight of this reality.

As you know, the Mayor's original budget proposal was bold and far-reaching. He proposed a significant expansion of health insurance coverage for as many as 35,000 people up to 200% of the federal poverty level as well as reform of how the city manages some substance abuse and prevention programs. The latter program will contract out more substance abuse programs, transforming the government's role from primary service provider to regulator, monitor, policymaker, and evaluator.

The health insurance expansion proposal provoked a vigorous dialogue in the city among government officials, health care providers, patient advocates, and health experts. Almost all agreed that the goal of universal coverage was laudable, but there were divergent opinions about how we reach that goal and the likely impact of the proposal on healthcare institutions. The Mayor proposed that the expansion be funded by reallocating Disproportionate Share Hospital (DSH) payments and local funds to pay for health insurance coverage. Under this plan, all hospitals would have been held harmless in FY 2000 through a combination of residual DSH payments and increased income from newly insured patients.

What emerged from the process was a much smaller pilot program for 2400 people funded by reallocation of $6 million in DSH payments. In FY 2000 the administration will focus on implementing this smaller program while not losing sight of the humane goal of coverage for considerably more uninsured residents.

Ultimately, this should not be a debate about institutions. At issue is the best way to use our resources to increase the efficiency of the delivery system, especially for our most

vulnerable populations. At the same time, the Mayor recognizes that reasonable, informed people can have differing views on how to achieve better health care. To this end, the Mayor is pleased to have joined with the City Council and Financial Authority in establishing a high-level commission that will examine the current system with a view toward making practical, action-oriented recommendations on the following subjects:

- inpatient bed overcapacity
- distribution of health care services and providers
- role and needs of the Public Benefit Corporation
- maintenance of safety net providers
- impediments to accessing care beyond the lack of health care insurance
- fiscal impact of expanding health insurance coverage
- implementation schedule for redeveloping the health care system

The 11-member commission will consist of mayoral and Council appointees. During its work, the commission will engage the full spectrum of health care parties to develop recommendations with broad support. Authorization for the commission is contained in the Budget Support Act of 1999. Final recommendations are due within 180-days of the effectiveness of the act.

The Mayor is eager to discuss fiscally prudent options that address the systemic problems in our system. He has, however, eliminated one option: the status quo. There is no going back to a system that is fragmented, unfocused on primary care, and, ultimately, results in troubling health status indicators. All while consuming considerable public funds. It is incumbent on all parties to prepare for and implement change in a way that honors important principles, protects the vulnerable, and causes minimal disruption and turbulence for individuals and institutions.

The Commission's work could not be more timely. As you know, under an agreement with the city, last month Greater Southeast Hospital sought and received Chapter 11 reorganization protection. The city is committed to loans, loan guarantees, and/or

payment advances to allow the hospital to meet immediate payrolls and provide vital services for up to 90-days -- during which it should develop a plan for financial health and competitiveness.

In the meantime, the Mayor, the Council, and the Financial Authority have convened a working group of other hospitals with a safety net mission to outline short- and medium-term options for uninsured and underinsured residents, especially those east of the Anacostia River. Fully aware of the vital and urgent needs that Greater Southeast fulfills for the community, the Mayor has committed time and resources to ensure that residents in Southeast have access to quality health care. The working group's findings will contribute to the work of the broader health care commission.

Mr. Chairman, quality heath care is an absolutely essential element of the Mayor's vision to improve city services and the quality of life for District residents. Economic development plans, hopes for our young people, and neighborhood stabilization efforts cannot succeed if larger health issues are not addressed.

Thank you for your time and attention to the issue of health care in the District of Columbia.

Mr. ISTOOK. Mr. McCarthy, we will be happy to hear from you at this time.

OPENING REMARKS OF GREGORY MC CARTHY

Mr. MCCARTHY. Thank you very much, Mr. Chairman. I read you loud and clear, and I will accept your invitation to summarize my remarks.

Chairman Istook, members of the Committee, thank you very much for the opportunity today to speak about Mayor Williams' vision for health care in the District of Columbia.

His initial budget submission to the City Council earlier this year launched a spirited city-wide debate on the future of health care in the District. I will briefly outline the Mayor's vision, summarize some critical events since the original submission, and relay to you plans to forge a city-wide consensus on how to proceed.

THREE BROAD GOALS

The administration has three broad goals: dramatically reduce the number of uninsured residents in the District, build primary care capacity in currently underserved areas, and strengthen the health care delivery system.

The Mayor is committed to a strong safety-net system and to refocussing the systems on patients rather than institutions, while ensuring equitable access to health care for all geographic and economic sectors of the city. Of course, this will allow institutions to maneuver in a market that is increasingly becoming more competitive. It also means having health care institutions that are strong and viable, particularly those that serve underinsured and lower-income populations.

80,000 UNINSURED PEOPLE IN DISTRICT

Despite the fact that we spend one-fifth of the District's budget on health care, there are still 80,000 uninsured people in our city, and ample resources exist in our public health care system to cover more people and we must not lose sight of this reality.

EXPANSION OF HEALTH INSURANCE AND SUBSTANCE ABUSE PROGRAMS

The Mayor's original budget proposal was bold and far-reaching. He proposed a significant expansion of health insurance coverage for as many as 35,000 people, as well as reform how the city manages some substance abuse and prevention programs. The latter, we will contract out more substance abuse programs, transforming the Government's role from that of a primary service provider to a regulator, monitor, policy-maker, and evaluator.

The health insurance expansion proposal provoked a vigorous dialogue in the city among government officials, health care providers, patient advocates, and health experts. Almost all agree that the goal of broader coverage was laudable, but there were divergent opinions about how we should reach that goal, and the likely impact of that proposal on health care institutions.

PILOT PROGRAM—REALLOCATION OF DSH PAYMENTS

What emerged from the process was a much smaller pilot program for 2,400 people funded by reallocation of $6 million in DSH payments. In FY 2000, the administration will focus on implementing the smaller program, while not losing sight of the humane goal of coverage for considerably more residents.

Ultimately, this debate should not be about institutions. At issue is the best way to use our resources to increase the efficiency of the delivery system, especially for the most vulnerable populations.

COMMISSION TO REVIEW HEALTH CARE SYSTEM

At the same time, the Mayor recognizes that very reasonable, informed people can have differing views on how to achieve this. To this end, the Mayor is pleased to have joined with the City Council and the Financial Authority in establishing a high-level commission that will examine the current system with a view towards making practical action-oriented recommendations on the following subjects: inpatient bed overcapacity, distribution of health care services and providers, roles and needs of the Public Benefit Corporation, maintenance of safety-net providers, impediments to accessing health care beyond the lack of health care insurance, the fiscal impact of expanding health care insurance coverage, and implementation of the schedule for redeveloping the whole health care system.

This 11-member commission will consist of mayoral and council employees. During its work, it will engage the full spectrum of health care parties to develop recommendations with broad support.

After the recommendations are relayed by the Mayor, the City Council will have 45 days to disapprove them or approve them without amendment.

The Mayor is eager to discuss fiscally prudent options that address the systemic problems in our system. He has, however, eliminated one option, the status quo. There is no going back to a system that is fragmented, unfocussed on primary care, and ultimately resulting in troubled health care status indicators, all while consuming considerable public funds.

It is incumbent on all parties to prepare for an implement change in a way that makes institutions viable, focusses on primary care, protects the vulnerable, and causes minimal disruptions to individuals and institutions.

GREATER SOUTHEAST HOSPITAL—BANKRUPTCY

The Commission's work could not be more timely. As you know, under an agreement with the city, Greater Southeast Hospital sought and received last month Chapter 11 reorganization protection. The city is committed to loans, loan guarantees, and/or payment advances to allow the hospital to meet immediate payrolls and provide vital services for up to 90 days, during which time it should develop a plan for financial health and competitiveness.

Mr. Chairman, members of the Committee, quality health care is an absolute essential element of the Mayor's vision to improve overall city services and the quality of life for our residents. Eco-

nomic development plans, hopes for our young people, and neighborhood stabilization efforts cannot succeed if larger health issues remain unaddressed.

Thank you for your time and for your attention to the issue of health care in the District.

Mr. ISTOOK. Thank you very much, Mr. McCarthy.

Mr. Moran, I understand you did not have an opening statement that you wished to make.

REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. I really do want to learn what is going on, Mr. Chairman. I understand that there are two issues that the panel intends to focus on. Primarily, one is the potential misuse of Federal money for abortions, contrary to the legislation that was enacted.

My principal interest in requesting this hearing was to look at the indigent health care in the District, particularly the very high level of child abuse and neglect.

I do actually think that both issues are related because if you want prospective mothers to have their children, then the least likelihood of being born into an environment which is abusive or potentially neglectful for the children is going to substantially increase the likelihood of giving birth.

So I do think that these issues are tied, and my principal concern obviously is going to be how we can improve the quality and the quantity of health care delivery, particularly to the indigent population, particularly to mothers and children, which I think has been generally neglected as a result of the lack of both health insurance coverage, but also institutional delivery of care in the areas that are the most disadvantaged in the District of Columbia.

So I am glad to get the professionals that you called appearing before us, and I look forward to learning from them and asking some pointed questions at the appropriate time.

Thank you, Mr. Chairman.

Mr. ISTOOK. Very good. Thank you, Mr. Moran.

PREPARED STATEMENT OF DR. MARLENE N. KELLEY, M.D.

Dr. Kelley, we will place your statement in the record at this point.

[Dr. Kelley's prepared statement follows:]

TESTIMONY OF

MARLENE N. KELLEY, M.D.
INTERIM DIRECTOR

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

BEFORE THE

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA
10:00 A.M.
WEDNESDAY, JUNE 16, 1999

CAPITOL BUILDING

ROOM H - 144

GOOD MORNING, CHAIRMAN ISTOOK, CONGRESSMAN MORAN AND MEMBERS OF THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA. I AM DR. MARLENE N. KELLEY, . INTERIM DIRECTOR OF THE DEPARTMENT O F HEALTH. THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON THE DEPARTMENT OF HEALTH'S (DOH'S) INITIATIVES AS THEY RELATE TO OUR FISCAL YEAR 2000 BUDGET REQUEST.

I COME BEFORE YOU AT A TIME WHEN OUR CITY IS CHALLENGED TO DEVISE PROGRAMS AND TARGET RESOURCES TO ADDRESS A NUMBER OF FAR REACHING PUBLIC HEALTH ISSUES.

MISSION

THE HEALTH OF A COMMUNITY IS NOT SOLEY THE DOMAIN OF GOVERNMENT NOR A PUBLIC HEALTH DEPARTMENT. IMPROVING A COMMUNITY'S HEALTH REQUIRES MULTI-SECTOR PARTICIPATION AND CREATIVE COOPERATION. IN KEEPING WITH THE MAYOR'S GOALS, THE MISSION OF THE DOH IS TO ASSURE A SAFE AND HEALTHY COMMUNITY BY DEVELOPING STRATEGIC ALLIANCES. WITH THIS IN MIND, WE WILL:

- USE THESE STRATEGIC ALLIANCES TO DESIGN PUBLIC HEALTH SYSTEMS BASED ON COMMUNITY INVOLVEMENT AND CUSTOMER NEEDS;

- CONDUCT ONGOING MONITORING OF THE HEALTH STATUS TO INCLUDE INVESTIGATION OF POTENTIAL THREATS AND INTERVENTION WHEN NEEDED;

- PROVIDE LEADERSHIP IN PUBLIC HEALTH POLICY DEVELOPMENT;

- ASSURE ACCESS TO HIGH QUALITY HEALTH SERVICES;

- FOSTER AND PROMOTE HEALTH EDUCATION AND DISEASE PREVENTION; AND

- MAXIMIZE THE EFFECTIVENESS OF ALL RESOURCES.

THE MAYOR'S VISION

MAYOR ANTHONY WILLIAMS HAS IDENTIFIED THE RESTRUCTURING OF HEALTH CARE SERVICES IN THE DISTRICT OF COLUMBIA AS ONE OF HIS TOP PRIORITIES. HIS VISION IS TO:

- DRAMATICALLY REDUCE THE NUMBER OF UNINSURED DISTRICT RESIDENTS;

- BUILD PRIMARY CARE CAPACITY IN CURRENTLY UNDER-SERVED AREAS; AND

- STRENGTHEN THE HEALTH CARE DELIVERY SYSTEM.

WE RECOGNIZE THAT RESTRUCTURING THE HEALTH CARE SYSTEM PRESENTS IMMENSE CHALLENGES. HOWEVER, IT ALSO BRINGS OPPORTUNITIES TO ENSURE ACCESS TO QUALITY HEALTH CARE-- ULTIMATELY FOR EVERY DISTRICT RESIDENT-- REGARDLESS OF GEOGRAPHIC LOCATION, ECONOMIC STATUS OR CONDITION OF HEALTH. THE DEPARTMENT OF HEALTH IS WORKING TO ASSIST THE MAYOR IN CAPITALIZING ON THE STRENGTHS OF THE CURRENT SYSTEM AND EXECUTING HIS PLAN.

THE FIRST STEPS IN IMPLEMENTATION OF THE MAYORAL GOALS ARE ALREADY UNDERWAY.

- DOH IS INCREASING ACCESS TO INSURANCE COVERAGE FOR APPROXIMATELY 2,400 UNINSURED DISTRICT RESIDENTS.
- DOH HAS EXPANDED ACCESS TO PRIMARY AND CRITICAL HEALTH CARE SERVICES, SUCH AS SUBSTANCE ABUSE TREATMENT; AND

- DOH IS PROVIDING MEDICATIONS FOR A GREATER NUMBER OF PERSONS LIVING WITH HIV/AIDS.

AS WE MOVE INTO THE NEXT FISCAL YEAR, DOH WILL

IMPROVE THE QUALITY OF CARE BY IMPROVING THE OVERSIGHT OF MANAGED CARE PLANS.

DOH ALSO WILL ASSIST IN THE REVITALIZATION OF THE HEALTH CARE SAFETY NET FOR THOSE WHO REMAIN UNINSURED. WE WILL ALSO REDUCE OUR INVOLVEMENT IN DIRECT SERVICE DELIVERY AND CONCENTRATE ON POLICY DEVELOPMENT, HEALTH PROMOTION AND ACCESS TO CARE.

PRIORITIES

WE HAVE IDENTIFIED THREE PRIORITIES THAT ARE IN KEEPING WITH THE MAYOR'S VISION. AS YOU KNOW, EARLY INTERVENTION IS THE KEY TO ADDRESSING MANY HEALTH ISSUES. ONE WAY TO PROVIDE THIS INTERVENTION AND PREVENTION IS BY INCREASING ACCESS TO HEALTH CARE. THE DEPARTMENT OF HEALTH'S PRIORITIES ARE TO:

- IMPROVE THE HEALTH STATUS OF CHILDREN;

- REDUCE THE SIZE OF THE DISTRICT'S POPULATION THAT IS DRUG-ADDICTED THROUGH TREATMENT SERVICES AND BY INCREASING ALCOHOL, TOBACCO AND OTHER DRUG AWARENESS TO PREVENT ADDICTION; AND TO

- DEVELOP POLICIES AND PROGRAMS THAT PROACTIVELY

PROTECT AND PROMOTE THE HEALTH STATUS OF DISTRICT RESIDENTS.

THE DEPARTMENT WILL ACHIEVE THESE PRIORITIES BY IMPLEMENTING THE FOLLOWING INITIATIVES. IN SUMMARY, WE WILL:

(MEDICAID)

- INCREASE ACCESS TO INSURANCE FOR UNINSURED RESIDENTS;

(CHILDREN'S HEALTH)

IN ORDER TO ADVANCE THE HEALTH OF A COMMUNITY, IT IS IMPORTANT TO TARGET EFFORTS TOWARD YOUNG PEOPLE. AS PART OF THE OVERALL CHILDREN'S HEALTH INITIATIVE, THE DEPARTMENT OF HEALTH WILL:

- PROVIDE IMMUNIZATIONS TO AN ESTIMATED 14,000 CHILDREN DIRECTLY THROUGH OUR DOH WALK-IN CLINIC;
- REDUCE THE INFANT MORTALITY RATE, WHICH IS CURRENTLY AT THE DISTRICT'S ALL-TIME LOW OF 13.1, BUT IS STILL HIGHER THAN THE NATIONAL AVERAGE; AND
- ENSURE ACCESSIBILITY TO WIC AND COMMODITY FOOD PROGRAMS FOR ELIGIBLE FAMILIES.

(SUBSTANCE ABUSE)

AS WE ARE ALL AWARE, THE PROBLEMS SURROUNDING SUBSTANCE ABUSE ARE A CRITICAL CONCERN IN THE DISTRICT. SUBSTANCE ABUSE FUELS OUR RATES OF CRIME AND VIOLENCE, ESCALATES MEDICAL AND SOCIAL COSTS, IS TOO OFTEN A FACTOR IN TRAFFIC ACCIDENTS, AND IS OFTEN AT THE ROOT OF FAMILIES IN CRISIS. IN ORDER TO ADDRESS THE ISSUES OF SUBSTANCE ABUSE, THE DEPARTMENT OF HEALTH WILL:

- DETERMINE LEVELS OF TREATMENT SERVICES BASED ON A RECENTLY COMPLETED COMPREHENSIVE NEEDS ASSESSMENT;
- OUT-SOURCE THE DETOXIFICATION CENTER AND RESIDENTIAL SHORT STAY PROGRAM LOCATED ON THE CAMPUS OF D.C. GENERAL HOSPITAL;
- REDUCE THE SALE AND ACCESSIBILITY OF TOBACCO PRODUCTS TO DISTRICT YOUTH IN COMPLIANCE WITH THE SYNAR AMENDMENT AND FDA REQUIREMENTS IN COLLABORATION WITH FEDERAL AND DISTRICT AGENCIES; AND
- IMPROVE ACCESS TO TREATMENT SERVICES FOR SPECIAL POPULATIONS, INCLUDING SENIORS, THOSE THAT ARE DUALLY DIAGNOSED, PREGNANT AND POST-PARTUM WOMEN, INJECTION DRUG USERS, HIV/AIDS PATIENTS AND LATINOS--

62-688 2000 - 24

WITH EMPHASIS ON MOBILE OUTREACH AND DAY TREATMENT.

(HIV/AIDS)

ANOTHER HEALTH CHALLENGE FACING OUR CITY IS THE GROWING NUMBER OF NEW HIV/AIDS INFECTIONS, PARTICULARLY AMONG BLACK WOMEN. HIV/AIDS IS A THREAT TO THE VITALITY OF ALL SECTORS OF OUR COMMUNITY AND THUS IT WILL BE A HIGH PRIORITY FOR DOH. WE PLAN TO REDUCE THE NUMBER OF NEW HIV INFECTIONS BY:

PROVIDING PREVENTIVE INFORMATION, EDUCATION, HOUSING AND MEDICAL SERVICES TO THOSE AT RISK;

- INCREASING TESTING AT HIV TESTING SITES FOR RESIDENTS; AND BY
- INCREASING ACCESSIBILITY TO MEDICATIONS FOR PERSONS LIVING WITH HIV/AIDS.

(PREVENTIVE HEALTH)

WE ALSO PLAN TO INCREASE OUR EFFORTS IN THE PREVENTION OF CHRONIC ILLNESSES. WE WILL

- INCREASE HEALTH EDUCATION, HEALTH PROMOTION AND

ENCOURAGE PREVENTIVE HEALTH ACTIVITIES;

- RENOVATE THE TUBERCULOSIS CLINIC TO BETTER SERVE OUR CUSTOMERS; AND
- RENOVATE THE WOMEN'S SERVICES CLINIC, WHICH PROVIDES OUTPATIENT SERVICES INCLUSIVE OF DRUG REHABILITATION, MEDICATION AND THERAPY TO ADULT WOMEN.

(ENVIRONMENTAL HEALTH)

THE HEALTH OF A COMMUNITY IS MORE THAN THE SUM TOTAL OF THE HEALTH OF ITS INDIVIDUALS. WE MUST ADDRESS THE COMMUNITY AS A WHOLE BY ENSURING THE QUALITY OF THE ENVIRONMENT. THEREFORE, WE WILL:

- CONDUCT 16,000 FOOD SERVICE ESTABLISHMENT INSPECTIONS THROUGHOUT THE DISTRICT TO MONITOR FOOD SAFETY;
- IMPLEMENT SEVEN NEW PROJECTS DESIGNED TO CLEAN UP THE ANACOSTIA RIVER IN PARTNERSHIP WITH FEDERAL AND STATE AGENCIES; AND WE WILL
- MOUNT A MASSIVE EFFORT TO REDUCE EXPOSURE OF OUR YOUTH TO LEAD THROUGH COLLABORATIONS WITH OTHER FEDERAL AND DISTRICT AGENCIES.

THE DISTRICT'S HEALTH STATUS PRESENTS MANY CHALLENGES; AND THUS AN AGGRESSIVE, AMBITIOUS PLAN OF ACTION MUST BE PURSUED. WE EXPECT OUR DOH INITIATIVES TO GIVE A SUBSTANTIAL BOOST TO MEETING OUR OBJECTIVE OF HEALTHY PEOPLE IN A HEALTHY COMMUNITY.

I THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU AND I WELCOME YOUR QUESTIONS.

Mr. ISTOOK. Dr. Kelley, we would be pleased to hear from you.

OPENING REMARKS OF DR. MARLENE N. KELLEY M.D.

Dr. KELLEY. Good morning, Chairman Istook. Thank you for the opportunity for being able to appear before this committee. I am Dr. Marlene Kelley. I am the Interim Director for the Department of Health in the District.

The Department of Health's initiatives as they relate to our fiscal year 2000 budget request will be the topic that I will discuss.

I come before you at a time when our city is challenged to devise programs that target resources to address a number of far-reaching public health issues. The health of a community is not solely the domain of a government, nor a public health department. Improving a community's health requires multi-sector participation and creative cooperation.

In keeping with the Mayor's goals, the mission of the Department is to assure a safe and healthy community by developing strategic alliances. So, with this in mind, the Department plans to use these strategic alliances to design public health systems based on community involvement and customer needs. We will conduct ongoing monitoring of the health status of the city to include investigations of potential threats and intervention when needed. We will provide leadership and public health policy development and assure access to high-quality health services. We plan to foster and promote health education and disease prevention and maximize the effectiveness of all of our resources.

RESTRUCTURING OF HEALTH CARE SERVICES

The Mayor has identified the restructuring of health care services in the District of Columbia as one of his top priorities. His vision is to dramatically reduce the number of uninsured District residents. He wants to build primary care capacity in currently underserved areas and strengthen the health care delivery system, as you have heard from Mr. McCarthy.

HEALTH INSURANCE ACCESS

The first steps in implementation of the Mayor's goals are already underway. You have already heard about how we plan to increase access to health insurance, and Mr. Offner will elaborate further on that.

SUBSTANCE ABUSE TREATMENT

We have already begun to increase our beds and slots for substance abuse treatment. We are providing medications for a greater number of persons living with HIV and AIDS. As we move into the next fiscal year, we will improve the quality of care by improving the oversight of managed care plans.

THREE PRIORITIES

We have identified in the Department three priorities that are in keeping with this vision. One, we plan to improve the health status of children. We plan to reduce the size of the District's population that is drug-addicted through treatment services and by increasing

alcohol, tobacco, and other drug awareness to prevent addiction, and to develop policies and programs that proactively protect and promote the health status of District residents. And we plan to achieve these priorities by implementing the following initiatives.

As I have said, you will hear more about the access to health insurance from Mr. Offner.

In order to advance the health of a community, it is important to target efforts toward young people, and as part of the overall children's health initiative, the Department of Health will provide immunizations to an estimated 14,000 children directly through our own Department walk-in health clinic.

INFANT MORTALITY RATE

We will reduce the infant mortality rate which is currently at the District's all-time low of 13.1, but which is still higher than any other State in the United States.

We plan to ensure accessibility to WIC, the Women, Infants, and Children food program and our commodity food program for eligible families.

SUBSTANCE ABUSE

As we are all too much aware, the problems surrounding substance abuse are of critical concern in the District. Substance abuse fuels our rates of crime and violence. It escalates our medical and social costs, and it is too often a factor in traffic accidents and is often at the root of families in crisis. So we plan to determine our levels of treatment services based on a recently completed comprehensive needs assessment. We plan to outsource our detox center and residential short-stay program, which are located on the campus of D.C. General Hospital.

We want to reduce the sale and accessibility of tobacco products to District youth in compliance with the Synar amendment and FDA requirements in collaboration with Federal and District agencies, and we plan to improve access to treatment services for special populations, including seniors, those that are dually diagnosed, pregnant and postpartum women, injection drug users, HIV patients, and Latinos, with emphasis on mobile outreach and day treatment.

HIV/AIDS

Another health challenge facing our city is the growing number of new HIV/AIDS infections, particularly among black women. HIV/AIDS is a threat to the vitality of all sectors of our community, and, thus, it is a high priority for the Department. We are providing preventive information, education, housing, and medical services to those at risk. We will be increasing our testing at HIV testing sites for residents, and we will increase accessibility to medications for persons living with AIDS.

PREVENTION OF CHRONIC ILLNESSES

In the area of prevention, we plan to increase our efforts in the prevention of chronic illnesses. We will be increasing health education, health promotion, and encouraging preventive health activi-

ties. We will renovate the tuberculosis clinic, and we will renovate our women's services clinic, both of which are on the grounds of D.C. General. The women's services clinic provides outpatient services inclusive of drug rehabilitation, medication, and therapy to adult women.

FOOD SAFETY

The health of a community is more than the sum total of the health of its individuals. We must address the community as a whole by ensuring the quality of the environment. Therefore, we plan to increase our inspections for food establishments throughout the District to monitor food safety.

ANACOSTIA RIVER CLEANUP

We will implement seven new projects designed to clean up the Anacostia River in partnership with Federal and State agencies.

LEAD ABATEMENT

And we will mount a massive effort to reduce exposure of our youth to lead through collaborations with other Federal and District agencies.

SUMMARY

The District's health status presents many challenges, and, thus, an aggressive, ambitious plan of action must be pursued. We expect our Department initiatives to give a substantial boost to meeting our objective of healthy people in a healthy community.

Thank you.

Mr. ISTOOK. Thank you very much, Dr. Kelley.

PREPARED STATEMENT OF PAUL OFFNER

Mr. Offner, we will place your statement in the record at this point.

[Mr. Offner's prepared statement follows:]

TESTIMONY OF PAUL OFFNER
DISTRICT MEDICAID DIRECTOR
D.C. APPROPRIATIONS SUBCOMMITTEE
HOUSE OF REPRESENTATIVES
JUNE 16, 1999

My name is Paul Offner, and for the last three and a half years, I have served as the District's Medicaid Director. I am here today to testify on the health re-structuring plan that was part of Mayor William's budget bill for the year 2000. The final budget package agreed to by the Mayor, the Council, and the Control Board included a pilot program limited to 2,400 individuals and $6 million, but we hope to expand on this in the future as funding becomes available.

There are currently about 80,000 uninsured people in the District. Last October, the District extended Medicaid coverage to uninsured children and parents in families with incomes under twice the poverty level. This was done without any new money -- the expansion was funded wholly out of savings. In the previous two years, our agency cut HMO rates by 20%, removed 20,000 ineligibles from the rolls, and effected a long list of other efficiencies. The savings were used to fund the expansion.

Mayor Williams' plan guaranteed health insurance coverage to all District residents under 200 percent of the poverty level. For a family of three, that means everyone under $27,300 a year. For the first time, people who *don't* have children would be covered. While, in the future, we hope to obtain a federal waiver to cover this group, the Mayor's plan for the year 2000 was to re-direct

local monies that are already funding health services -- currently about $100 million a year goes to hospitals or government agencies to provide services to the uninsured. This is a big change. Currently, most uninsured people in the District don't receive primary and preventive care, but wait till they're seriously ill, and then go to a hospital emergency room. Under the Mayor's plan, these individuals would receive insurance cards allowing them to see their doctors whenever they need to, so that problems can be treated before they get serious. In this way we promote prevention and save money at the same time.

How would this affect health care providers? The private hospitals would lose the so-called Disproportionate Share Hospital, or DSH, payments they receive now to cover the costs of caring for the uninsured, but this loss would be more than offset by the fact that almost everyone coming to them would have insurance. Howard University Hospital, for instance, would gain an estimated $60 million in additional revenue over the next six years.

Similarly, DC-General, the District's public hospital, would lose part of its District subsidy, but would gain paying customers. The big question is what these newly insured individuals would do once they get an insurance card. How many of those who were previously clients of DC-General would take their business elsewhere? While no one has the answer, we do know this: though DC-General would likely lose some patients, all the patients they see would be paying customers, which would be a big plus.

For the first time, too, the uninsured would have equal access to physicians, dentists, pharmacists, and all the other providers who deliver preventive care. The District has the nation's highest infant

mortality rate, the third highest AIDS infection rate, the 11th highest TB rate, and getting people insured is the key to turning these numbers around. Uninsured children are three times as likely as insured children to have unmet health care needs. Uninsured people generally are three times as likely to experience a hospital admission that could have been prevented. All of which is to say that health insurance is important.

And expanded coverage has an additional benefit. Health care providers would be able to locate their practices in poor areas of the City from which they are effectively shut out at the present time because they can't make a living there. In this way, the Mayor's plan would help to revitalize the City's poor neighborhoods.

Of course, lack of health insurance isn't the District's only health problem. Even after expanding coverage, substance abuse services will need extra support; and there will still be areas of the City -- wards 7 and 8, for instance, -- where direct investments will be needed to expand primary care. But the Mayor's program would make comprehensive health insurance available to all but a handful of the District's citizens, thus giving a major boost to primary and preventive care, and it would accomplish this at no additional cost to the local taxpayer. Finally, the great majority of our residents would gain control over a critical part of their lives.

The Washington Post

METRO

SUNDAY, MARCH 14, 1999

D.C. Health Plan Would Cover Most Uninsured

Program Overhauls Medicaid

By AVRAM GOLDSTEIN
Washington Post Staff Writer

D.C. Mayor Anthony A. Williams will announce tomorrow a health insurance plan that would cover most uninsured District residents and overhaul the way hospitals are paid, a move that would vault the city to the forefront of efforts across the nation to find new ways to bring medical care to the poor.

The $70 million program eventually would give Medicaid cards to nearly 48,000 residents who are ineligible for the insurance program that covers low-income families, welfare recipients and disabled people. Williams's plan primarily would benefit childless adults and undocumented residents who are not eligible for Medicaid, provided their income is not more than double the poverty level—now $13,650 a year for a family of three.

The initiative would leave about 15,000 people in the District uncovered, giving the District the highest rate of health insurance coverage of any large U.S. city— as much as 97 percent of the population, officials said. An estimated 10,000 undocumented residents would be enrolled in Medicaid health maintenance organizations starting Oct. 1, 2000.

Williams (D) said he hopes to improve the overall health of a city where impoverished residents have nearly the shortest life expectancy in the nation. City officials estimate that 39 percent of hospital admissions of uninsured patients are for preventable health problems. By encouraging patients to form continuing relationships with Medicaid-paid primary care doctors, the mayor hopes to avert costly hospital stays caused when untreated chronic health problems escalate into medical emergencies.

"It's a very important policy initiative for the Williams administration ... and something the mayor cares very deeply about," said Peggy Armstrong, Williams's press secretary. "He's particularly interested in initiatives that will provide quality health care to more of our citizens."

It's unclear whether most of the District's 11 acute-care hospitals and

See INSURANCE, *C9, Col. 4*

Williams to Announce Insurance Plan

INSURANCE, *From C1*

other health organizations will embrace the plan, whose details will be worked out during the next six months. The hospitals are under enormous pressure from the health insurance industry, which has ratcheted down payments as it has gained control of ever larger numbers of insured patients.

It is already clear, however, that the biggest source of opposition to Williams's plan is likely to be within city government: the quasi-independent Public Benefits Corp., which runs city-owned D.C. General Hospital and numerous government-backed health programs.

Williams's plan estimates that PBC, which accepts patients without regard to ability to pay, would see the annual city subsidy it receives to treat the uninsured decline from $47 million this year to about $25 million next year. "It sounds very optimistic and very good on paper, but it's not going to work," said Bette L. Catoe, a pediatrician and PBC board chairman. She complained that health officials advising Williams are "hell-bent on closing or disrupting" her agency, and cutting the so-called safety net of institutions that care for the uninsured.

Independent health analysts praised Williams's plan as an important step, even if it provokes internal warfare. "Insurance matters. It gets people a regular source of care," said Ed Howard, executive director of the nonpartisan Alliance for Health Reform, a congressional advisory group.

"It gets them intervention at the best possible times of illness," he added. "If the only thing that happens is that 97 percent of people in the District end up having better access to physicians and hospitals, that's a really big deal. It should have happened a long time ago."

The idea behind the mayor's plan is to enable low-income residents to use their insurance to obtain primary care from one of the city's seven Medicaid health maintenance organizations—and reward hospitals that attract their business and control their own costs.

City officials plan to seek $36 million in federal Medicaid matching funds, and officials at the U.S. Health Care Financing Administration say they are encouraging Williams to extend insurance benefits to as many people as possible.

Even in the unlikely event that those federal officials reject the city's request, the District on its own can afford to pay for Williams's plan because of recent savings in the D.C. Medicaid program, officials said.

Preliminary reports indicate that Medicaid spending in the city fell from $872 million in 1997 to $852 million last year, said D.C. Medicaid director Paul Offner, whose agency plans to spend $844 million for the year ending Sept. 30 and predicts that Medicaid again will come in under budget.

Launching Williams's plan would not require new spending, Offner said, adding that it would be funded by redirecting $70 million that now goes to hospitals and city-run health programs that treat the uninsured. A report last year by the Urban Institute indicated that the cost of caring for the uninsured in the District has been $100 million to $206 million a year, depending on the accounting method.

"We're changing from an arrangement where the District government sends out subsidies to institutions and toward a situation where we empower individuals to decide for themselves where they will get their health care," Offner said. "I don't think any place in the country has gone as far to cover the uninsured."

Even if uninsured residents are reluctant to take the trouble to sign up for Medicaid in advance, they would be enrolled when they go to any hospital or clinic, and assigned to an HMO within two months, he said. In the meantime, they immediately would have full coverage on a fee-for-service basis, he said.

"We're going to create a situation where 97 percent of the population either has an insurance card, or the minute they get sick, they can get coverage," Offner said.

During the last few years, the city has brought control to a program that once was plagued by escalating costs. The program funneled huge sums to hospitals to care for uninsured patients who had little or no care before being rushed to an emergency room in a crisis.

Over the last several years, the city has shifted most of its Medicaid recipients to HMO membership and increased the categories of eligible participants to include all children and their parents.

Health analysts say that Congress, which must approve the city's budget, has a track record of encouraging similar plans in the few states that have tried them. But the mayor's plan already is getting a harsh reception from critics who say that any reduction in subsidies will spell disaster for inner-city hospitals—especially D.C. General.

Supporters of D.C. General, which now provides 36 percent of the District's hospital care to the uninsured, said the plan is part of an effort to shut down the busiest trauma center in town and to shift the job to private contractors.

Catoe is particularly irked that Williams is issuing his insurance plan without consulting her board, which is waiting for an appointment with the mayor to discuss its concerns.

"You're about to get a full-scale rebellion by the board," she said. "The whole board is dismayed at the lack of communication with us before the decisions were made."

D.C. Council member Sandy Allen (D-Ward 8), who called the quality of the District's Medicaid HMOs suspect, said she would work to kill the mayor's plan because no one has explained the long-term financial impact on all D.C. hospitals. One council aide said the proposal would be "dead on arrival because of its dire consequences for D.C. General."

But even if the council rejects Williams's plan, the mayor can implement it by persuading the city's financial control board and Congress to endorse it.

The mayor and Offner project that D.C. General will see a net 10 percent drop in revenue after all is said and done. "Some people who now go to D.C. General may decide to go elsewhere, but people who do go there are much more likely to pay their way," Offner said. "It should be a more financially stable institution at a smaller size."

Private hospitals will see corresponding growth in their reimbursement for treating patients who now are uninsured, he said.

MEDICAID *monitor*

DC: Turning the Corner

The oft-maligned District of Columbia Medicaid program has turned the proverbial corner. In FY 98, program spending fell by nearly $20 million, to $851.5 million. And despite some early glitches, the move to enroll most recipients in managed care appears to be going smoothly, holding the promise of even greater savings down the road.

According to Donna Folkemer, chief of the policy and planning unit in the Medicaid division, the basic strategy was straightforward: set a budget and stay within it. Beyond that, the agency also undertook three key reforms: a change in the reimbursement system for hospitals, nursing homes and independent care facilities for the mentally retarded; a new point-of-sale pharmacy system; and implementation of the ambitious managed care program.

Under the old hospital reimbursement system, explained Folkemer, "we were paying 40 percent more than cost" because the payment system instituted in the early 1990s had incorrectly calculated rates. That has since been fixed by bringing payments in line with actual costs. Nursing home and independent care facilities, on the other hand, weren't being paid over cost, but they weren't being given any incentives to improve efficiency either. Now, they're rewarded for keeping their routine administrative and support costs on target.

While it's a small piece of the puzzle, the point-of-sale pharmacy system—which involves determining eligibility before a prescription is filled—is also important in the savings equation. "Before, the pharmacist would bill us, we'd find out the person wasn't covered and we'd then be stuck with the bill," she said.

After a rocky start—including prolonged court challenges over enrollment procedures, certification of plans and assurances that kids were receiving appropriate shots, checkups and follow-up screenings—the District's move to managed care is also "going well," according to Jane Thompson, who's heading up the effort. Since enrollment began in May, almost 43,000 of 73,000 eligible women and children have made the transition into one of seven managed care plans available. By Nov. 1, almost 71,000 should be enrolled—a figure Thompson said "seems to be on target at this point." (There are no current plans to move the District's 50,000 elderly and disabled into managed care.)

As a bonus, the division has also seen "higher than expected numbers of voluntary enrollees," said Thompson, "and that means people are getting into the plans they want." Because most enrollees are selecting plans themselves, the division hasn't had to deal with a high volume of calls from people wondering why they've been placed in a particular plan. To gauge satisfaction, enrollee and provider surveys will be fielded in early 1999, with results due out next summer.

With the savings garnered to date, the agency is now moving to expand coverage to parents of kids enrolled in the new Children's Health Insurance Program. Effective Oct. 1, it began offering insurance to an estimated 15,000 city residents—half of them children—with incomes below 200 percent of poverty. In a Sept. 7 *Washington Post* op-ed article, Medicaid chief Paul Offner called the expansion "the most significant public health advance in this community in many years." Next October, assuming federal approval, the agency will also offer coverage to childless people to 50 percent of poverty—a small step, Offner wrote, but "all we can afford for now."

In an interview, Offner stressed that there's much more work to do. "We still have one of the most expensive Medicaid programs in the country for two reasons," he said. First, Medicaid enrollees use a tremendous amount of inpatient hospital care, although managed care will help greatly in that regard. Second, the cost per day of long-term care providers in the District is one of the highest in the nation. To address that problem, he said the division needs to develop and encourage "community-based care and other alternatives to nursing homes."

Those kinds of initiatives, he noted, will involve more work than went into revamping the hospital payment system. But he sees a payoff at the end. "The gratifying part of the whole process is that we've been able to use savings to expand eligibility. Our hope for the future is that we'll be able to expand even more." • *MG*

STATE HEALTH *notes*

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DECEMBER 27, 1996 WASHINGTON CITY PAPER

The Good News in D.C.

Yes, Virginia, there is some.

By John Cloud

EARLIER THIS YEAR, while you were moving—packing your belongings into a car that thieves had burgled one too many times—D.C. hit rock bottom and began bouncing up.

Just as you hauled into Prince George's County, weary of crime and muck and withering schools, and a city government that was only a hideous simulacrum of a city government, the District began improving. You couldn't wait one more week, and now you're stuck in suburbs bloated with urban migrants and antiseptic malls. You blew it. Washington is coming back.

And that comeback is not only the work of the new, supraDemocratic forces that ascended this year—though the control board (and its hand-picked school superintendent) had a significant role in it. Rather, the District, at least partly on its own, is fumbling its way toward a political and economic recovery.

"We can fundamentally change the culture of D.C. government," Barry says. He adds, predictably, that this will take "more time and some more energy," but for a man who seemed so unreconstructed in his old-style approach to governance just last year, his rhetoric is a significant step forward.

There's even some evidence that Barry has learned to keep some of the promises that flow from that rhetoric. In October, he told *Washington City Paper* staffers that "we're not competitive because the tax structure—commercial tax structure, disability comp[ensation], unemployment comp—is much higher than in the suburbs." It only took a month (the bureaucratic equivalent of warp speed) for the D.C. Department of Employment Services to announce a reduction in the amount that businesses must pay into the unemployment compensation fund.

Barry himself likes to tout low-to-the-ground achievements, like making D.C. attractive to big-budget filmmakers, saving $2 million in a prison-food contract, re-equipping some recreation centers, persuading the sports commission to build a $65,000 football field for Anacostia kids, and making D.C. government forms available on the Internet. These aren't revolutionary achievements, but God knows the District can use some visible, if small, accomplishments.

Elsewhere in the Barry government, a little-known city official running the Medicaid behemoth managed to slash the city's biggest program by $80 million this year. Paul Offner—a former domestic-policy aide to Sen. Daniel Patrick Moynihan (D-N.Y.) and contributor to the *New Republic*—came to the District in August 1995 to undertake a challenge. He hasn't been disappointed.

From 1988 to 1995, Medicaid spending in the District rose at an average annual rate of 14.3 percent, crowding out spending on education, police, and other basics needed to prevent middle-class flight. Offner brought the growth rate down to 8 percent this year and expects to see even slower growth next year.

Offner achieved this feat in part because he identified areas in which the District was spending Medicaid dollars it didn't have to spend. The city was overpaying hospitals, so Offner cut the amount D.C. paid for hospital services by an average of 20 percent. He was also able to wring a 17-percent cut from what the District was paying health maintenance organizations. And Offner found $14 million in savings in what the District had paid for nursing homes and group homes for the mentally retarded.

Finally, Offner slashed 25,000 unqualified people from the Medicaid rolls last spring, saving $18 million. And he is planning to move the remaining half of AFDC (Aid to Families with Dependent Children) recipients not already in managed-care plans into HMOs, saving another $2.4 million. Though other states have had trouble moving welfare recipients into managed-care systems—which have a tendency not to cover the sickest recipients—Offner says the city has learned from such difficulties. HMOs will be required to furnish all Medicaid services currently provided, and HMOs bidding for city contracts will fare better if they promise to include community-based clinics—which often serve poor patients—in their provider networks.

Not all of Offner's accomplishments are merely financial. Unsurprisingly, by the early 1990s the District had developed a Medicaid system heavily dependent on state-run institutions and wary of experimentation. Most states had programs that allow elderly and disabled Medicaid recipients to live at home, with homemaking and nursing assistance. Such programs are cheaper, and the recipients like them much better than the alternative—state-run facilities. But in the District, the only option has been institutionalization.

Beginning Jan. 1—thanks to a federal waiver obtained by Offner—D.C. will begin providing in-home services for the disabled. He hopes a waiver for the elderly will follow by the summer.

Perhaps most important—in terms of future attempts to scale back the city government—Offner managed to slash deeply without triggering a political backlash. While the cuts have shocked the system and prompted howls from liberals and hospital bureaucrats, those complaints have little political traction: Most of the complainers are Barry supporters, and the mayor has not only accepted the cuts but encouraged them. Finally, because Offner has maintained minimum federal standards for care—or because he can at least plausibly claim to have done so—no one has sued the city over the Medicaid cuts.

Beyond the technicalities, Medicaid is a symbol of what a determined, intelligent reformer could do in the D.C. government of 1996. Offner isn't afraid to trumpet his own success. "An $80-million cut is the instruction I got from the mayor, and that's what I've done," he says. But he's one of the few city officials who deserves his own plaudits.

OPENING REMARKS OF PAUL OFFNER

Mr. ISTOOK. Mr. Offner.

Mr. OFFNER. Chairman Istook, Mr. Moran, and members of the committee, I have——

Mr. ISTOOK. I'm sorry. In addition to the members of the subcommittee, we have the Delegate from the District of Columbia present, Eleanor Holmes Norton. Ms. Norton, always happy to have you here. Thank you.

Excuse me, Mr. Offner. Please go ahead.

Mr. OFFNER. I have submitted my testimony, and I will just paraphrase it.

MEDICAID PROGRAM OVERHAULED

The Medicaid program in the last 4 years in the District has gone through a total overhaul. Obviously, we have one of the most expensive Medicaid programs in the country. Over the last 4 years, we have taken a whole slew of steps to bring expenditures under control.

20,000 INELIGIBLES REMOVED FROM MEDICAID

Over 20,000 people who are ineligible were removed from the rolls some 2 years ago. Hospital rates have been reduced significantly. All of the TANF, formerly AFDC, recipients are now enrolled in managed care. Our HMO rates were cut over the last several years by an average of 20 percent. We have made deductions in what we pay our nursing homes, and we have included in all of our reimbursement systems cost containment incentives so that we have an incentive to run efficiently.

MEDICAID COSTS REDUCED

The result is that the cost situation has completely turned around. Between 1990 and 1995, the cost of Medicaid in the District doubled, went up an annual average—average annual rate of about 15 percent. This year, we will spend less than last year. Last year, we spent less than the year before.

ALL CHILDREN TO BE COVERED UNDER MEDICAID

Starting in October of this year, the District—and this gets to Mr. Moran's point—the District started covering all children and all adults in families with children up to under 200 percent of the poverty level. We have now one of the more expansive coverage policies in the Nation, and notwithstanding that, we will spend less. We project we will spend less this year than we spent last year. We funded this expansion completely out of savings in the Medicaid program.

MAYOR'S PROPOSAL TO COVER UNINSURED

The Mayor's proposal, very quickly, builds on that base. The Mayor basically said, all right, we have covered the children and the parents. Let's now provide some coverage for the people who do not have children, which is a group that traditionally has not been covered by Medicaid. And he proposed to do this, I might add,

at no additional cost to the taxpayer or to the Federal government because the concept was that we are going to redirect money that we are already spending.

The District already spends over $100 million, money that goes to health care providers or to District agencies, to cover the uninsured. The Mayor's basic proposal was to say let's take some of that money and use it to provide insurance.

HIGH COMPARATIVE COST OF DC MEDICAID PROGRAM

Why is that so important? It is so important because what is so missing in the District of Columbia is the preventive in the primary care. We spend more on hospital care than just about any jurisdiction in the Nation. Medicaid recipients in the District spend two and a half times as much time in the hospital as the national average.

Our Medicaid program is completely distorted towards institutional care instead of preventive care.

MANAGED CARE INITIATIVE

We are trying to address that through the managed care initiative, but the Mayor's concept was that by providing insurance to folks, we can begin to get that primary care and help people stay out of the hospital and the other institutional settings.

Obviously, as I think Mr. McCarthy said earlier, a small pilot was approved, but I believe that the Mayor is still committed to this notion, to this concept, and we will be back to efforts to revisit this as funding becomes available.

Thank you.

Mr. ISTOOK. Thank you very much, Mr. Offner.

PREPARED STATEMENT OF JOHN A. FAIRMAN

Mr. Fairman, we will place your statement in the record.

[Mr. Fairman's prepared statement and a copy of a health care reference plan follows:]

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STATEMENT OF

JOHN A. FAIRMAN

CHIEF EXECUTIVE OFFICER

THE DISTRICT OF COLUMBIA HEALTH AND HOSPITALS

PUBLIC BENEFIT CORPORATION

Before the

District of Columbia Subcommittee of the Appropriations Committee

United States House of Representatives

June 16, 1999

Mr. Chairman and Members of the Committee, I am John A. Fairman, Chief Executive Officer of the District of Columbia Health and Hospitals Public Benefit Corporation, the PBC. First, I would like to make a brief statement both describing how the PBC serves the District of Columbia, and endorsing needed reform of the District's health care system, especially improved services to the poor, uninsured, and underserved.

The PBC was formed in 1996 to meet the need for a coherent and cohesive approach for delivering quality and accessible healthcare in the District. The idea for a PBC came out of numerous task forces that studied the District's health system for over a decade. In 1997, the District consolidated some of its direct medical functions under the PBC, including D.C. General Hospital, eight community health centers, a pediatric special needs clinic and a school health program comprising nurses in 147 D.C. public schools. Mental health and substance abuse services and services provided at correctional facilities including Oak Hill, were not included.

The PBC operates as an instrumentality of D.C. government under the direction of a board of directors, all of whom have recognized professional and community credentials. In spite of the challenge of aged and inadequately maintained facilities and information systems that D.C. government turned over to us, we are successfully meeting our fiscal and operational goals, such as:

- Completed Fiscal Years 1995, 1996, 1997 and 1998 with excess revenue over expenses;

- We are upgrading our computer and medical devices to be Y2K compliant;
- We have continued to upgrade our patient care facilities;
- We have integrated primary care prevention and acute care services, and now offer the city's only fully integrated delivery system;
- We are full participating providers in the District's Medicaid Managed Care Program;
- D.C. General Hospital is fully accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), and scored in the 90th percentile at our last review;
- Our laboratories are accredited by JCAHO, and at last review, scored in the 95th percentile nationally.

Under the PBC's leadership, D.C. became one of thirteen cities awarded a "Community Voices" grant by the W.K. Kellogg Foundation. Through this initiative, we are collaborating with other historical safety net providers in the District to improve and coordinate care. We also received a grant from the Robert Wood Johnson Foundation to improve the quality of care for people at the end of life.

I could continue long beyond my allotted time, but I will refer you to the supporting materials I have provided to this Subcommittee.

Eugene Kinlow, a member of the Presidentially-appointed "Control Board" asked me to articulate my thoughts on healthcare reform in the District. My comments are captured in a paper entitled "Reforming Health Care in the District of Columbia: Tailoring Change to Real-Life Citizen Needs." I have made copies of this document available to this Subcommittee.

In the paper, we point out essential health indicators for D.C. citizens that appear stubbornly resistant to change. For example, despite unprecedented levels of spending:

- The infant mortality rate remains nearly twice that of the nation;
- African-Americans, especially women, account for a disproportionate number of newly diagnosed AIDS cases;
- Teen pregnancy rates are nearly twice the national average; and
- Death rates from largely preventable diseases remain at alarmingly high levels.

There are 81,368 D.C. residents who are uninsured in spite of a Medicaid expansion program implemented by the city last fall. D.C. is plagued with persistent barriers to health care that particularly plague the poor, including lack of money, transportation and child care, linguistic barriers, inconvenient provider hours and locations, inadequate health education promoting healthy behavior, and insufficient education about managed care procedures such as prior authorization.

Yet, the District of Columbia is rich with health care resources. The District is home to three academic medical centers, four community hospitals, five specialty hospitals and two nonacademic tertiary care hospitals, an abundance of healthcare centers, and six Level One Trauma Centers. These abundant resources are shamefully mal-distributed. For instance, wards west of the Anacostia River house the vast majority of hospitals and not-for-profit clinics. Wards east of the river, home to the highest numbers of low income and vulnerable citizens, offer few health resources. The PBC provides over 37% of the total uncompensated care provided by D.C. hospitals, making D.C. General Hospital the single largest provider of uncompensated hospital care in the city. Appropriations from the District covered only one-third of the cost of care at D.C. General Hospital, with the remaining two-thirds absorbed to the detriment of program improvements, employee compensation, and capital investments.

Reform is needed. But, reform must be directed at improving the overall health status of the District's citizens. We believe the principle ingredients essential to successful reform are:

- Establish objectives to improve health outcomes in specific areas;
- Align key health indicators with national averages, especially those which improve the quality of life for families and children;
- Improve continuity/coordination of care and services, especially among traditional safety net partners;
- Focus on community needs, based on community input, rather than provider needs;

- Strengthen promotion and prevention efforts;
- Maintain a strong safety net system, including an independent PBC; the Non-Profit Clinic Consortium members, Federally Qualified Health Centers and "Look-alikes," and relevant non-profit (DSH) hospitals.
- Ensure that insurance cards get used by requiring evidence that covered consumers get care;
- Make evaluation and measurement data public;
- Mandate HMO reimbursements to safety net facilities utilized two or more times within a plan year by their members;
- Establish incentives designed to encourage providers and health systems to deliver services in Health Professions Shortage Areas, Medically Underserved Areas, and other locations defined as needy. (See Figures 1 and 2 in our reform paper); and
- Require providers to establish and implement community-based outreach, education and prevention programs unique to their service areas; these programs should focus on meeting the health improvement objectives to be established by the Department of Health.
- Enhance enrollment outreach in communities where the largest numbers of Medicaid-eligible residents live;
- Tie HMO payments to quality measures;
- Incentivise hospitals to convert unused acute care beds to fill unmet needs in substance abuse, intermediate care, rehabilitation and long term care; and

- Designate only one Level One trauma center per quadrant to receive Medicaid reimbursements.

A nationwide report by The Urban Institute, *Public Policy, Market Forces, and the Viability of Safety Net Providers* (September 1998) suggests that certain circumstances like those existing in the District are recipes for eventual failure. We are encouraging the District to consider the experience of other states and cities, and institute successful practices that assure a strong and effective safety net, for example:

- Designate the PBC system as a Managed Care Organization (MCO) capable of holding risk;
- Assign default enrollees (individuals who do not choose an MCO) to the safety net system;
- Require this system's participation in commercial insurance plans offered to local government employees; and
- Allow safety net providers to bill MCO's when their enrollees use safety net facilities.

I conclude by saying that the District's Public Benefit Corporation is the largest single safety net provider between New York and Atlanta. We support the District's current efforts to encourage collaboration, especially between safety net providers and, the PBC stands ready to support policy makers in the actualization of our shared vision for a healthy city served by a new, unified health system whose performance is evaluated according to measurable improvements in key health indicators.



District of Columbia Health and Hospitals Public Benefit Corporation

Reforming Health Care in the District of Columbia:
Tailoring Change to Real-Life Citizen Needs

A Challenge to Elected Officials to Truly Serve the Citizens

A Plan Submitted by the
D.C. Health and Hospitals Public Benefit Corporation

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April 14, 1999

Reforming the Health Care Delivery System
In Our Nation's Capital:
TAILORING CHANGE TO REAL-LIFE CITIZEN NEEDS

The Mayor of the District of Columbia recently submitted his FY 2000 budget proposal, including a plan to reform the District's health care system. The D. C. Health and Hospitals Public Benefit Corporation agrees with the principle of expanding Medicaid coverage to more of the uninsured. We disagree, however, with key details of the plan, including the proposed use of disproportionate share and PBC funds to achieve this goal.

In an effort to move this policy debate forward, we offer the following thoughts on reform. In our view, we must first review the problems confronting the people of the District of Columbia, and the challenges facing both the public & private health care system. Therefore, any specific reform proposal should be developed around a set of well thought out overarching principles for improving the public's health. We believe that some of the public and private sector concerns related to the Mayor's proposal could be addressed through a deliberative policy-making process, beginning with an overview of why reforming the District's health care system is so critical:

I. WHY REFORM?

A. Too many of the District's residents do not get the health care they need and deserve. Year-after-year key indicators of the health of the citizens of the District of Columbia point to **dismal outcomes** that appear stubbornly resistant to change. For example, despite unprecedented levels of spending:

1. The infant mortality rate remains nearly twice that of the nation (13.1 vs. 7.2/1,000 live births);

2. African-Americans, especially women, account for a disproportionate number of newly diagnosed AIDS cases;

3. Teen pregnancy rates are nearly twice the national average (106.8 vs. 56.8 per 1000 ages 15-19), and

4. Death rates from largely preventable diseases remain at alarmingly high levels;

Death Rates From Preventable Causes (per 100,000 population)		
Cause of Death	**D.C.**	**U.S.**
Heart Disease	302.4	280.7
HIV/AIDS	117.6	16.4
Stroke	66.8	60.1
Homicide	56.8	8.7
Injury by Firearms	48.5	13.7
Diabetes	39.5	8.1

B. Other **abysmal health indicators** compared to national averages include:

1. low birth weight babies;
2. teen pregnancies;
3. influenza, etc. etc. etc.;

C. **81,368 DC residents are uninsured** – even after the Medicaid expansion implemented last fall;

D. DC is plagued with stubbornly persistent **barriers to accessing health care** ***that particularly plague*** the ***poor*** –

1. *lack of money, transportation and child care*
2. *linguistic barriers and fear of deportation*
3. *lengthy waiting times and inconvenient provider hours and locations*
4. *inadequate health education to promote preventive behavior*
5. *insufficient education about managed care procedures such as prior authorization*

E. Yet, the District of Columbia is rich with health care resources. Today, measured per 100,000 population, resources are available in the District:

Health Care Resource	D.C.	U.S.	D.C. vs. U.S.
Generalist Physicians	189	81	2.3 to 1
Specialists	342	128	2.7 to 1
Hospital beds	1,185	433	2.7 to 1

Moreover,

1. The District's Medicaid spending, at an average of $5,439 per recipient vs. $3,739 *nationally*, is almost one and one-half times ($218 million dollars) more than the national rate;

2. Three academic medical centers, four community hospitals, five specialty hospitals and two nonacademic tertiary care hospitals house **six Level One Trauma Centers**, and adequate capacity to more than meet the total acute, chronic, specialty, long-term, and intermediate care needs in a city of this size. (See Figure 1).

F. Yet these abundant resources are shamefully maldistributed: **doctors, clinics, hospitals, and other health care resources are not equally distributed by wards or where people have the greatest needs.** For example:

1. One-third of the District's census tracts are Federally **designated "health professions shortage areas"** (HPSAs), and one in five is considered a **"medically underserved area (MUA);"**

2. While wards west of the Anacostia River house the vast majority of hospitals and not-for-profit clinics, **wards east of the river, home to the highest numbers of low income and vulnerable citizens, offer few health resources.** (See Figures 1 and 2);

3. Two of the three hospitals in the Southeast quadrant of the city provided over 40% of the total uncompensated care at D.C. hospitals in 1997. **The PBC's share—37% of the total bill—renders D.C. General Hospital the single largest provider of uncompensated hospital care in the city.** Payments ("subsidies") from the District covered only one-third of the cost of care at DC General Hospital, with the remaining two-thirds absorbed to the detriment of program improvements, employee compensation, and capital investments.

II. INGREDIENTS FOR SUCCESS

By definition, ***to reform*** something implies that a process or change will be put in place that improves significantly upon what currently exists. Therefore, change or ***reform*** must be directed at improving the overall health status of the citizens of the District, especially those previously outlined. Among the principle ingredients necessary for success at breaking the backs of the ***stubbornly persistent barriers which contribute to the overall poor state of health experienced by citizens in the District*** are:

A. Objectives directed at improving **health outcomes** in specific areas; and

B. Aligning key **health indicators** with national averages, especially those which improve the quality of life for families and children;

C. **Improved access** to care – actual access for the uninsured and newly insured;

D. Improved **continuity/coordination** of care and services, especially among traditional safety net partners;

E. **Focus on community needs,** based on their input, rather than provider needs;

F. Stronger **promotion and prevention efforts;**

G. **Maintaining a strong safety net system,** including an *independent PBC;* the Non-Profit Clinic Consortium, Federally Qualified Health Centers and "Look-alikes," and relevant non profit (DSH) hospitals.

H. Expanded coverage/**Higher coverage rates** - *accompanied by* evidence of **actual access** to care (i.e. ensuring that an insurance card gets used);

I. Implementation of an ***evaluation/measurement system*** to determine:

1. Patient satisfaction with quality and availability of care (insured and uninsured)
2. Reduction of inappropriate use of emergency rooms;
3. Increase in primary care usage by insured and uninsured;
4. Further reduction of preventable inpatient admissions;
5. Effectiveness in eliminating unauthorized (and uncompensated) use of safety net facilities.

J. Mandated HMO reimbursements to safety net facilities utilized two or more times within a plan year;

K. Incentives designed to **encourage providers and organizations to** deliver services in Health Professions Shortage Areas, Medically Underserved Areas, and other locations defined as needy.(See Figures 1 and 2); and

L. Phased cost reduction strategies - targeted at efficient use of **public health care dollars;**

III. REFORM PROPOSALS

Expanded coverage is a good and progressive plan. The presence of an insurance card does not mean you get care. Exercise care to "do no harm." Direct reform at specific improvements needed by people. Partner with affected citizens to enhance chances for improvements. Incentivize providers and organizations to assist with reform.

A. As a condition of receiving Medicaid and local funds, the District should **require each provider to establish and implement** a community-based outreach, education and prevention program unique to their service areas that focus on meeting the health improvement objectives established by the Department of Health;

B. Establish the following **health improvement objectives** within [ ] years in order to

Reduce:

1. Infant mortality rate by 1.5% per year;
2. The rate of newly diagnosed HIV/AIDS cases by 2% per year;
3. Teen pregnancy rate by 2% per year;
4. Death from heart disease by 2% per year;
5. Death from stroke by 1.5% per year;
6. The rate of homicides by 2% per year;
7. The rate of injury by firearms by 2% per year;
8. The rate of death from diabetes by 2% per year; and to

Increase:

1. Prevention and primary care visits to two annually by the uninsured, underinsured, and newly insured persons residing in HPSAs and MUAs
2. The number of provider sponsored prevention programs designed to assist the District in meeting its health improvement objectives;
3. The availability of primary care services after normal work hours and weekends.

C. **Expand Medicaid coverage** – through reductions in Medicaid payments and fraud, and proceeds from the tobacco settlement.

D. **Improve "actual access"** to health care by the newly insured persons – ensure that the insurance card gets used through:

1. Implementing mandates similar to those required under the District's EPSDT program. Quarterly reports enable effective monitoring of Managed Care Organizations' performance in assuring timely health screening and service delivery;
2. Working with the HMOs to provide the necessary support needed for the chronically ill, aged, and the physically or behaviorally challenged.
3. Requiring HMOs and providers to offer a defined set of Medicaid paid services for the poor, e.g.:

a) Transportation
b) Extended hours
c) Case management
d) Translation services
e) Education on HMO procedure

4. **Risk-adjusted rates** – pay the HMOs more for sicker and costlier patients and less for healthy and/or non-utilizing patients (eliminate incentives for cherry-picking and discouraging utilization of needed services);

E. **Enhance enrollment outreach** in communities where the largest numbers of Medicaid eligible residents live. Engage health care and other social service organizations in the enrollment process;

F. **Tie HMO payments to quality measures;**

G. Establish an **incentive** program for hospitals **to convert unused** acute care **beds** to fill areas where beds are needed, e.g., substance abuse, intermediate care, rehabilitation, long term care, and detoxification, etc.;

H. Provide **incentives for primary care physicians** to practice in medically underserved areas (MUAs), or health professions shortage areas (HPSAs);

I. Divide the city into four "trauma quadrants," and **designate only one trauma center per quadrant to receive Medicaid** reimbursements;

J. **Foster full participation by the PBC** in Medicaid managed care. Disadvantaging the largest safety net provider undercuts its ability to serve non-paying patients, increasing the probability that the city's residents needing care the most will not have it available. The PBC is holding on at the moment, but a nationwide report done by The Urban Institute entitled *Public Policy, Market Forces, and the Viability of Safety Net Providers (September 1998)* suggests that certain circumstances, e.g., those allowed to be perpetrated upon the PBC, are recipes for eventual failure. As the report states, "as competition increases or the number of uninsured persons rises, federal, state, and local public policies will need to play an increasingly important role in ensuring access to health care for the uninsured." Full participation can be achieved through:

1. Executive and legislative support in establishing a PBC managed care plan similar to those developed in Boston and Denver;
2. Default assignments; including automatic assignment of patients currently using PBC clinics and providers;
3. Guaranteed participation in commercial HMO/insurance plan offered to District employees;
4. Allow the PBC and other safety net providers to fee-for-service bill the HMOs whose enrollees use their facilities, given the District-imposed

constraints which interfere with the PBC's ability to quickly adjust to rapid changes in the managed care market

5. Provide the PBC with flexibility to adapt to managed care through full implementation of the PBC Act.

K. **Fully implement the law establishing the PBC.** The PBC was established to develop and implement a vertically and horizontally integrated health care delivery system. The system currently includes DC General Hospital, nine (9) community health centers, ambulatory specialty clinics, and the school health program with nurses and other health professionals in 147 public schools.

Among the more critical parts of the PBC law the PBC Board and administration have been not allowed to implement are:

1. Implement fully the PBC Fund (Bond Account);
2. Pursue issuance of revenue bonds or borrow money;
3. Operate pursuant to its independent status;
4. Establish a negotiated service contract with the District for the uninsured and each special population (ward of the District);
5. Or, in the alternative, discontinue providing uncompensated care once the PBC Board can demonstrate that all arbitrarily determined payment in the form of "subsidies" have been expended;

L. **Enhance school health programs** through legislation which mandates capitated reimbursements to school based health centers, including nursing service, regardless of HMO or plan affiliation. Schools offer a direct avenue of access to our city's children and an excellent opportunity to improve their health status both now and for years to come, and to enhance education and prevention programs.

M. **Encourage collaboration, affiliations and mergers** by establishing three-year grants for existing hospitals and/or health centers choosing to participate in efforts to reduce costs, or improve quality or the coordination of services. Participants should be allowed to keep current revenue streams during the transition period. This new initiative will:

1. allow participating providers time to rethink and refocus on their primary mission through a comprehensive network of primary, specialty, secondary, tertiary and other inpatient services, and;

2. offer a critical opportunity to effect a rational reallocation of resources in a manner that does not interrupt services to the citizens who rely on these organizations for care;

3. goals of the initiative will include (1) sharing resources such as technology and personnel to better serve the public, and (2) lowering costs of the

system as a whole through economies of scale and elimination of duplication;

Traditional safety net providers – along the lines contemplated by the Kellogg Community Voices Project – should be encouraged to form a unified health care delivery system. Chief among the traditional safety net providers are the Health and Hospitals Public Benefit Corporation, Howard University Hospital, Non Profit Clinic Consortium, Federally-qualified and Federally-qualified look-alike health centers, and Greater Southeast Health System. Governance and structural options could include:

1. one system with separate governance structures
2. alliances or affiliations
3. selected mergers

The District should allow the PBC Act to be implemented in its entirety to ensure that the PBC is able to participate fully in this initiative.

N. **Require each provider to establish prevention and education programs** in the communities most affected with poorer than the national average statistics for health outcomes;

O. **Finance the expansion and reform through:**

1. Tobacco settlement proceeds;
2. Savings or under expenditures within the Medicaid office;
3. Enhanced federal funding;
4. Enhanced federal funding through recalculation of federal share of disproportionate share hospital payments;
5. Other general revenue funds.

P. The DC Health & Hospitals Public Benefit Corporation is the largest single safety net provider in the District of Columbia, and anywhere to be found between New York and Atlanta. This "distinction" reflects both the state of personal health and social crisis facing many of the District's citizens and the disproportionate financial burden historically faced by DC General Hospital and health clinics, formerly operated by the Commission on Public Health. The state of facilities and general absence of capital funding speaks volumes about the daunting challenges inherited by the PBC. Nevertheless, we believe, like the thirty-three (33) prior reports, that no other organization is more relevant today than the PBC. Fully implementing the District's own law would enable the PBC to be **financed through the following mechanisms:**

1. Medicaid revenues
2. HMO contracts
3. D.C. government contracts for the uninsured and special populations
4. Medicare

5. Grants
6. Private provider contracts
7. Private insurance
8. Further improvements in operating efficiencies.

Conclusion

These recommendations provide a framework from which to rethink how we fund health care, to consider the implications of our current funding decisions and to make real improvements to truly serve this city's citizens. Our public stewardship demands that we do so. Spending at the highest levels this country has seen has failed to lessen the tragedy of dying children and the premature and preventable death of their parents and grandparents. Moreover, expanding Medicaid coverage without assuring access and improving health outcomes is not an improvement in the health system. The Mayor's plan presents an opportunity to reallocate Medicaid funds. We can do so, but we must also assure that we meet the most basic needs of the citizens: access to care and improved health status.

The Public Benefit Corporation stands ready to support policy makers in the actualization of our shared vision for a healthy city served by a new, unified health system whose performance is evaluated, along with that of the city, according to measurable improvements in key health indicators.

Figure 1.. Hospitals and level I Trauma Centers in the District of Columbia

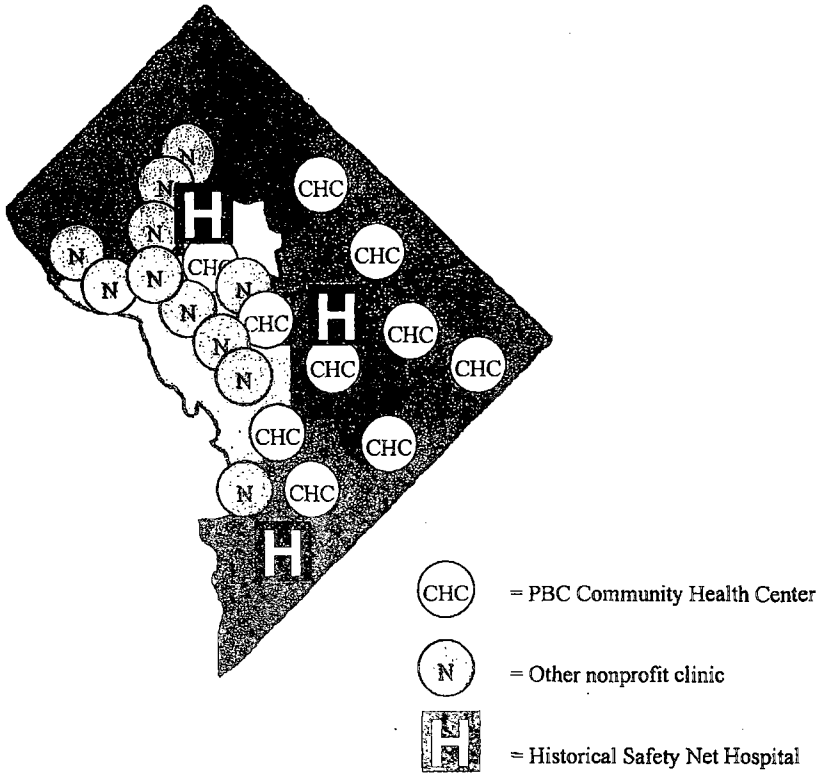


Figure 2. Community Health Centers and Nonprofit Clinics in the District of Columbia

RESPONSE TO MAYOR WILLIAMS'
HEALTH INSURANCE EXPANSION PLAN
prepared by
The DC Health and Hospitals Public Benefit Corporation (PBC)

- The PBC supports efforts to expand health care coverage to uninsured District residents. We applaud the Mayor's commitment to this goal.

- However, simply giving an individual an insurance card does *not* mean the person will have *actual access to care.* It is only such actual access leading to the receipt of actual services that will improve the health status of our citizens. Unfortunately, we believe that the Mayor's proposal does far too little to ensure actual access; on the contrary, it would *reduce* access by damaging the District's safety net health system, in particular the Public Benefit Corporation.

- Our concerns about the proposal fall into four broad categories:

  - **Simplistic assumptions**: The Mayor's proposal is based on simplistic and unsupported assumptions relating to projected enrollment levels, assignment of enrollees to PBC providers, and enhanced revenues and reduced uncompensated care for the PBC.

  - **Speculative financing**: The Mayor has identified only $115 million out of the $283 million in federal Medicaid savings he projects would be needed over 5 years to fund the program. In addition, the proposal claims that a federal waiver would bring in $36 million in new federal funds when federal waivers are explicitly required to be budget neutral, and it assumes another $9 million in proposed but not yet enacted new federal Medicaid revenues.

  - **No protections for the safety net**: Based on simplistic assumptions that the PBC's revenues will increase and its uncompensated care will drastically fall, the Mayor proposes slashing the PBC's subsidy and eliminating its Medicaid Disproportionate Share Hospital payments, representing a $26 million annual cut. This cut is not tied to *actual* reductions in uncompensated care at the PBC – if such care were to remain at or near current levels, for example, the PBC would still have to absorb the $26 million loss. In addition, the proposal fails to draw on innovative programs developed in several other states to assist their safety net providers in making a smooth transition to managed care and ensure continued access for those remaining uninsured.

  - **No provision for the PBC's participation as a plan**: Previous analyses of coverage expansion proposals have recommended that to ensure the PBC's viability it must be permitted to participate directly as a health plan, rather than subcontracting with a private HMO. The Mayor's proposal fails to allow such participation and thereby places the PBC at a perpetual disadvantage in the

competitive marketplace, requiring it to rely even more heavily on taxpayer-funded support.

RECOMMENDED MODIFICATIONS

The PBC believes that with certain modifications, the Mayor's plan would have a much greater chance of achieving the twin goals of increasing both coverage *and* access. We recommend the following changes:

- **Require plans to ensure access**: Plans should be obligated to ensure that their enrollees actually receive care in addition to their insurance card, through the provision of certain services (translation, transportation, child care, social services, etc.), through financial incentives and through other means.

- **Tie reductions in the PBC subsidy to actual reductions in uncompensated care**: Only when the PBC's uncompensated care burden is actually reduced should its subsidy be scaled back.

- **Rationalize the PBC subsidy**: Rather than providing a lump sum subsidy, the public support given to the PBC should be based on the volume of indigent care provided.

- **Solidify the financing**: No proposal of this magnitude should be based on such speculative financial grounds.

- **Allow the PBC to participate as a plan**. Certain protections should be given to a PBC plan to ensure its viability, as has been done in other states.

- **Establish a default assignment process favoring the PBC**

- **Create a transition assistance program for the PBC**: Models for such programs are available from several other states that have helped their safety net providers make the transition to managed care.

- **Assistance with contingency planning**: If these or similar recommendations are not adopted, it will be necessary for the PBC to begin a community-wide contingency planning process for closing services, laying off workers and taking other drastic steps to cope with the fallout. We would request the District's assistance in such planning efforts.

Mr. ISTOOK. Mr. Fairman, we will be pleased to hear from you.

OPENING REMARKS OF JOHN A. FAIRMAN

Mr. FAIRMAN. Thank you, Mr. Chairman, members of this committee, and the Honorable Delegate, Eleanor Holmes Norton.

I am John Fairman, the Chief Executive Officer of the Health and Hospitals Public Benefit Corporation.

BACKGROUND OF PUBLIC BENEFIT CORPORATION

First, I would like to make a brief statement, both describing how the PBC serves the District of Columbia and endorsing needed reform for the District's health care system, especially improved services to the poor, uninsured, and underinsured.

First, the PBC was formed in 1996 to meet the needs of a coherent and cohesive approach to delivering quality and accessible health services to the District. The idea for a PBC came out of numerous task forces, 33 to be specific, spanning over the course of 15 years and in excess of 200 different citizens, none of whom or few of whom were public employees.

In 1997—and I might add, Mr. Chairman, over the course of those 15 years, consistently there was a recommendation for a coherent and organized approach for providing and/or overseeing the health care in the District.

In 1997, the District consolidated some of its direct medical functions under the PBC, including D.C. General, eight community health centers, a pediatric special needs clinic, and, one year later, a school health program comprising nurses in 147 public schools. Mental health, substance abuse, and services to correctional facilities, including Oak Hill, were not included.

However, we believe this approach, along with expanded coverage, will finally address the needs of people we all purport to serve. The PBC operates as an instrumentality of the D.C. Government under the direction of a board of directors, appointed jointly by the Council and the Mayor, all of whom are recognized professionals with professional and community credentials.

"BALANCED" BUDGETS

In spite of the challenge of aged and inadequately maintained facilities and information systems, the D.C. Government turned over to us, we are successfully meeting our fiscal and operational goals such as we completed fiscal years '95, '96, '97, and '98 with excess revenues over expenses.

[CLERK'S NOTE.—Mr. Fairman's statement concerning "excess revenues over expenses" does not reflect the fact that (1) the District government "loaned" DC General Hospital $58 million (see FY 1995 DC hearings, volume 2, pages 1746–1752); (2) $29 million of the $58 million was "written off" during the period FY 1996 through FY 1999; (3) the District government "forgave" the balance of $29 million in section 1602(c) of the Service Improvement Act and FY 2000 Budget Support Act (DC Bill 13–161 enrolled June 11, 1999); and (4) DC General borrowed $36 million from the city "in the last two years to avert a shutdown" (Washington Post, March 9, 2000, page A9). In essence, DC General Hospital and its successor, the Public Benefit Corporation, DID NOT REPAY THE $58 MILLION borrowed from the District's general fund as reported in the FY 1995 hearings AND HAS BORROWED ANOTHER $36 MILLION from the city as of March 9, 2000 to avert a shutdown.]

We are in the process of upgrading our computers, as are other medical facilities, to be Y2K-compliant.

We have continued to upgrade our patient care facilities. We have integrated primary care, prevention, and acute care services, and now offer the city's only fully integrated delivery system.

ACCREDITATION

We are a full participant in the Medicaid managed care programs offered by the District. D.C. General Hospital is fully accredited by the Joint Commission on Accreditation of Health Care Organizations, and in fact, scored in the ninetieth percentile in our last review. Our laboratory, by comparison, was scored by JCAHCO in the ninety-fifth percentile.

Under the leadership of the PBC, D.C. became one of 13 cities awarded a Community Voices Grant by the prestigious W.K. Kellogg Foundation. Through this initiative, we are collaborating with some 50 different community-based organizations and other agencies in bridging the gaps that now exist between safety-net providers.

We also received a grant from the Robert Wood Johnson Foundation to improve the quality of life for patients that are at the end stage of life.

REFORMING HEALTH CARE IN THE DISTRICT

Mr. Eugene Kinlow, a member of the presidentially appointed Control Board, asked me to articulate my thoughts on health care reform in the District. My comments and those of my board are captured in the paper before you entitled "Reforming Health Care in the District of Columbia: Tailoring Change to Real-Life Citizen Needs." Those copies, as I stated, are available here.

[CLERK'S NOTE.—A copy of the report referred to appears earlier in this hearing on pages 756–769 immediately following Mr. Fairman's prepared statement.]

In the paper, we point out essential health indicators for the D.C. citizens that need to be improved, which heretofore appeared to be stubbornly resistant. They have been touched on by Dr. Marlene Kelley, and I will not reiterate those in the interest of time.

81,368 UNINSURED DC RESIDENTS

There are 81,368 D.C. residents who are uninsured, in spite of the District's Medicaid expansion program implemented by the city this past fall. D.C. is plagued with persistent barriers to health care, particularly plaguing the poor. Those would include lack of money, transportation and child care, linguistic barriers, inconvenient provider hours and locations, inadequate health education promoting healthy behavior, and insufficient education about managed care procedures, such as prior authorization.

Yet, the District of Columbia, as is well known, is rich in health care resources. The District is the home of three academic medical centers, five community hospitals, four specialty hospitals, two non-academic tertiary care facilities, an abundance of health care primary centers, and six level-one trauma centers. These abundant resources are shamefully maldistributed.

For example, wards west of the Anacostia River house the vast majority of the hospitals and not-for-profit clinics. Wards east of the river, homes to the highest number of low income and vulnerable citizens, offer few resources. The PBC provides over 37 percent of the total uncompensated care provided by D.C. hospitals, making D.C. General, the single largest provider of uncompensated care in the city.

Contrary to the perception that D.C. General spends an inordinate amount of money, we are in fact a very small part of the dollars spent on health care by the D.C. Government. Appropriations from the District covered only one-third of the cost of the care in D.C. General, with the remaining two-thirds absorbed by the facility to the detriment of program improvements, employee compensation, and capital investments.

REFORM NEEDED IN HEALTH CARE

Reform is indeed needed, but reform must be directed at improving the overall health status of the citizens. We believe the principal ingredients of a successful reform are establish objectives to improve health outcomes, align key indicators with the national average, improve continuity, coordination of care, especially among safety-net providers, strengthen promotion and prevention, maintain a strong safety net, ensure that insurance cards get used rather than just patting ourselves on the back about expanded coverage, make evaluation and measurements data public, mandate HMO reimbursement to safety-net facilities, utilizing the facilities two or more times a year, and those are just some. The others are listed there.

We also believe that the city should incentivize hospitals to convert uninsured acute care beds to fill unmet needs in substance abuse, intermediate care, rehabilitation, and long-term care, and designate only one level-one trauma center per quadrant to receive Medicaid reimbursement.

A nationwide report by the Urban Institute entitled "Public Policy Market Forces and the Viability of Safety-Net Providers," issued September 1998, suggests that certain circumstances like those existing in the District of Columbia are recipes for eventual failure.

We are encouraging the District to consider the experience of other States and cities and institute successful practices that assure a strong and effective safety net. First, recognize the critical role and designate the PBC system as a managed care organization. Assign, as Council has legislated, the default enrollees to the PBC and/or acknowledge the recommendations of HCFA in terms of how one should go about doing that. Require this system's participation in commercial insurance programs, and allow the safety-net providers to build the managed care organizations, as I mentioned.

CONCLUSION

I conclude by saying that the District's Public Benefit Corporation is the largest single safety-net provider between New York and Atlanta. We support the District's current efforts to encourage collaboration, especially between safety-net providers and the PBC,

and we stand ready to support policy-makers in articulating our shared vision for a healthy city served by a new unified health system whose performance is evaluated according to measurable improvements in key health indicators.

I might mention, Mr. Chairman, I read this after having broken my glasses before coming here.

Mr. ISTOOK. I think we can all sympathize with you, Mr. Fairman. Thank you for your testimony.

Let me mention, we will be having questions under the 5-minute rule. Since there really was not that much difference in the time of arrival when we got started, I am going to go with Committee members in, so to speak, seniority order, rather than arrival order, at least to those that are already here.

Mr. Moran certainly outlined some areas of focus. I want to ask my first questions about a particular area that is of great concern to me.

CRIME AND SUBSTANCE ABUSE TREATMENT

We have a proposal before us from the Office of Offender Supervision to try to help reduce the crime rate in D.C. by having a more aggressive effort to make sure that persons that are on some sort of probationary status, who have history of drug abuse, are in compliance with requirements totally to abstain from that while they are on that status.

With 20,000 to 30,000 offenders, most of whom have that history, this mechanism of either getting them, one, to comply or, two, be taken back off the streets for violating the conditions of their probation, I think, holds great promise for not only improving the climate, but frankly improving the crime rate in D.C., since it is estimated that each of these offenders is committing crimes to finance their drug habits, sometimes hundreds of crimes per offender, per year.

I think it would be a great thing for the District. However, it is certainly true that, at the same time, we need to make sure that we have sufficient drug treatment programs in place because our goal is not to have people locked back up. Our goal is to have them abstain from using any substance that is prohibited.

OVERVIEW OF CURRENT SUBSTANCE ABUSE TREATMENT PROGRAMS

With that in mind, I want to ask questions about the level of the treatment programs that exist, and I would like an overview of the current treatment programs and how many are in them, and of those persons, how many of them are in some type of probationary status with the courts as opposed to those that are in for some other purpose, what is the capacity of these programs. I want to work with you and get some information for the record, so if you would outline this in more detail, and, frankly, tell us which programs have the best track records and which are lacking and where do we need to put resources to make this happen.

So I suppose, Dr. Kelley and Mr. McCarthy, that probably falls in your bailiwick more than anything else. Can you begin to address that with me? And I do want to do some follow-up outside of the hearing, of course.

Dr. KELLEY. I think that some of the information, we will need to get back to you on——

Mr. ISTOOK. Of course.

Dr. KELLEY [continuing]. Some of the specific, but, in general, the substance abuse program within the Department is currently working with the courts in terms of trying to address some of those needs and to make a priority in several areas for putting those folks into substance abuse programs.

LARGE WAITING LIST

Yes, we do have a large waiting list, but we have been able even thus far this year to make some inroads in that. So, where we had 1,200 people on a waiting list before, it is now down to approximately 600, and we anticipate before this calendar year is out, decreasing the waiting list, but increasing the access to services.

CAPACITY OF SUBSTANCE ABUSE TREATMENT PROGRAM

Mr. ISTOOK. How many slots do you have to give some proportion to that waiting list?

Dr. KELLEY. What we have done is within our existing program is to expand, and I did not bring that list with me, the numbers. So that, for instance, we have a number of contracted services, and we have been able to work with the contractors. They have increased their slots so that they are accommodating more than they had before.

We anticipate a new 360-bed methadone treatment program, slots not beds, but slots, to come into being before the end of this year.

Most of our people on the waiting list that I just described are awaiting methadone treatment slots. So there is an anticipation that we will be able to accommodate those.

The other programs, abstinence, alcohol, there is no waiting list for that. So there should be an ability to accommodate.

Mr. ISTOOK. Just for the illegal drugs that you have a waiting list?

Dr. KELLEY. Yes.

Mr. ISTOOK. You do not know the information without checking on how many persons are currently participating in these programs?

Dr. KELLEY. No. I do not know. As of how many are court—involved with the court system——

Mr. ISTOOK. Right.

Dr. KELLEY [continuing]. No, I do not have those figures, but I will try to get those figures, and then how many are in need of these services and are not able to get them. I will get that for you.

Mr. ISTOOK. I appreciate that.

Mr. McCarthy, did you have some——

Mr. MCCARTHY. Yes, Mr. Chairman.

INCREASE IN FUNDING FOR SUBSTANCE ABUSE TREATMENT

I would just like to add that the budget that was relayed to you a couple weeks ago by the City Council does include significant in-

creases in funding for substance abuse and prevention. It is a priority for the Mayor and the Council, especially the prevention part.

Mr. ISTOOK. Was there a reason—the part that I saw was under the HIV/AIDS segment of that. Is that because that department is under that segment or because those were actually treatments related to that?

Mr. MCCARTHY. The prevention and recovery administration——

Dr. KELLEY. Did get increases.

Mr. MCCARTHY [continuing]. Got increases in funding.

Mr. ISTOOK. Right. I am just talking about the budget item for the increase appeared to be within that category, and I was not sure what that meant as far as how the organization chart runs or how the flows—is there a relationship between those two programs, the difference?

Dr. KELLEY. They work together, but the budgets are not intermingled as such, no. So there are increases in the APRA, which is the substance abuse program, specifically targeted to prevention and to treatment services.

Mr. ISTOOK. The documents that I have received from the Department of Health show that the drug assistance program is under the agency for HIV/AIDS.

Dr. KELLEY. Oh.

Mr. ISTOOK. You were proposing, but I am not sure if this is——

Dr. KELLEY. No, no, no. That drug assistance program is the—what is the word I want to use?

Mr. ISTOOK. That is a different program.

Dr. KELLEY. Yes. That is for the medications for HIV/AIDS persons.

Mr. ISTOOK. Okay. I thought perhaps that was it.

So the increase that is actually budgeted for the actual substance abuse programs is the $3-million increase.

Dr. KELLEY. Yes.

Mr. ISTOOK. Okay. That was it.

Dr. KELLEY. Yes, exactly.

Mr. ISTOOK. I wanted to make sure I got straight on that.

We may need to have that for the record.

Mr. ISTOOK. We are not prepared to go into that this morning because, to me, this is an interrelated thing. It involves several agencies. It involves the Office of Offender Supervision——

Dr. KELLEY. Yes.

Mr. ISTOOK [continuing]. And it involves the courts and it involves the corrections system and it involves the health department and the substance abuse treatments.

Dr. KELLEY. Yes.

Mr. ISTOOK. But I think it could go a long way toward changing a number of the problems within the city, and I am interested in bringing everyone together and finding all the elements that have to be coordinated to make this aggressive program happen so offenders know they will be tested. They cannot get away from being tested, so, thereby, to be held accountable, they have more incentive than ever to get their life and their behavior in order. I want to make sure we are giving them the resources for that, not just telling them that they are to be locked back up.

Thank you. I think my own time has expired. So, Mr. Moran?

DSH MEDICAID PILOT PROGRAM

Mr. MORAN. Thank you, Mr. Chairman.

Mr. Chairman, I would like to inquire as to the use of the DSH program to fund the new initiative that the Mayor has proposed for childless adults.

As I understand it, most of the DSH program, the Disproportionate Share Program, would be used in the Mayor's program to provide health care for childless adults under 200 percent of poverty. Is that true?

Mr. OFFNER. That is right.

Mr. MORAN. Is that basically the case?

The first thing I want to ask is what impact will that have on Children's National Medical Center, which currently receives DSH payments. Howard also receives DSH money, I understand. Providence has maternal and geriatric health care service. Children's has pediatric health care, one of the best in the Nation.

What I would like to get at is to what extent the quality of that care is going to be compromised by the diversion of DSH payments to fund the Mayor's program for childless adults.

Mr. OFFNER. Mr. Moran, we had the Llewyn Group, which is a reputable national consulting group, working with our staff to make projections over the next 5 years of the impacts on each of these hospitals. What the result of that analysis was, that each of the hospitals you named would be better off because of this proposal.

Why would they be better off? Because while they would lose, as you said, some or all of their DSH funding, they would not get a large infusion of uninsured business, particularly in the case of a place like Howard which has a very, very large uninsured group that has a relatively small number of children.

We estimated that Howard over the next 5 years would have received over $50 million over that period in additional net revenue.

DSH MEDICAID PROGRAM—IMPACT ON CHILDREN'S HOSPITAL

Children's Hospital, it was about a break-even because Children's Hospital we are already covering in the District every child under 200 percent of poverty, or at least insurance is available. Obviously, not everybody has come in and enrolled, and that is a process that is continuing, but the point is that when enrollment is finished, every child under 200 percent of poverty will have access to health insurance. So Children's Hospital is, it seems to me, in a fairly good situation under our regular program, and they would have abruptly broken even..

Mr. MORAN. Not according to them, but I would like to see those numbers.

The fact is that Children's does not care for childless adults because it is a children's hospital, obviously, and so the expansion for childless adults, it would seem, would come at the expense of the hospital that did not provide that care. The money that was being paid for the expansion is coming out of a very essential source of funding for a hospital like Children's. That is one of the things I want to get at because the quality of care at Children's is as high

as there is anywhere in the Nation. I want to see that quality of care continue.

It looks as though this initiative would compromise that quality of care. I think we need to see why the Llewyn report suggested that they would break even. They say they do not, and I find it difficult to understand how they would.

Mr. OFFNER. If I may just add—let me ask Mr. Moran this question. If the District—I mean, we have, I think, fairly reliable data that only 3 percent of the District's population is represented by uninsured people above 200 percent of poverty, and 97 percent of the population would have been covered under this Mayor's proposal.

If we are covering every child or we are making insurance coverage available to every child up to 200 percent of poverty, so that there are only a handful of children in the District who do not have insurance, what is the need for a large additional payment to a hospital like Children's to cover uninsured people? That is the question, but we would be glad to share those figures with you.

Mr. MORAN. Well, okay. I thought that the original estimate was of the $6-million waiver being requested, about $4 million was going to come out of Children's hide, but, apparently, that has been modified.

My time is up, but we can have another round, I trust, to get into this in greater depth.

Thank you.

Mr. ISTOOK. Absolutely.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

First of all, Dr. Kelly, I want you to know my boat is named Kelly and my Jack Russell terrier's name is Kelly.

Dr. KELLEY. Very good.

Mr. CUNNINGHAM. So we have an affinity for——

Mr. ISTOOK. Dr. Kelley, do you have a dog named Duke?

[Laughter.]

Mr. CUNNINGHAM. No, but J.C. Watts named his dog D.C., and he mistreats it, I am going to tell you.

We get a little levity in these meetings, anyway.

PROSTATE CANCER EXAMS

Some of my colleagues just came in, and I would like to announce also that in room B–344 today, there is a prostate cancer check for Members of Congress between now and 1330. For those on non-military times, that is 1:30 this afternoon. A year can make a difference between your life or death. It is down in room B–344.

ANACOSTIA RIVER HEALTH HAZARD

Also, I would like to mention that one of my stated goals is—I live down on the waterfront, and I have taken my little boat up the Anacostia River, all the way past RFK stadium. I do not care if it is the Navy, if it is industrial pollution, if it is the amount of chemical and fecal content parts per million, it is the worst anywhere in the United States on the Anacostia River. You talk about a health hazard. That is something that I will fight, and I will be the tip of your spear to help clean up the Anacostia River. I have told

the chairman I want to work with the Mayor and the city and the health department.

HEALTH TOWN HALL MEETINGS

Secondly, Chairman Istook, Chairman Porter, and the Mayor—I also sit along with Mr. Istook on Labor HHS. Dr. Varmus, who is head of NIH, Dr. Klausner, head of cancer research, and others have agreed to put on a series of town hall meetings. It is not going to be a big show for Members of Congress. I would like their support, and, Ms. Holmes-Norton, we need a place to hold these meetings. But they are going to put on a series of town hall meetings.

The first one is going to be on cancer, since I am a cancer survivor. We are going to have another on children's diabetes. It is focused on information like where does someone get information on medical health, all the way from HMOs to medical savings accounts, to where they can call a doctor, if someone, for example, has prostate cancer.

I have had over a hundred calls from friends that wanted to know, that they came up positive for cancer. What do you do? Where do you go? The meeting is going to focus on, as the gentleman mentioned, prevention with diabetes, children's diabetes, to diet, to everything else.

We are going to do a series of these. The first one is on cancer, then juvenile diabetes, and then the other medical research which gives hope. For example, there has been no marker for women's ovarian cancer——

Dr. KELLEY. Right.

Mr. CUNNINGHAM. Like there is for prostate cancer.

HEALTH INFORMATION—AVAILABLE ON INTERNET

We heard testimony that up to 25 markers for ovarian cancer are possible now because of medical research. Those kinds of things all available on the internet. A lot of your constituents here in D.C. do not have access to computers, but I want to tell you something. My wife is the district administrator in a school district, and I was at a board of education meeting. There was a little 6-year-old girl there. I walked up to her, and it is one of those, Eleanor, that you want to walk up and pat on the head and say, "What is your name?"

I said, "Well, little girl, what is your name?," and she looked at me and she threw her chest back and she said, "My name is www.mary.com." So, if you do not think the children do not have access to these in their schools and stuff, that is important to get out that kind of information.

HEALTH PREVENTION PROGRAMS

I would rather prevent my children from getting the measles than have to treat them afterwards. I know there is a fine line between prevention and then also the care. Unfortunately, I think we spend too much on the care after you get the disease instead of prevention.

DRUG DEALERS

I think it is the lowest thing on earth to be a drug dealer or drug user. It does not mean we cannot help them once, but after that, I am sorry, they are on their own, and it has got to be a quality effort in the first place, but after that, they are gone.

MEDICAID COSTS—ILLEGALS

I would also like you to take a look at other contributors to public health costs. In California, Texas, and the Western States, over half the children born in our public hospitals in California are illegals. Can you imagine how that hurts the Medicaid problem with the poor and the indigent? That takes the dollars away.

We have 400,000 children that are illegal, K through 12 education. That is $2 billion a year for their schooling. That does not even include the school lunch program, which is over a million and a half dollars a day.

You may want to include these in your report to focus on things that are costing us excess money and taking money away from our poor in not only the jobs, but everything else.

CONGRESSMAN CUNNINGHAM'S OUTREACH TO CITY

I would like to work with the Mayor, which we are doing not only in Anacostia, but these medical town hall meetings. I think it is something proactive we can do to get out the information.

I have had some in my own district, and I want to tell you, across the spectrum, people got information just, for example, where they could get the information, and it is very important. I think it is something we can do positively that does not cost anything, but I am going to need Ms. Holmes-Norton and the Mayor and the hospitals to find a place large enough that we can do this.

I am going to announce it. I am going to give it out, and I am going to turn it over to NIH, and that is the only role I am going to play. It is something I think we can do proactively.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Cunningham.

Mr. FAIRMAN. May I——

Mr. ISTOOK. Go ahead, Mr. Fairman.

RADIO PROGRAM "PBC PULSE"

Mr. FAIRMAN. Congressman Cunningham, I would just say that the PBC in partnership with the Department of Health operates a radio program every Sunday we call the "PBC Pulse." We are disseminating information to the community.

We would be delighted to have you, if your schedule permits, and if not, a member of your staff——

Mr. CUNNINGHAM. My schedule will permit.

Mr. FAIRMAN [continuing]. This Sunday, this Sunday from 2 to 6 at the Waterside Mall. We are having a broadcast, and the focus is male health issues and prostate cancer, et cetera.

Mr. CUNNINGHAM. From a person who thought they only had a year to 5 years to live up to, 2 weeks ago, I will be happy to because it came the other way and it is very positive now, and it is because of the health care system.

Mr. FAIRMAN. You might remember the show airs every Sunday. So there are numerous issues that we are trying to put out to the community and to broadcast.

We also have a program called "What is the Deal, Yo?," which kids operate a soap operate skit, letting each other know that unsafe sex practices and drug activities are not good. It is done by the kids. It has a 98-percent identification factor among teens.

COMPUTERS FOR SCHOOL NURSES

The last thing I would like to say is that we have secured a grant, again, in partnership with the Department of Health, to put computers in the school nurses' offices. We believe—I certainly believe that the school nurses are the most motivated group we have, and they have enormous knowledge and it is all on pieces of paper.

21ST CENTURY CLASSROOM ACT—COMPUTERS

Mr. CUNNINGHAM. Look into the 21st Century Classrooms Act. The President signed it. It was my bill. It allows schools to receive computers from industry.

We have a non-profit that receives the computers. We use prison labor to upgrade the computers. So there is a win there that teaches them a skill. That computer then goes into the school where it plugs in, ready to use with the software, so that you do not waste them.

Ways and Means Chairman Bill Archer told me that the provision expires in the year 2000. We are now in 37 different States. D.C. ought to look into that because we can provide computers that are upgraded. They may not be brand-new ones, but they are like brand-new ones, and they are for the schools. My next phase is to get them into our libraries.

Thank you.

Mr. ISTOOK. Thank you, Mr. Cunningham.

Mr. MCCARTHY. May I add something, sir?

Mr. ISTOOK. Yes.

ANACOSTIA RIVER—REGIONAL COMPACT SIGNED

Mr. MCCARTHY. Mr. Cunningham, you may know the Mayor is an avid outdoorsman, and in fact many times has taken his canoe out on the Anacostia River.

Mr. ISTOOK. Does it have a name?

Mr. MCCARTHY. Kelley. [Laughter.]

No. Duke. Excuse me. Duke.

Mr. CUNNINGHAM. I like power.

Mr. MCCARTHY. Last month, with the county executives from Montgomery and Prince George's, he signed a compact for committing over the next 5 years to clean the river up. I do not have more detail than that, but I would be very happy to get that for you.

Mr. CUNNINGHAM. I wrote him a letter saying I told him I wanted to help, and I never got an invitation for that.

PREVENTIVE HEALTH CARE

Mr. MCCARTHY. Your focus on prevention is exactly where the Mayor is headed. His whole program is premised on the fact that

if people get preventive care and are educated there, we can minimize the number of costly emergency room visits when people are very, very sick.

One of the programs we are most proud of is our school nurse program where we do educate kids at a very, very early age in that field.

Mr. ISTOOK. Thank you.

Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

DRUG USE, PREVENTION AND REHABILITATION—POLICY INTERFACE

This line of questioning might be best directed to Mr. McCarthy, but maybe others as well, if you would let me know.

I would like for you to talk about the policy position of the District of Columbia with regard to the interface between the judiciary and the public health system in the area of drug use, prevention, and rehabilitation. How do you all see that? Where you are?

Mr. MCCARTHY. I do not feel well versed in that.

Dr. KELLEY. As I was trying to say to Mr. Moran, we are currently working with the court system, with Judge Hamilton and others, in terms of trying to address the concerns and issues that exist with respect to getting that community involved in treatment programs quickly, so that it will help the system along.

Mr. MOLLOHAN. You mean the addicted community?

Dr. KELLEY. Yes, those who are addicted and involved in the court system in some way, whether they are on probation, coming out of jail, or what have you, and need rehabilitation programs.

COURT SYSTEM ROLE IN SUBSTANCE ABUSE TREATMENT

Mr. MOLLOHAN. What do you see as a successful strategy in dealing with addiction? What part can the court system play in that process?

Dr. KELLEY. Communication is the bottom line, and aside from that part, first of all, those who are within the jails and the correctional system, we want to ensure that there is appropriate treatment within the system and then a bridge for when they come out so they can continue in rehabilitative programs that will address those substance abuse issues.

Right now, I do not think it exists the way it should.

Mr. MOLLOHAN. Let me ask you this. If you have an addicted person, one who has been arrested and is subject to a misdemeanor or a felony count, and another that has not been arrested, do you have any sense of the treatment success between those two groups?

Dr. KELLEY. No, I do not have enough information really to comment well on that, and I do not know whether, John, you all have any.

Mr. MOLLOHAN. Let me just say, that seems to be a starting point for understanding or developing a strategic plan for dealing with addictions and being successful in getting people off addiction.

The information that I am getting suggests that if the court system has an arm on or a hammer over the head of addicted people and then the addicts have a choice between staying in a treatment program or going to jail, that would be a successful combination.

Do you have such a system? Are the courts sensitive to what their role could be in providing an incentive for a really effective treatment program?

Dr. KELLEY. I am not sure to what extent that kind of system is totally in place. It is my sense that it is being worked on as we speak. There are groups that are meeting to address that issue.

GROUPS INVOLVED IN SUBSTANCE ABUSE TREATMENT PROGRAMS

Mr. MOLLOHAN. Who are they in the District of Columbia?

Dr. KELLEY. On our side, it would be APRA, our Addiction Prevention Recovery Administration. The administrator is Dr. Deidra Roach, and her staff—she has it divided up, and there are a number of them that are involved in that aspect of it, but she would be the contact person to find out.

I can try to find out something specific about that and get some information.

Mr. MOLLOHAN. I would like to know if the District is going in this direction——

Dr. KELLEY. Oh, yes.

Mr. MOLLOHAN [continuing]. Or if they are studying this issue.

Dr. KELLEY. Yes.

Mr. MOLLOHAN. Okay. Thank you, Mr. Chairman.

Mr. CUNNINGHAM [Presiding]. Mr Tiahrt.

Mr. TIAHRT. Thank you, Mr. Chairman.

Mr. CUNNINGHAM. I have to leave, and you can be the chairman in a minute.

MEDICAID PROGRAM—ADDING 48,000 ADDITIONAL PERSONS

Mr. TIAHRT. First of all, I want to say that I think the Mayor is doing a good job, and I agree with most of the programs he has put in. I wish him all the success, and I think you are doing a lot to make a good team effort.

I think the District of Columbia today is much better than it was 5 years ago. I have seen the growth in population as a very positive thing, but I am a little concerned about the new health plan.

Right now, I guess you are going to take an additional 48,000 residents and put them into Medicaid. How many people are in Medicaid today in the District?

Mr. OFFNER. 125,000.

Mr. TIAHRT. 125,000.

It appears that you are going to take $70 million and set it aside for these 48,000 people, which would work out to about $120 a month per person.

Just looking at your numbers, I think that probably you are currently spending somewhere around four times—about $6,000 a year, instead of the $1,500 a year that this would allow for these 48,000.

So, if you are going to spend $6,000 a year per Medicaid person today, which I think is pretty accurate—I think $844 million is what is currently being spent, according to the article that you submitted through your testimony?

Mr. OFFNER. That is right.

Mr. TIAHRT. You do read the paper, right? I assume you read the paper?

Mr. OFFNER. I do read the paper.

Mr. TIAHRT. Okay. $844 million in Medicaid costs, and that covers about 125,000. So the cost comes close to about $6,000 per year per recipient, and now we are going to add 48,000 for only $70 million, which is about $1,500 a year per recipient, or about one-fourth of what it is currently costing.

So I would guess that your cost is going to be well over $70 million. It is probably going to be more like four times $70 million. Where would that additional money come from?

Mr. OFFNER. The problem is that the roughly $6,000 limit that you have used—70 percent of the cost of Medicaid is the elderly and disabled, and most of that cost is associated with people who are in nursing homes.

Mr. TIAHRT. Right. If I listened to Director McCarthy, he said that these people probably use health care more than others. Is that not correct? Director McCarthy, was that your testimony?

Mr. MCCARTHY. This is Mr. Fairman.

Mr. TIAHRT. I am sorry. Mr. Fairman, without name tags, I am lost.

Mr. Fairman said something about the people that will continue to pick up on this program are those that use the health care system more than usual, more than most. So we are alleviating the other agencies that are providing for these people by putting them in a Medicare program. In other words, we are diverting them from programs that provide reimbursement to agencies that are providing their health care now to a new system, putting them in Medicaid, but I do not think you put enough money in Medicaid and I am wondering where that additional money is going to come from.

Mr. OFFNER. I understand your question.

ANALYSES OF ADDITIONAL 48,000 PEOPLE ON MEDICAID

Two things. First of all, the numbers—there are some problems with the numbers. We assumed an average cost of something like $200 per member per month, and the problem is that this is basing—$70 million is, I think, a first-year or second-year cost. By the time this thing is fully phased in, it will cost more than that.

The other point is that this single population that we are talking about, there is a statistically, relatively small number of people who are drug addicted, who are mentally ill, who generate significant cost, but the great majority of this population is the young, actually relatively healthy people.

We have looked at other States that have done these expansions to this group, and we have looked at New York and other States like that, that have done these expansions, and we are simply using numbers that are based on experience in those States.

ABORTION SPENDING VIOLATED ANTI-DEFICIENCY ACT

Mr. TIAHRT. In the paper, at least nine times between October of '95 and November of '98, there were articles that were related to health care in Washington, D.C., and the fact that we are no longer going to be using the tax dollars within the District of Columbia to provide abortions. Yet, during that time period, there

were 844 abortions at a cost of nearly $250,000, which is directly in violation of the laws that were passed.

Is this practice still going on?

Mr. OFFNER. We stopped funding abortions a year and a half ago, in January a year and a half ago.

Mr. TIAHRT. Is there any attempt to seek repayment from these people who provided abortions, to reimburse this $250,000, approximately $250,000?

Mr. OFFNER. No, there is not. I do not know how we could go back and—I suppose that is not an option that has been considered.

At the time, these providers were under the misimpression because of the mistake that our department, our agency made, that this was a proper, legal thing that they were doing, and——

Mr. TIAHRT. Well, it was against the law, and according to the Mayor's letter that he sent to me on February 25th, he says there is some confusion down there in the Department of Health. The confusion undoubtedly resulted from changes in the laws regarding Federally-funded abortions.

You are telling me the confusion is gone?

Mr. OFFNER. There is no confusion, and a series of mistakes——

Mr. TIAHRT. The Mayor told me that there was some confusion down there. I just wanted to know what was going on.

Mr. OFFNER. He is right, but——

Mr. CUNNINGHAM. If the gentleman would yield, maybe we can provide questions for the record, so not to take away from any Member's time.

Mr. TIAHRT. Thank you, Mr. Chairman.

Mr. CUNNINGHAM. Mrs. Emerson.

After Mrs. Emerson, we will recognize members of the Committee, and I will ask unanimous consent to allow the Delegate, Eleanor Holmes Norton, to ask questions if she desires. But I have to leave and I would like to relinquish the chair, now that I have taken your time away.

Mrs. EMERSON. Let me continue on.

Mr. CUNNINGHAM. Mrs. Emerson.

MEDICAID—SECTION 115 WAIVERS

Mrs. EMERSON. Let me continue on with the Section 115 waivers from HCFA that you all would have to request to ensure single-adult males in the Medicaid system. You started to talk about—I think Congressman Tiahrt asked you what other States have done this. Can you expand on that a little and tell us precisely how many other States have asked for these types of waivers?

Mr. OFFNER. Well, the most—Tennessee has the broadest waiver. Wisconsin, Ohio, and I can get the full list.

There are 11–15 waivers involving eligibility that are almost in every State, as you probably know. Specifically targeted at this population, it is those, I think, three States and a handful of others, and I can get you the list.

Mrs. EMERSON. Precisely what do you give as a justification for seeking that waiver so that you can in fact expand Medicaid coverage to single adults with no children? I am just curious, given the

fact that there are so many families who are eligible for coverage who are not taking advantage of it.

LARGE POPULATION OF SINGLE MEN IN DISTRICT

Mr. OFFNER. In the District of Columbia, a big part of the public health problem is that we have a large population of single people, frankly particularly single men who have substance abuse problems, who have mental health difficulties, and who are without insurance. We basically have no insurance.

Some States like New York, progressively northern States have traditionally had State-funded, local-funded as you probably know—State-funded programs to accommodate this population.

The District essentially has nothing right now. So these people end up in our public system. We end up paying for it, anyway. If you can insure them, there is a greater chance to be able to get them some primary preventive care so that they do not end up being institutionalized.

MEDICAL CHARITIES PROGRAM

Mrs. EMERSON. Has the District ever had an insurance pool for low-income people similar to some of the other States?

Mr. OFFNER. We had a tiny little program called Medical Charities, which is now $700,000 a year. So the answer is a very, very small program.

Mrs. EMERSON. Is there any desire to either increase that or to actually set up a pool for people who might not be able to get traditional-type insurance, but might fall just a little bit above the poverty line or the income level to be eligible for Medicaid?

Mr. OFFNER. Right. Well, that is really what this would have done. This would have allowed the District to provide insurance to people who do not have it, who are up to 200 percent of poverty. Again, the Mayor's proposal did this without costing the District additional money because the proposal at least was to divert money that we are already spending, but it has exactly the objective that you outlined.

PILOT PROGRAM FOR 500 UNDOCUMENTED CHILDREN

Mrs. EMERSON. I am also curious why the Council included in its proposal a program or perhaps the expansion of a pilot program is a better way of putting it, for 500 undocumented children, given the number of legal children who are still not getting care.

Mr. OFFNER. It is worth emphasizing that we do right now in the District cover—we make available——

Mrs. EMERSON. Make available.

Mr. OFFNER [continuing]. Coverage to any child who is under 200 percent of poverty. As has been noted before, not every child has signed up yet.

Mrs. EMERSON. Right.

REQUIREMENT FOR PROVIDERS TO ESTABLISH COMMUNITY OUTREACH PROGRAMS

Let me ask Mr. Fairman a question because I noticed in your remarks, you have suggested that we require providers to establish

and implement community outreach, enhance enrollment outreach, incentivize hospitals. Those are great, and I applaud you for wanting to do that, but how precisely are you going to do that?

PBC POSITION ON ISSUE

Mr. FAIRMAN. First off, let me make clear the Public Benefit Corporation's position. I think some of that is reflected in the actions that were legislated by the Council.

The expansion of the proposal is a very good and noble idea. The method of funding, we thought, was speculative, and we suggested to the Mayor some alternatives.

We also suggested that perhaps he was not getting the best advice on how to go about implementing the very good idea.

I, for one, just briefly, was a CEO of the system in Denver, 14 years in Houston, studied 16 cities around the country in terms of this, and there is an abundance of information out there as to how to do this.

A lot of things that were undergirding this proposal were recipes for failure, particularly because they were based on projected enrollments that had not been borne out in actual experiences to date.

Yet, again, I emphasize that it was a good idea. So what we tried to lay out in this proposal is that rather than enrolling people, making them eligible—we already know that a vast majority of persons do not select a provider, the gatekeeper, and so there is a massive random assignment to the seven HMOs.

HMO CLIENTS STILL USE SAFETY NET PROVIDERS

Many of those providers all around the country—many of those clients still end up going to their traditional safety-net providers. That is why Boston, that is why Illinois, Denver, and other places have put in their plans at least either a carve-out or something that says if you go to the safety net, the HMO must pay. They are going to mandate it.

The objective is not to declare victory on the dollars or to declare victory that coverage is available. The objective is so that people can actually receive care and stop the rampant, out-of-control health status or health indices that we see.

We feel that there are already excellent programs within the District of Columbia. There are case management programs that are already out there. We simply suggest that those be expanded to the Medicaid piece.

We suggest that the data, the experiences, the actual utilization data is made available publicly, so that the District does not end up paying twice. We put the funds in the HMOs, and as we are experiencing at the PBC, folks are still coming to D.C. General. They are still going to the non-profit clinics and so on. That is where we suggest consideration of these options that we have outlined in here.

Then, and only then, do you back away from the—reduce the funding to the safety-net facilities because you have hard data. People are in HMOs and getting care and are not backed up with long waiting times and all of the problems that are experienced even in commercial HMOs.

Mrs. EMERSON. So you have had a pretty good success rate in both Denver and Houston for educating the public about alternatives to their safety-net hospitals, if you will?

Mr. FAIRMAN. Absolutely, and Cambridge. I think that, again, what we are saying is go slow in this noble idea. Do not assume success, cut the funding, and then declare victory. Implement the program, but we suggest to the Mayor and Council other alternative funding mechanisms.

ADDITIONAL INFORMATION ON ALTERNATIVES TO SAFETY NET HOSPITALS

Mrs. EMERSON. I apparently have run out of time, Mr. Chairman, but I would like to just ask for some more information about precisely what mechanism you used in previous experiences and would like to use today to get people educated because, as you say, the ideas are great, but the bottom line is you have got to get more people using these services that they are going to be provided so that they do not in fact flood the safety-net hospitals.

I appreciate it. Thanks.

Mr. TIAHRT [presiding]. Do you care to submit questions in writing? We are going to go through another round.

Mrs. EMERSON. Unfortunately, I cannot stay, but I think most of my questions have already been asked. Thank you.

Mr. TIAHRT. As you know, we have Delegate Eleanor Holmes Norton with us today, and she dedicates most of her energy to representing the District and does a very fine job.

I was wondering if you would like to ask some questions or offer some encouragement to our distinguished panel.

ABORTION SPENDING VIOLATED EXISTING LAW

Ms. NORTON. I appreciate it.

I would like to ask one question just to elucidate a concern of the Committee that is not brought out here. May I simply indicate to Mr. Tiahrt, who it seems to me raised an issue about the expenditure of funds for abortions in the District of Columbia. You indicated that the Mayor had written a letter indicating there had been some confusion.

I just wanted you to know, Mr. Tiahrt, that since I have been in Congress, that prohibition has been on our appropriation. It has never been violated, and it appears to have been violated at a point when, to use the word "confusion" is to use a tame word, when the District of Columbia was in a state of disarray.

I find it hard to believe that it would have been a deliberate attempt to countermand a command from the Congress, and I did want you to know that I do believe that there was some confusion and that you have a new Mayor, and that with a clean start with a new administration, I would hope that you would accept his apology and his explanation that that is not anything that his administration would have done deliberately, although it clearly did happen.

I do not know of a single instance where any requirement of the Congress has ever been deliberately disobeyed, although the District government has not always been the most efficient.

DSH PILOT MEDICAID PROGRAM—PLANNED IMPLEMENTATION

We have been talking about the Mayor's program—to expand medical care as if somehow it was a full-fledged program when in fact, as I understand it, in negotiations with the Council and the Control Board, this has become a pilot program.

I would like you to explain to the Committee how the pilot program will be carried out so that some data or information from which to know the effect this would have on Children's Hospital or any other hospital will be derived before we go to assuming the effects on our institutions.

I think it was probably prudent to begin on a pilot basis, so that one would have some experience, so that one could keep from harming vital institutions to the District of Columbia.

On the other hand, the Mayor's concern that there are thousands of people who are costing the District of Columbia money and costing themselves health care cannot be ignored, but I did not hear you offer any information as to how you intend to carry out the pilot program, what it consists of, and how you intend to use that information so as to know whether the program should be expanded citywide.

Mr. TIAHRT. Care to respond?

Mr. OFFNER. May I respond? Just very quickly, we are coordinating both the new people who came on—the expansion started last October—and the people who will come onto Medicaid because of this expansion. We are computer-coding them so we can track the expenditures associated with those individuals, and we will be able to tell how much revenue each of the hospitals got from each of these stages of the expansion, and after a year or so, we can come back and say here is the experience, here is how much this expansion meant in terms of revenue to Children's Hospital, for instance.

I assume that will happen before the City Council and others will——

Ms. NORTON. Before the next budget period, you will——

Mr. OFFNER. Yes. We will clearly have some of that data before the next budget period.

Ms. NORTON. Thank you very much.

CONCERN OVER ABORTION SPENDING IN VIOLATION OF STATUTE

Mr. TIAHRT. You are welcome. I share your optimism about the Mayor and the job that he is doing. I did want to make a point, and I think I made the point.

VEHICLES—CONCERN OVER VIOLATIONS OF TAKE-HOME PROHIBITION

There are others who do have a concern over the use of city vehicles for travel between their homes and workplace. I think we should also look into that.

Ms. NORTON. I share that concern, Mr. Tiahrt. The notion that people come into the District of Columbia—most of them do not live here—and go home to Mr. Moran's district on my dime and my car is something I would like to see prohibited.

Mr. TIAHRT. All right. We will pull together.

At this time, I think we should afford the opportunity for others to continue questioning.

Mr. Moran would be next in order.

Mr. MORAN. Thank you very much, Mr. Tiahrt. I would have no problem supporting any initiative you wanted in that area, Ms. Norton.

I think we have more than enough traffic in our suburbs. If you wanted to keep the D.C. cars in the District, that would be just fine. We can work on that together.

CHILDREN'S HOSPITAL AND ABUSED AND NEGLECTED CHILDREN

That was not what I wanted to focus on in this hearing. Let me tell you where I am coming from. At the Children's National Medical Center in D.C., they come across an awful lot of abused and neglected children, and my experience when my daughter was there for an extended period of time supports that observation.

Invariably, they would be children who just had not been identified by the system such as it is that exists in the District. They were falling through the cracks or there was not any floor to begin with to catch them.

Even after they were identified, there would be very little follow-up, and I think that a lot of these kids, we invariably see in the criminal justice system, you know, they are not going to go away, and the worse the experience during the childhood, the more likely we are all to suffer as a result.

One of the reasons, I am sure, is lack of resources. I cannot imagine it is a lack of compassion on the part of employees involved in the system. I suspect most probably that those who are involved in abuse and neglect have just too large a caseload that they can handle, and 200 is too large if that is what it is. We may have too many people, as we do with public safety, still behind the desk, but I suspect that those who are out in the field are doing a good job and it is just overwhelming.

So that gets me to how we can expand the high quality of care that I know Children's offers. So I have confidence in Children's. They do offer high-quality care, and families that use Children's will support that.

EXPANSION OF QUALITY CARE FOR ABUSED AND NEGLECTED CHILDREN

So I would like to see that kind of quality of care expanded out into the neighborhoods. I would like to see them really take on an initiative particularly to address the abuse and neglect situation.

I have a very high impression of Mr. Fairman, that he has good credentials. Dr. Dougherty tells me you are a great guy, he has a lot of confidence in you, and, naturally, everyone up here—I have every reason to believe you are the right people in the right place.

CONCERN OVER MEDICAID INITIATIVE AND DSH PAYMENT

I have got concern with this new initiative. For one thing, you say that you are going to cover about 18,000 as the population you plan to enroll in this expanded Medicaid initiative, yet, there are only 3,600 who are actually enrolled. Is that correct?

In October, the District Government implemented the local CHIPS program with approximately 18,000 individuals potentially eligible to enroll. Through March of this year, only 3,600 have enrolled. Your proposal assumes about 34,000 people total, many of whom are difficult to reach. Are those the right numbers? Are those bad numbers?

Mr. OFFNER. The October expansion, the universe is about 15,000 people, and there are about just under 6,000 that are now——

Mr. MORAN. Okay. So it is 15,000 and 6,000.

I do know that even when people who were eligible for Medicaid families, there was a large share of parents who just were not bringing their kids into the system, even though the kids were actually eligible for Medicaid, but it just did not get to them.

So what this means is that while on paper, the answer that I am getting as far as Children's, for example, and eliminating the DSH payment, is do not worry about it because you have more people who are now covered by insurance. So they will go there, and they will get their health insurance and that will pay for it.

Well, not if we are only going to get enrolled maybe a quarter of the population or maybe if we put on a push we get half of it. The fact is that it is very difficult to enroll anywhere near the universe of the eligible population for the program. We would probably be lucky if we could get half.

Meanwhile, the DSH payment is gone. The DSH payment is being used for childless adults. I am sympathetic toward childless adults, many of whom are homeless. They are victims primarily of self-abuse. Whereas, the kids have no control over their lives. Both are populations that should elicit sympathy, but the kids elicit the greatest sympathy, at least as far as I am concerned, and I think need to be the highest priority.

I really am concerned about the fact that the DSH payments are being used for this other population because I do not think that the balance sheet is going to work out for a hospital like Children's which only takes care of kids.

As a result, not only are we not going to be able to expand that kind of care out into neighborhoods, which is what I would like to see, but I think that we are compromising even the quality of care at the institution itself.

Mr. OFFNER. I guess three things. The good news, I guess, is that the City Council clearly shared your concerns, and we now have a pilot program and we will find out. Before anything drastic is done in this area, we will presume we know better.

Secondly, you need to understand, though, if a kid goes to Children's and they are covered by this program but they have not signed up, the hospital can sign them up right there while they are in the hospital. It is a two-page form. They stick it in the mail, and within 14 days—they are averaging 14 days—that kid is on the program.

We are pretty confident we are going to do a lot better than half, but——

REIMBURSEMENT RATE TO HOSPITALS

Mr. MORAN. Let me just interject. What percentage of cost does that mean is going to be reimbursed?

Mr. OFFNER. The Medicaid program, what percentage of cost?

Mr. MORAN. Of Children's cost of care, what percentage is going to be reimbursed as a result of this signing-up?

Mr. OFFNER. What I have in my head is the percent of hospital cost that we reimburse, which is close to 90 percent.

Mr. MORAN. You will reimburse 90 percent of hospital cost?

Mr. OFFNER. Of cost. That does not necessarily mean their charges.

Mr. MORAN. What percentage of charge?

Mr. OFFNER. In the average, it is probably like 50 percent of the charges.

Mr. MORAN. It is 50 percent of the charges.

Mr. OFFNER. The charge is way above cost.

Mr. MORAN. Do you think that they are getting a 50-percent markup above cost?

Mr. OFFNER. I think most hospitals in the United States, the charges are well above cost. Certainly, the Medicare studies have all shown that.

I do not know specifically what Children's is. I can get that.

Mr. MORAN. I interrupted you. You were going to complete your answer.

EMPHASIS ON PREVENTIVE CARE AND NEIGHBORHOOD CLINICS

Mr. OFFNER. I was only going to repeat the point that at the end of the day, we have to find some way to redirect some of these resources in preventive care. That is not to take a thing away from Children's Hospital, but if we wait until these children go to Children's Hospital, we have lost part of the battle.

CHILDREN'S HOSPITAL—APPROPRIATIONS FOR NEIGHBORHOOD CLINICS

Mr. MORAN. I totally agree, and that is why I wanted to expand it out into the neighborhood. I would like to get a clinic out in Anacostia. I would like to get one up in Shaw. Perhaps Shaw is a little closer to Children's. Anacostia would probably be the first location, but I would really like to get some clinics out into the neighborhoods. I do not think we are going in that direction, and that troubles me. That is why I asked that the additional money should be put into the D.C. appropriations bill this year for such clinics, but it is only going to work if the administration wants it to work. It is not going to work otherwise—we cannot mandate it. We cannot impose it. It is going to have to be an idea that you own and want to work.

"LOW BALL" BID BY PBC-TYPE HEALTH GROUPS

The other thing I have concern about, and I do not want to push the indulgence of the chairman on this, but there was a bid process recently, and there was a sense by some people—I am not sure how accurate it is—that an organization like the Public Benefit Corporation can bid at a relatively small percentage of actual cost, basically low bid, get the proposal, but then farm out the care. Then,

the actual people who deliver the care may be getting an even smaller percentage of the money paid out.

I do not know the extent to which that is true, but it is a concern, certainly, if it is. If you wanted to address that, that would be fine.

Mr. ISTOOK [presiding]. Please go ahead.

Mr. FAIRMAN. Thank you.

I am not aware of any particular bid at which the PBC has participated and/or received and then in return would farm out care at a lesser cost.

I think the good news is that the PBC was created to provide for the care, meaning we would not duplicate services already available in the private sector, if the care was—the quality was acceptable and the cost was acceptable.

We did participate in a bid for the La Shaun receiver kids for the cost of care. We were the selected vendor to manage the care for the receiver. I think that is good news because you were speaking of abuse and neglect earlier, and the system that they had in place was not appropriate.

The reason they selected us is that we are the only comprehensive integrated delivery system that goes from the schools to the acute care level-one trauma and community-based centers, and we have a dedicated medical director.

It was the feeling, not the sole provider, that then we were in a better position to pull in all the data from the other providers so that more rational decisions could be made.

I think it was Mr. Tiahrt that was mentioning about the computers and so on, and that is all a part of building a database system, along with the private provider, to do that.

If I might just comment with respect to the proposal, we have to acknowledge what Ms. Norton said that what is on the table now is a pilot program. It is a small one, and Mr. Offner is right that the results will be there.

The other parts of it, though, relative to the funding mechanism, with the DSH hospitals and the PBC, a very good idea could be a recipe for disaster if in fact it does what you are talking about. You move the dollars and the care, and reimbursement does not follow.

Mr. MORAN. Okay, good. A good answer. Thank you.

Mr. ISTOOK. Thank you, Mr. Moran.

Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

REPORT ON SUBSTANCE ABUSE TREATMENT SERVICES

Dr. Kelley, in your testimony, you say in order to address the issues of substance abuse, the Department of Health will determine levels of drug treatment services based on a recently completed comprehensive needs assessment. Who conducted that assessment?

Dr. KELLEY. It was done through our Substance Abuse Administration.

Mr. MOLLOHAN. Did it develop a report?

Dr. KELLEY. Yes. We would be happy to send you a copy.

Mr. MOLLOHAN. Did it have comprehensive recommendations?

Dr. KELLEY. As I recall, yes, it did, with also specific recommendations.

Mr. MOLLOHAN. Does this budget that you are up here testifying about today reflect those comprehensive recommendations?

Dr. KELLEY. Some are included in our expansion of services, and the way that we plan to do that, yes, that is included because it was certainly recommended through that assessment.

Mr. MOLLOHAN. Were you involved with that study?

Dr. KELLEY. Was I personally? No.

Mr. MOLLOHAN. What I am trying to get at, is this an impressive study that really comes forth with a reworking of the way we deliver services for substance abuse? Does this budget reflect it?

Dr. KELLEY. I think the fact that both the Council and the Mayor have felt that we needed additional resources and that was included in an additional allotment of funds for the substance abuse administration indicates that we all felt that based on information and what we all know to be true that substance abuse is a serious problem in our community, and so, therefore, it needs the resources.

I might also add that there are a number of areas where we are working collaboratively with other agencies within the Government and outside of the Government, and the Federal Government also through many of its agencies are working with us. So we have gotten additional funding from that area, too, from some of the grants. So there is a lot of collaboration going on to address this very serious problem. So I think that needs assessment report and others that have been done regarding the problem of substance abuse in the city have been taken to heart.

Mr. MOLLOHAN. I was just impressed with the title of it or how you reference it here, "Comprehensive Needs Assessment." I think everybody agrees this is the way you have to approach this problem.

Dr. KELLEY. We will send you a copy of it.

Mr. MOLLOHAN. I am sorry?

Dr. KELLEY. We will send you a copy of it.

SUBSTANCE ABUSE—UNIFORM GATE-KEEPING SYSTEM

Mr. MOLLOHAN. I understand that the Addiction Prevention and Recovery Administration would like to implement a uniform gatekeeping system. Is that an idea that has come out of the comprehensive study?

Dr. KELLEY. I am not sure. I am not sure about that.

Mr. MOLLOHAN. Are you familiar enough with that system? I think it provides for a comprehensive assessment of individual needs based on the severity of their addiction. That implies to me that there will be a variety of treatment and levels, and different levels of treatment available, depending upon the severity of the addiction.

Dr. KELLEY. Yes. I think that there is an attempt also within certain communities.

For instance, the pregnant and postpartum women that there is a specific special emphasis on that community and the dually diagnosed to have a more managed care kind of a system in place for targeted groups because of the high-risk situations involved.

OUTSOURCING DETOX AND RESIDENTIAL FACILITIES

Mr. MOLLOHAN. Also, as a part of this testimony, you would like to outsource the detoxification center and the residential short-term facility that is located at D.C. General Hospital.

Dr. KELLEY. Yes.

Mr. MOLLOHAN. Why are you making that recommendation?

Dr. KELLEY. I believe that it was a conclusion of a number of folks, including the Council and the administration, that perhaps the community could be best served if it was outsourced.

Mr. MOLLOHAN. Does that mean privatized?

Dr. KELLEY. Privatized, contracted out, yes, and, of course, the employees will have an opportunity if they so choose to band together and present a proposal where they feel they could do it. So that is an opportunity.

Mr. MOLLOHAN. Do you anticipate that that would happen during the next fiscal year?

Dr. KELLEY. We are working on that, yes, the next fiscal year. Yes. We are starting in October, yes.

Mr. MOLLOHAN. This budget?

Dr. KELLEY. This budget.

BUDGET INCREASE FOR INPATIENT SERVICES AND DECREASE FOR OUTPATIENTS

Mr. MOLLOHAN. You increase in this budget the inpatient services by about $2.3 million and decrease the outpatient request or budget proposal by about $1.4 million. Can you explain that adjustment?

Dr. KELLEY. Are you referring to the substance abuse administration?

Mr. MOLLOHAN. Yes, I am, and I am referring to the request, the decreased inpatient and increased outpatient. I am on the red light.

Mr. ISTOOK. Go right ahead, Mr. Mollohan.

Mr. MOLLOHAN. If you would feel more comfortable answering that in writing, then that would be perfectly fine with me, but I am interested.

Dr. KELLEY. I will get back to you.

Mr. MOLLOHAN. Let me let you do that because we are on the red light.

[The information has been retained in the Committee files.]

Mr. MOLLOHAN. I would like to understand the strategy associated with that, and I will follow up with you on some of this.

Dr. KELLEY. Very good.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Mollohan.

Ms. Kelley, is that something that you can elaborate on some now in addition to what you have brought to the record?

Dr. KELLEY. Well, in order to be specific and to address all of the issues, it is a little complicated because numbers are moving around. I would rather put it in writing.

Mr. MOLLOHAN. I would be pleased to follow up with her, Mr. Chairman.

Dr. KELLEY. Okay.

Mr. ISTOOK. Thank you.

Mr. Fairman?

FACILITIES ON CAMPUS OF D.C. GENERAL HOSPITAL

Mr. FAIRMAN. Mr. Chairman, I just wanted to—several references have been made with regard to what was located at D.C. General, and this is a burden that we have. Correct reference is located on the campus of D.C. General, and we get a lot of references like that with the morgue, at D.C. General, the independent medical examiner, the jail at D.C. General and so on.

Dr. KELLEY. Right, right.

Mr. MOLLOHAN. And the facilities I referenced are on that campus.

Dr. KELLEY. On the campus of D.C. General.

Mr. FAIRMAN. On the campus of.

Dr. KELLEY. Right.

CLINIC IN ANACOSTIA OPEN TIL 11 P.M.

Mr. FAIRMAN. To Mr. Moran, we already have the map in the book that refers you to a center in Anacostia and Congress Heights that we have extended hours up to 11 at night.

Mr. ISTOOK. Appreciate that.

Let me ask a final few questions, and then we will ask others for the record. Was there anything pressing, Mr. Mollohan and Mr. Moran, that you wanted to pursue?

Mr. MORAN. This is fine, and I think we can follow up. At some point, for example, I would like to get out and see some of those centers.

D.C. PROGRAMS REQUIRING FEDERAL WAIVERS

Mr. ISTOOK. Let me ask, first, Mr. Offner. I want to make sure I understand everything correctly. So I would appreciate some elaboration from you. To what extent do aspects of the District's budget depend upon some sort of ruling or waiver or accommodation from HCFA or anyplace else in the Federal health care hierarchy?

Mr. OFFNER. The proposal that the Mayor made in terms of this Medicaid-expansion proposal—the District back in October submitted a waiver proposal. So that is now under review, and it has been under review for several months at HCFA. In light of this latest action with the City Council and everybody, we will have to amend that waiver to limit it to this pilot proposal. So we are still working with the Health Care Financing Administration to get that waiver.

The Mayor's proposal went well beyond that waiver because it would have covered people up to 200 percent, which is much, much further.

Mr. ISTOOK. 150 percent, is it?

Mr. OFFNER. The waiver only takes us to 50 percent.

Mr. ISTOOK. Okay. Go ahead, please.

Mr. OFFNER. And the Mayor's proposal would have gone to 200 percent, but the difference was really funded out of local monies, although at some point, I think the District will go in and try to get a waiver. They have not done that yet.

So the short answer is we have a waiver proposal that is under review now. We are in the process of amending it so that it will incorporate this pilot program that everybody has talked about.

TIMING OF FEDERAL WAIVER

Mr. ISTOOK. My concern is whether we can have any realistic expectation that we will know the answers to this so that we can rely upon it and what we have to do to improve the budget. Do we just leave a hole in the plan and leave it hanging and also leave other aspects of local funding hanging if we do not have some action from HCFA before then?

I am just wondering if we can make the different time frames that are involved. If HCFA approves something, but we have already had to complete our work on this, is it in time that you can do it the next fiscal year?

Mr. OFFNER. We expect HCFA—this has been complicated because we have had to amend the waiver in the middle of the process, but I am hopeful—I guess all I can do is give you the information as soon as we can get it.

Mr. ISTOOK. When can you reasonably expect that, one, the application will be formally amended and accepted as such and, two, that we will have a final disposition of it?

Mr. OFFNER. We have actually informally sent them our suggestions, and we will formally do it, I would think, in the next couple of weeks.

I would hope that we can get some response within 2 months. Dealing with HCFA on 11–15 waivers is not always——

Mr. ISTOOK. Yes. And how much is at issue? How much of the Federal funds are tied up in the grant of that waiver? How much of the District funds are involved?

Mr. OFFNER. This is this little pilot program. $6 million is the total amount which is essentially 70 percent Federal.

Mr. ISTOOK. I was thinking there was a larger figure that was also involved in HCFA waiver right now.

Mr. OFFNER. No, because all we are doing right now is this small pilot program.

Mr. ISTOOK. Let me ask on the whole issue of the hospital capacity, and I am not talking just about D.C. General, but within the area, the over-capacity, the decline, the occupancy rates, the desire to change from inpatient emergency room treatment to clinic-setting treatment.

DECLINE IN HOSPITAL BED USAGE

First, let me ask what is driving the decline in the hospital bed usage.

Mr. FAIRMAN. I will attempt to speak to it, Mr. Chairman.

I think across the country, the same factors that are driving the reduction in D.C. are affecting bed utilization throughout the country.

Changing the payment emphasis by third-party payers to pay for things on an outpatient basis that they did not pay for before, I think Mr. Moran talked about getting ahead of the curve, and insurers who were late to realize that, including various Medicaid programs, are now at that state.

So the emphasis is on the gatekeeper concept, and less emphasis on—and that unto itself requires prior approval for hospitalization.

Mr. ISTOOK. You say it is part of the national trend as opposed to anything that is distinct to the District?

Mr. FAIRMAN. Absolutely. And the District does have a lot of good programs that the four of us have talked about, that are initiatives that are driving that as well——

Mr. ISTOOK. Certainly.

Mr. FAIRMAN [continuing]. Hopefully toward wellness.

Mr. ISTOOK. Right. We have seen it with hospital closures. We have had that situation, and I think every State has.

You are not only wanting to take care of that, but you are looking at a change in the nature of health care that is made available. I just wanted to know if there was any distinct factors that you saw that were specific to the District.

HOSPITAL CONSOLIDATIONS EXPECTED

Do you expect all the hospitals that are operating now, absent any change in the underlying compensation and payment rates from the District and Federal Government—do you expect all of those that are operating now to still be operating in the next year and 2 years from now?

Mr. FAIRMAN. I think that the Urban Institute and others have clearly projected that there would, at minimum, be further consolidations.

We see that right now going on between MedStar, Washington Hospital Center, Georgetown, and a lot of the others. In fact, there are discussions going on with the Council, the Mayor, the Control Board, and the various administrations looking at consolidation between the three largest safety-net facilities as possibilities that are being discussed.

OPERATING BEDS VS. LICENSED BEDS

I think also we need on the record that most of the time, including the Washington Post's recent article that focusses on declining occupancy versus licensed beds—in the trade, in the business, we look at operating beds versus occupancy, and that is the true test of what is going on, but clearly——

Mr. ISTOOK. The term licensed beds, you are saying is misleading, as opposed to operating beds?

Mr. FAIRMAN. Absolutely.

For example, at D.C. General right now, we have 250 beds. We were licensed up until a year ago for 410. So you look at occupancy from 250 versus how many——

Mr. ISTOOK. They closed off certain wings?

Mr. FAIRMAN. That is right, and we are in the process of trying to consolidate the various buildings on the campus into the main core building.

EXCESS HOSPITAL BEDS—ALTERNATIVE USES

What happens to those beds, at least in our paper, we are suggesting that there are some incentives to encourage all of us to

meet these needs for increased substance abuse beds and intermediate care and some of the other things.

Mr. ISTOOK. I think this may go back to part of the question that Mr. Mollohan was posing. That may be a concern that there may be a desire to make some substance abuse programs be programs that use the bed space that is available and is not being utilized because certainly I would not want to see substance abuse dollars being soaked up for residency programs that require a bed when they can be better used in some sort of outpatient program.

I do not want to see the substance abuse dollars utilized to try to solve the hospital over-bed problem.

Mr. FAIRMAN. Right.

If I might, I do not think any of us, even in the private hospitals, would attempt to do that, and in fact, the payers, like Medicaid, Paul Offner and others, would not allow it even if it were to try to do it because there are different regulations that speak to it.

20-BED DETOX UNIT AT D.C. GENERAL

We have a 20-bed detox unit at D.C. General, and quite frankly, it is the hottest item around because there are so many people that cannot get in. They are short-term treatment programs when people are in crises. Those are the kinds of things I am talking about. You are correct. Simply putting somebody in an acute care bed and move them forward, that would not be in the best interest of anyone.

Mr. ISTOOK. I think that is one of the things that we want to be looking at.

SUGGESTIONS FOR DEALING WITH EXCESS HOSPITAL BEDS

A final question. What can the District government or the Congress do, in your opinion—it is an open question, any of you—what we can do or should do to address the over-bed situation and how it contributes to higher health care costs in the District?

Mr. OFFNER. I will just start. I want to emphasize that to some extent, this is a problem that is—I do not want to say taking care of itself, but just the managed care initiative in Medicaid, we have the data. We have cut inpatient hospital utilization in half, and so far, we have just addressed the so-called AFDC population, which is about a third of Medicaid. The aged and disabled just have to come, and we have, as I said before, among the highest hospitalization rates in the free world, and as we begin to manage that, it is going to come down. So I just leave you with the point that over the next 3 years, there are going to be major, major reductions in hospital use in my opinion, at least from that 25 percent of the District that is under Medicaid.

Mr. ISTOOK. Anyone else?

Mr. MCCARTHY. I just might add, I mentioned earlier on about the Health Care Commission that the Mayor and the Council have formed. That is one of the top issues they are going to be looking at, so much so that a consolidation is not going to create economic or geographic disparities when it happens.

The composition of the commission is such that they are going to engage the PBC, of course, and hospitals like Children's. I would

be very much hoping that when the next budget cycle comes around to have a city-wide consensus on how to address that issue.

Mr. ISTOOK. Good.

Mr. Fairman.

Mr. FAIRMAN. My statement would be, first, that there has been a dramatic reduction in the actual beds, and I refer you to the District Hospital Association book that does depict the decline.

Mr. ISTOOK. Is that licensed beds?

Mr. FAIRMAN. These are operating beds.

Mr. ISTOOK. Operating.

Mr. FAIRMAN. What you see, for example, at facilities like Children's National Medical Center, Howard, Providence, and so on, they are all opening community health centers to keep in vogue, keep in step with what is before us now, the emphasis on prevention and primary care.

We outline in page 7 of our report some things that we think would help accelerate the so-called over-bedding issue that exists in the District, and they go to encouraging collaboration and doing some of the things that the Federal Government has led in States like New York when they were overtraining doctors and some of the other things. I would just leave it there, though, but the market forces, the payment mechanisms and all of that, are in fact pushing them. I think collaboration is the other, to stop some of the intense competition that is left for a smaller market.

Mr. ISTOOK. Did you want to say something, Mr. Moran?

Mr. MORAN. There is one other area that I had wanted to ask a question about, Mr. Chairman, since we are winding this up and we have got a vote on—I would like to just throw this in.

MEDICAL MALPRACTICE IMPACT

I have talked about children's health care, and one of the things that was particularly troublesome is the dearth of pediatricians and OB–GYN practitioners in the areas of the city that need them the most. I could list the parts of the city. There is an inverse correlation with the number of pediatricians and OB–GYNs.

I am told—and this is a problem that particularly affects D.C. General and other hospitals in those areas—that a major part of the problem is the cost of medical malpractice insurance and the fact that we have people in the city, the trial lawyers, and even people that have been around the D.C. City Council who made this a cash cow, to sue the city's institutions and the city's doctors.

I am wondering if you—I would guess you cannot even respond, but if you were willing to, I would love to hear you. Do you think it would make a difference if we had some caps on medical malpractice insurance in the city? Would it make a positive difference in terms of the delivery of quality health care? The first question is: Can you say anything?

Mr. FAIRMAN. I would say that while we are not elected officials, we have been around here long enough to know not to touch that, except to say that the issue of malpractice does drive the equation and has to be a part of the debate.

Mr. MORAN. That was a good answer.

Anybody else?

[No response.]

Mr. MORAN. So the answer is basically yes, it is a major problem.
Mr. OFFNER. We will talk about it.
Mr. MORAN. Right, got you.
Mr. ISTOOK. Thank you, Mr. Moran.
If there is nothing further—is there anything further that you were wanting to say to my last question in there?
[No response.]
Mr. ISTOOK. If not, very good.

ADJOURNMENT

We appreciate very much your coming forward and sharing with us today. We may have some further things for the record. We thank you very much.
We stand adjourned.

TUESDAY, JUNE 22, 1999.

D.C. PUBLIC SCHOOLS (INCLUDING CHARTER SCHOOLS)

WITNESSES

PANEL 1: PUBLIC WITNESSES

JEANEE SNIPES, STUDENT, WASHINGTON MATH, SCIENCE AND TECHNOLOGY PUBLIC CHARTER SCHOOL
SIDIDKI PAUL LANCASTER, PRESIDENT, PARENT ASSOCIATION FOR EDISON-FRIENDSHIP PUBLIC CHARTER SCHOOL
DELORES L. SCOTT, ESQ., EDUCATION ADVOCATE, SASHA BRUCE YOUTH WORK, INC./CONSORTIUM FOR YOUTH ALTERNATIVES

PANEL 2: PUBLIC CHARTER SCHOOL REPRESENTATIVES

JOSEPHINE BAKER, CHAIR, D.C. PUBLIC CHARTER SCHOOL BOARD
MALCOLM PEABODY, CHAIR, D.C. PUBLIC CHARTER SCHOOL COALITION
JACK McCARTHY, MANAGING DIRECTOR, APPLE TREE INSTITUTE

PANEL 3: D.C. PUBLIC SCHOOLS REPRESENTATIVES

ARLENE ACKERMAN, SUPERINTENDENT OF D.C. PUBLIC SCHOOLS
MAUDINE R. COOPER, CHAIR, D.C. EMERGENCY TRANSITIONAL EDUCATION BOARD OF TRUSTEES
CONSTANCE NEWMAN, VICE CHAIR, D.C. FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY

CHAIRMAN ISTOOK'S OPENING REMARKS

Mr. ISTOOK. The committee will come to order. We are meeting today to receive testimony concerning the budget for the District of Columbia's public schools and the charter schools. The fiscal year 2000 budget is at a crucial stage in the development of charter schools within the District of Columbia and in improving the educational quality within the District of Columbia's schools. Certainly it is not always easy to get things back on track with some of the things that have been experienced in the past, but there is a very significant charter school movement within the District, and we wanted this hearing to focus on that particular transition, trying to fill a niche between what has been the development of private schools and the development of the traditional public schools.

I think the District is very fortunate that it has in place a strong framework and mechanism for the benefit of the students, so that no matter where they may be attending school there is the possibility to extend the best educational future for them.

CONCERNS OVER ASSISTANCE TO CHARTER SCHOOLS

Now, one of the concerns I want to make sure we cover within this hearing is the problems with whether the District schools are assisting, through sale, lease, transfer or use agreements, with

making property available to the charter school system. Information indicates that there are about 3 million square feet of unused space within the public schools in the District of Columbia. That is vacant space, of course, that could be used by charter schools or could be transferred or sold to other entities, perhaps gaining revenue for the benefit of the District schools and the students.

I think, to bring it home, I understand that 3 million square feet is about half the space of the Pentagon. So if you realize that half the Pentagon is available within the public school system, we see that the excess classroom space is a very significant issue.

We also want to make sure that we know what steps are being taken to protect this property of the taxpayer and to help achieve the highest and best use and utilization of that property.

THREE PANELS TESTIFYING

We have three panels that are going to be testifying today. In order to make an orderly process, we want to hear first from the first panel, then have any questions—that I hope will be fairly brief—with members of the first panel; call the second panel and hold until after the third panel before we have questions of the second and third panels, because I think there is going to be some interaction that will help us to develop the information that we are needing.

I don't have anything further in the way of my remarks. I do want to recognize that we have the Delegate from the District of Columbia, Eleanor Holmes-Norton. We are always pleased that she is here, although not a member of the Committee. I would like to yield to Mr. Moran as the Ranking Member for any remarks you may have.

CONGRESSMAN MORAN'S OPENING REMARKS

Mr. MORAN. Thanks very much, Mr. Chairman, and thanks for having this hearing, and we want to express our appreciation to the witnesses today for giving us some greater insight into the conduct of the school system.

Just 2 years ago as Ranking Member of this committee, I could not have been more pessimistic about the State of D.C.'s public schools and their potential for reform, and I was a fan of Dr. Becton and I like Franklin Smith, too. I just felt that the problems they were dealing with were simply insurmountable, but the leadership that Ms. Ackerman has shown in tackling those problems has been tremendous, and I am very much impressed, Dr. Ackerman.

Last year the schools opened on time, which you would think would not be an exception but an expectation, and yet it was the first time in 4 years, and it happened twice in a row. Test scores for Stanford 9 tests have improved over the last 2 years. The D.C. public school system is preparing for 30,000 students in the summer STARS program, your summer school program, and I am sure that is going to continue to improve test scores.

I understand that there are a lot of problems in terms of the physical facilities in our school system. The bathrooms, for example, have been described as unhealthy and unsafe, but there has

been a lot of improvement, particularly in the last 2 years in the capital improvements program. We have a long way to go to provide quality special education to truly disabled students, but we have improved the assessment process substantially.

We have a long way to go, but I think we have come a long way in a relatively short period of time, and I am very pleased to see that progress.

CHARTER SCHOOLS

As far as charter schools are concerned, I think it is useful in the District of Columbia to have an alternative to the public school system, but the oversight, particularly of those charter schools, has to be at least adequate, if not extraordinary, and I think we do have some problems there.

We have created a compromise to ensure the charter school funding is not in competition with the needs of the D.C. public school system. We were able to do that, and I am glad because if we had not done that, there would have been substantial infighting and it probably would have been destructive to both the traditional public school system and the charter school system if we had not provided the additional money we did last year.

So this hearing is part of a process in our objective of having the Congress play a constructive supportive role to the D.C. public school system, and our objective is mutual: To create a safe and a strong educational environment for all the children of the District of Columbia.

And so with that, I thank you, Mr. Chairman, and look forward to asking questions after the—particularly after the second and third panels have testified.

Mr. ISTOOK. Thank you very much, Mr. Moran. And I want to echo what Mr. Moran has said, although we recognize there is an accumulated backlog of many problems that the District's schools have, nevertheless I think it is good to focus on the progress that has been made and is being made and to applaud and to encourage that progress at the same time as we help to try to solve the problems that do remain.

I think it is very significant that the charter school legislation in the District enables the money to follow the child whether they are in a regular public school or a public charter school. I have had some concerns as to whether the city's budget was doing so adequately, but I think those concerns are being worked out. We are going to make sure that in the final bill it does have adequate money following the child wherever the child may be attending school.

WITNESSES SWORN

At this time, we want to continue the standard practice of the subcommittee of swearing in all witnesses pursuant to the rules of House and of the Committee. So I would like to ask all the witnesses, regardless of which panel you are on, if you would stand at this time for that oath. We will try to do it all at once.

[Witnesses sworn.]

Mr. ISTOOK. Thank you. You may be seated, and if the record could show that the witnesses answered in the affirmative.

PUBLIC WITNESSES

The first panel is public witnesses, and forgive me if I mispronounce someone's name, please. Is it Jeanee Snipes?

Ms. SNIPES. Jeanee.

Mr. ISTOOK. Okay. Jeanee Snipes, who is a student currently attending the Washington Math, Science and Technology Public Charter School; then Sidiki Paul Lancaster, who is President of the Parent Association at Edison Friendship Public Charter school; and our third witness is Delores L. Scott, who is from the Sasha Bruce Youth Work, who has extensive experience with at-risk youth.

We will have the entirety of your statements placed in the record. So there is certainly no need to read—in fact, we encourage you to depart from or summarize your statements, so that then we can have the benefit of any extra comments you have there. We appreciate your being here, and Ms. Snipes, you have the privilege of being first. Thank you for being here.

Ms. SNIPES. Thank you.

Mr. ISTOOK. And why don't you pull the microphone closer to you, if you would?

OPENING REMARKS OF JEANEE SNIPES

Ms. SNIPES. Good afternoon, Chairman Istook, and subcommittee board members. Again, my name is Jeanee Snipes, I am a student at the Washington Math Science Technology Public Charter High School. I currently have just finished the 11th grade, and I must say this has definitely been one of the most memorable school years I have ever had.

Before coming to the Washington Math Science Technology Public Charter High School, known as WMST, I was enrolled for 2 years at the School Without Walls in Washington, D.C. I chose to attend WMST because I thought the charter school would give me more opportunities in internships as far as job opportunities to meet different types of people. I also believe that charter schools have the flexibility to do more things for the students, and the students have the opportunity to implement their ideas into everyday school life.

I find WMST to be an excellent school. While at WMST, I have attended a conference on physiology which American physiologists from all over America attended, and we had the chance to talk to them. Currently I have an internship with the Apple Tree Institute for Education Innovation, and I also had the chance to be part of the Higher Aspirations Academy which is a volunteer organization that comes into the school once a week and helps us with college applications and getting prepared for college life.

At WMST I believe I have had a better opportunity than I would have had at a regular public school. By saying this, I have had the opportunity to be involved in choices that I made for myself, academically and socially, things that—extracurricular activities that I wanted implemented into the school day, I have had the chance to say this is what I wanted and it has been fulfilled.

Academically, we have had a voice as far as getting a type of work schedule that we thought would be suitable for us as students.

I have definitely succeeded at WMST. I have received several awards for academic excellence in humanities, U.S. History, mathematics. I was the second-place recipient of an award for the Stanford 9 testing, for which I had the second highest score in the 11th grade. Not only have I succeeded at WMST, but currently this year 94 percent of the seniors that were enrolled in the school graduated, and 100 percent of the seniors that enrolled in college were accepted.

The staff at WMST is definitely the best staff and teachers that I've ever had. The teachers are dedicated. They offer after-school tutoring as well as tutoring on weekends which they don't have to offer. They offer SAT training for students who are lacking, and this is all out of the goodness of their heart.

The principal has stepped up and helped the students as a mentor, a friend and a parent in some cases. Parental involvement at WMST is very important for the fact that if you have a parent that's involved, usually the student's going to be more involved in the school, and if the student's more involved, they are going to want to be there to learn, and if they want to be there to learn, it's just going to help the whole productivity of the school.

My mother is in the military, but she still finds time when she's between TDYs and between bases to be involved in the school and she's very supportive of me. And that's really all I have to say, and thank you for listening.

Mr. ISTOOK. Thank you very much.

PREPARED STATEMENT OF JEANEE SNIPES

[The prepared statement referred to follows:]

GOOD AFTERNOON CHAIRMAN ISTOOK AND MEMBERS OF THE D.C. SUBCOMMITTEE. MY NAME IS JEANEE SNIPES AND I AM A STUDENT AT THE WASHINGTON MATH, SCIENCE AND TECHNOLOGY PUBLIC CHARTER SCHOOL. I HAVE JUST COMPLETED THE 11TH GRADE AND IT WAS ONE OF THE MOST MEMORABLE SCHOOL YEARS I EVER HAD.

BEFORE COMING TO WASHINGTON MATH, SCIENCE AND TECHNOLOGY, I ATTENDED THE SCHOOL WITHOUT WALLS. I CHOSE TO COME TO WMST BECAUSE THE OPPORTUNITIES THEY OFFERED SEEMED LIKE THEY WOULD BENEFIT ME IN THE FUTURE IN TERMS OF INTERNSHIPS, GETTING SCHOLARSHIPS TO COLLEGE AND THE KINDS OF PEOPLE I WOULD BE ABLE TO MEET. I ALSO BELIEVED THAT IN CHARTER SCHOOL I WOULD HAVE MORE FLEXIBILITY TO DO MORE THINGS. WMST INTERESTED ME ESPECIALLY BECAUSE I LIKE MATH AND SCIENCE.

I HAVE FOUND WMST TO BE AN EXCELLENT SCHOOL. I HAVE ATTENDED CONFERENCES WITH NATIONAL ORGANIZATIONS WHERE WE WERE THE ONLY STUDENTS AMONG A LOT OF ADULTS FROM ALL OVER. I HAVE AN INTERNSHIP WITH THE APPLETREE INSTITUTE AND HAD A CHANCE TO BE PART OF THE HIGHER ASPIRATIONS ACADEMY WHICH IS A VOLUNTEER ORGANIZATION THAT HELPS WITH COLLEGE

APPLICATIONS AND GETTING YOU READY FOR COLLEGE. I AM NOW THE EDITOR OF THE SCHOOL NEWSPAPER.

I FEEL I HAVE GOTTEN MORE OPPORTUNITIES AT WASHINGTON MATH, SCIENCE AND TECHNOLOGY THAN WOULD HAVE BEEN POSSIBLE AT A REGULAR PUBLIC SCHOOL. BECAUSE THINGS ARE NOT SET IN STONE, I HAVE BEEN ABLE TO HAVE A VOICE IN HOW THINGS ARE GOING TO HAPPEN ACADEMICALLY AND SOCIALLY. I FOUND MYSELF TAKING LEADERSHIP POSITIONS AND HELPED START A MODELING CLUB, SOCCER TEAM, AND JOURNALISM CLUB. I AM ACTIVE IN THE MODEL UNITED NATIONS AND STUDENT GOVERNMENT ASSOCIATION. I HAVE GOTTEN AWARDS FOR ACADEMIC EXCELLENCE IN U.S. HISTORY AND IN HUMANITIES, AND I AM ALSO ON THE HONOR ROLL. BUT IT'S NOT JUST ME THAT'S DOING WELL AT WMST. NINETY-FOUR PERCENT OF THE SENIORS GRADUATED AND 100% OF THOSE HAVE BEEN ACCEPTED INTO COLLEGE.

I THINK THE WMST STAFF IS REALLY ENTHUSIASTIC ABOUT WHAT THEY DO. MY CURRENT TEACHERS HAVE INFLUENCED ME MORE THAN ANY OTHERS I HAVE EVER HAD. THEY REALLY PUT THEIR FAITH IN THE STUDENTS, HAVE HIGH EXPECTATIONS AND WILL NOT SETTLE FOR LESS. I NOTICE TEACHERS DOING A LOT OF OVERTIME, TUTORING

AFTER SCHOOL AND ON WEEKENDS. THE TEACHERS, PRINCIPAL AND STAFF WORK HARD TO HELP YOU MEET YOUR GOALS.

PARENTAL INVOLVEMENT IS IMPORTANT AT WMST. MY PHILOSOPHY IS IF YOU HAVE AN INVOLVED PARENT THE STUDENT WILL ACT BETTER; IT HELPS WITH DISCIPLINE, AND IT'S IMPORTANT AS FAR AS EXTRACURRICULAR PROBLEMS. EVEN THOUGH MY MOM IS IN THE SERVICE AND TRAVELS A LOT, SHE IS VERY INVOLVED WITH THE SCHOOL AND VERY SUPPORTIVE OF ME.

THANK YOU FOR LISTENING AND FOR CARING ABOUT CHARTER SCHOOLS. I THINK WMST IS GREAT.

FOCUS
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FAX*memo*

TO: Migo Miconi

FROM: Nathea Lee

DATE: July 7, 1999

SUBJECT: Responses to Congressman Cunningham's Questions

Mr. Miconi,

Mike Peabody asked me to forward the following responses to Congressman Cunningham's questions from Sidiki Paul Lancaster and Jeanee Snipes. Please do not hesitate to contact FOCUS should you need additional information.

Jeanee Snipes responds:

Q. Describe to us why you and your family chose a public charter school over your neighborhood public school.

A. I chose Washington Math Science and Technology because the opportunities they offered seemed like they would benefit me in the future in terms of internships, getting scholarships to college and the kinds of people I would be able to meet. I also believed that in charter school I would have more flexibility to do more things. WMST interested me because I like math and science.

Q. What are the strengths of your public charter school?

A. Teachers are dedicated and have a willingness to help students outside normal school hours. You don't have to worry about violence; there's a feeling that we can go to school in safety since it is easier to let a student who breaks the rules go from a charter school. The administration backs up students' ideas and tries to implement them. Students have more input and ability

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to start their own programs (ex. soccer team, student government association, various extracurricular clubs such as magic, modeling, poetry and art). Smaller student body makes students feel more noticed. Parents are generally more involved since they had to apply in order for their child to attend.

Q. What are its weaknesses?

A. Political disputes between the funding body* and school administration. The funding body sometimes makes decisions on matters they have inadequate experience with such as hiring/firing teachers. Lack of understanding by parents on how the partnership works as well as funding body withholding information. Lack of facilities for academic and sports programs (science lab, gym, etc.).

* Funding body refers to the school's management company.

Q. Would you recommend a public charter school for your friends?

A. Yes. Charter schools offer opportunities for choice in education. School voucher idea does nothing for truly impoverished families, especially when most quality private facilities are already filled to capacity and turning financially able families away.

Q. When you finish high school, what do you dream of doing?

A. Immediate: four-year institution, preferably the Air Force or Merchant Marine academy. Long term: service to the nation as Air Force officer after graduating with a dual major in political science and biology, minor in military science. Alternate plan: service to the nation in AmeriCorps followed by private four-year institution majoring in political science and biology. Would like to be a public relations manager for a major political machine or serve the public in some other manner.

Mr. ISTOOK. Mr. Lancaster.

OPENING REMARKS OF SIDIKI LANCASTER

Mr. LANCASTER. Yes. Good afternoon, Chairman Istook, fellow members of the D.C. Subcommittee. My name is Sidiki Paul Lancaster. Not only am I president of the Home School Association, but my daughter attends the Edison Friendship Public Charter School at Chamberlain campus. Because I am a parent and I have that unique position, I think my perspective is a little bit broader and, I think I can offer some insights on that.

We chose Edison Friendship School mainly because of the strong academic background and the technological support that we saw that our daughter would get by attending. We wanted her to have a much more broader experience in that she would be exposed to foreign languages as well as to the computer in the home program that Edison provided to us. We felt that with that Ki-aura would have a better opportunity to develop and meet future challenges that are unique to her age group.

We found also that the curriculum was one that was very acceptable to us, the math and reading programs particularly. Our daughter is very proficient in reading anyway and thanks to the public school system that—she went to Gibbs Elementary first, and we had very good teachers there, and we weren't disappointed with Gibbs, but we were looking for a broader opportunity, that's all, and the District at that time just didn't afford that. So Edison provided that for us.

The math program is very good because it challenges her and it challenges her to use her creativity to solve problems, and we feel that problem solving is important not only in the classroom but outside the classroom, and developing that is a part of life so that when she gets older she could also deal with solving problems or meeting confrontations in her own life and then solving them. Edison provided us with that.

The classroom environment was bright, relaxed, and the room itself was creatively adorned, which we thought would encourage an enthusiasm for learning. And we feel that a positive atmosphere like this is necessary for our child, and of course, everybody's child, and because I was—being president of the Home School Association, I encouraged that, and working with the staff at Edison, particularly at the Chamberlain campus, I found that when I opened the doors so other parents can see how easy it is for them to take part in their children's education, the educational curriculum itself got easier, and the children became more confident because they knew they had support, not only at the school, but when they went home as well, and this is important I think in any educational system.

Most of the time our children go to school, then come home and everybody forgets about them; send them outside and let them play. Well, at Edison, we try to encourage the parents that once your child comes home, start—give them a break and then sit down with them and say, what do you have to do and let's see can we get it done together; and then if there are any problems, the parents are free to come to the classroom, sit in, observe, volunteer, and then help their child to succeed, not only educationally but so-

cially, and because of that open-door policy at Edison, we feel that this has strengthened the educational curriculum in that regard.

As president of the Home School Association, I have encouraged all the parents to come to me and deliver to me any concerns they may have, and I, working as a liaison between them and the principal, Dr. John Pannell, and the rest of the staff at Chamberlain, see if we can solve the problems, see if we can have conferences with those parents, sit down and see whatever their special needs are and see if we can meet them, just so their child can succeed; because it's not just the child succeeding, it's the family succeeding, because education is a family experience, not just a child's experience, and that's how we see it.

So Chamberlain for us has proven that they can be very caring, very supportive. We think that it's a broad experience, and we are looking forward to the coming year. The start-up year for Chamberlain, as for any start-up situation, can have a lot of bugs in it, but if the parents—with the parents' support, we were able to work the bugs out very quickly and get the educational curriculum into a continuum so the children would not lose anything for the school year. And we thought that was important, and the parents made sure that occurred because they volunteered their time and support, not only to the staff but to their own children as well.

So thank you very much for allowing me to make those remarks and——

Mr. ISTOOK. Thank you, Mr. Lancaster.

PREPARED STATEMENT OF MR. SIDIKI LANCASTER

[The prepared statement referred to follows:]

TESTIMONY OF SIDIKI PAUL LANCASTER

PRESIDENT, PARENT ASSOCIATION
EDISON-FRIENDSHIP PUBLIC CHARTER SCHOOL
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D.C. SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS COMMITTEE PUBLIC HEARING

JUNE 22, 1999

GOOD AFTERNOON CHAIRMAN ISTOOK AND MEMBERS OF THE D.C. SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS COMMITTEE. MY NAME IS SIDIKI PAUL LANCASTER. MY 8 YEAR OLD DAUGHTER, KI-AURA FRAZIER-LANCASTER IS A THIRD GRADE STUDENT AT THE EDISON-FRIENDSHIP PUBLIC CHARTER SCHOOL, CHAMBERLAIN CAMPUS. AS A PARENT AND PRESIDENT OF THE PARENT ASSOCIATION, I BELIEVE MY EXPERIENCE OFFERS A UNIQUE PERSPECTIVE.

THE EDISON-FRIENDSHIP SCHOOL'S EMPHASIS ON STRONG ACADEMICS WITH TECHNOLOGICAL SUPPORT IS EXACTLY WHAT MY WIFE AND I WANTED FOR OUR DAUGHTER. THE READING AND MATH PROGRAMS AT EDISON-FRIENDSHIP SEEMED TO BE DESIGNED WITH KI-AURA IN MIND. WE WANTED A CURRICULUM THAT NOT ONLY WOULD CHALLENGE HER BUT FOSTER HER DESIRE TO LEARN AND BE CREATIVE. WE ARE ALSO VERY PLEASED WITH EDISON'S COMPUTER-IN-THE-HOME PROGRAM. WE FEEL THIS IS ESPECIALLY APPEALING IN THAT KI-AURA CAN NOW DEVELOP HER SKILLS IN THIS AREA AND BE BETTER PREPARED TO MEET FUTURE EDUCATIONAL CHALLENGES.

THE CARING AND STRUCTURED ENVIRONMENT AT EDISON-FRIENDSHIP HAS HELPED TO BUILD OUR DAUGHTER'S CONFIDENCE AS A STUDENT. KI-AURA'S MOTHER AND I FEEL STRONGLY THAT THE POSITIVE ATMOSPHERE AT EDISON-FRIENDSHIP HAS PLAYED A BIG

ROLE IN SHAPING OUR DAUGHTER'S ENTHUSIASTIC ATTITUDE FOR LEARNING. HER CLASSROOM IS BRIGHT, CLEAN, CREATIVELY ADORNED, RELAXED AND COMFORTABLE. IT STIMULATES KI-AURA'S CURIOSITY. SHE NOW ENJOYS LEARNING AND HAS FLOURISHED THERE.

WE HAVE FOUND THAT AT THE EDISON-FRIENDSHIP SCHOOL, COOPERATION IS KEY. THE FACULTY AND STAFF THERE RECOGNIZE THAT PARENTAL INVOLVEMENT IS NECESSARY FOR A SUCCESSFUL LEARNING EXPERIENCE. PARENTS ARE ENCOURAGED TO BE PARTNERS IN THEIR CHILDREN'S EDUCATION. WE ALL DESIRE OUR CHILDREN TO HAVE THE BEST OPPORTUNITY TO LIVE A SUCCESSFUL AND HAPPY LIFE. THIS IS WHY WE CHOSE THE EDISON FRIENDSHIP PUBLIC CHARTER SCHOOL AT CHAMBERLAIN, SO THAT OUR DAUGHTER'S EDUCATIONAL LIFE WOULD BE BROAD, EXPANSIVE AND INCLUSIVE AND HELP HER BE BETTER PREPARED TO LIVE IN A COMPLEX WORLD.

FINALLY, AS PRESIDENT OF THE PARENT ASSOCIATION AT CHAMBERLAIN, I HAVE FOUND THE PRINCIPAL, DR. JOHN PANNELL, AND HIS STAFF TO BE HIGHLY COMPETENT. ON THE OCCASIONS WHEN I HAVE VOLUNTEERED THERE OR SUBSTITUTED AS A TEACHER, THE STAFF AT CHAMBERLAIN WAS OPEN, CARING AND SUPPORTIVE. THEY

HAVE DONE A VERY GOOD JOB IN WORKING WITH PARENTS TO PROVIDE THE BEST POSSIBLE PUBLIC EDUCATION FOR OUR CHILDREN.

THANK YOU FOR THE OPPORTUNITY TO SHARE THESE REMARKS WITH YOU TODAY AND FOR YOUR INTEREST IN PUBLIC CHARTER SCHOOLS IN THE DISTRICT.

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FAX*memo*

TO: Migo Miconi

FROM: Nathea Lee

DATE: July 7, 1999

SUBJECT: Responses to Congressman Cunningham's Questions

Mr. Miconi,

Mike Peabody asked me to forward the following responses to Congressman Cunningham's questions from Sidiki Paul Lancaster and Jeanee Snipes. Please do not hesitate to contact FOCUS should you need additional information.

Sidiki Paul Lancaster responds:

Q. You are president of the parent association for the Edison Public Charter School, correct? Why have you decided to put so much of your life and time into the public charter school?

A. Yes. I have invested the time and energy into the public charter school because Edison-Friendship shares my vision that the quality of life parents want to give to their children is tied to the quality of education they receive. The school affords parents like myself the opportunity to truly set that vision into motion and to be an integral part of our children's future.

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Q. Edison is a for-profit corporation, correct? In your opinion, how does this affect the quality of education that your public charter school provides the students?

A. In and of itself, being a for-profit corporation does not ensure "quality." The people working in the schools and their attitude dictate the quality of the experience. Edison-Friendship has demonstrated a no-tolerance attitude towards substandard education. The attitude of demanding a high level of performance affects all of us involved very positively. Parents are required to raise our level of involvement so that the children see examples of that high standard; this encourages them to strive and achieve higher standards as well. Edison-Friendship's attitude toward quality as part of the investment in the future of our children is what comes across, not whether or not the Edison Project makes a profit as a benchmark of success.

Q. You have worked with your charter school, and with the DC Public Schools, and with the District government, on your charter school. How helpful have you found local officials to be in answering your questions and solving your problems? Would you recommend any changes in the laws governing public charter schools?

A. My experiences with D.C. government have been disheartening. Rhetoric and unresponsiveness are rampant; effective changes: nil. That was in the past. When my daughter attended Gibbs Elementary School, the principal, Mr. Bledsoe, was excellent. He was approachable, he listened and he created avenues to bring about effective change. When Mr. Bledsoe retired, we saw no other person who shared our view of the future. This led us to the Edison-Friendship school. The level of red tape and lack of access to DCPS is mind-boggling. The District did not provide in-home computers, special language classes, improved reading programs, or other educational enhancements. We saw over-worked, underpaid teachers trying to create miracles because funding to the schools was severely cut. Therefore, the educational system suffered. Seeing this continuous cycle was exasperating and I felt movement was too slow. Representative Eleanor Holmes Norton has voiced the frustration I have felt in her remarks about Federal accountability and insensitivity to District matters. Similarly, Councilmember Chavous and the education committee of the Council have expressed frustration with the machinery of DCPS.

As far as changes I would recommend to the laws governing charter schools, I would like to do further study of the laws so that I can be better informed about what governance exists. I could then have a better sense of what changes could enhance what public charter schools do.

Mr. ISTOOK. Ms. Scott.

OPENING REMARKS OF DELORES SCOTT

Ms. SCOTT. Good afternoon. My name is Delores Scott. I am the legal educational advocate at Sasha Bruce Youth Work.

Sasha Bruce is a 25-year-old private, nonprofit youth and family services agency, and one of the principal providers of youth and family services in Washington, D.C. Sasha Bruce has many programs designed to provide children and their families with an array of comprehensive services such as emergency shelter, individual and family counselling, substance abuse and AIDS prevention education, job training and placement, and educational advocacy, to name a few.

Today I will be brief in my remarks discussing one of Sasha Bruce's programs called the Consortium for Youth Alternatives, CYA. CYA is a juvenile diversion program for D.C. Superior Court.

Prior to 1995 CYA's clients consisted mostly of young people who had been charged with an offense or crime. In an effort to avoid stigmatizing the young people by entering them into the juvenile justice system, CYA provided them with an opportunity to address their truant or out-of-control behavior by participating in individual, group, and family counselling sessions, as well as participating in recreational and community service activities.

However, in 1996, in response to the alarming number of truancy cases reported to the court by DCPS, it was determined that students who were truant, performing poorly or out of control, required educational advocacy, in addition to the services provided by CYA.

The District of Columbia has a compulsory school attendance law whereby all residents must attend school to the age of 18. As the educational advocate, I make an assessment of the students' educational needs in order to come up with a plan of action to address their truancy, poor grades or out of control behavior.

As we are all aware, a student does not attend school for many reasons. For example, many of our clients are truant because they are simply bored with their neighborhood school. These clients are placed in a neighborhood school without regard to their career and educational interests or performance level. Many of our clients are frustrated with their neighborhood school because they are not performing at grade level and have not been provided with a program or educational setting to remedy the situation. Moreover, in some cases, a residential school is the only appropriate alternative educational placement.

For students who are truant, performing poorly or out of control, I have found the public charter schools to be a wonderful, alternative educational placement. In fact, many of our clients are requesting applications for charter school placements.

To date, approximately 20 percent of our clients are attending charter schools. Those schools include Associates for Renewal in Education, Maya Angelou's See Forever School, Integrated Design Electronics Academy and Edison Friendship, to name a few. Many of our parents with children attending charter schools have reported to me that their children are doing well and are no longer truant.

It is my experience that most at risk students require a school that provides an intensive remedial program, with a strong behavioral management component that addresses the students' career and educational interests. In cases where the student may be borderline in terms of specific learning disabilities or emotional behavior disorders, a small structured school that focuses on students' individual strengths and weaknesses is able to provide those students with an appropriate education.

In addition, it is important for our borderline academic functioning students to have schools that allow them to obtain a high school diploma or GED; not a certificate of individual education plan which seems to be the standard for some DCPS students with special needs.

Lastly, having more public charter schools that focus on at risk students could help to reduce the costly and time consuming process of special education litigation.

In closing, as the legal educational advocate working with court-referred students, it is imperative that the District of Columbia provides its at-risk students with alternative educational placements designed to meet their emotional, behavioral, and academic needs in both a day school and a residential school environment.

Thank you.

Mr. ISTOOK. Thank you very much, Ms. Scott.

PREPARED STATEMENT OF DELORES SCOTT

[The prepared statement referred to follows:]

TESTIMONY of DELORES L. SCOTT, ESQ.

EDUCATIONAL ADVOCATE

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IN SUPPORT OF PUBLIC CHARTER SCHOOLS

D.C. SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS COMMITTEE

JUNE 22, 1999

INTRODUCTION

GOOD AFTERNOON, MY NAME IS DELORES SCOTT, I AM AN EDUCATIONAL ADVOCATE AT SASHA BRUCE YOUTHWORK, INC.

BACKGROUND

SASHA BRUCE, IS A 25-YEAR OLD, PRIVATE, NON-PROFIT YOUTH AND FAMILY SERVICES AGENCY AND ONE OF THE PRINCIPAL PROVIDERS OF YOUTH AND FAMILY SERVICES IN WASHINGTON, D.C. SASHA BRUCE HAS MANY PROGRAMS DESIGNED TO PROVIDE CHILDREN AND THEIR FAMILIES WITH AN ARRAY OF COMPREHENSIVE SERVICES, SUCH AS (1) EMERGENCY SHELTER, (2) INDIVIDUAL AND FAMILY COUNSELING, (3) SUBSTANCE ABUSE AND AIDS PREVENTION EDUCATION, (4) JOB TRAINING AND PLACEMENT AND, (5) EDUCATIONAL ADVOCACY, TO NAME A FEW.

CYA

TODAY, I WILL BRIEFLY DISCUSS ONE OF SASHA BRUCE'S PROGRAMS CALLED THE CONSORTIUM FOR YOUTH ALTERNATIVES (CYA). CYA IS A JUVENILE DIVERSION PROGRAM FOR D.C. SUPERIOR COURT.

PRIOR TO 1995, CYA'S CLIENTS CONSISTED MOSTLY OF YOUNG PEOPLE WHO HAD BEEN CHARGED WITH AN OFFENSE OR CRIME. IN AN EFFORT TO AVOID STIGMATIZING THE YOUNG PEOPLE BY ENTERING THEM INTO THE JUVENILE JUSTICE SYSTEM, CYA PROVIDED THEM WITH AN OPPORTUNITY TO ADDRESS THEIR TRUANT OR OUT-OF-CONTROL BEHAVIOR BY PARTICIPATING IN INDIVIDUAL, GROUP, AND FAMILY COUNSELING SESSIONS: AS WELL AS PARTICIPATING IN RECREATIONAL AND COMMUNITY SERVICE ACTIVITIES.

HOWEVER IN 1996, IN RESPONSE TO THE ALARMING NUMBER OF TRUANCY CASES REPORTED TO THE COURT BY D.C. PUBLIC SCHOOLS, (DCPS), IT WAS DETERMINED THAT STUDENTS WHO WERE TRUANT, PERFORMING POORLY OR OUT-OF-CONTROL REQUIRED EDUCATIONAL ADVOCACY; IN ADDITION TO THE OTHER SERVICES PROVIDED BY CYA.

ARGUMENT SUPPORTING PUBLIC CHARTER SCHOOLS

THE DISTRICT OF COLUMBIA HAS A COMPULSORY SCHOOL ATTENDANCE LAW WHEREBY ALL RESIDENTS MUST ATTEND SCHOOL TO THE AGE OF 18. AS THE EDUCATIONAL ADVOCATE, I MAKE AN ASSESSMENT OF THE STUDENTS' EDUCATIONAL NEEDS IN ORDER TO COME UP WITH A PLAN-OF-ACTION TO ADDRESS THEIR TRUANCY, POOR GRADES OR OUT-OF-CONTROL BEHAVIOR.

AS WE ARE ALL AWARE, A STUDENT DOES NOT ATTEND SCHOOL FOR MANY REASONS. FOR EXAMPLE, MANY OF OUR

CLIENTS ARE TRUANT BECAUSE THEY ARE SIMPLY BORED WITH THEIR NEIGHBORHOOD SCHOOL. THESE CLIENTS ARE PLACED IN THEIR NEIGHBORHOOD SCHOOL WITHOUT REGARD TO THEIR CAREER AND EDUCATIONAL INTERESTS OR PERFORMANCE LEVEL. MANY OF OUT CLIENTS ARE FRUSTRATED WITH THEIR NEIGHBORHOOD SCHOOL BECAUSE THEY ARE NOT PERFORMING AT GRADE LEVEL AND HAVE NOT BEEN PROVIDED WITH A PROGRAM OR EDUCATIONAL SETTING TO REMEDY THE SITUATION. MOREOVER, IN SOME CASES, A RESIDENTIAL SCHOOL IS THE ONLY APPROPRIATE ALTERNATIVE EDUCATIONAL PLACEMENT.

FOR STUDENTS WHO ARE TRUANT, PERFORMING POORLY OR OUT-OF-CONTROL, I HAVE FOUND THE PUBLIC CHARTER SCHOOLS TO BE A WONDERFUL, ALTERNATIVE EDUCATIONAL PLACEMENT. IN FACT, MANY OF OUR CLIENTS ARE REQUESTING APPLICATIONS FOR CHARTER SCHOOL PLACEMENT. TO DATE, APPROXIMATELY TWENTY PERCENT OF OUR CLIENTS ARE ATTENDING CHARTER

SCHOOLS. THOSE SCHOOLS INCLUDE ASSOCIATES FOR RENEWAL IN EDUCATION (ARE); MAYA ANGELOU'S SEE FOREVER SCHOOL; INTEGRATED DESIGN ELECTRONICS ACADEMY (IDEA) AND EDISON-FRIENDSHIP, TO NAME A FEW. MANY OF OUR PARENTS WITH CHILDREN ATTENDING CHARTER SCHOOLS HAVE REPORTED TO ME THAT THEIR CHILDREN ARE DOING WELL AND ARE NO LONGER TRUANT.

IT IS MY EXPERIENCE THAT MOST AT-RISK STUDENTS REQUIRE A SCHOOL THAT PROVIDES AN INTENSIVE REMEDIAL PROGRAM, WITH A STRONG BEHAVIORAL MANAGEMENT COMPONENT THAT ADDRESSES THE STUDENTS' CAREER AND EDUCATIONAL INTERESTS.

IN CASES WHERE THE STUDENT MAY BE BORDERLINE IN TERMS OF SPECIFIC LEARNING DISABILITIES OR EMOTIONAL OR BEHAVIOR DISORDERS, A SMALL, STRUCTURED SCHOOL THAT FOCUSES ON STUDENTS' INDIVIDUAL STRENGTHS AND

WEAKNESSES IS ABLE TO PROVIDE THOSE STUDENTS WITH AN APPROPRIATE EDUCATION. IN ADDITION, IT IS IMPORTANT FOR OUR BORDERLINE ACADEMIC FUNCTIONING STUDENTS TO HAVE SCHOOLS THAT ALLOW THEM TO OBTAIN A HIGH SCHOOL DIPLOMA OR GED; NOT A CERTIFICATE OF INDIVIDUAL EDUCATION PLAN (IEP), WHICH SEEMS TO BE THE STANDARD FOR SOME DCPS' STUDENTS WITH SPECIAL NEEDS. LASTLY, HAVING MORE PUBLIC CHARTER SCHOOLS THAT FOCUS ON AT-RISK STUDENTS, COULD HELP TO REDUCE THE COSTLY AND TIME-CONSUMING PROCESS OF SPECIAL EDUCATION LITIGATION.

CONCLUSION

IN CLOSING, AS AN EDUCATIONAL ADVOCATE WORKING WITH COURT-REFERRED STUDENTS, IT IS IMPERATIVE THAT THE DISTRICT OF COLUMBIA PROVIDES ITS AT-RISK STUDENTS WITH ALTERNATIVE EDUCATIONAL PLACEMENTS, DESIGNED TO MEET THEIR EMOTIONAL, BEHAVIORAL AND ACADEMIC NEEDS IN BOTH A DAY SCHOOL AND RESIDENTIAL SCHOOL ENVIRONMENT.

THANK YOU.

PREPARED STATEMENTS

[CLERK'S NOTE.-- The following five prepared statements concerning charter schools were submitted for the record:]

Testimony by Linda R. Moore, Executive Director of the

Elsie Whitlow Stokes Community Freedom Public Charter

School

To

The DC Subcommittee of the House Appropriations Committee

June 22, 1999

Thank you Congressman Istook and members of the DC Subcommittee of the House Appropriations Committee for giving me the opportunity to speak to you about our experiences as a first-year Charter School in the District of Columbia. I am Linda Moore, Director of the Elsie Whitlow Stokes Community Freedom Public Charter School.

I would like to begin by giving you a little background about our school. The Elsie Whitlow Stokes Community Freedom Public Charter School opened its doors in September 1998. When I am asked, "What makes your school special?" I respond by noting that: (1) every student in our school is expected to become fluent in two languages: English and French or English and Spanish; and (2) that

all students engage in community service activities, as a means of learning good citizenship.

Our school is named for Elsie Whitlow Stokes, my mother and a first-grade teacher in Arkansas for 36 years. As the best teacher I ever knew, Elsie Whitlow Stokes is the role model for our school. Our mission is based on three simple educational principles that made Mrs. Stokes a superbly successful teacher: (1) every student can succeed academically and become a responsible citizen; (2) every student must receive a solid foundation in reading, mathematics, social studies, science, and the arts; (3) and community service activities prepare children to become caring neighbors and good citizens.

While we emphasize academic excellence, we respect and foster every child's cognitive, emotional, moral, physical, and social well-being.

Our goals are to:

1. Help every child achieve at his or her highest capacity.

2. Teach children to speak, read, write, and think in two languages: English and French, or English and Spanish.

3. Involve our students in active service to the community while preparing them for responsible citizenship in a multicultural society.

4. Increase our students' knowledge of, and respect for, their own culture and the cultures of others.

In this, our first year, we served 35 kindergarten and first grade students. As we add one grade a year, we expect to serve 75 kindergarten, first, and second grade students in the 1999-2000 school year, and 220 students in kindergarten through grade five in school year 2002-2003.

While many of our students live in the immediate Mt. Pleasant neighborhood of the school, others come from all over the District of Columbia. Ninety percent of the children are eligible for free or

reduced-price lunches, and 20 percent are from homes in which a language other than English is spoken.

We have begun to create in our school an environment of acceptance, respect, and nonviolence--not just among our students, but among all members of our school community. This year we launched a peace education curriculum that introduced our children to such peace-loving figures as Martin Luther King, Jr; King Hussein, the late ruler of Jordan; and Mahatma Ghandi of India. We have formed a partnership with a senior citizens center, where our students and seniors practice t'ai chi and read and sing together, all the while making discoveries about each others' lives and histories.

Our students took the leadership to pursue community service activities focused on the environment. Our first graders, as part of their science and language arts curricula, were studying pollution. They took a walk around the block of our school and noticed a considerable amount of trash in the neighborhood. Because our emphasis on citizenship education has led them to believe that they *can* make a difference in their community, they sought ways to abate

the trash condition. They invited the city councilman who represents the ward where we are located to join them in a walk through the neighborhood and to help them think about how they could help rid the neighborhood of trash. As a result of that meeting, our *kindergarten and first grade students* decided to start a recycling program, to join the neighborhood association in clean-up efforts and to join with the national youth community service organization, City Year, in re-building a community park.

We believe that we are developing, not only a group of scholars. We are also molding a generation of responsible, caring citizens.

At the Elsie Whitlow Stokes Community Freedom Public Charter School, we are strongly committed to working in partnership with our students' families. Parents who choose our school commit themselves to active involvement. Our parents have chosen to work with us in countless ways—including assisting with classroom instruction and lunch management, taking an active and creative role in fundraising, participating in regularly scheduled quarterly parent-teacher conferences, making instructional materials, decorating the

school, organizing a parents' group, particpating in parent education workshops, serving on the school's Board of Trustees, and recruiting new students for us.

Our first year has been incredibly rewarding. One of my favorite success stories involves a first-grader, Wheeler Mendoza. Wheeler came to us because he had significant behavior problems and low academic achievement at his previous school. His mother, a Salvadorean refugee, wanted a better opportunity for her son. We found Wheeler to be an exceptionally bright child, who, until April of this year, was very satisfied that he could not read. Wheeler could do math. He was fluent in English and Spanish, often serving as translator for limited-English speaking children. However, Wheeler simply could not read. His teacher, Alexis Dickens, an extremely talented teacher, began to experiment with a variety of techniques to teach Wheeler to read. The result is, that in April, Wheeler, for the first time, picked up a book and read it from cover to cover. He is confident that he *can* read now and, therefore, he *does* read with great enthusiasm.

Our challenges, during our first year, include issues related to acquisition and funding of an appropriate facility, the enormous social, health and special education needs of our students, and challenges related to the oversight process and the certainty and fairness of funding. Of these issues, I would like to comment on one: facilities. The District of Columbia is not blessed with an abundance of commericial buildings and open space appropriate for renovation or construction of schools. However, we do have a number of vacant and deteriorating buildings that have been built for the purpose of educating our city's children and youth and other publicly owned buildings. The current process for accessing these school buildings is so cumbersome, confusing and unpredictable, that we have chosen not to expend our energies trying to acquire excess public school property. Instead, we are housed in the basement of an Episcopal Church. While we appreciate the temporary home that the church has provided, we recognize that we will quickly outgrow this facility. As we research strategies for finding a permanent home, we acknowledge that the facility question may be our greatest long-term challenge.

We are grateful for any help that this subcommittee can provide to our school and all charter schools in the District of Columbia as we continue to provide an exemplary education for the children and youth in the nation's capital.

TESTIMONY OF BRUCE ALCAN

CESAR CHAVEZ PUBLIC CHARTER SCHOOL
FOR PUBLIC POLICY
401 M STREET, SW
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D.C. SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS COMMITTEE

JUNE 22, 1999

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS BRUCE ALCAN. I AM A RETIRED D.C. SCHOOL TEACHER AND CURRENTLY WORK AT CESAR CHAVEZ PUBLIC CHARTER SCHOOL FOR PUBLIC POLICY. THE SCHOOL'S MISSION IS TO PREPARE STUDENTS FOR COLLEGE AND FOR CAREERS IN PUBLIC SERVICE. IN FURTHERANCE OF THAT GOAL STUDENTS AVAIL THEMSELVES OF THE WEALTH OF OPPORTUNITIES AVAILABLE IN D.C. TO INCLUDE ATTENDANCE AT CONGRESSIONAL HEARINGS LIKE THE ONE WE ARE AT TODAY.

MY 16 YEAR OLD DAUGHTER, SANDRINA RAY USED TO ATTEND D.C. PUBLIC SCHOOLS BUT THIS YEAR I ENROLLED HER IN THE CESAR CHAVEZ SCHOOL. WHILE IN JUNIOR HIGH SCHOOL SANDRINA VIEWED A PRESENTATION ON CESAR CHAVEZ HIGH SCHOOL AND PICKED IT AS HER FIRST CHOICE AMONG HIGH SCHOOLS. SHE WAS IMPRESSED BY THE ENERGY, FOCUS ON COLLEGE PREPARATION AND THE THEME OF GOVERNMENT SERVICE. I WAS IMPRESSED ALSO AND WE BOTH WERE OVERJOYED WHEN SHE RECEIVED HER ACCEPTANCE LETTER.

I AM HAPPY WITH MY CHOICE BECAUSE IN MY 25 YEARS WITH THE PUBLIC SCHOOLS, I NEVER OBSERVED THE LEVEL OF INDIVIDUALIZED ATTENTION AND NURTURING, NOR THE VAST VARIETY OF ACTIVITIES THAT MY DAUGHTER NOW ENJOYS AS A STUDENT AT CESAR CHAVEZ.

SANDRINA HAS VISITED A RANGE OF GOVERNMENT AGENCIES, HAS GIVEN TESTIMONY HERSELF - SOME OF WHICH WAS TELEVISED, AND HAS BEEN MISTRESS OF CEREMONIES FOR D.C. MAYOR ANTHONY WILLIAMS. HER PICTURE AND COMMENTS WERE FEATURED IN THE CHRISTIAN SCIENCE MONITOR, SHE HAS EVEN BEEN PART OF A PRODUCTION CREW FILMING A PIECE ON IMMIGRANTS TO THE DISTRICT. HER INTERNSHIP IS WITH KIDSNET WHERE SHE IS HELPING ADMINISTER A WEBSITE AND LEARNING THE ATTENDANT TECHNOLOGY.

HAVING BEEN A TEACHER IN THE PUBLIC SCHOOLS, I AM ESPECIALLY APPRECIATIVE THAT ALL OF SANDRINA'S TEACHERS KNOW HER STRENGTHS AND WEAKNESSES THOROUGHLY BECAUSE THERE ARE SO FEW STUDENTS PER TEACHER. NOT ONLY DOES SHE RECEIVE CUSTOM-TAILORED TREATMENT FROM HER TEACHERS BUT SHE HAS HER OWN TUTOR PROVIDED BY THE SCHOOL. AS A PARENT, I AM ABLE TO MONITOR HER PROGRESS THROUGH THE WEEKLY REPORTS THAT I SIGN OR BY LOOKING AT THE STATUS CHARTS IN EACH CLASSROOM. I AM CONVINCED THAT THIS CLOSE ATTENTION CAUSES HER TO HAPPILY GIVE HER BEST.

I AM FULLY CONFIDENT MY DAUGHTER WILL LEAVE HIGH SCHOOL ON A TRAJECTORY WHICH WILL TAKE HER THROUGH COLLEGE AND

HOPEFULLY BACK TO THIS BUILDING TO EMULATE THE MEMBERS OF THIS COMMITTEE.

THANK YOU FOR YOUR INTEREST. I WELCOME YOUR QUESTIONS.

TESTIMONY

By
COL(Retired) Norman Johnson
Director, IDEA Public Charter School
Before the DC Subcommittee of
House Appropriations Committee
June 22, 1999

My name is Norman Johnson. I am a retired colonel and the Director of the Integrated Design Electronics Academy(IDEA) Public Charter School. IDEA was established December 17, 1997 as a transition from the Phelps High school JROTC Career Academy. This academy along with nine others was established through the support of General Colin Powell. This concept was the brainchild of General Powell and called for retired military personnel to work along side regular teachers using a team teaching approach. Since this concept has worked extremely well, it was not changed when IDEA became a Public Charter School. This concept allows the retired personnel to instill leadership and teamwork principles, while the other teachers provide the academic focus.

The mission of IDEA is to develop young people with the academic, social, leadership and occupational skills necessary to

compete successfully in post secondary education/training and enter challenging careers in the technical fields of work. IDEA prepares students for the competitive high-tech careers now required in the 21st century.

The impetus for the IDEA Public Charter School came from a March 1997 meeting with former Superintendent General Julius Becton. He stated the school system did not have sufficient resources to support the Academy as a District of Columbia Public School(DCPS) organization. He suggested that our Academy pursue becoming a Public Charter School. It has been a long tedious process and much tougher than I would have imagined but we have been able to accomplish our task. As far as we know our school is the only one of its kind in the United States.

Our School was founded by 6 retired military personnel and one former DCPS teacher. Our school requires retired military personnel to teach the JROTC principles and support leadership and teamwork activities. In addition to JROTC, academics are stressed and are integrated with career vocational courses. The school has been

successful beyond our wildest dreams and we have been able to achieve positive results in less time than originally expected.

Achievements:

- 18 of 33 students taking the Armed Services Vocational Aptitude Battery(ASVAB) test scored high enough to be accepted in the military if they decided to join. This is an 21% improvement from the beginning of the school year. The possibility of military service gives students another avenue for success.
- Of the eight graduating seniors, 3 are going to college, 3 into the work force in a field related to IDEA's career courses and 2 are going into the active military or reserve forces.
- Students taking the Scholastic Aptitude Test(SAT) experienced a 15% score increase in one year.
- Students taking the Stanford Nine Test experienced a 14% score increase in one year.
- At the beginning of the school year, only 10 percent of the students taking our Math pretest achieved a passing score. When students were given the post test, 80 % passed.
- 5 of 8 seniors were placed in internships with local business organizations.

While we had many successes, we had some concerns as well. We have not been able to obtain a suitable facility. This issue has haunted us for over two years. Due to the turnover in the facilities office, obtaining a vacant DCPS school building has been difficult. We have been investigating some commercial properties but leasing or purchasing commercial property can be cost prohibitive. This is especially true for

a school attempting to direct the majority of its resources toward its students. Vacant DCPS school buildings are much more attractive because they are in fact structured to be schools! We are continuing to negotiate for a vacant school building but our time is running out and this issue may seriously jeopardize the existence of our school.

Overall, we feel we have had a very successful first year and hope to build on our successes and carry them into the future. Thanks to the committee for allowing me an opportunity to provide this overview.

12/17/98 Testimony at the Public Hearing on Public Charter Schools

Good Morning. My name is Jacqueline Russell. My son Philip Russell has been enrolled at the See Forever/Maya Angelou Public Charter School since September 1997.

But, prior to that time, in 1995 and 1996, Philip was retained in the 9th grade both years. His report cards were filled with F's. Not because he could not do the work and learn, but because he just would not go to school. He had lost all interest in going to school and thought that playing hooky was more fun. I spent a lot of time going to his school talking to counselors, administrators, teachers, and the principal. Nothing I did nor said seemed to get it though Philips's head that he needed to get his education. I asked my sister in Florida if he could move down there and go to school and one of my cousins told me he could move in with her and attend school in Maryland.

Unfortunately, in 1996, Philip got into some trouble. He became a part of the court system. His Probation Officer, Veda McCormack, told me that Philip could get his education through an alternative school. I had never heard of an alternative school.

Ms. McCormack recommended Philip's case to Christine Anninos, an Educational Advocate at the Educational Support Systems, Inc. Mrs. Anninos visited our home, interviewed us, and determined that Philip was qualified for a new at risk school being started by David Domenici and James Forman called See Forever. Mrs. Anninos sent Philip an application for See Forever. He filled it out and returned it. We were contacted by See Forever to come in for an interview. Philip was accepted into the See Forever School.

Philip's interest in school soon returned. He has been doing exceptionally well at the now named Maya Angelou Public Charter School. His first report card was unbelievable. He had A's, B's, and one C. What a change from all F's. He made the Dean's list twice and won a computer for his efforts. Philip's best friend Ivan is now enrolled at Maya Angelou Public Charter School.

* The Maya Angelou Public Charter School has a great academic program. Classes only have 5 to 6 students. Philip gets the attention he needs. School goes from 9:30 am to 8:00 pm. School also runs year round. In addition, the students also work one day a week and participate in various activities throughout the year. They have also learned how to save money. Philip has a bank account and an account at Merrill Lynch. Philip has mastered the computer. Philip worked at the George Washington University this past summer as a computer troubleshooter. He also worked his last internship at George Washington. The staff at George Washington University is asking Philip to consider attending George Washington University upon graduation. He has scored high on the SAT's to be admitted.

In March of this year, the See Forever school was renamed Maya Angelou Public Charter School. A student won the renaming contest. Maya Angelou attended the ceremonies and it was a gala. She will be returning in March of 1999.

I have become involved too. I attend regular PTA meetings, I am the Secretary on the Board of Directors at the school, and I work in the school office when needed. I also take a computer class taught by two of the students.

David Domenici, James Forman, and the staff at the Maya Angelou Public Charter School have done an excellent job with my son. He has turned his life around and he is now ready to pursue college or a career in computers. THANK YOU

My name is Jeanne Fields. My son's name is Daniel Fields. Daniel currently attends IDEA Charter School located in the Taft School building in northeast D.C.

Daniel is now fourteen years old, dealing with peer pressure and not living up to his full potential academically.

My thoughts were to send him to military school but I knew that I could not afford to pay the tuition.

IDEA has been like a gift from heaven to myself and my son. The other night my son told me that he knew that IDEA was serious and would not allow students to interfere with learning.

A couple of years ago, my son told me that he wanted a school where he could learn without a lot of fighting and rude behavior. I told him that I would do the best I could to find a school for him with that kind of atmosphere. The other night he told me that he believes we have found it.

For many parents and students in D.C. and other areas across the nation, charter schools have been a blessing.

Already, I see a positive change in my son and the Jr. ROTC program in place at IDEA adds character building to a sound academic experience.

Testimony of Ms. Cecelia Paul to the Committee on Education, Library and Recreation and Parks

Good afternoon ladies and gentlemen. My name is Cecelia Paul and I am here today to speak on behalf of charter schools.

My granddaughter, Eve'lyn Paul, attends the Elsie Whitlow Stokes Community Freedom Public Charter School. I made the decision to transfer her to a charter school for many reasons. Some of those reasons include overcrowded classrooms, poor pupil/teacher ration, upsurge in school crime, and the bureaucratic school structure that has long been in existence since the beginning of time.

Parent's ability to select their child's school creates a level of involvement and empowerment that would not normally take place. Since my granddaughter has been in Charter school, my participation as well as her mother's has been more to ensure that she is getting what she needs, since the charter school concept to us is new. I have raised 7 children in public schools. I've even attended them myself a few years ago. In public schools, the structure and curriculum of how the children will be taught has already been established, and I might add, there seems to be no difference from one public school to the next. Therefore, regardless whether you think the child is not getting all that they should, it seems like your hands are tied, and what you see is what you get. I feel that it is basically due to the bureaucratic culture of the present school system. While I have always held public school teachers in high regard, I have felt for years that the D.C. public schools should be doing a better job. It is a school's job to satisfy the parent and the student. For years I have wished for an alternative without having to go to private schools.

In my granddaughter's school, parents have lots of participation and a voice about the teaching structure. I feel free about making suggestions about what I've found that works for my granddaughter, Eve. I think parents who are dedicated should be the ultimate judges of what is good for their child's education. I also think the charter school concept is an excellent way of confronting the centrally managed structure of public school, which for years has not provided important needs of the children. One such need is "personal attention". While I understand teacher/student ratio plays a big part in the public school's inability to provide attention, it is very important. I feel the competition alleged by the public school system is a joke. The real issue and the most important thing to parents and students is the education. And, I have found that the charter schools offer me the best alternative. It is results for the student that parents are seeking.

If I may speak a little more on the Elsie Whitlow Stokes Community Freedom Public Charter School, since it is the school that I know more about. Elsie Whitlow Stokes Charter has established a school management system, which enables all people in the school community to contribute meaningfully to achieve the schools goals, based on

parents and community beliefs. The school demonstrates its strong commitment to the shared vision to others. This is being done while keeping the students as the focus of the work of the school. The school displays efforts of commitment to educate its entire student regardless of their race, ethnic or religious diversity, and its commitment for excellence and equity for all of our Elsie Whitlow Community Charter students.

I feel very comfortable about making suggestions that I feel benefit Eve as well as her classmates. For example, while it may seem small to others, writing parallel on paper my be harder for some children as it sometimes is for Eve. Her teacher was very receptive when I suggested that Eve could do better with parallel writing, if she had lines on the paper, so her words would not flow downward on the paper. And, that perhaps it would be good to have a handwriting hour since other kids appeared to have that same problem. The teacher agreed and informed me that she would take an hour daily for handwriting practice. Eve is also being taught the French language, and she is only in the 1st grade.

While we, the parents, acknowledge school alone can't meet every need, with the collective efforts of the families, community organizations and other public and private agencies, the needs of the students can be achieved.

"COMMON DENOMINATOR" FOR CHARTER SCHOOLS

Mr. ISTOOK. I'm struck by the fact that the common denominator of what all of you say seems to be the difference that it makes when people want to be where they are, and I think that, of course, is the common element, the freedom to choose the school that you attend, and what a difference it makes.

I notice, Ms. Snipes, or Jeanee, you mention the difference in being in a classroom setting where the other students want to be in that particular school. I'm not sure if you were in public school at some prior point and so forth. Would you just elaborate what difference you experience as a student when you know that the other people around want to be there and how it makes a difference?

Ms. SNIPES. Okay. Before attending WMST, I did attend School Without Walls, so the students there were there because they chose to go there. But prior to that, I attended Hart Junior High School, and at that school I noticed behavioral problems were the biggest factor in disruptions in the classrooms where the students didn't want to be there. They were there because they were forced to be there, and you know, they were told, you're not 18 years old, you're still a child, you need to attend this school.

And once you have behavior problems inside classrooms and they're not being alleviated and those children who are acting up in the classroom are not being placed outside the classroom and are disrupting other students, the learning process stops and comes to a halt because the teacher is trying to alleviate this behavior problem while teaching. So the class lesson never gets taught because they don't have the choice to suspend or to expel the child, to kick the child out of school because that is their neighborhood schcol.

So when you have children who aren't there to learn, everybody else is being affected by it; but if you have a school where everybody is there to learn, they want to be there, and if they don't want to be, they can be placed outside, are a different—or they can go to a different learning institution.

So when you have a school where everybody is there to learn and everybody has the same goal, to come out, to succeed, to be something in life, then the learning process is a hundred percent quicker, and everybody gets that much more out of it.

Mr. ISTOOK. Of course, there's still—they are not 18 so they are still required to be at school.

Ms. SNIPES. Right, but they want to be there.

PARENT PARTICIPATION

Mr. ISTOOK. They want to be at this particular one. As a parent, Mr. Lancaster, do you see any difference in the charter school parents' attitudes toward participating and those who are not charter school parents, in your own experience?

Mr. LANCASTER. What I find is the access makes the difference and what's accessible to the parent. Unfortunately, in prior years in D.C. public schools, there weren't always an access to certain things; for example, a computer in the home. Many parents can't afford to go out and purchase a computer to give their child that experience.

Edison allows for each student from the third grade up, and now they are up to eighth grade, to have a computer in the home as part of their learning curriculum. So we are linked to the school. Homework is e-mailed to the teacher. There are assignments that are specifically designed so that the child has to go into his computer system, pull the assignment off, complete it and then of course, put their work back in so it can be checked.

So the technological support makes a big difference, especially if it's accessible to those families who do not have the economics to do it on their own. That's a big help.

The other thing is, piggy-backing on what Jeanee has said, when there's a problem in the classroom, rather than say, all right, you're out of here—as I said before, education is a family experience. So if a child is disruptive, we bring that family back, that parent in or those parents in with that child and sit down and say, hey, look, we are here for not just your child but for you. Is there a way you can support us and get your child in order so——

Mr. ISTOOK. You find that charter schools are able to enforce that involvement and discipline?

Mr. LANCASTER. I found that particularly at Chamberlain and with my being there as—partly as the president of the Home School Association, encouraging this, that that helped minimize the disruptive influences in the classroom because I was on the parents to say, let's go and help your child, are there any special needs, and we made referrals to those families who needed help with their children, in other regards, especially those who had single parent situations.

Mr. ISTOOK. I appreciate very much your comments. In the interest of time, with three panels, I'm going to forgo any other questions, but thank you very much. I notice that common element from all three of you.

Mr. Moran.

WASHINGTON MATH, SCIENCE AND TECHNOLOGY SCHOOL

Mr. MORAN. Thank you, Mr. Chairman. It's been helpful testimony. Most of my questions are going to be directed to other members of the panel, but I wanted to ask the young lady that goes to Washington Math, Science and Technology School—there was an editorial in the Washington Times on June 14th that caused me some concern because it was contrary to my assumptions; but they really, for whatever reason, the Washington Times really took on the Apple Tree Institute and somebody took the initiative to send it to us, and they didn't say who it was, but it says what can and what will the D.C. Council and Congress do about this.

I am more impressed when they put down their name and, you know, why they are asking us than just these kinds of anonymous missives, but it talks about the school being in a facility that has very little in the way of windows. It says it has no windows for light or fresh air, that it's a sick building—that's why EPA got out of there—the parents and students complain of headaches, constant coughing, other illnesses. It talks about one student who thought it was everything they wanted but then it—apparently they suggested Apple Tree as another bureaucracy, just like the public school system. They fired a chemistry teacher after she questioned

Apple Tree about fiscal matters. There was no chemistry lab, only one or two computers. We had an art class, no supplies, no windows, everybody was scared, et cetera, et cetera.

You know, I don't want to read the whole thing here, but it's troubling, and I think hearing directly from a student would be enlightening so maybe you can tell us what the real situation is there.

RESPONSE TO COMPLAINTS ABOUT WASHINGTON MATH CHARTER SCHOOL

Ms. SNIPES. I think I'll just have to start with—the start up of the school was difficult. For approximately a month and a half we were placed in the basement because the facilities upstairs in the old EPA building were not up to par for students. After that 6-week period, we were moved upstairs. Correction, there are windows everywhere. The windows are probably larger than the ones in this room. They don't open but the ventilation in the classrooms is adequate.

As far as firing the chemistry teacher or whatever, if teachers or administrators and anybody else are not serving the school and the school's goals as they should be serving, if they aren't serving the student, then they should be released from their duties. If the teacher is not teaching the material that needs to be taught or if the teacher is not serving the students' learning abilities, then they do need to be dismissed, and a more adequate teacher that can deal with these students can be in place. That's exactly what happened. The current teachers at the school, all of them I have found to be very dedicated. They are very enthusiastic about being there.

As far as people getting sick, at first there was a little lunch problem. Nobody was actually getting sick, but with students, if the food is not exactly what the student wants, if you don't have pizza every day, if you don't have this every day, the students aren't going to be happy. They are going to complain. Now, the meals are all up to FDA standards. So I mean, if you have green beans one day, students are going to complain, you are going to hear it. You're going to hear the negative side of the story, but you're never going to hear the positive side about, you know, them getting catered every single day, about air-conditioning. I mean, you can't complain when you have central air in a school building coming from a school district that most of the time you are burning up.

So I found myself—yes, there were start-up problems, but I would say 99 percent of them have been alleviated, and the 1 percent that hasn't, it's being worked on.

ACCOLADES FOR JEANEE SNIPES' RESPONSE

Mr. MORAN. How old are you? No. I am thinking of Eleanor. I mean Eleanor's safe, but boy, oh boy, with this talent, some day—we love to have—I am just impressed by the articulate way in which you answer. Really, I'm serious, how old are you?

Ms. SNIPES. I just turned 18.

Mr. MORAN. Eighteen, and you're a senior in high school?

Ms. SNIPES. Yes.

Mr. MORAN. Where are you going to college?

Ms. SNIPES. I'm looking at the Air Force Academy or Agnes Scott in Decatur, Georgia.

Mr. CUNNINGHAM. How about the Naval Academy?

Mr. MORAN. Good for you. That was terrific, and 4 years from now——

Mr. ISTOOK. I think she could be a Marine.

Mr. MORAN. She could also get a PR job with any charter school organization in the country, but no doubt that was terrific, and it's enlightening, and you know, as again, as always, there's always another side, and I'm glad that you have refuted this article because it obviously was misleading and didn't tell the whole story. Nice job.

There's one other question I wanted to ask and probably of the lady who represents the Sasha Bruce organization——

Ms. SCOTT. Delores Scott.

SUMMER RECESS IMPACT ON STUDENTS

Mr. MORAN. Yes, I want to focus on this fact because you represent Sasha Bruce. There was an article in the Outlook section in last Sunday's Post, by a T.C. Williams teacher who is actually a good friend. He talks about what happens when kids leave for the summer. I mean, is summer recess a pretty outdated practice that dates back to when we were an agricultural society; the problem is that today many children don't get the kind of supervision, they don't get the structure. Even at T.C. Williams in Alexandria, the majority of kids come from single parent households, and whereas conflicts that erupt can oftentimes be mediated when they are in school, they don't get mediated oftentimes when they're out of school. They, don't have as much excuse to avoid the kinds of things that get you in trouble during school with your peers, et cetera, et cetera.

I am so impressed that we've got so many kids going to the summer school program here in the District. I am wondering if it shouldn't be virtually all the kids that don't have some other kind of constructive, alternative activity during the summer because their parents aren't with them, there's very little to do in D.C. on the streets other than get in trouble. They don't have a lot of alternative activities for kids and teenagers. So I'm just wondering if you think it would help if we tried to keep the kids at least in some kind of structured activity throughout the summer?

Ms. SCOTT. Well, I am focusing on a targeted population. For our clients, students that are likely to regress academically and/or behaviorally, then by Federal law, the Individuals With Disabilities Education Act, they are required to have extended school year, and what that means is that their plan during the normal school year is also extended throughout the summer. Also, with these children, we have parent family counselling as a part of their educational plan where the parent is also taught how to work with the student at the home. So there's a smooth transition there.

Mr. MORAN. Thank you.

Mr. ISTOOK. Thank you, Mr. Moran. I just need to remind members that we do need to be attentive of the time because we do have the two additional panels, also.

Mr. Cunningham.

Mr. CUNNINGHAM. Sure. You always say that when it's my turn to speak.

Mr. MORAN. It's because I'm always so lengthy, Duke, I'm sorry.

PRAISE OF JEANEE SNIPES

Mr. CUNNINGHAM. I will be succinct, but it's funny the observation that I had just written down; if Jeanee came to work for me, I'd be afraid that I'd end up working for her. I want to tell you, you're very articulate. My daughter, I am very proud of, my youngest daughter, scored 1550 on her SATs. She's a junior in school and she is very articulate, just like yourself. It's exciting to see someone not only that comes with a prepared text but can handle questions so well, to analyze what the question is and then give us back the feedback as you see it. Never change that, because we get a feeling that you're speaking from your heart, and it makes it a hundred times more effective.

FLEXIBILITY IN CHARTER SCHOOLS

One of the things you mentioned was the flexibility in your school system. My daughter goes to public schools, both my daughters do and my wife is a public school administrator. There are very good teachers in public schools and good education programs. I am very fortunate, I live in Del Mar, California. So you can imagine that the level of school is very high. But somewhere places in San Diego are much like D.C., the same schools not performing, and children want out of that.

PARENT PARTICIPATION IN CHARTER SCHOOLS

Another area in which I saw that the Chairman talked about was children wanting to be in school which was evident, is parent participation. In the schools where they very seldom produce students of high quality, at least across the board, there's very little parent involvement. Is there a requirement at the charter schools for parents to participate or just a strong emphasis.

Ms. SNIPES. I don't think you can make a requirement for the parents to participate, but going into the school, there is a sheet of paper saying, you know, going into this charter school, we ask that you as a parent support your child, and if the child—usually if the child has the parent support, then they are going to do better. So that's why the school does encourage the parents to be involved in the everyday life of the student.

Furthermore, with the start-up of a new charter school, if you have parent involvement, extracurricular activities are going to be starting more, because you're not putting all the emphasis on the teachers to try to get extracurricular activities implemented. So you do have teachers and parents taking over the role of maybe the administrators who would usually implement those extracurricular activities. You have the parents instead having different clubs after school, trying to start soccer teams, trying to start a student government association. You still do have your teachers, for instance, starting journalism clubs, things like that, but with the parent involvement, you just have that much more. You have that much

more push to have even school dances, which is an important thing in high school, social events.

Mr. CUNNINGHAM. Well, I would think that parents that want better for their children would work to establishing a public charter school, if they are dissatisfied with the public school system. You look at most members of Congress, including the President, their children don't go to D.C. schools. They go to private schools or to charter schools, and I think that a challenge to traditional public schools is good in light of our schools, and I am excited about what the D.C. school system, the direction that they are going.

I would challenge my colleagues—in San Diego I found out that summer school, there's very few programs actually offered for credit. It's mostly just remedial education that doesn't count toward the main school year. I would challenge my friends—of 30,000 children, the good thing is that most children are going because they want to, not because they have to. That's the equation of wanting to be there, and I think that's exciting with D.C. We got a long way to go.

I would ask, Ms. Scott.

Ms. SCOTT. Ms. Scott.

ALTERNATIVE SCHOOLS AND SPECIAL EDUCATION

Mr. CUNNINGHAM. Ms. Scott, do you handle—in the alternative schools, do you have any of special education children within that? We have a monumental problem in San Diego and across the Nation with special education. Our San Diego public schools superintendent is Alan Bersin, who was a Clinton appointee. He came to me and said, Duke, we need help. We have children that are acting up. They are affecting, like Laura said, they're affecting the other children in the education system. In your program, though, are you handling any of the special needs children?

Ms. SCOTT. Most of my children are special education. Charter schools are public schools. They're open to all students. So I don't make a distinction with special education. What I find is that most of the students require a different educational setting, smaller, more structured, providing intensive remedial education. Primarily we are talking about children with specific learning disabilities, and as was mentioned earlier, behavioral issues. So, yes, I deal with a lot of special ed students, but when they apply to charter schools, special education is not an issue because it is an open school, and the charter schools provide what is appropriate for that child, according to their IAP, and assisting in the development of that IAP along with the parents.

Mr. CUNNINGHAM. Good. I'm glad to hear that that's open. And my last little comment is that, Jeanee, I was a Navy fighter pilot, and I would ask you to look at the Naval Academy, which is just a hoot and a holler down the road here. And I would ask the young lady, do you know what you put on the bottom of a Coke bottle at an Air Force base?

Ms. SNIPES. No.

Mr. CUNNINGHAM. Open other end.

PARENT INVOLVEMENT—QUALITY LEARNING CONTRACT

Mr. LANCASTER. If I may make a final comment concerning parent involvement, since I am a president of the Home School Association, as in particular we have what we call a QLC. It's a quarterly learning contract which the student and the parent signs, and that—what that means is that the parent and the student have agreed with the teacher that there would be cooperative effort to make sure that that child succeeds. And if there's a problem that comes up and the parent, for whatever reason, cannot honor or live up to that QLC, then that parent conference is immediately called; the parent is called in, we try to find some other ways to make sure that child succeeds. Maybe that parent is ill, maybe there are some other problems in the home. We make referrals to that. But at Edison Friendship, especially the Chamberlain campus, it is important—we don't require it, but we encourage that the parents be——

Mr. CUNNINGHAM. That's what I was getting at.

Mr. LANCASTER. And we do it on a daily basis.

Mr. CUNNINGHAM. I would also say, Jeanee, that I had lunch with General Ryan, who is chief of the Air Force, and I admitted to him that when I was coming down in a parachute over North Vietnam, I had Air Force pilots protecting me from the VC.

Mr. ISTOOK. There's some good even in the worst of us, is that what you're saying? Thank you, Mr. Cunningham, and I am sure, Ms. Snipes, if you achieve your ambition at the Air Force Academy, I am sure you will come back and tell us what they say about the people in the Navy.

Mr. Sununu.

CONGRESSMAN SUNUNU'S REMARKS

Mr. SUNUNU. Thank you, Mr. Chairman. Thank you very much to all of the panelists. Great to hear from you. Great to hear any panel speak of firsthand, personal, or direct experience with the programs and policies that we have some responsibility for funding and dealing with. It's very encouraging to hear discussion about an atmosphere where the students want to be, where the teachers want to be, and where there's the best possible atmosphere for education to take place. I find that very encouraging.

But the charter school program is still a new one and there are quite a significant number of schools that received their charter last year for the first time. I think it is a learning process.

UNMET NEEDS OF CHARTER SCHOOLS

And my question would be for each of the panelists to address now, that at least in some cases, this start-up process is complete. What limits do you see or what needs are there that you see that haven't been met and what opportunities might there be to provide additions or changes to the curriculum and the facilities and the faculty? Where would you like to see the charter school program go to make it even better?

SPORTS AND ACADEMIC COMPETITIONS NEEDED

Ms. SNIPES. From a student's view, I was raised in a military family so I was always raised, you know, to aim high. And first of all, I think the limit for the charter schools is the sky. They really don't have a limit, and they can do anything any other public school. As far as the sports program, I would definitely like to see some type of intramural sports between the high schools because I think that is really important in high school life. Getting college counselors, extracurricular activities just for the charter schools, maybe model U.N. Programs just within the charter schools. I would just basically like to see more extracurricular activities and academic competitions within the charter schools, similar to what the public schools have.

Other things as far as structural problems can be worked on from the inside out. A big thing again goes back to sports, having equipment, having the facilities.

Mr. SUNUNU. Does your school have their own athletic program?

Ms. SNIPES. We have a gym teacher but we have no athletic equipment whatsoever.

Mr. SUNUNU. Thank you.

MORE COMMUNITY INVOLVEMENT IN CHARTER SCHOOLS

Mr. LANCASTER. In terms of limits, I didn't see any except in what you normally have in any start-up situation. You have to kind of like let paperwork follow its course, certain governmental things that have to be dealt with, and of course, on those time lines, there were some limitations this year. If I had to add anything to the situation I am involved in particularly, I would like to see more of the so-called elite clan come down and really take a look at what it takes to make something work in a community sense. You see, what I think happens is that get separated. People who can afford certain things think that everybody can afford certain things but that's not always the case. Sometimes it takes an entire community to make something work, and what I have learned at the Chamberlain school, the more you get the community involved—that's not just the parents, I'm talking about the neighborhood people, the business people in the neighborhood, the whole mix, police, fire department—when you get that whole community involved with that school, Boy Scouts, Girl Scouts, et cetera, et cetera, then you see that school prosper and flourish anywhere in the United States. But the main thing is that the parents at that school have to be the ones that reach out into their community to bring all those other things in. So, if anything, I would like to see more of the community participate.

Mr. SUNUNU. Thank you.

MORE RESIDENTIAL SCHOOLS NEEDED

Ms. SCOTT. In the area of limits, I view that as a challenge. We need more residential schools for our kids. We also need facilities and an opportunity for all children to reach their maximum educational and vocational potential.

Mr. SUNUNU. Thank you very much.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Sununu. I appreciate all three of you taking the time to be here this morning. Thank you very much for your testimony.

PUBLIC SCHOOLS (INCLUDING CHARTER SCHOOLS)

I might suggest on the second and third panels, since we are not going to have questions between them, it might be good if we could just seat everyone at the table at the same time and work accordingly. If we could have both panels come forward.

WITNESSES

The second panel is comprised of Malcolm Peabody, the Chair of the District of Columbia Charter School Coalition; Jack McCarthy, Managing Director of the Apple Tree Institute; and Josephine Baker, Chair of the D.C. Public Charter School Board.

The third panel is composed of the Superintendent of the D.C. Public Schools, Arlene Ackerman; Maudine Cooper, Chairperson of the D.C. Emergency Board of Trustees; and Connie Newman, Vice Chair of the D.C. control board.

We welcome all of you. We very much appreciate your taking time to be here, and as I mentioned before, we will be placing your entire testimony in the record. So I invite people to deviate from it, shorten it, cover what is on your mind as opposed to what's on the paper, as need be, because the paper is going to find its way into the record anyway. What's on your mind is not going to find its way into the record unless you speak it. We will go in the order that I announced, and Mr. Peabody, we are happy to have you here.

OPENING REMARKS OF MALCOLM PEABODY

Mr. PEABODY. Thank you, Congressman Istook, and members of the subcommittee. I'm chairman of the Friends of Choice in Urban Schools or FOCUS. We provide technical support to the D.C. public charter schools and information about these charter schools to parents and the community. We also provide support and leadership to the D.C. Public Charter School Coalition, which is an informal network of charter school leaders and advocates which I also chair.

CHARTER SCHOOL ENROLLMENT GROWTH

This has been a stupendous year. Charter school enrollment has grown from 300 to about 3,600 students, and we are very impressed by the talent and dedication of the charter school founders and encouraged by the overall quality of the schools.

You have heard from Ms. Snipes and Mr. Lancaster, and their experience is not at all unusual. We've had glowing reports from many students and parents. For most of them, this is the first time school has been a place where they feel that they are known, where their individual needs are addressed and where they or their children are making real academic progress. As one mother of a student put it in a hearing before the District Council, "Charter schools have been like a gift from heaven for me and my son.".

POSITIVE PSYCHOLOGICAL IMPACT

Although, it's far too early in the lives of these schools to make precise statements about their impact on student achievement, the early returns indicate that by and large positive psychological impact of the schools is being mirrored by the increases in student performances on standardized tests. For example, the reports thus far from the schools indicate that in many cases there have been a significant improvement during the course of the year on the Stanford 9 tests. More on that later.

OBSTACLES TO CHARTER SCHOOLS

All these achievements of the public charter schools this year have been made in the face of a variety of obstacles, some inevitable and some which need to be addressed, but as difficult as these challenges have been, the public charter school leaders have embraced them. But there have been unnecessary public policy related impediments that threaten the viability of these schools; specifically, the lack of access to the unused public school buildings, burdensome oversight and funding problems stemming from the lack of clarity in the annual budget process, and a failure to fully fund the facilities portion of the per-pupil allowance. Ms. Baker is going to testify to the budget problems, but I'd like to speak briefly on facilities and one of the important budget issues.

FACILITIES PROBLEMS

First and foremost, of course, is the facilities issue. Now, you have heard in real estate that the three most important factors are location, location and location. It's the same for charter schools, except that it's facilities, facilities, facilities. Of the 19 D.C. Public charter schools in operation this year, only 4 located permanent facilities. Many of the rest operated in makeshift circumstances, having hastily renovated nonschool space or made short-term arrangements to use the school system's property. Even with the per-pupil facilities allowance passed by the D.C. Council last year, many public charter schools this year had to dip into operating budget to pay for commercial rent and/or accelerated renovations.

For September of 1999, several schools have yet been unable to find large enough facilities and have thus had to delay their opening or delay expanding their school and even reducing charter school enrollment. Next year, because of these hamperings, 2,000 less students will be in charter schools.

Six of the 19 operating public charter schools, even at this late date, have not even finalized their location, including the nationally recognized Cesar Chavez Public Charter High School for Public Policy.

It didn't have to be so. There's over 2 million square feet of unused space, as the Chairman noted, in the DCPS inventory and dozens of school buildings that are still vacant, blighting their neighborhoods and deteriorating from neglect and vandalism.

UNUSED SCHOOL SPACE—TWO CATEGORIES

Now, there are two distinct categories of unused school space, and in the D.C. School Reform Act of '95, Congress gave public

charter schools preference in the disposition of both of them. The first are the buildings that have been declared excess under the D.C. Code and have been transferred from the DCPS inventory to the jurisdiction of the Mayor's office. In 1996 Congress gave responsibility for the disposition of these buildings to the Control Board and the school system's Emergency Board of Trustees or EBT. Most of the vacant buildings fall into this category.

Then there is the vacant space within the DCPS inventory. This includes a number of entirely vacant buildings as well as space in many DCPS schools that operate well beneath capacity. Unlike excess property, DCPS may lease this type of space without waiting for Control Board approval.

FACILITIES DISPOSITION POLICY DELAYED

Now, the EBT did not develop a disposition policy until 14 months after it had been given control of the buildings. The D.C. Public Charter School Coalition worked collaboratively at that time with EBT to draft that policy, which included a right to match the highest bid in a public bidding contest with a discount of up to 25 percent or, if no bids were received, a discount from the appraised price. We were pleased to get the process started, but we were disappointed at that time because public charter schools were forced to compete on the same footing with commercial developers in what became an agonizingly slow series of REI's, bids and administrative delays.

In 1998, only four schools acquired buildings through the process, and one of those delayed opening for 1 year. Another opened at a reduced size, in an alternate facility. A third incurred $1.2 million in accelerated renovation and repair costs since they didn't get possession until June. The fourth school gained access to their building just 8 days before the beginning of the school year and found that it had been stripped of its plumbing and kitchen equipment over the summer. The charter of this school may be revoked, and in part because it never fully absorbed the shock of the $300,000 that they had to incur in unanticipated repair costs.

An additional five charter schools acquired 1-year leases at the last minute for space still in the DCPS inventory.

FACILITIES DISPOSITION PROCESS HALTED

Now, regrettably, this already bad situation deteriorated when the disposition process was brought to a halt in October of '98. The applications of the Washington Math Science Technology and Hyde Public Charter Schools, which had been in the bidding process for 18 months, stalled. More on that from Mr. McCarthy.

In March, at the behest of the Control Board, the EBT brought forward those proposals but voted them both down. The Control Board then overturned the EBT's decision on the Hyde School proposal, but by that time a charter school that had agreed to sublease with the Hyde School decided it was too late to move forward, and the deal fell through. The Control Board's review of the Washington MST is still pending.

CONTROL BOARD VICE CHAIR CONSTANCE NEWMAN'S NEW ROLE

We were pleased to learn recently that Mrs. Newman, here at the table and vice chair of the Control Board, has assumed responsibility for the excess properties until a new policy will be developed. We appreciate her action and hope very much that as major stakeholders, charter school leaders will again be invited to assist in the policymaking process. We hope Congress will also assist by further clarifying the preference language in the law to give public charter schools a first preference on the excess properties.

As for schools seeking to renew or initiate leases on inventory property, negotiations have been interrupted by a succession of appointees to the DCPS realty office.

Mr. ISTOOK. Mr. Peabody, I realize you have more reading in your statement. I just need to remind people that with the number of witnesses and the time constraints, we do need, to pay attention to the time and the light system we have to help you. I know it's difficult to condense it all sometimes, but unfortunately, I think it is necessary. So if you could wrap it up; we do have the entirety of your statement, of course, for the record.

SUMMARY

Mr. PEABODY. Let me just summarize, then, that we are very concerned at this moment that four schools have not yet found space within the DCPS inventory and do not have their leases and do not know what their costs are.

Just one or two items on oversight issue. On oversight, we think that the oversight responsibilities are being tackled, and particularly well, by the new Public Charter School Board set up under the law. In fact, they are doing a really first rate job, and although the Board of Education has chartered some very good schools, they are—they have not followed the model of the Public Charter School Board, which we think is a problem because we think that their monitoring focuses much more on administrative problems than on the basic education, and we hope to work with them to get that improved.

Also, there is a problem in that there's a tendency to re-regulate on these charter schools, and this year they—these schools have been audited by three different sets of groups for finances, and some schools facing three audits simultaneously.

Mr. ISTOOK. Mr. Peabody, we appreciate your statement and your time. Why don't we have the rest of it contained in the record so the other witnesses will have an opportunity.

Mr. PEABODY. Yes, I agree. I would like to have my statement put into the record.

Mr. ISTOOK. Certainly, absolutely. It certainly will be.

PREPARED STATEMENT OF MALCOLM E. PEABODY

[The prepared statement of Malcolm E. Peabody referred to follows:]

TESTIMONY OF MALCOLM E. PEABODY

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HOUSE APPROPRIATIONS SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

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Good afternoon Congressman Istook and members of the Subcommittee, and thank you very much for this opportunity to testify. I am the chairman of Friends of Choice in Urban Schools (FOCUS), an organization that provides technical support to D.C. public charter schools and information about charter schools to parents and the community. FOCUS also provides support and leadership to the D.C. Public Charter Schools Coalition, an informal network of charter school leaders and advocates of which I am also the chairman.

This has been a stupendous year, as charter school enrollment has grown from less than 300 to over 3,500 students. We are very impressed by the talent and dedication of the charter school founders and encouraged by the overall quality of the schools.

You have heard something of what public charter schools add to the lives of their students from Ms. Snipes and Mr. Lancaster. Their positive experience of the charter schools is not at all unusual: over the course of the year we have had glowing reports from many, many students and parents. For a large percentage of them, this is the first time school has been a place where they feel that they are *known*, where their individual needs are addressed, and where they or their children are making real academic progress. As one mother of a charter school student put it in a hearing before the District Council, "charter schools have been like a gift from heaven for me and my son."

Although it is far too early in the lives of the public charter schools to make precise statements about their impact on student achievement, early returns indicate that, by and large, the positive psychological impact of the schools is being mirrored by increases in student performance on

standardized tests. For example, the reports we have so far from the schools indicate that in many cases there has been significant improvement during the course of the year on the Stanford 9 tests.

All of these achievements of the public charter schools this year have been made in the face of a variety of obstacles, some inevitable and some which ought to be addressed.

As difficult as these challenges have been, the public charter school leaders have embraced them. Unfortunately, there have also been unnecessary, public-policy related impediments that threaten the viability of D.C. public charter schools. Specifically, these impediments are lack of access to unused public school buildings; burdensome oversight; and funding problems stemming from lack of clarity in the annual budget process and the failure to fully fund the facilities portion of the per pupil allowance. Ms.

Baker will testify to the budget problem but I would like to speak on facilities and on one important budget issue.

Facilities Issue

Of the nineteen D.C. public charter schools in operation this year, only four occupied permanent facilities. Many of the rest operated in decidedly makeshift circumstances, having hastily renovated non-school space or made short-term arrangements to use school system property. Even with the per-pupil facilities allowance passed by the District Council in 1998, many public charter schools this year dipped into operating budgets to pay for commercial rent and/or accelerated renovations. Several schools this year, unable to find large enough facilities, have delayed opening or expanding, reducing charter school enrollment next year by as much as 2,000 students. Six of the nineteen operating public charter schools, even at this late date, have not

finalized arrangements for the coming September, including the nationally recognized Cesar Chavez Public Charter High School for Public Policy.

This need not have been so. There are over two million square feet of unused space in the school system and dozens of school buildings that sit vacant, blighting their neighborhoods, deteriorating from neglect and vandalism. There are two distinct categories of unused school space and, in the D.C. School Reform Act of 1995, Congress gave public charter schools preference in the disposition of both of them:

(1) Buildings that have been declared "excess" under the D.C. Code and have been transferred from the D.C.P.S. inventory to the jurisdiction of the Mayor's office. In 1996 Congress gave responsibility for the disposition of these buildings to the Control Board

and the school system's Emergency Board of Trustees (E.B.T.). Most of the vacant school buildings fall into this category.

(2) Vacant space within the D.C.P.S. inventory. This includes a number of entirely vacant buildings, as well as space in the many D.C.P.S. schools that operate well beneath capacity. Unlike "excess" property, D.C.P.S. may lease this type of space without waiting for Control Board approval.

The E.B.T. did not develop a disposition policy until fourteen months after it had been given control of the buildings. The D.C. Public Charter School Coalition worked collaboratively with the E.B.T. to draft that policy, which included a right to match the highest bid in a public bidding contest with a discount of up to 25% or, if no bids were

received, a discount from the appraised price. We were pleased to get the process started. However, we were disappointed that public charter schools were forced to compete on the same footing with commercial developers in what became an agonizingly slow series of RFPs, bids, and administrative delays.

In 1998, only four schools acquired buildings through the process. Of these one delayed opening for one year, another opened at reduced size in an alternate facility, and a third incurred $1.2 million in accelerated renovation and repair costs, since they did not get possession of the building until June. The fourth school gained access to their building just eight days before the beginning of the school year and found that it had been stripped of all plumbing and kitchen equipment over the summer. The charter of this school may be revoked, in part because it never fully absorbed the shock of $300,000 in unanticipated repair costs.

An additional five schools, in a similarly protracted and last-minute process, acquired one-year leases for space still in the D.C.P.S. inventory.

Regrettably, this already bad situation deteriorated when the realty process came to a dead halt in October of 1998. The applications of the Washington Math Science Technology and Hyde public charter schools, which had been in the bidding process for 18 months, stalled. In March the E.B.T. voted to kill both proposals, which would have revitalized landmark buildings for public benefit. The Control Board overturned the E.B.T.'s decision on the Hyde School's Proposal, but by that time a charter school that had agreed to sublease decided it was too late to move forward. The deal fell through. The Control Board's review of the Washington Math Science Technology bid is still pending.

We were pleased to learn recently that Mrs. Newman, Vice Chair of the Control Board, has assumed responsibility for the "excess" properties until a new policy has been developed. We appreciate her action and hope very much that as major stakeholders charter school leaders will again be invited to assist in the policy making process. We hope Congress will also assist by further clarifying the preference language in the law to give public charter schools a *first* preference on the "excess" properties.

As for schools seeking to renew or initiate leases on inventory property, negotiations have been interrupted by a succession of appointees to the D.C.P.S. Realty Office. Four charter schools, all of which initiated the lease process months ago, still are not sure what their lease cost will be or even if a final lease will be approved. Several other charter schools unwilling to subject themselves to this process have been desperately looking for space; we know of several

creative but fragile partnerships that appear to be coming together just this week.

Oversight Issues

Public charter schools welcome oversight consistent with the D.C. charter law and very much believe in maintaining high standards. However, there must be a balance between the need for accountability and the need for independence from excessive bureaucratic intervention and burdensome reporting requirements

Charter school leaders this year have had to cope with the challenges of start-up while also accommodating multiple sets of audits and site visits. The schools' finances were audited by their chartering authorities, by an accounting firm hired by the District's Chief Financial Officer, and by D.C.P.S.'s Office of Categorical Funds, each of which

required somewhat different modes of documentation. Enrollments were also audited periodically by multiple entities, and documents were often requested with very little notice or well ahead of announced deadlines. Some schools faced three audits *simultaneously*.

In general, the District's two chartering authorities, the Board of Education and the D.C. Public Charter School Board, have done a good job creating a rigorous application process, approving many top-notch schools, and, in the case of the Public Charter School Board, making the accountability process as constructive and collaborative as possible. However, the Board of Education's oversight program at this point seems less focused on helping schools overcome obstacles than on monitoring administrative details.

Two Board of Education-chartered schools have been put on

probation this year; the process of charter revocation has begun for one of them. We recognize that this latter school has serious deficiencies, and we support the closing of charter schools that do not properly serve the interests of their students. However, we also feel strongly that chartering boards should take constructive measures early on if a school shows evidence of trouble. Furthermore, it is imperative that standard rules of fairness and due process be followed -- including adequate time to address problems -- before any punitive action is taken.

Funding Issues

As I mentioned earlier, Ms. Baker will address in detail various problems in charter school funding. I will discuss only one, which arises from the fact that D.C. uses an October 1st fiscal year. Because of this, new public charter schools must survive for thirteen months on twelve months

of funding in their first year. The D.C. charter school law originally created a special payment for a school's initial September, equal to 1/12th of the school's projected annual allocation. However, this provision was inadvertently repealed in November of 1997. We calculate that new public charter schools in FY1999 lost approximately $1.8 million, or $550 per pupil. We hope that Congress will restore this funding provision in the law and reimburse the schools that started in 1998 for their loss.

Conclusion

In conclusion, in spite of the many serious obstacles just discussed, this has been a wonderful year for the public charter schools in D.C. When we look at what matters most – the progress being made by the 3,600 children who this year attended the charter schools -- we see that the promise of the public charter schools has already begun to be realized. We are convinced that public charter schools are on their way to radically improving the quality, diversity,

and accountability of public education here. For the charter school movement in the District to reach its full potential, however, the problems discussed by the speakers here today must be addressed soon.

Thank you again for your interest in D.C. public education, and I look forward to answering any questions you may have.

Mr. ISTOOK. Mr. McCarthy.

OPENING REMARKS OF JACK MCCARTHY

Mr. MCCARTHY. Thanks, Mr. Chairman. My name is Jack McCarthy, and I'm managing director of the Apple Tree Institute for Education Innovation.

CREDIBILITY OF EDITORIAL

I would like to express my deep gratitude to Mr. Moran for asking that question of Jeanee Snipes rather than me. I know that all of the members here have been on the receiving end at some point in your career of what you would think is an unfair editorial, and I will just mention that the opening paragraph of that editorial talked about a scene at our commencement, with tense faces and so forth. The editorial appeared on Monday in the Washington Times, and our commencement was held on Wednesday, so——

Mr. ISTOOK. The following Wednesday?

Mr. MCCARTHY. The following Wednesday. So that's the credibility of the article. I would just like to move on.

MATH AND SCIENCE EDUCATION

I would like to talk about some positive things, and even more positive things that could occur if we can somehow work out the situation we have here with charter schools. It seems to me everyone recognizes that we need to improve public education offerings in the District. That's why my organization got involved with the Washington Math Science Technology Charter High School. We need more math and science education in the District.

In Mr. Moran's territory we have this burgeoning economy of technology companies, and many of those people are very supportive of math and science education.

40,000 AREA JOBS UNFILLED

Virginia Tech did a study of 40,000 jobs which are unfilled today because the work force in the area is not being adequately prepared. Unfortunately, we know the problems in D.C. Washington, unfortunately, ranks last in the country in math and science education. The 8th grade math and science test scores are the worst. We could blame a lot of people, but we've got to recognize we've got a situation, we've got to do something about it, and this charter school, working on math and science education, is one solution and something that we are very passionate about.

WORK FORCE PREPARATION IN SCHOOLS

There was a study put out by the American Electronics Association entitled "Cyber Education," and they are really talking about how work force preparation standards need to be incorporated into schools. We've been working closely with the American Electronics Association trying to adapt some of those things. That's the flexibility a charter school has. We don't have a large bureaucracy, we have flexibility. We can bring folks like that in and get hands on and we can start to work to improve our offerings right away, and

that's what makes the American Electronics Association excited about working with us.

INFRASTRUCTURE AND FACILITIES DISPOSITION PROCESS

I just wanted to talk about the general situation. It seems to me District of Columbia public schools need capital to improve their infrastructure. Charter schools need buildings to operate. And an informal arrangement was worked out in the legislation a couple years ago so that a preference in the disposition of the 60-odd empty buildings would make them available first to charter schools who could buy or lease them, and then those proceeds would go back to DCPS. I think that makes a lot of sense.

We've been working for almost 3 years to try and get a transaction done. In the back of my testimony, I have a chronology that goes through the dates from the passage of the D.C. School Reform Act to today that lays out all of the meetings and all of the efforts that we've tried to make in good faith to close a transaction. I want to talk about one particular situation and why it's important.

This Math, Science and Technology School needs a home. We were able to put it in temporary space under the Public Facilities and Cooperative Use Act of 1976 using a community development block grant to create 35,000 square feet of space that is relatively safe, that is accessible and very affordable for the schools.

FRANKLIN SCHOOL BUILDING

We bid on the Franklin School building in March of 1998 under the process that was developed by the Emergency Board and accepted by the Control Board. This is, I don't know, something like 16 or 17 months later, and we have no idea where the status of that bid is. We played by the rules, we followed the procedures, we were given an opportunity to match the highest acceptable noncharter school bid with a 15-percent discount. We were asked to indicate our ability to close. We got National Cooperative Bank to provide $2½ million financing. We raised $150,000 in capital. We came to the table prepared to close.

It took us 4 months to get a purchase and sales agreement negotiated. We executed a purchase and sales agreement in December of 1998. School system never did. Came back with another agreement that had additional provisions which were essentially deal killers.

It seems to me—and from there it went to the Control Board and we still don't know where that is today, although we have received informal word from the broker of record about 2 weeks ago that the Control Board has decided to withdraw the Franklin School building from the market. Now, this building is surrounded by 200 math, science and technology companies, including IBM, Xerox, Lockheed Martin, Intel, Motorola, Sun Microsystems, all the kinds of companies that have an interest in math and science education; and at 13th and K Streets Northwest, we could have a veritable campus of opportunities, offering mentorships, internships, partnerships, you name it. And we have letters from companies, a lot of these companies supporting the effort, and if we can get a policy in place that can be implemented, I think we can start to do some really great things for kids that need to be done now.

SUMMARY

And I think just in closing, the way to do it, a couple of years ago power was taken away from the Mayor and given to the Emergency Board of Trustees for the disposition of these school properties, and it made sense at the time for a lot of reasons, but I think that there is—if I were the superintendent of schools, I think I would be reluctant to be giving my competition access to buildings in any kind of favorable situation, and I think that's only human nature. But it is the law, and we should have a preference that makes these buildings available, and if we can get some of these buildings into charter schools, I think we can start to accomplish some really great things for kids.

Mr. ISTOOK. Thank you very much for your testimony, Mr. McCarthy. We will place your prepared statement in the record.

PREPARED STATEMENT OF JACK MCCARTHY

[The prepared statement of Jack McCarthy referred to follows:]

TESTIMONY OF JACK McCARTHY

TRUSTEE, WASHINGTON MATH SCIENCE TECHNOLOGY
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D.C. SUBCOMMITTEE OF THE
HOUSE APPROPRIATIONS COMMITTEE
PUBLIC HEARING

JUNE 22, 1999

Mr. Chairman, my name is Jack McCarthy. I am Managing Director of the AppleTree Institute for Education Innovation, a non profit organization whose mission is to increase the supply of effective schools through innovation. As a result of that work, I serve on the Board of the Washington Math Science Technology Public Charter High School, ("WMST"). My testimony will illustrate the problems resulting from the failure to enforce critical elements of the District of Columbia School Reform Act of 1995.

First of all, Washington D.C. needs public schools which emphasize mathematics, science, and technology education.

According to a study by the American Electronics Association entitled, "CyberEducation", Washington, D.C. ranks first in the country with the percentage of public schools wired for the Internet (100%), but last in the country in mathematics and science education. Eighth grade math and science test scores in the District are the worst in America.

Last year, a Virginia Tech study estimated that there are nearly 40,000 jobs in Northern Virginia's exploding technology economy which were unfilled because of a lack of work force preparation. From a policy perspective, it seems everyone should support efforts to improve math and science education so that children from the District might cross the river and connect with some of these high wage, high skill opportunities. Today, those companies recruit from as far away as India. They would rather recruit from the District, only the public schools have not prepared enough students for success

in work and life.

Toward that end, a charter application was filed in September of 1997 to create and to grow WMST to a full enrollment of approximately 400 students in two years. The school incorporates rigorous standards from a research-based, whole school design known as the Modern Red Schoolhouse. We're finishing our first year and we have encouraging results! On the Stanford 9 exams, our 9th and 10th graders showed significant improvement in math. Those performing at Below Basic level declined from 64% to 44%. Those performing at Basic increased from 33% to 46%, those performing at a Proficient level tripled from 3% to 9%.

Despite early success indicators, if our school and other charters expect to fulfill their promise to prepare students for success in work and life schools need predictable access to funding and facilities. Congress addressed this in the DC School Reform Act. With over 60 empty school buildings across the District, a "preference" was accorded to charter schools in the disposition of these excess properties. Little effort was made by DCPS to define that preference until the House of Representatives passed language setting aside 23 empty school buildings for charter schools in the fall of 1997. With this new incentive, the Emergency Transitional Education Board of Trustees adopted a policy which defined that preference as a 15% discount from the highest acceptable non-charter school bid in October of 1997. That policy was accepted by the Control Board.

It took from April of 1996, when the Act was passed to October of 1997 for that policy to be developed, some nineteen months. That is a long time for policy

development in a dynamic area like charter schools. Unfortunately, it took the threat of Congress indicating it was willing to define the preference as a "set aside" of excess buildings, for the policy to emerge.

The policy was established, rules were adopted, and a process was underway for new public schools to find homes from among sixty empty buildings with DCPS to receive proceeds from the sales or leases of these properties.

In February of 1998, DCPS advertised a request for "Expressions of Interest" in buying the Franklin School Building at 13th and K Sts. NW. WMST was granted its charter on March 23, 1998. On March 30, 1998 WMST filed a bid to purchase Franklin School from DCPS for $2,600,000. Franklin School Building has been empty for eighteen years. Homeless people sleep on the front steps and pigeons live on the top floor. It is a Registered National Landmark which is deteriorating daily.

It is also, literally surrounded, by more than 200 science and technology-related companies including: IBM, Xerox, Lockheed Martin, Motorola, Sun Microsystems, Intel, Ford Motor Company, Northern Telecom, Ceridian, Ciba Corning, and many others.

Our vision for this building is to anchor a campus of science and technology partnerships for kids who are primarily from Southeast Washington. Tutoring, mentoring, Internships, job shadowing, guest speakers, seminars, site visits, and close collaboration with major employers would thrive at this building, which is where Alexander Graham Bell conducted the first experiments on the transmission of sound via light beams. This building was a birthplace of fiber optics.

Like most things in life which seem too good to be true, so was this. It makes so

much sense for this building to be a center of math and science education. We organized letters of support from many leading citizens and corporations. Yet, despite making a bid under the 15% discount policy, playing by the rules as established by the Emergency Transitional Education Board of Trustees, exercising our charter school preference under DCPS guidelines, following the procedures as instructed by the DCPS Director of Facilities, and securing a financing commitment of more than $2,600,000 which satisfied DCPS requirements that we be able to close, we have no idea where we stand on our bid which was made sixteen months ago!

We have not received anything in writing from DCPS or from the Control Board about the status of our bid.

We were required to participate in an investigative hearing by 3 attorneys of the Control Board. Our Chairman, our Principal, and I were questioned separately for over two hours. Not one question focused on how this school might be used to better serve children. No one asked about the kids at the school, or the teachers. No one was concerned about the fact that we're operating in temporary space. Rather, questions focused on technical issues. We have been advised, by Smithy Braden Oncor, the broker of record for the school system that the Control Board plans to withdraw the Franklin School Building from the market for some, as yet, undisclosed reason. Nothing, I repeat nothing, has been sent to the school to advise us of the status of our bid.

As a part of my testimony, I'd like to submit a detailed chronology of our participation of this charter "preference" process

Essentially, the Emergency Transitional Education Board of Trustees and the Control Board are not enforcing the DC School Reform Act. I'd like to emphasize that Mayor Anthony Williams wrote a strong letter of support to the Control Board urging them to complete these dispositions so that charter schools might fulfill their missions. From the perspective of the charter school I represent it looks like "the same old D.C." thwarting reform when it gets too close. That's exactly what the Congress believed it was reforming when the DC School Reform Act was passed over three years ago.

For charter schools to live up to their promise, Congress needs to eliminate this stranglehold DCPS has over its competition for empty, surplus buildings. I believe it makes a great deal of sense to take this power away from the Control Board and DCPS and return it to the Mayor where it resided three years ago.

Washington Math Science Technology Public Charter High School should have the right to buy the Franklin School Building. We should give the many organizations and people who care an opportunity to bring this building back into service to educate children as it was intended. I'd like to end my testimony with a quote from District of Columbia Alderman W. H Chase, at the time of the dedication of the Franklin School in October of 1869. He said, "I hope the time may never come when we would make less beautiful and attractive the places where our children are to receive an education, where lasting impressions are to be made upon the young mind, than we would the offices of state...It has been well said by an eminent thinker, 'Show me the churches and schoolhouses of a nation, and I will tell you what its civilization and enlightenment." I suggest this applies to our efforts to house public charter schools today. Thank you.

4/22/99

CHRONOLOGY OF PROCESS TO PURCHASE FRANKLIN SCHOOL
BY WASHINGTON MATH SCIENCE TECHNOLOGY PCS
1996-1999

APRIL 1996
District of Columbia School Reform Act, creating public charter schools, passed by the Congress and signed by the President.

NOVEMBER 1996
Superintendent Franklin Smith fired, DCPS taken over by DC Financial Responsibility and Management Authority. Julius Becton appointed as CEO. Bruce MacLaury appointed as Chairman of DC Emergency Transitional Education Board of Trustees.

FEBRUARY 1997
DC Public Charter School Coalition founded by AppleTree Institute for Education Innovation, FOCUS, and Charter School Development Corp., Arnold & Porter and others to develop a charter school facilities preference policy, derived from DC School Reform Act, with the Emergency Transitional Education Board of Trustees.

FEBRUARY 1997 through OCTOBER 1997
Numerous discussions and meetings with Dr. Bruce MacLaury, Chairman of DC Emergency Transitional Education Board of Trustees, and Suzanne Conrad, Director of Facilities, to develop a workable policy for charter schools to use empty school buildings. Consensus growing on the need for a defined preference.

MARCH 1997
DC Emergency Transitional Education Board of Trustees holds hearings on closing schools because of excess capacity and the need to raise funds for capital improvements.

APRIL 1997
AppleTree Institute and Ballou MST Academy partner to apply for a charter to launch Washington Math Science Technology PCS.

Emergency Transitional Education Board of Trustees vote to close and dispose of 11 public school buildings to raise funds for capital improvements.

MAY 1997
Dr. Mary Johnson, Principal of Ballou Math Science Technology Academy identifies Franklin School Building, which has been vacant for 18 years, as the best site for the permanent location of new Washington Math Science Technology because of 200 science and technology companies which have grown around Franklin Square.

JULY 17, 1997
Lex Towle (AppleTree Institute for Education Innovation) and Cathy Martens (Options Public Charter School) of DC Charter School Coalition testify before Subcommittee on the District of Columbia, Committee on Appropriations, United States House of Representatives on need for a defined "charter school preference" and other issues.

JULY 22, 1997
Jack McCarthy of DC Charter School Coalition testifies before the Emergency Transitional Education Board of Trustees on need for a defined "charter school preference" in disposition of surplus school properties.

AUGUST 11, 1997
Washington Math Science Technology PCS Founders inspect Franklin School Building with Architect Marc Fetterman.

SEPTEMBER 4, 1997
Malcolm Peabody and Lex Towle of the DC Charter School Coalition testify before Subcommittee on the District of Columbia, Committee on Appropriations, United States House of Representatives on need for a defined "charter school preference" and other issues. The concept of interpreting the "preference" as a "set aside" is introduced.

FIRST WEEK OF SEPTEMBER
Opening of all DCPS schools is delayed.

LAST WEEK OF SEPTEMBER 1997
All District of Columbia Public Schools open three weeks late because of capital improvements being made to school buildings.

SEPTEMBER 15, 1997
AppleTree Institute for Education Innovation, Ballou Math Science Technology Academy file an application with the District of Columbia Public Charter School Board to create Washington Math Science Technology PCS.

Paul Junior High School and Whittier Elementary School apply to convert to public charter schools.

The Assistant Principal of Bell Multicultural High School, Irasema Salcido applies for a charter to create Cesar Chavez Public Policy Public Charter High School.

OCTOBER 1997
Four days after reopening, Bell Multicultural High School, Paul Junior High School, Ballou Senior High School, and Whittier Elementary School are shut down for fire code violations. Students and classes are relocated to several different swing site for six weeks time.

OCTOBER 1997
House of Representatives passes the D.C. Appropriations bill with "set aside of 23 school buildings for charter schools" report language as requested by the DC Charter School Coalition.

OCTOBER 29, 1997
The Emergency Transitional Education Board of Trustees, reacting to pressure from Congress, adopts a charter school preference policy interpreted as a "15% discount" from the highest acceptable non-charter school bidder. Procedures are established under the policy for disposition of properties according to the D.C. School Reform Act of 1995.

NOVEMBER 1997
Washington Math Science Technology PCS notified of "provisional approval" charter status by District of Columbia Public Charter School Board. The need for a facility is cited as a key provision which must be satisfied for full approval.

NOVEMBER 1997
House adopts Senate DC Appropriations bill leaving out "set aside" language for charter schools preference after concern is expressed by Mr. Becton and Mr. Brimmer to Congress that "set aside" language would tie hands of Emergency Transitional Education Board of Trustees in meeting conditions of Parents United settlement agreement. Parents United later refutes that assertion in testimony before DC City Council. Key staffers of appropriations and oversight committees urge DC Charter School Coalition to work with DCPS and promise legislative relief if that proves unfruitful.

DECEMBER 1997
Emergency Transitional Education Board of Trustees passes resolution conveying 34 excess DCPS properties (including Franklin) to DC Financial Responsibility and Management Authority (Control Board) for disposition.

JANUARY 30, 1998
AppleTree Institute for Education Innovation, Ballou Math Science Technology Academy, and Latino Economic Development Corporation partner to seek CDBG funding from DCHD for pre-development costs at Franklin. Funding is also sought for a charter school "incubator" to house Washington Math Science Technology PCS and Cesar Chavez Public Policy PCS until permanent facilities at Franklin School are secured.

FEBRUARY 16, 1998
Smithy Braedon Oncor advertises Request for Expressions of Interest in buying Franklin School and the Stevens School in Washington Post.

MARCH 23, 1998
Washington Math Science Technology given final approval for charter by District of Columbia Public Charter School Board.

MARCH 27, 1998
AppleTree Institute for Education Innovation awarded $680,000 community development block grant to fund renovations for charter school incubator at Waterside Mall in Southwest Washington.

MARCH 30, 1998
Washington Math Science Technology PCS partnership files bid to purchase Franklin School with Smithy Braedon Oncor.

APRIL 30, 1998
Julius Becton resigns under pressure as CEO of District of Columbia Public Schools. Arlene Ackerman becomes new Superintendent.

MAY 1998
Bruce MacLaury resigns as Chairman of the Emergency Transitional Board of Trustees.

MAY 12, 1998
Morris James appraises Franklin School for DCPS at $4,105,000.

AUGUST 12, 1998
Emergency Transitional Education Board of Trustees accepts Bernstein/Trammel Crow joint venture bid on Franklin to purchase for $3,000,000 thereby triggering charter school preference under the Emergency Board's policy.

AUGUST 13, 1998
Washington Math Science Technology PCS partnership told of acceptance of highest acceptable non charter school bid. Charter school preference "triggered" giving school 21 days to exercise preference with financing commitment and funds to close.

AUGUST 14 through SEPTEMBER 7, 1998
Washington Math Science Technology PCS partnership raises $150,000 raised for deposits, and secures a financing commitment of $2,550,000 from National Cooperative Bank.

SEPTEMBER 8, 1998
First day of school for over 200 students at Washington Math Science Technology PCS at charter school incubator at Waterside Mall.

Washington Math Science Technology PCS partnership provides detailed proof of capability to fund a $50,000 escrow deposit, a $50,000 third party deposit, $2,550,000 purchase price and settlement related costs as required by Smith Braedon Oncor.

Negotiations begin between Washington Math Science Technology PCS and DCPS to reconcile the purchase and sale agreement with Bernstein/Trammel Crow's agreement.

SEPTEMBER-NOVEMBER 1998
Washington Math Science Technology PCS works to negotiate a purchase and sales agreement with DCPS. Director of Facilities, Suzanne Conrad, departs and responsibilities are placed with Associate Superintendent Joseph Carillo.

NOVEMBER 1998
Attempt to complete negotiation is stymied. Washington Math Science Technology PCS's counsel Jon Paul Morris and Jack McCarthy confer with Associate Superintendent Joe Carillo via telephone. Carillo indicates that DCPS is no longer willing to follow the established"charter school preference" policy. Carillo states that a review of all dispositions must take place and that there are many problems which need to be addressed.

NOVEMBER 25
Suzanne Conrad brought back to work as consultant to Facilities Department on Franklin School and other dispositions.

FIRST WEEK OF DECEMBER
Suzanne Conrad taken off Franklin. Dallas Evans hired as Director of Facilities.

DECEMBER 11, 1998
Final purchase and sales agreement forwarded by Karen Kramer of Covington & Burling to Jon Paul Morris of Patton Boggs (Counsel to Washington Math Science Technology PCS)

DECEMBER 14, 1998
Purchase and Sales Agreement, drafted by District of Columbia Public Schools is executed by Washington Math Science Technology PCS partners and returned to DCPS for execution.

DECEMBER 22, 1998
Building Committee for Washington Math Science Technology PCS/Franklin organized at DRI. Project Manager, Architect, begin work.

DECEMBER 14, 1998 THROUGH FEBRUARY 3, 1999
Over fifteen attempts to reach Dallas Evans are made to ascertain status of Franklin disposition. No calls are returned. A recording and a full voice mail box make communication with DCPS impossible. The Emergency Transitional Education Board of Trustees meet several times in closed session and discusses Franklin School. No questions or dialogue are asked of, or forwarded to, Washington math Science Technology PCS.

FEBRUARY 3, 1999
Director of Facilities Dallas Evans and Associate Superintendent Joseph Carillo meet with twenty five Members of the DC Charter School Coalition at Arnold & Porter to discuss how DCPS is working to facilitate charter school purchases and leases. Evans is asked if DCPS anticipates any additional conditions being added to charter school preference policy. Evans says, "no". Evans is asked if he expects the dispositions of McKinley School and the Franklin School to charter schools to be approved at the next meeting of the Emergency Transitional Education Board of Trustees. Evans says, "yes".

FEBRUARY 4, 1999
Emergency Transitional Education Board of Trustees meets and expresses "undefined concerns" about sale of Franklin School.

FEBRUARY 9, 1999
DCPS--without acting on Purchase and Sales Agreement--adds restrictive new conditions to the executed purchase and sales agreement including a requirement to use Franklin only as a public charter school, a seller's

right of first refusal, and a seller's right to repurchase which requires DCPS approval of all loans and improvements. None of these conditions are added to the Bernstein/Trammel Crow purchase and sales agreement.

THIRD WEEK OF FEBRUARY 1999
Five attempts to reach Dallas Evans fail. Dallas Evans is relieved of his responsibilities as Director of Facilities. Suzanne Conrad returns as a consultant to manage disposition of properties. Negotiations proceed between Washington Math Science Technology PCS partners and DCPS. An agreement in principal is reached to eliminate the onerous elements of the requirement to use Franklin as a public charter school, a seller's right of first refusal, and a seller's right to repurchase.

MARCH 3, 1999
Suzanne Conrad is relieved of duties by Assistant Superintendent Eloise Brooks. Director of Facilities responsibilities are taken by Ms. Brooks.

MARCH 4-8, 1999
Washington Math Science Technology PCS partners are told by Karen Kramer, of Covington & Burling that the agreement in principal is no longer operative. Instructions are given to the school to prepare a memorandum to outline problem issues with the additional provisions.

MARCH 8, 1999
Memorandum on "Proposed Additional Provisions..." is prepared by Washington Math Science Technology PCS partners in good faith attempt to reach agreement on concerns expressed by Emergency Transitional Education Board of Trustees in a manner consistent with the Board's charter school preference policy and the DC School Reform Act.

MARCH 10, 1999
Memorandum, with cover letter, faxed to Karen Kramer of Covington & Burling by Jon Paul Morris of Patton Boggs, LLC.

MARCH 11, 1999
Emergency Transitional Education Board of Trustees votes 6-0 (with one abstention) against the sale of Franklin School to Washington Math Science Technology PCS.

MARCH 16, 1999
Jack McCarthy of Washington Math Science Technology PCS partners contacts Karen Kramer of Covington & Burling to seek information on the process. Kramer directs inquiries to Paula Perelman of Emergency Transitional Education Board of Trustees. Associate Superintendent Joseph Carillo answers Perelman's line and declines to provide any information. A call to Russell Smith of the DC Financial Responsibility and Management Authority's staff results in a commitment to ascertain all of the facts, determine the situation, and to tell us what the action is going to be.

MARCH 17, 1999
Members of DC Charter School Coalition meet with Control Board Member Constance Berry Newman to seek clarification on charter school preference policy and to seek redress for DCPS failure to adhere to established charter school preference policy which was approved by the Control Board under the DC School Reform Act. Ms. Newman commits to examine "what is in the pipeline" and to examine the policy in greater detail.

MAY 4, 1999
Board Chairman Bob Hobson, Principal Mary Johnson, and Trustee Jack McCarthy are questioned in a hearing by Control Board attorneys: Russell Smith, Sam Kaiser, and Daniel Reznick regarding the proposed purchase of Franklin School Building.

JUNE 11, 1999
John Lienhard of Smithy Braden Oncor, DCPS broker of record on Franklin School Building calls Kimberly Price, broker of record for WMST and conveys his understanding that the Control Board plans to withdraw Franklin School from the market for unspecified reasons.

JUNE 11, 1999
Kimberly Price speaks with Sam Kaiser of the Control Board who says that "a letter will be sent by the end of the week" regarding Franklin School.

JUNE 22, 1999
Hearing by DC Subcommittee of the House Appropriations Committee

Mr. ISTOOK. Ms. Baker.

OPENING REMARKS OF JOSEPHINE BAKER

Ms. BAKER. Good afternoon, Chairman Istook and members of the subcommittee. I am Josephine Baker, chair of the D.C. Public Charter School Board, and I appreciate having this opportunity to share our views with the subcommittee today.

Mr. Chairman, I would ask that my written testimony be included in the record. For now I will summarize its key points.

Mr. ISTOOK. Absolutely. And yours will be, as will the written testimony of each and every one of the other witnesses.

Ms. BAKER. As we meet today, eight schools chartered by our board are completing their first year in operation, and what a year it has been. From the struggle to open schools, despite difficulties in obtaining facilities, to the proud moment last Wednesday when 17 young men and women received their diplomas from our first graduating class at Washington Math Science Technology Public Charter High School. This year truly has been a study in achieving against the odds.

OBSTACLE—CONFLICT OF LOCAL AND FEDERAL LAWS

The charter school movement in the District is off to a strong start, but we see several obstacles that must be overcome. First, uncertainty created by the appropriations process itself. The D.C. School Reform Act requires that all D.C. students in D.C. public schools or public charter schools should receive funding based on a common per-pupil formula according to a head count taken in September of each year. But local law requires that DCPS be funded on the basis of prior year enrollment. Because our enrollment is growing, the disparity between the two laws jeopardized the FY 2000 charter school budget.

Fortunately, at the last minute, the Control Board and the D.C. Council were able to embrace the idea of a 5 percent set-aside from the DCPS budget that will be made available to charters based on fall enrollment. But this is a one-time fix, and we should not wait for the problem to recur next year before seeking a more permanent solution.

Congress can contribute by clarifying that dollars should follow students based on enrollment decisions made by their parents, and, Mr. Chairman, I thank you for your statement supporting the funding of charter schools.

ALLOWANCES FOR SPECIAL EDUCATION AND FACILITIES

A second issue is adequacy of resources with respect to special education and facilities. We have shared with your staff some detailed analyses done by two of our schools showing that the method of allocating special ed funds under the current per-pupil formula Act actually leaves them with a significant per-pupil deficit. We plan to work closely with local officials on a revision of the formula, but Congress can help in another way by being clear that any Federal special education moneys appropriated to the District are to be shared by all public school students, not just those attending DCPS.

FACILITIES PER PUPIL ALLOTMENT OF $1,098

The facilities allowance remains problematic as well. The District's funding formula law requires that charter schools receive roughly the same per-pupil allocation provided to DCPS through its capital budget, but last year, that figure was arbitrarily reduced to an amount that was clearly inadequate. This year, according to the Council's own legislation, charter schools are entitled to a facilities allotment of $1,098 per pupil. If Congress approves the D.C. Budget with the 5 percent charter school set-aside contained in the Budget Support Act, we know that there will be enough in the bank to fund the charter school facilities at this level. We certainly expect no less.

PROBLEMS IN ACQUIRING SPACE FOR CHARTER SCHOOLS

But money is not the only issue. For some charter schools, the simple task of finding space has turned into a protracted saga, and of course, you have heard about that already in some detail. In recent months, the process has been marked with inconsistent guidance, a lack of accountability, and disregard for established policies.

PUBLIC SCHOOL CONVERSIONS

One particular troubling issue concerns public schools that seek to convert to charter status. The school system has indicated that schools seeking to convert will immediately have their buildings assessed for use as public education facilities. We believe this contravenes the spirit of the School Reform Act's charter provisions.

SIBLING PREFERENCE

Finally, I will touch on two additional items that require your attention. The first is the matter of sibling preference, an issue that is easily overlooked, but a sore point for parents and schools alike. The law permits conversion charters to give admissions preference, in their first 5 years, to siblings of current students, but it does not extend this right to new charter schools. We believe that this is an oversight in the law and that charter schools should be able to grant admissions preference to siblings of students currently enrolled. What a nightmare to have kids going to two or three different schools because you do not have the sibling preference.

SCHOOL REFORM ACT TERMINATES IN 2001

Second, I want to bring to your attention the anomalous situation faced by our board. The School Reform Act sunsets in 2001. If the provision creating the D.C. Public Charter School Board is not extended or made permanent, we will be in the uncomfortable position of approving 15-year charters but leaving office before their first fifth-year renewal process is enacted. While I and my fellow board members are all volunteers and can certainly return full time to our other pursuits, we owe it to our schools and to potential applicants to be able to state with confidence that we will be there to do the job Congress and the District's elected leaders expected of us. We ask that Congress also attend to this matter without delay.

Thank you, and I look forward to your questions.
Mr. ISTOOK. Thank you very much, Ms. Baker.

PREPARED STATEMENT OF JOSEPHINE BAKER

[The prepared statement of Josephine Baker follows:]

Testimony of
Josephine Baker
Chair, District of Columbia Public Charter School Board
Before the
Subcommittee on the District of Columbia
House Committee on Appropriations
June 22, 1999

Chairman Istook and Members of the Subcommittee:

I am Josephine Baker, Chair of the DC Public Charter School Board, and I appreciate having this opportunity to share our views with the Subcommittee today.

As we meet today, eight schools chartered by our Board are completing their first year in operation. And what a year it has been -- from the struggle to open schools despite difficulties in obtaining facilities, to the proud moment last Wednesday when 17 young men and women accepted their diplomas as the first graduating class of the Washington Math Science Technology Public Charter High School. This year truly has been a study in achieving against the odds.

Early on, the Board adopted a simple motto: "We Charter Success." The crucial first step in making those words a reality is a rigorous process by which we review and approve charter applications. Of the 39 applications received in the past two years, we have approved only 12 -- just 2 of these in the cycle just ended. We will continue to set the bar very high.

Once approved, our schools receive active assistance and support from the Board. Every one of our board members is visiting every one of our schools. Our professional staff is in constant contact with our schools across a range of issues -- interpreting the charter law, acting as intermediary between our schools and city agencies, and dealing with nuts and bolts issues such as facilities and student ID numbers.

But our schools also know that our most important job is to hold them accountable for performance. Our accountability program includes a detailed plan that is unique to each school, a stream of reports on finances and school performance, and an exhaustive annual review.

In fact, our first-year "Implementation Review" is now in its final stages -- and it will produce a multi-dimensional picture of how well our schools are delivering the program promised in their charter application. For this review, each school has

completed a detailed self-study. This is followed by three separate site visits by teams of outside experts who assess their academic program, their operations and management, and their financial controls. These visits are now underway, and the subsequent reports will be scrutinized by the Board and our staff. Next month, we will execute with each school a Memorandum of Understanding outlining steps needed to achieve improvement in the next academic year.

Over the summer, the Board plans to summarize and publish the lessons learned from this first year, and we look forward to sharing them with you and other leaders in Congress and the District.

The charter school movement is off to a strong start. We have begun to show that public schools can operate with a high degree of autonomy and still be held accountable for performance by public authorities. But the future of DC's charter schools may be compromised unless we remove some of the obstacles in their path.

The first obstacle is uncertainty created by the appropriations process itself.

Mr. Chairman, the DC School Reform Act could not be clearer in requiring that all DC students -- in DC Public Schools or public charter schools -- should receive funding based on a common per-pupil formula, according to a headcount taken in September of each school year. But local law requires that DCPS be funded on the basis of prior-year enrollment. This problem threw into jeopardy half of the charter school budget for the coming year.

Fortunately, at the last minute the Control Board and DC Council were able to embrace this idea of a set-aside from the DCPS budget that will be made available to charters based on fall enrollment. This is now included in the Budget Support Act accompanying the District's FY2000 consensus budget. But it is a one-time "fix," and we should not wait for the problem to recur next year before seeking a more permanent solution. Congress can contribute to this solution by clarifying that dollars should follow students. The appropriations process should be more closely aligned with the requirements of the DC School Reform Act.

While appropriations processes need review, so do their outcomes. In several ways, charter schools are being asked to take on extraordinary responsibilities without adequate resources. The most serious disparity is in the area of special education funding. Charter schools are provided add-on funding to finance special education services, but it does not begin to match the actual costs schools are incurring.

Two of our schools have done detailed analyses, which we have shared with your staff, showing that the current method of allocating special ed funds leaves them with a significant per-student deficit. While revision of the formula is a local responsibility, Congress can help in one critical way: by being clear that special

education monies appropriated to the District are to be shared by all public school students, not just those attending DCPS schools.

Another formula issue concerns the facilities allowance. Since charter schools do not share in the city's capital budget, they must finance leases and mortgages from the facilities portion of their operating revenues, which come from the per-pupil formula. The District's funding formula law creates a level playing field, requiring that charters receive roughly the same per-pupil as is provided to DCPS through the capital budget.

Last year, that should have provided about $1040 per pupil to charter schools -- but the figure was arbitrarily reduced to $617 per pupil. This year, according to the Council's own legislation, charter schools are entitled to a facilities allotment of $1198 per pupil.

Let me be very direct on this point: If Congress approves the DC Budget with the 5 percent charter school set-aside contained in Budget Support Act, we know that there will be enough in the bank to fund the charter school facilities at the level required by law. We expect no less.

A third obstacle is also related to facilities. Even if the dollars are available, charter schools will still face enormous challenges in obtaining suitable space, especially in a time of rapid expansion. We have counseled our schools to be creative in this area, and they have: Two of our schools are in a charter school "incubator" located in a shopping mall; one is in a beautifully refurbished downtown building that formerly housed a business school; one opening next fall will be operating in a remodeled former Safeway store in Southeast DC.

But the rest are all in space currently or formerly operated by DCPS -- and as more charter schools come on line, they will inevitably seek to locate in buildings that were created to be schools. Can't we make it a little easier to do that?

As we know, the DC school system has lost about half its enrollment over the past twenty years, leaving dozens of buildings vacant and providing excess space in numerous active school buildings. Public charter schools are entitled by federal law to preference in the disposition of these facilities. But for some charter schools, the simple task of finding space has turned into a protracted saga that saps resources and distracts attention from the task of preparing to educate children. Because DCPS is responsible for administering their own excess space, their cooperation is indispensable. But in the past few months, the process has been marked by inconsistent guidance, a lack of accountability, and disregard for established policies.

One particularly troubling issue concerns public schools that seek to convert to charter status. According to the school system's own policies, as ratified by the

Control Board, conversion schools would be allowed to remain in their buildings if this was consistent with DCPS' academic and facilities plans.

However, the long-awaited facilities master plan has never been completed. Instead, the Emergency Trustees last year approved a new policy that when a school seeks to convert to charter status, its building will immediately be assessed for use as a special-education site. This measure contravenes the letter of the school system's own policy as well as the spirit of the School Reform Act's charter provisions. Congress should protect schools that seek to convert to charter status and continue serving the communities in which they are located.

Mr. Chairman, we understand that many parties -- the school system, the DC Council, and the Control Board -- want to reexamine the property-disposition policy in light of current market conditions, an improved capital budget, and the more optimistic outlook for DCPS under Mrs. Ackerman's leadership. We welcome that dialogue, and are prepared to participate in an open discussion.

What we cannot accept is a situation in which schools act in good faith, over a period of months, and then find that the rules have changed.

Mr. Chairman, since the DC School Reform Act which established our system of charter schools originated in the 1996 appropriations process, I will conclude by touching briefly on two aspects of that Act requiring your attention.

The first is an issue that is easily overlooked, but is a sore point for parents and schools alike. The law permits conversion charters to give admissions preference in their first five years to siblings of current students. But it does not extend this right to new charter schools. Dozens of charter-school parents are struggling to find transportation to two different schools, and the number will grow as more new schools open. We believe this is an oversight that should be corrected promptly.

Second, I want to bring to your attention the anomolous situation faced by our Board. The School Reform Act "sunsets" in 2001. If the provision creating the DC Public Charter School Board is not extended or made permanent, we will be in the uncomfortable position of approving 15-year charters, but leaving office before their critical fifth-year renewal. While I and my fellow Board members are all volunteers and can certainly return full-time to our other pursuits, we owe it to our schools, and to potential applicants, to be able to say with confidence that we will be there to do the job Congress and the District's elected leaders expect of us. We ask that Congress attend to this matter without delay.

Thank you, and I look forward to your questions.

DC Public Charter School Board Responses to Questions from the Subcommittee on the District of Columbia, House Committee on Appropriations July 6, 1999

1) One of the continuing concerns of local public charter schools is with facilities.

How would you characterize the facilities situation with DC public charter schools?

Securing adequate facilities is one of the greatest challenges facing public charter schools in the District. The effort to find, negotiate, finance, and renovate appropriate space has become a larger and more complex task than it should be, one that diverts attention and resources from the educational program.

This Board has approved 12 charters, of which 8 are open. Four of the eight are in current or former DCPS buildings (including two campuses for Edison-Friendship Public Charter School). Of the other four, two are located in an "incubator" at Waterside Mall; one is at Capital Children's Museum; and one occupies a former business-school building downtown.

Of the four scheduled to open this fall, one will be in three floors of an office building near the Convention Center; one will be housed in a former commercial laundry in NE; one will be in a closed DCPS school building; and one will be in a converted supermarket. In addition, the existing Edison-Friendship charter will open a middle school in a former DCPS building.

Within the next two years, at least six of our schools will require additional space because of planned enrollment growth. Several schools now housed in start-up space will move into permanent quarters. Others will require additional square footage at current sites.

Each one of these situations represents months of effort to find a site, create architectural plans, obtain financing for acquisition and renovation, and carry out the work -- all in time for school to open. Charter school operators know in advance that they will face these challenges. Those that choose to obtain excess DCPS space encounter additional hurdles due to the inconsistent disposition process the school system has followed.

How well are the DC government and DC Public Schools abiding by the law, with respect to providing public charter schools priority in using surplus public school facilities?

Regrettably, the intent of the charter-school preference has been frustrated by the way in which it has been administered.

In 1997, the Emergency Transitional Education Board of Trustees adopted, and the Control Board approved, procedures under which the preference policy contained in the DC School Reform Act was to be administered. The procedures called for a bidding process, and then allowed charters to match the high bid minus a 15 or 25 percent discount. The intent of this method was to allow the market to work, and to recoup for DCPS a substantial amount of funds for the system's facilities needs, while at the same time giving charter operators a significant advantage in acquiring property.

In recent months, however, this established procedure has been ignored or slowed down until actual dispositions have been effectively halted. Even in the case of schools leasing in charter "hubs," DCPS has become an unreliable partner, sending unclear signals to schools about the terms under which they might remain as tenants.

The Board was heartened by the comments of Constance Newman of the DC Financial Authority at the Subcommittee's recent hearings. Her frankness about the system's problems, and her willingness to have an open discussion of the policy, were encouraging signs.

The school system has threatened charter access in one other important area. Although the School Reform Act included clear congressional intent to support public schools converting to charter status (for example, by allowing enrollment preference to students living in the school's attendance boundaries), DCPS last year announced a policy under which conversions would find their buildings immediately assessed for use as special-education sites. This certainly contravenes the spirit, and quite possibly the letter, of the Act.

Describe to us the situation regarding a public charter school attempting to lease the Franklin School building, which is a surplus building.

The Subcommittee has had detailed testimony on the process by which Washington Math Science Technology Public Charter High School has attempted to acquire the Franklin Building.

This is one of several cases in which charter schools have bid on excess DCPS buildings in good faith, according to published rules, and have seen the process delayed as policies were being reconsidered. Without addressing the specifics of any of these cases, the Board has maintained that schools must

not be required to expend critical time and resources in these efforts, only to find that the rules change without notice.

Consistency and predictability must be restored to these processes.

Would you recommend any changes in practice or law with regard to public charter school facilities?

The Board recommends that Congress clarify the facilities provisions of the School Reform Act in three areas:

a) The charter-school preference should be simplified, so that it extends uniformly to *all* vacant and excess space subject to sale or lease, whether held by DCPS or by the Mayor;

b) DCPS or an independent agency such as the General Services Administration should conduct and publish a full survey of space utilization within active DCPS buildings, so as to establish what space is actually available; and

c) The provisions on conversion of DCPS schools to charter status should explicitly permit conversions to remain in their current building so long as their charter remains in good standing.

2) By law, the District government, in developing its budget, should provide traditional public schools and public charter schools the same per-pupil allocation of funds.

By your understanding of the budget, is this the case?

Last year (FY99), the District's consensus budget did not provide adequate funding for charters, and Congress was required to appropriate $16 million in federal funds to make up the gap.

Unfortunately, the same pattern was followed this year by the DC Council. While the Council approved a substantial increase in funding for DCPS, its initial submission to the Control Board included only $27.8 million in FY2000 funding for charter schools. This would have funded only current enrollment, and would have provided nothing for the large enrollment increase expected this fall. In fact, had this budget gone forward without amendment, it would have created a dramatic disparity between funding for DCPS and charter-school students. The per-pupil amount for DCPS ($600.9 million in local funds divided by 71,000 students) would have been $8463. The per-pupil amount for charters ($27.8 million divided by a projected 7443 students) would have been just $3735.

After the Council's Education and Libraries committee voted out a version of this flawed budget, the Chair, members, and staff of this Board spent long hours at One Judiciary Square, meeting with members and staff of the Council, attempting to educate them about what the law required. Despite these efforts, the version originally approved by the full Council represented no improvement over the committee budget.

Fortunately, at the urging of the Control Board, the Council eventually modified the Budget Support Act to include a set-aside of 5% of the DCPS budget, which will be allocated to charters based on fall enrollment. This step, which is similar to the "escrow account" proposed in Mayor William's original FY2000 budget, will provide sufficient funding to support charter schools at the rates required by the DC Uniform Per-Pupil Funding Formula Act.

Why have there been such problems ensuring that public charter schools receive a fair allocation of funds?

Frankly, some policymakers seem reluctant to concede that charter schools are here to stay, and are a significant and growing component of public education in the District. Others believe that they are simply a federal mandate and should be paid for out of federal funds. Obviously, we disagree with both arguments. Charter schools are public schools, open to all children of the District's -- and providing their funding is a local responsibility.

However, there are two problems that must be addressed:

First, there is a discrepancy between local and federal laws guiding disbursement of public education funds. The DC School Reform Act says that charter schools are to be funded, according to the per-pupil formula, on the basis of a September headcount. Under this regime, funds based on this current-year census should be disbursed no later than October 15.

However, the DC Council's Uniform Per-Pupil Funding Formula Act requires that DCPS be funded according to its enrollment in the prior year. Presumably, the Council adopted this approach to hold DCPS harmless from major enrollment losses in any given year.

The net effect of this discrepancy is that if students move from DCPS to charters, they must be funded twice: once at DCPS (following local law), and again in their new charter schools (following federal law).

The intent of the School Reform Act was clearly that dollars should follow students. The appropriations process should ensure this outcome.

A second and perhaps more difficult problem is the matter of enrollment projections. During DC Council deliberations, some members voiced

skepticism about claims being made by the charter community about enrollment growth. The Board believes that this skepticism is ill-founded, both because last year's projections turned out to be quite accurate, and because much of the currently-projected growth is due to planned expansion already authorized in the schools' charters (as, for example, a high school that started with 9th grade now expands to 10th).

However, we recognize the need for reliable enrollment data, and are working to produce such data as early as possible in the budget cycle.

What should be done? Should there be a change in the federal law?

As noted above, good enrollment data is the key to a fair and equitable appropriations process. Some flexibility is also needed, since we cannot know enrollment totals with certainty until the students show up in September.

Therefore, we recommend (a) developing an annual appropriation figure for public education in the District that is based on the total number of students in both DCPS and charter schools; then (b) disbursement of those funds based on a fall headcount.

Creating this process should be a local matter; indeed, the Mayor's original FY2000 budget used a very similar approach. However, Congress can help by addressing the gap in the DC School Reform Act, which prescribes a process for disbursement of charter school funding, but does not cover appropriations. There should be no room for doubt that sufficient funds must be appropriated in the District's consensus budget to support the disbursement requirements of the Act.

3) I would like to ask you about accountability in public charter schools.

Describe the method by which the elected school board and the public charter school board seeks out, then awards charters to public charter school applicants.

The two boards have different processes, and we will respond in terms of the DC Public Charter School Board's process.

The Board does not directly solicit applications from any individual applicant. However, in this application cycle we mailed several hundred application packages to community based organizations, leading business and professional groups, federal agencies, universities, museums, and other institutions in an effort to spur participation.

We also held three public meetings (in SE, NE, and NW), giving potential applicants the opportunity to ask questions about the process. And our staff has fielded numerous inquiries as well.

In the belief that accountability begins with rigorous standards for charter approval, the Board has devised a demanding, two-stage process. This year's deadline is July 7.

Once applications are received...

- Staff will do an immediate review for technical responsiveness
- Panels of expert reviewers will evaluate the proposals individually. Then the panels will convene for three days of intensive discussion, including face-to-face interviews with applicants.
- A public hearing will be held on all the applications.
- Panel recommendations will be forwarded to the Board.
- The Board will evaluate the technical panel recommendations, plus information received from background checks conducted by the Board's contractors.
- In early September, the Board will announce "first-stage" decisions.
- All applicants, whether successful or unsuccessful, will received detailed feedback from the technical reviews.
- Applications that have merit but need additional work will be given until early January to resubmit a revised application.
- A second review will be conducted at that time.
- Final decisions will be announced in February (for schools intending to start the following September).

Last year, only 2 of 13 applications received by the Board made it through this process to final approval.

<u>How do you hold them accountable for good financial stewardship? For academic progress? For safety?</u>

Good financial stewardship begins with the application process. The Board requires each applicant to submit a detailed two-year and five-year budget, along with a monthly cash flow projection.

Once approved, the Board works with the city's Chief Financial Officer and with the DCPS Office of Categorical Programs and Grants (which administers our federal funds) to ensure that our schools' funding requests contain accurate, verified information.

We require each school to produce a monthly financial report and balance sheet in its first year. At the Board's discretion, this may change to a quarterly report in the second year. These reports are examined both by staff and by an

accounting firm on contract to the Board, to ensure that there are no "red flags" or irregularities.

Each school is subject to a comprehensive annual review that includes a financial component. In the first year, this is known as an "Implementation Review," and is aimed at determining whether the program promised in the charter application is actually being delivered. As part of this year's study, the Board contracted with a CPA firm to do a thorough review of financial controls at each school. We are awaiting the firm's findings and recommendations, and will then work with each school to see that any possible deficiencies are remedied.

Finally, each school is required by law to submit a financial audit as part of its annual report. Those reports are due to this Board by November 1, and will be made public.

We believe that this approach provides the Board with a number of tools through which to ensure strong financial operations, and to determine where corrective actions must be taken.

Academic progress is the central concern of this Board. With each school we have developed detailed accountability plans covering not only standardized assessments but also a host of indicators specific to that school's mission. For example, one school with a public-policy theme will report periodically on the thesis papers required of upper-grade students on policy issues. Another school that serves students formerly in the juvenile-justice system will report not only test scores, but information about student's development of workplace skills and appropriate behaviors.

These accountability documents will be publicly available. Accountability information will also be released through the annual reports due in November.

With regard to the Stanford-9, every school administers this test on an annual basis, and the Board intends to publish school-by-school results at the same time as DCPS publishes its results later this summer. Because this is the first year for all of our schools, we will regard this Spring's results as baseline data, and will report growth in performance on an annual basis thereafter.

Safety in charter schools is no less a concern than in any other public school. Each school must obtain the same DC occupancy permits required of other schools before opening, and buildings are subject to fire code inspection at the discretion of the Fire Department. All other DC health and safety codes are applicable to charter schools as well.

Do you have any test scores that would demonstrate the quality of local public charter schools?

We will release school-by-school test scores later this summer. Although we hope to be able to do some comparison with students' performance in their prior school (in almost all cases, a DCPS school), we are severely hampered in this by the inability of our schools to obtain hundreds of student cumulative files from DCPS.

In any case, as noted above, we intend to provide voluminous data about student performance, both from the SAT9 scores and from the multiple indicators contained in each school's accountability plan.

7. Can the same application be submitted to more than one chartering authority during a calendar year?

No. An eligible applicant may not file the same petition to establish a public charter school with more than one eligible chartering authority during a calendar year.

8. Can more than one application be submitted during a calendar year?

No. An eligible applicant may not file more than one petition to establish a public charter school during a calendar year.

9. How many charter schools can be approved in one year?

The District of Columbia Board of Education and the District of Columbia Public Charter School Board are each authorized to approve up to ten applications to establish public charter schools in any given year.

10. How can I learn more about the District of Columbia Public Charter School Board's application process?

The Board will hold a series of information meetings in various locations for potential applicants and members of the Washington, D.C. community with an interest in public charter schools. We will announce the schedule by mid-April.

Mr. ISTOOK. We are transcending then to the second panel, and Ms. Ackerman, we are very pleased to have you here.

OPENING REMARKS OF ARLENE ACKERMAN

Ms. ACKERMAN. Good afternoon, Mr. Chairman and members of the subcommittee. I am Arlene Ackerman, superintendent of the District of Columbia Public Schools. I would like to first thank Mr. Cunningham and other members—I see he's gone—who are introducing the bipartisan New Millennium Classrooms Act. One of our schools will receive five high-tech computers with multimedia capabilities as a part of this introduction today, and we do appreciate the interest that has been shown and the commitment to the education of the children of the public schools of the District of Columbia.

I'd also like to congratulate Jeanee Snipes on her testimony. She is indeed very articulate, and while we know that she is currently attending the Washington Math Science Technology Public Charter School, we are proud that for 3 years she did attend D.C. public schools, and so we'd like to take a little bit of credit for her success.

I welcome the opportunity to speak to you. I do know that you have my written testimony so I will try to be brief and summarize also. We do have a vision for what we would like our school system to become, and we are creating an exemplary school system, and we know to make that vision a reality we will have to continue to focus our energy on making dramatic improvement in the academic achievement of our students.

As you know, we have set more challenging expectations for students, principals, teachers, administrators and parents. We have put in place regular assessments of student achievement and new annual evaluations for principals, 50 percent of which is based on improving achievement in their schools. For teachers, our new evaluation system includes the shortest time line for removing an ineffective teacher of any school District in the country—that's 90 days. Central office administrators now have their evaluations tied to the assistance they provide to the schools.

As a result of our efforts, test scores improved last year and preliminary data suggests that we are still making progress. We have had a very successful year, although we still have a long way to go. Since you have my written statement, I would like to just highlight a few things in my testimony.

35,000 STUDENTS TO BE SERVED IN JUNE AND JULY

Under academic achievement, I would like to update you on the "STARS" program. The STARS program, "students and teachers achieving results and success," was established last summer to assist students who scored below basic on the Stanford 9 by giving them intensive reading and math instruction. Last summer, 24,500 students participated in the program. To keep the momentum going this year, we also instituted for our students a Saturday STARS program where 12,000 students attended school on Saturday. This summer we are planning for up to 30,000 students who will attend our regularly scheduled STARS program. And, in addition to that, we are now planning for another 5,000 students to

participate in our new Voyager Enrichment program this summer. So we are planning to serve up to 35,000 students, including those who need the basic skills as well as those who would like to have enrichment programs, this June and July.

SPECIAL EDUCATION

Special education continues to warrant a lot of our attention and a large portion of our budget, but we are indeed making dramatic changes in the way we do business in special education. I have appointed a new special education director. Because there is a nationwide shortage of special teachers, we are looking at "growing our own" by offering over a hundred of our regular-ed teachers the opportunity to earn master's degrees in special education this year. We will do this in partnership with two of the local universities.

Additionally, we are changing how we deliver services to students, and we are putting those services in the schools near the families so that they can get access to those services.

Another critical issue in special education is attorney's fees. This subcommittee included language last year capping what attorneys could charge for these cases. We appreciate this assistance and we hope you will include this provision again this year. Last year, we paid $14 million in attorneys fees; because of the provision, so far this year we have paid out only approximately $2 million, and we have not seen this affect the level of services in terms of advocates and lawyers for our students.

I would also like to thank you for granting the extension on the time line last year for assessment and placement of students for special education services. We have a June 30th goal to put the District ahead of its schedule with the cases under the 120-day time line, and in fact by June 30th we will be ahead of the game, so that we can focus this summer on eliminating all of the backlog cases for the 50-day time line.

SCHOOL FACILITIES IMPROVEMENT—CORPS OF ENGINEERS

I'd like to just mention our school facilities improvement effort. As you know, over the past few years, we have made major strides in stabilizing our facilities, replacing roofs and installing new boilers and windows. We have a very strong cooperative and collaborative relationship with the Army Corps of Engineers, and we expect that we will continue making progress with their assistance.

RELATIONSHIP WITH CHARTER SCHOOLS

Where charter schools are concerned, I would like to share with you that while there may have been some issues, as with any start-up of a cooperative relationship, I am proud to say that there are some things we have done very well with charter schools. I'd like to just name a few of those. We have provided technical assistance to charter schools in the development of a variety of grants, including Title 1, Title 2 and Title 4. We reviewed all of their Improving America's Schools Act applications. We conducted meetings with all of our charter schools to provide them with information regarding Federal entitlements and the other Federal programs.

In the terms of allocation of funds, we've notified them of their funds. We've awarded many grants through a competitive process to teachers in charter schools. We've provided mid-year accommodations for prorating funds to charter schools.

We have provided competitive grant opportunities for charter schools, as well as utilizing the 1998 Technology Literacy Challenge Fund for charter schools.

We've provided informational packets about categorical programs and developed a grant announcement newsletter so that they would be aware of the opportunities for them.

And lastly, we administered the State Stanford 9 test to charter schools in October and in May. We received the interim and final performance and financial reports and shared those with them, as well as submitted annual performance reports to the U.S. Department of Education.

A comprehensive list of these services we have provided to charter schools is attached to my testimony.

FY 2000 BUDGET FOR PUBLIC SCHOOLS

Lastly, I'd like to talk about the FY 2000 budget. As you know, the consensus budget included approximately $600 million in local funds for the D.C. Public schools, a roughly $40 million increase over FY 99. 90 percent of these new dollars will go directly to schools. We put in place a new weighted student formula that allows the local schools to decide how they will spend their dollars, and the resources do follow the students as they do with the local formula.

We are very proud that our principals, parents and teachers did get a chance this year to develop plans at the school site to determine their own destiny, how to spend their dollars, how to staff their schools. We are now in the business in the central office of determining what the outcomes will be. The "how now" is developed at the school site.

CONSENSUS BUDGET EXCLUDES $30 MILLION IN FEDERAL FUNDS

Finally, I want to alert the subcommittee to the fact that the consensus budget does include a request for a $30 million Federal pay bid for special education. We urge you to support this again this year. We have said that the school district will be exemplary, and we are taking the steps we believe necessary to achieve this goal, and we thank you, Mr. Chairman, and members of the committee, and I'm happy to answer your questions.

Mr. ISTOOK. Thank you, Ms. Ackerman. I appreciate very much your testimony. I very much appreciate the progress you're making with District schools, I really do.

PREPARED STATEMENT OF ARLENE ACKERMAN

[The prepared statement of Arlene Ackerman follows:]

STATEMENT OF ARLENE ACKERMAN
Superintendent
District of Columbia Public Schools
Before the House Appropriations Subcommittee
on the District of Columbia

The District of Columbia Public Schools Budget and Charter Schools

Tuesday, June 22, 1999
3:00 p.m.

Good afternoon Mr. Chairman and Members of the Subcommittee. I am Arlene Ackerman, Superintendent of the District of Columbia Public Schools.

I would first like to thank Mr. Cunningham and other Members who are introducing the bipartisan New Millennium Classrooms Act. One of our schools will receive 5 high-tech computers with multimedia capabilities as a part of this introduction today. We appreciate your interest in, and commitment to, the education of the children in the public schools of the District of Columbia.

I welcome the opportunity to appear before you today to report on the District of Columbia Public Schools and the Fiscal Year 2000 budget. Our vision is clear...to create an exemplary system. To make that vision a reality, we must continue to focus our energy on making dramatic

improvement in the academic achievement of all our students today in preparation for their world tomorrow.

As you may know, we have set more challenging expectations for our students, principals, teachers, administrators and parents. We have put in place regular assessments of student achievement and new annual evaluations of principals, teachers and administrators. As a result of these efforts our test scores improved last year and preliminary data suggests that they will improve again this year.

Academic Achievement

S.T.A.R.S.

First, I would like to give you an update on our activities that provide support to our students in the critical areas of reading and mathematics. As you know, the S.T.A.R.S. (Students and Teachers Achieving Results and Success) program was established last summer to assist students who scored below basic on the Stanford 9 Test (SAT 9) by giving them intensive reading and math instruction. During the Summer of 1998, 24,500 students participated in the S.T.A.R.S. program. It was our largest summer school program ever.

To keep the momentum going, we had the S.T.A.R.S. program in many of our schools on Saturday from January through May. Approximately 12,000 students participated.

This summer we expect even more students to participate in S.T.A.R.S. The program will run from June 28 to August 6. And, in addition to providing intensive reading and math support, we have developed an enrichment program for students scoring at the basic, proficient and advanced levels on the SAT 9. The program -- called Voyager-- will be held simultaneously with Summer S.T.A.R.S.

Special Education

Special Education continues to warrant much of my attention, as we must provide quality and accessible services for our children with special needs. It is clear that drastic changes were needed, so, in April, I decided to undertake a complete overhaul of our Special Education Division. One of our most successful principals, the principal of Janney Elementary is taking over the leadership of this Division in July. To address the difficulty in attracting staff to the special education program, we have developed a new incentive package to be more competitive with surrounding jurisdictions. We are also working with local colleges and universities to grow our own staff.

Additionally, we are changing how we deliver services to students with special needs. To provide quality services locally, we are in the process of increasing our capacity to accommodate students with disabilities in schools near their homes. We are also increasing our emphasis on the inclusion model for teaching special education students, which keeps them in the classroom with their peers whenever possible. Beginning this Thursday, we are providing regular education administrators and teachers with the training necessary to provide students with disabilities access to the general education curriculum within the regular education classroom.

Another area of critical importance is attorney's fees for handling Special Education cases. This subcommittee included language last year capping what attorneys could charge for these cases. We hope you will include the provision again this year. During FY 1998, the District of Columbia Public Schools paid approximately $14 million in attorney's fees and so far this year, we have paid approximately $2 million.

During FY 98, one attorney received $1 million; another law firm received over $2 million. Paying attorney fees at high levels has diverted funds critically needed to provide improved services to all DCPS students with disabilities, including a large majority who never benefit from either legal representation or private placements.

As we provide appropriate high-quality services, programs and support for students with disabilities, the need for attorney involvement and private school placements will decrease significantly.

I would like to thank you for granting the extension of the timeline for assessment and placement of children for Special Education services. Our goal is to be ahead of schedule with cases under the 120-day timeline through September. We will spend this summer eliminating the backlog of cases under the 50-day timeline.

Additionally, I would like to talk about our activities centered around Mediation of Special Education issues. Mediation is an informal, voluntary and confidential process which, through discussion, helps parents and the school system reach agreement on issues regarding an appropriate Special Education program or related services for the student with disabilities. There is no cost to parents or students for Mediation. Our Caring for our Students with Disabilities Procedural Manual for Parents and brochure on Mediation has been sent to parents, attorneys and advocates to inform them of the availability of mediation. This information has been translated in five other languages.

As you may know, two Special Education class suits, Blackmon and Jones, et al. v. District of Columbia, et al., have been pending against the

District of Columbia Public Schools for two years. The school district and the Plaintiffs have been negotiating a settlement for several months. I am happy to report that we are very optimistic that an agreement among all of the parties will be reached soon, pending approval by District Court Judge Paul Friedman.

School Security

We continue to monitor and re-examine school security. In the aftermath of school-related tragedies that occurred this school year in Colorado and Georgia, we, like most school districts across the nation have taken a position of heightened alertness for potential acts of violence. In the District of Columbia Public Schools we continue to take proactive measures to minimize the potential for such tragedies. We have 315 trained security and special police officers employed under our security contract. At least one officer is assigned to every elementary school. Multiple officers are assigned to all secondary and alternative schools. All secondary and alternative schools are equipped with walk-through and hand-held metal detectors. Fourteen secondary schools are equipped with closed-circuit televisions systems, and state-of-the-art, x-ray screening machines.

DCPS continues to work closely with the District of Columbia Metropolitan Police Department to secure the assignment of police officers

at individual schools as needed. We are also grateful to the Capitol Police who have recently informed us that they will donate excess security equipment to our schools.

School Facilities

As you know, over the past two years we have made major strides toward stabilizing our facilities, replacing roofs, and installing new boilers and windows. However, we understand that some of our facilities are very old; therefore, we constantly are faced with possibility of systems failures. We still have a strong cooperative and collaborative relationship with the U.S. Army Corps of Engineers, which manages our capital improvement efforts. With the help of this Subcommittee, the Corps was able to take over the procurement aspects of this program last year. This effort has been very successful and we hope the Subcommittee will assist us in continuing this relationship.

Charter Schools

Another topic that I know is of interest to you is Charter Schools. As the State Education Agency for the District of Columbia, DCPS provides a number of services to Charter Schools. Please know that Charter Schools (as well as non-public schools and home schoolers) have a separate service team within our Office of Categorical Programs, called Grant Independence.

Some of the services provided Charter Schools are in the areas of technical assistance, allocation of funds, grant opportunities, information and reporting as listed below:

1. Technical Assistance
    a. Provided technical assistance and guidance in the development of requirements related to the Improving America's School Act (IASA) Application in order to provide Charter Schools with an opportunity to participate in various available Federal programs, i.e.,
        - Title 1 - Education of Disadvantaged Children
        - Title II - Eisenhower Professional Development Program)
        - Title IV – Safe and Drug Free Schools and Communities and others
    b. Reviewed IASA applications
    c. Conducted meetings to provide information regarding Federal entitlements and other Federal programs, i.e.,
        - Carl D. Perkins Vocational and Applied Technology Education Act
        - National School Lunch and School Breakfast Program and
        - Goals 2000 Mini Grants

d. Provided information and other assistance in the area of data reporting of enrollments, special education population performance/financial reports, etc.

2. Allocation of Funds

a. Notification of funds allocation for each Federal entitlement

b. Awarded Goals 2000 Mini Grants through a competitive process

c. Provided mid-year accommodations for prorating funds to Charter Schools opening late in the school year based on a ratable reduction formula

d. Reallocated additional Title I, II, IV, VI, Goals 2000 and Title X funds to Charter Schools to continue supporting planned activities and programs.

3. Grant Opportunities

a. provided competitive grant opportunity for Charter Schools to apply for the Comprehensive School Reform Demonstration Program Grant – the Cesar Chavez Public Charter School was awarded $50,000;

b. Utilized the 1998-99 Technology Literacy Challenge Fund State rollout grant to provide five (5) Charter Schools, that has

students enrolled in Grades 2 and 3, a total of 99 computers, 33 printers and peripherals. They also received professional development and training for staff;

c. Disseminated Title X start-up (Federal Grant Program to Support Public Charter Schools) subgrant application guidelines;

d. Developed and submitted FY2000 State application for the reauthorization of Title X start-up funds for Charter Schools; and

e. Reviewed Title X start-up subgrant Request for Applications (RFAs).

4. Informational:

a. Disseminated the Categorical Programs and Development Grant Announcement Newsletter and other information pertinent to available grants through various Web Sites;

b. Informed Charter Schools of professional development activities, seminars and summer workshops as well as conferences;

c. Informed Charter Schools of Title I school-wide program eligibility criteria;

d. Maintained an open channel of communication with authorized chartering agencies to remain abreast of newly approved and continuation Charter Schools entitled to Federal funding; and

e. Responded to complaints, questions and concerns expressed by parents, Charter School advocacy groups, the public in general and other outside entities.

5. Reporting:

a. Administered the State Stanford 9 Tests to Charter Schools in October 1998 and in May 1999;

b. Received Interim and Final Performance and Financial Reports from Charter Schools delineating expenditures and activities supported by Federal funds, as well as carryover funds;

c. Monitored and provided program and fiscal reviews in order to ensure Federal compliance; and

d. Submitted Annual Performances Reports to the U.S. Department of Education.

A comprehensive list of the services provided to Charter Schools by our Office of Categorical Programs is attached to my testimony.

I also have assigned an Associate Superintendent on my staff to work directly with both Chartering Boards and individual Charter Schools to

resolve policy questions as they arise. This office also coordinates activities between Charter Schools and our Real Estate Office to ensure that Charter schools have information about and access to surplus properties held by the DC Public Schools.

Charter Schools are currently operating in twelve (12) schools through the disposition process or under lease and lease/purchase agreements and, in two (2) DCPS facilities that have been designated as Charter "Hubs. We will continue to work with Charter Schools and the two Chartering Boards to assist them with facilities needs.

FY2000 Budget

As you know the consensus budget included approximately $601 in local funds for the D.C. Public Schools. Roughly $40 million of the increase from last years' funding level will be used to provide schools with an adequate basic funding level as they assume greater local control of their resources through the Weighted Student Formula.

This formula was designed with input from the school community to ensure that resources follow the student based on the needs of the student and that schools have the opportunity to make decisions about the best way to use those resources. Each school completed a needs assessment, and

developed a school plan complete with an aligned budget; therefore, making decisions about how their resources will be allocated.

Our principals, parents and teachers worked many hours to develop these plans. The process provided a powerful experience for each school team to learn more about their school and chart a course for its future. For the first time in this community, every school and every member of the public knows what resources go to each school and the logic behind why each school gets the resources it does.

An additional $16 million would go to schools in the form of higher salaries for teachers and other school-based personnel. These raises are critical if we want to hire and retain the best teachers, and to stay competitive with the surrounding areas. Finally, $5 million will be used to support aggressive intervention in our lowest-performing schools. Increased investments in professional development and instructional technology, and incentives for schools that are performing well are also needed.

Our budget for FY 2000 focuses on three priorities: Schools, Schools, and Schools. Over 95% of the increases in funding we requested would go directly to school-based costs.

Additionally, as I mentioned earlier, I hope you will again include language capping plaintiffs' attorney fees for special education cases in this

years' bill. Data reflect that these caps have not noticeable impaired plaintiffs' ability to obtain representation in these cases.

Finally I want to alert the Subcommittee to the fact that the consensus budget includes a request for a $30 million federal payment for special education. We urge you to support the $30 million Federal payment for the second year.

We have said the school district will be exemplary and we are taking the steps necessary to achieve this goal. This budget is designed to support this effort.

Thank you Mr. Chairman. I am happy to answer any questions you may have.

District of Columbia Public Schools
Categorical Programs and Development

SERVICES PROVIDED TO DC PUBLIC CHARTER SCHOOLS

TECHNICAL ASSISTANCE

- Provided technical assistance and guidance in the development of requirements related to the Improving America's School Act (IASA) Application, in order to provide schools with an opportunity to participate in various available Federal programs (i.e. **Title I - Education of Disadvantaged Children, Title II - Eisenhower Professional Development Program, Title IV -Safe and Drug Free School and Communities, Title VI - Innovative Education Program Strategies, Title VII - Bilingual Education Program: Emergency Immigrant Education Program, Title X - Programs of National Significance: Public Charter Schools, Goals 2000 – Title III of Educate America Act, and IDEA, Part B Special Education state funds**) to support cognitive and affective development in students;

- Reviewed IASA applications submitted by DC public charter schools;

- Provided technical assistance meetings with DC public charter schools (operating and newly approved) to provide pertinent information regarding not only federal entitlements but also other Federal programs in which the schools can apply (i.e. **Carl D. Perkins Vocational and Applied Technology Education Act, Adult Education Act, Impact Aid, Comprehensive School Reform Demonstration Program, Goals 2000 Mini Grants, Technology Literacy Challenge Fund, the National School Lunch and School Breakfast Program and the Class Size Reduction Program**);

- Provided technical assistance and disseminated Federal guidelines, including amendment laws, compliance information and required assurances;

- Participated in the first kick-off Technical Assistance Workshop for DC Public Charter Schools in collaboration with the White House, U.S. Department of Education, and the Region III Comprehensive Technical Assistance Center of the George Washington University;

- Provided technical assistance to charter schools in the area of data reporting, i.e. enrollments, eligible special education population, performance/financial reports, Title I low-income student information, and NEP/LEP student data;

- Provided technical assistance to DC public charter schools regarding use of federal grant funds and procedures in place to access federal entitlements;

ALLOCATION OF FUNDS

- Notified DC public charter schools of federal allocations for each Federal entitlement based on computed per pupil allocations and federal guidance that dictates proportionate shares to LEAs;
- Disbursed 25% of total allocations for each federal entitlement to all eligible charter schools in the month of September;
- Awarded public charter schools **Goals 2000 Mini Grants** through a competitive process;
- Awarded subgrants based on activities and programs planned, designed and supported by the subgrant Title X startup funds requested;
- Provided Mid-year accommodations for prorating funds to charter schools opening late in the school year based on a ratable reduction formula;
- Disseminated to all eligible DC public charter schools **a 30-Day Federal Grant Funds Drawdown Procedure**, inclusive of drawdown dates and drawdown form;
- Disseminated to public charter schools a **Federal Grant Funds Drawdown Request Monthly Report** that summarizes monthly requests and ending balances to avoid overspending of allocated funds for each entitlement;
- Reallocated additional Title I, II, IV, VI, Goals 2000 and Title X funds to DC public charter schools to continue supporting planned activities and programs;

GRANT OPPORTUNITIES

- Provided competitive grant opportunity for public charter schools to apply for the **Comprehensive School Reform Demonstration Program Grant** – the Cesar Chavez Public Charter School was awarded $50,000;
- Included the participation of charter school representatives in the district-wide task force (planning group) for development of the **Reading Excellence Act** grant application;
- Utilized 1998-1999 **Technology Literacy Challenge Fund** State rollout grant to provide five (5) public charter schools, that had students enrolled in Grades 2 and 3, a total of 66 IMAC computer, 33 G-3's, 33 printers and 33 drives, including professional development and training for staff (one school has two campus

locations); 1999-2000 State rollout funds will benefit students in Grades 7-12, reading and mathematics;

- Disseminated Title X start-up **(Federal Grant Program to Support Public Charter Schools)** subgrant application guidelines to eligible DC public charter school applicants;

- Developed and submitted FY 2000 State application for the reauthorization of Title X start-up funds for DC public charter schools;

- Reviewed Title X start-up subgrant Request for Applications (RFAs);

INFORMATIONAL

- Disseminated the Categorical Programs and Development ***Grant Announcement*** Newsletter and other information pertinent to available grants through various Web Sites and other e-mail information;

- Informed public charter schools of professional development activities, seminars and summer workshops offered through various universities, in particular the National Institute for Educational Options (NIEO) at the Nova Southeastern University in North Miami Beach, Florida;

- Informed public charter schools of pertinent conferences, i.e. IASA Conference, the National Charter Schools Conference, and the Nova Southeastern University Technical Assistance Conference for Public Charter Schools;

- Informed DC public charter schools of Title I schoolwide program eligibility criteria and services upgrade the entire school and services to all students;

- Maintains an open channel of communication with authorized chartering agencies: DC Board of Education and the DC Public Charter School Board, in order to remain abreast of newly approved and continuation charter schools entitled to federal funding, as well as approval/revocation status of schools; and

- Maintains an open channel of communication with all DC public charter school directors and principals to provide assistance upon request;

- Responded to complaints, questions and concerns expressed by parents, charter school advocacy groups, the general public and other outside entities;

REPORTING

- Administered State **Stanford-9 Tests (SAT-9)** to DC public charter schools in October 1998 and May 1999, and results were sent directly to the charter schools from Harcourt and Brace;

- Received **Interim and Final Performance and Financial Reports** from DC public charter schools delineating expenditures and activities supported by the federal funds, as well as carryover funds; and

- Monitored and provided program/fiscal reviews in order to ensure Federal compliance;

- Submitted Annual Performances Reports to U. S. Department of Education;

- Monitor federal programs and fiscal records – grant funds must be placed in a non-interest bearing account and cannot commingle with appropriated funds

FY 1999 FEDERAL ENTITLEMENTS TO DC PUBLIC CHARTER SCHOOLS

Program	Total Allocation to Charter Schools
Title I*	$1,099,556.00
Title II	50,982.53
Title IV	76,953.91
Title VI	60,226.23
Title VII	7,656.00
Title X** (Allocated)	3,589,060.00
Goals 2000 (Educate America Act)	202,750.00
IDEA, Part B Special Education	93,619.89
Comprehensive School Reform Demonstration Program (Cesar Chavez PCS)	50,000.00
GRAND TOTAL ALLOCATED (FY99)	**$5,230,804.56**
A Cost Extension approval from USDE will permit these funds to be used in FY 2000 for newly approved charters, if not expended by September 30, 1999 **TITLE X CARRYOVER**	700,394.00

* Includes FY 1999 Title I funds and FY 1998 Title I Carryover Funds

** Thirteen (13) DC public charter schools each obligated $10,000 of its Title X budget to participate in the **Special Education Charter School Cooperative** sponsored by the DC Public Charter Resource Center

Mr. ISTOOK. Ms. Cooper.

OPENING REMARKS OF MAUDINE COOPER

Ms. COOPER. Mr. Chairman, Congressman Moran, members of the committee, and also in attendance, our own Delegate Norton. I am delighted to be here to speak on behalf of the Emergency Transitional Education Board of Trustees. I will try to be very brief because I know there are a lot of questions to be asked and answered.

First of all, since our new superintendent has been here, we view our progress as remarkable, not just something to simply say we made improvements, but remarkable improvement. We do have our four core values that I will repeat here. One is the improved academic performance of all students, promotion of educational equality, the institution of sound management practices, the development of a safe, healthy and cost-effective environment for our children.

10-YEAR $1 BILLION FACILITIES MODERNIZATION PROGRAM

All these things have not been done easily over the criticism, and indeed a variety of support mechanisms from across this community. Indeed, the concerns raised here about facilities, it is important to note that in FY 99 we plan to kick off a 10-year, $1 billion modernization program that will bring all schools in the District up to adequate and explicit architectural facilities standards for the 21st century. This plan encompasses an area including modernization, public-private partnerships, and ADA improvements, and will result in expenditure of approximately $100 million per year over the next 10 years.

STARS SUMMER PROGRAM

Our superintendent has already spoken to the academic plan, but let me also say that even in the STARS program, which we are now applauding, our superintendent for—there was so many naysayers we thought it would not get off the ground. When we said 20,000 students, many said you will be lucky to get 5 or 10. When we closed the door at 25,000 or 23,000, they said why are you closing the door, because so many youngsters want to get in? So our position is you're darned if you do and darned if you don't, but we keep plodding along, and hopefully the kind of reforms and management efforts that she has underway will continue.

TRUSTEES ROLE

We are careful as trustees not to micromanage. We understand the difference between policy and operations. However, we remind you that under the Shook v. The CONTROL BOARD Financial Management System decision, we are no longer the final decision makers. We make a decision. It is referred to the Control Board for final ratification, acceptance or rejection.

STATUS OF REFORM AGENDA

In addition, our superintendent has talked about and spoken eloquently to the teacher recruitment and certification issues, but I

must say as we look at other jurisdictions in major urban cities, we are far ahead of many of our sister institutions as they try to get to where we are through their own reform agenda.

The budget process and resources for the academic plan, you will see there as you look through the testimony, but I must say, that again our desire is to support the reform agenda with appropriate resources.

CHARTER SCHOOLS

And now I get to Section 6 of my testimony where we talk about the public charter schools.

As you have already heard, 19 public charter schools presently operate in the District. The fall of '98 witnessed an expansion of charter schools, and prior to this, only two charter schools existed. The current budget is approximately $28.8 million and the proposed FY 2000 budget is approximately the same. However, $30 million of DCPS' funds are earmarked and are to be escrowed in relationship to the enrollment increases in the charter schools. As has been pointed out, they don't really have the history to determine exactly how many students will be in those schools. So we do have to rely on their projections.

The average per-student expenditure for charter schools approximate, and these numbers go up and down depending on what factors you put into those schools and what kind of students they will have. For example, they may have less students who are in need of special education or more. So, again, the costs are around $7,000. This is an unaudited figure and does not include the approximate $400,000 allocated to the Public Charter School Board or the approximate $300,000 allocated to the Board of Education for charter school oversight expenses. Again, we believe that we are giving the accurate, approximate number for operating those schools, and we hope if there is additional information provided by the charters that we will have that so we can look at those numbers again.

Presently, there are 3,632 students enrolled in the 19 charter schools, and again, the numbers vacillate. They go in, they go up and they go down, and while we know that the dollars do follow the students, for those students who may have returned to the public schools, those dollars do not follow them because for the most part they have been spent.

I might add that one of the challenges that we would like for this Committee to look at is the ability or the opportunity for the charter schools to carry over their dollars while the DCPS is not allowed to do that. We must spend by the end of the year. So in the process of looking at this, please look at that challenge as well.

TRUSTEES ATTITUDE TOWARD CHARTER SCHOOLS

Let me just skip to the summation and say for a moment that there is a feeling or an explanation or a perception that somehow the trustees are against charter schools, and I want to address that head on. That is absolutely untrue. As a matter of fact, before taking on this responsibility as a member of the trustees, the Urban League was in the process of looking at the ability to in fact operate a charter school, and we nationwide have approximately 20

charter schools that are operating right now. So the notion is not that there's anything wrong with having good, quality, alternative opportunities for our youngsters, it is that it seems like this may be perhaps the worst time for us to be doing that. Not to stop anything but just to look at that process.

We have a superintendent who is in a reform environment. We have a public school that is coming out of a crisis, and then we still have to deal with these many charter schools that are in this community. We want to do that. We need the support of those alternative schools to give youngsters another opportunity, especially those in special education.

But in the meantime we want to set the record straight, we are not anti-charter. We are not anti-facilities going to charter schools. We hope to be able to make up for any misconceptions and just also say that we have had challenges in that area. The facilities people have come. Many have found this activity to be overwhelming. As you know, we are the largest landholder in the District of Columbia. So it's something that we hope that we've gotten worked out with this new person coming in, and again, when I leave this position, this volunteer position, I will start looking at my own charter school which will be different from the existing school system and in addition to, not to supplement or to undermine.

Thank you.

PREPARED STATEMENT OF MAUDINE COOPER

[The prepared statement of Maudine Cooper follows:]

Emergency Transitional
Education Board of Trustees

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STATEMENT OF MAUDINE R. COOPER
CHAIRPERSON, DISTRICT OF COLUMBIA
EMERGENCY TRANSITIONAL EDUCATION
BOARD OF TRUSTEES

Tuesday, June 22, 1999
3:00 p.m.
Room 2362 Rayburn House Office Building

Before the Sub Committee on Appropriations for the District of Columbia
United States House of Representatives
Congressman Ernest Istook, Chairman

Good morning and thank you for providing me the opportunity of updating the Committee on the significant progress that we have made in the District of Columbia Public Schools since June of 1998.

Over these past 12 months we have witnessed a true renaissance in both spirit and actual reforms in our public school system. The credit goes to the leadership of Mrs. Ackerman, for without her leadership and her courage to make bold changes this renaissance would have been incremental, **rather than remarkable!**

The fundamental task that we as Trustees serve as to the mission of **educational reform** can be grouped into **Four Core Areas**, as defined by the Financial Authority:

1). **Improved Academic Performance for all Students.**
2). **The Promotion of Educational Equity.**
3). **The Institution of Sound Management Practices**
4). **The Development of a Safe, Healthy, and Cost Effective Environment in which Children Learn.**

Our role is that of a policy support group, not one of micromanaging the superintendent or her staff. Our job is to support educational reform through marshalling the resources that we as community members command.

The revelations found in ***"Children in Crisis"*** **serve as the rationale as to why we take our roles seriously. This is why we serve; and, for us to serve as volunteers is an honor.**

If we were to define eras by leadership and courage, then this is the era of Arlene Ackerman. An era characterized by high standards, steady progress, clear goals, honest answers, no surprises; problem solving and a relentless commitment toward educational improvement for the 71,889 students enrolled in our system. We are proud that she will lead the District of Columbia Public Schools into the new Millenium.

I will now highlight some of the more vivid reforms that have been initiated over the past 12 months:

I. THE CAPITAL IMPROVEMENT PLAN

On January 28, 1999, the Superintendent proposed and the Trustees approved a comprehensive Capital Improvement Plan for Fiscal Year 1999. The Goal of this plan is ***"To make our schools engaging, compelling, effective, and efficient environments for learning, teaching, working and community activities."***

This FY 1999 Plan kicks off a ten-year $1 Billion modernization program that will bring all schools in the District up to an adequate and explicit architectural and facility standard for the 21st Century by the year 2009. This Plan encompasses areas such as Modernization; Public/Private Partnerships, and ADA Improvements and will result in an expenditure of approximately $100 million per year over the next 10 years. Inclusive in this plan are bathroom repairs, roofs, boilers, and central cooling and heating systems replacements.

II. THE ACADEMIC PLAN

The Trustees have supported the curricular thrust that Mrs. Ackerman has initiated. **This thrust has resulted in improved SAT 9 test scores for last year, and promises to do the same for this year**, and includes:

- **Ending social promotion**
- **Developing more challenging academic standards**
- **Creating new report cards and new school profiles for every school**
- **Increasing reading and math programs**

- **Initiating a Saturday STARS program coinciding with the results of the SAT 9, assuring that students scoring below basic receive 16 weeks of remedial reading.**

- **Developing a Summer STARS program in which over 22,000 students attended for six weeks. For this summer, 30,000 students are anticipated.**

- **Adopting a new K-12 textbook social studies series, and a 9-12 science series**

- **Developing an innovative Weighted Student Formula that promises a more equitable distribution of educational dollars to the classroom, and more accountability for the use of these dollars toward improving academic achievement.**

III. THE TECHNOLOGY PLAN

We could probably move faster in this area but due to the convoluted procurement process that rests with the City, our hands are tied. Presently, Procurement falls under the City. This means that DCPS is required to rely on City administrators and City procedures to purchase fundamental items for its 71,889 students. This current paradigm poses administrative nightmares and gives rise to finger pointing and blame shifting.

This current system lacks responsiveness. Students are ultimately hurt by a procurement system characterized by indifference and neglect. Given this bureaucratic-convoluted paradigm through which we attempt to purchase instructional materials for children, DCPS is held hostage to the City. Because of this, we cannot timely purchase such basic items as computers and textbooks. And this creates a backlog, and this has to be changed! As with virtually all other school systems, procurement should report to the Superintendent, not to the City! If we have the responsibility, then we need the authority!

During the 1997-98 school year DCPS developed an Educational Technology Plan **entitled, *"Beyond 1997-Children First."*** This plan, approved by the Department of Education, is the backbone of our efforts to improve instructional technology for our students in 5,500 classrooms throughout our District. Since the plan was initially developed, virtually all schools are now connected to the Internet and have E-Mail.

Our technology plans call for more hardware, more software, training, additional staff, and of course, more funds to accomplish all of this. In fact our 2000 Fiscal Year budget request calls for an additional $1 million for Instructional Technology, and an additional $500,000 for MIS.

Lastly, in accordance with the Mayor's proposed FY 2000 Budget, DCPS will work with the Mayor's office to establish a new technology center at a cost of $2.2 million for FY 2000 and approximately $25 million over the next 5 years.

IV. TEACHER RECRUITMENT AND CERTIFICATION

Presently, all teachers employed by DCPS hold certification. Last year we enforced our rule requiring that all teachers be fully certified within three years after their initial employment. According to our Teacher Licensing and Certification department, there are approximately 890 teachers on one-year licenses. This represents approximately 17% of the 5,197 teachers employed by DCPS. This is not unusual given the national teacher shortage in critical teaching areas. We fully expect that the majority of these teachers will obtain full certification by the end of this school year.

In terms of teacher recruitment, the Human Resource department has an excellent plan that includes out of state recruitment and local recruitment fares. Given teacher attrition, retirements, and certification issues, we project somewhere over 400 teaching vacancies. This is a flexible number and might well drop accordingly. Additionally, DCPS is exploring full reciprocity for out of state teacher candidates. This will expand our current candidate pool of approximately 800 teachers.

V. THE BUDGET: RESOURSES FOR THE ACADEMIC PLAN.

In accordance with our emphasis of placing "Children First," we will end this fiscal year in a positive fiscal status. Our budget was balanced after closing a deficit in excess of $62 million dollars for FY 1999. To continue and build upon the many educational reforms our Superintendent, with the Support of the Trustees has requesting an **operating budget for FY 2000 of $627.5 million, and a proposed Capital Budget of $73 million. However, it appears that our request may fall short of its mark in terms of the Mayor's proposed budget.**

Nearly $41 million in additional resources are being requested to fund the newly developed "**Weighted Student Formula.**" This WSF, as it is called is a new method of allocating funds to schools based on student needs. Our additional funding request is in concert with the per pupil formula developed by the City Council. Again this amount may or may not be forthcoming.

On top of this, the DCPS budget request also calls for $4.5 million additional dollars to address the needs of ***"Targeted Assisted Schools," and an additional $500,000 for" school performance awards,"*** intended to reward achievement. Again, this is contingent upon the Mayor's budget.

A major drawback to our current budgeting process is that it does not allow us to maintain a reserve for contingencies. Nor does this process allow DCPS to carry a reserve into the ensuing school year.

VI. D.C. PUBLIC CHARTER SCHOOLS

19 Public Charter Schools presently operate in the District of Columbia. The fall of 1998 witnessed an expansion of Charter Schools. Prior to this, only 2 Charter Schools were operative. The current Budget is approximately $28.8 million. The proposed FY 2000 Budget is approximately the same. However, $30 million of DCPS funds are earmarked and are to be escrowed in relation to enrollment increases in the Charter Schools. From our perspective, this is not a sound budgetary practice.

The average per pupil expenditure for Charter Schools approximates **$7,000**. This is an un-audited actual and does not include the approximate $400,000 allocated to the Public Charter School Board, or the approximate $300,000 allocated to the Board of Education for Charter School oversight expenses. In comparison, an un-audited actual amount per DCPS student **would also approximate $7,000 (locally appropriated). Again, this is all subject to year-end closing.**

9 Charter Schools currently lease property from DCPS. The leases are in accordance with the Charter School Preference Policy. It is projected that up to 5 additional Charter Schools will lease DCPS facilities for next year, **bringing the total number of Charter School leases to 14.**

Presently, there are 3,632 students enrolled in the 19 Charter Schools, and the growth rate may approximate **1,450 students over this number.**

7 new Charter Schools have been provisionally approved for next year. The **projected enrollment for these new schools approximates 1,800 students**. If we combine current enrollment, growth enrollment, and enrollment from new Charter Schools **we can anticipate Charter School enrollment to approximate 6,882 students for next year.**

Summer school enrollment for charter schools is projected at 1,351 students. 13 of the 19 charter schools will hold a summer school.

Because facility and space utilization is important to Charter Schools, the Trustees developed a Charter School preference policy, which allows Charter Schools to purchase or lease excess property at a discounted rate. Next year's budget for charter schools includes a proposed $1,082 per student facilities allocation.

As a State Education Agency we also work with Charter Schools in the areas of Special Education, Categorical Programs, Technology grants, Teacher Certification, and Federal compliance areas to name a few.

Summation

On behalf of the Trustees, I want to thank you for giving us the opportunity to provide you with this update. As an appointed Board of Trustees, we support the educational reforms that Mrs. Ackerman has initiated these past 12 months, for without her leadership, and intelligent approach to the issues, educational reform for the District of Columbia would be illusory, rather than concrete.

Through the efforts of Mrs. Ackerman and the Emergency Board of Trustees, we have been able to develop an important Alliance of educational support for the aforementioned reforms. This Alliance was formed in consultation with The Federal City Council, The Greater Washington Board of Trade, and The D.C. Chamber of Commerce.

Their collaborative support is intended to further the efforts of educational reform in the areas of School to Careers, Literacy, Technology, and the Arts.

Thank you Congressman Istook and members of the Committee.

Mr. ISTOOK. Thank you very much, Ms. Cooper. If you would pass the microphone to Ms. Newman. Thank you.

OPENING REMARKS OF CONSTANCE NEWMAN

Ms. NEWMAN. Mr. Chairman and Mr. Moran and Congresswoman Norton, the charter school movement has really gotten off to an effective and exciting start with the growth of the number of schools and students in those schools, and I think this is good from everyone's point of view because I guess I view it all as one system, and it's all one system where there should be synergy between the charter schools and the reforms in the regular school system. There ought to be learning that goes back and forth, and I believe that is the original intent of the charter school movement, and I hope to see in the months and years to come that this becomes a part of the philosophy of everyone who's involved with the charter schools.

FUNDS SHOULD FOLLOW STUDENTS

Yes, the dollar should follow the students, and as a result of our believing that, there will be a student count at the beginning of the school year, and the money that is reserved, set aside, the 5 percent, will move depending upon where the students are, and that's as it should be.

It is safe to say that the District's charter school development has weathered some problems. We can't pretend that there haven't been problems. Some of them have been the obvious. When you're starting something up new, you are going to have some difficulty in planning. It is difficult to know how many students you are going to have in a school that is brand new, and it's difficult for a school system to plan not knowing exactly what the changes are going to be and the number of professors, the number of students in the school system.

FACILITIES FOR CHARTER SCHOOLS—MOST TROUBLESOME

But I do believe that the most troublesome of the problems, and I think where the most difficult relationships have come about, is over the procuring of the adequate facilities, and that has already been addressed, and I will have to say that we are not proud of the process. There's no way to pretend that we have been proud of the process. I think that all of us who are involved in it are getting on top of it. We have the Staubach firm in now, looking at each property and giving us an assessment of where that property is in the process, what decisions have to be made about it.

LACK OF AGREEMENT IN PROPERTY DISPOSITION

But there's a larger issue that I probably ought to share with you, and that is, a city with its leadership that has not quite yet determined how it wants to address the disposition of the properties. And this is what I mean. At the outset, under the leadership of the Congress and our own leadership, we said you must get top dollar for each of these properties and that is the final call that you should make. Once that was the call and once that was the pressure on the staff, very little consideration was made, frankly, of the

community. There were a few hearings, but I frankly don't think those went to the heart of what the community wanted and needed in their community.

And so there is a view now that it is extremely important to go back to the drawing board and ask the tough questions of the community and of the elected officials, how do you want to address the needs of the community, and how do you expect and want these properties to respond to those needs. Does it make more sense to hold these properties in the portfolio of the school system and to lease them out? Does it make more sense to use the school properties as hubs for both the regular system and the charters? Does it make more sense to sell and bring the dollars in in order to use it to repair the additional properties in the school system?

My point is this: There has not been the kind of management of the system that everybody had wanted. I think with the new director and with Staubach that is coming about, but at the same time, there is a need for a review of the policy and for this community to decide exactly how does it want to treat these properties in their community. It's obvious that no one wants boarded-up schools or wasted square footage, but what is the best usage. And I would commit to you that through the summer and fall, there will be serious discussions of this.

CONTROL BOARD TO COME BACK TO THE COMMITTEE

In the meantime, we were looking at what was in the pipeline and where we had obligations and attempting to address those on a fairness basis. We will be prepared to come back to you with what we believe is sensible direction in this regard, but I guess I just will end by saying that the charter school movement is good for the school system and for the community in Washington, and I think that as time goes on everybody will understand that it benefits the school system in that it allows models for reform in the regular system.

PREPARED STATEMENT OF CONSTANCE NEWMAN

[The prepared statement of Constance Newman follows:]

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY



Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives

Alice M. Rivlin
Chairman

Constance Newman
Vice Chairman

Robert Watkins
Authority Member

Eugene Kinlow
Authority Member

Darius Mans
Authority Member

June 22, 1999
For Release Upon Delivery

Good afternoon Mr. Chairman and Members of the Committee:

My name is Constance Newman and I am the Vice Chair of the D.C. Financial Responsibility and Management Assistance Authority (Authority), and the Board Member with lead responsibility for public education issues. It is a pleasure to be here today to discuss the development and future of charter schools in the District of Columbia.

As you know, charter schools are educational programs that exist as alternatives to traditional public education. Charter school legislation grew out of concerns that public schools were failing to adequately educate children, and that little choice was afforded to parents seeking a quality education for their children. More than one-half of the states currently have charter schools within their boundaries, with more than 800 schools in operation. Research to date from such groups as the U.S. Charter Schools organization indicates that definitive conclusions about effective education in an alternative environment are yet to be drawn. Since most charter schools have been in operation just a few years, baseline data makes it difficult to assess performance or to make substantive comparisons. Hopefully, we will all be in a position to make meaningful conclusions about the charter schools experience in the near future.

Washington's Charter School Program

The Congress in 1996 followed the lead of educational reform in the states and passed charter school legislation for the District. Similar legislation was also passed by the Council of the District of the Columbia. Unlike most states, the District has two chartering institutions, the D.C. Board of Education and the D.C. Public Charter School Board. The law allows that upwards of 20 charter schools may be established each year. Those seeking charters can apply to either board.

The charter school movement has gotten off to an effective start in the District. For calendar year 1997-1998, the first year of the new legislation, two schools with 166 students were in operation. We were very pleased that, most recently, in the 1998-1999 calendar year, 19 charter schools operated with 3,662 students.

The budget for the charter schools has also grown considerably in the three years since the law was enacted. For fiscal year 1998, a $1.23 million line item was designated in the budget for charter schools. For fiscal year 1999, the charter school budget was 12.2 million. In fiscal year 2000, the District has proposed $28.9 million for the charter schools. It is relevant for me to note here that the amount for charter schools in FY 2000 could increase substantially, depending upon the number of students who register for the schools in that year. As you know, the dollars should follow the students. Therefore, there will be a student count in the charter schools soon after the beginning of the school year and based on that count there will be an adjustment of the funding level for the charter schools.

There is no question, Mr. Chairman, that, on a per capita basis, this rapid growth in charter schools places the District's efforts in the vanguard of the initial phase of alternative program development. I am not aware of another school system with the District's characteristics that has experienced such rapid and sustainable growth in charter schools. Likewise, this dynamic expansion in schools, students and funds confirms that the D.C. Public Schools' leadership is committed to the constructive development of alternative academic models such as the charter schools.

Charter Schools Issues

I think we are all aware that, despite the early progress made in creating a durable charter schools program, there are still a number of obstacles that confront the development and success of these alternative models. I would note that some problems, which are typically evident in the start up of any complex public policy, have been experienced by school systems throughout the country. Groups like the U.S. Charter Schools organization indicate that nearly all charter schools face a central core of obstacles involving their development. These include resource limitations, especially a lack of start up funds reflected in poor planning and preparation; opposition from status quo forces to their creation; and regulatory barriers that hinder the schools' development. I think it is safe to say that the District's charter schools development has weathered these particular problems relatively well in light of the growth of the number of charter schools in a shorter period of time than has been the case in the rest of the country.

Still, the Authority is not satisfied that the District has done all that it can to ensure the effective development of charter schools and full implementation of the charter school law. For instance, a problem of adequate and timely funding has hampered charter schools in the District – as it has elsewhere in the country. It has been difficult for the nascent charter schools to accurately predict the number of students who will attend their facilities, in turn making it hard for public officials to correctly allocate sufficient operating funds. As was indicated at the outset, to solve this problem, the District in the proposed fiscal year 2000 budget has decided to hold back until the second fiscal quarter 5 percent of all schools funds. This will assist officials in allocating funds appropriately to all schools once official student counts are completed in the fall. The Authority and the Public Schools are committed to an adequate and equitable funding of all charter schools. To do otherwise, to ignore the plight of charter schools funding, is to ignore the plight of the students themselves, a course of action unconscionable to anyone who cares about students' education. We believe that this approach to funding in the budget will solve the charter schools' fiscal problems, and we will work closely with the charter schools to ensure that their needs are met.

Mr. Chairman, we are also aware the many charter schools face an issue of procuring adequate facilities. In order to help new schools quickly create viable institutions, the charter school law stipulates that charter schools be provided the opportunity to lease or buy at discounted cost the excess facilities of the public school system. I think it is fair to say that this process is still evolving, and that we have not made all the progress here that we would like.

In 1996, the Authority determined that there were inadequacies in the manner in which the Public Schools managed its core operations. In the area of property management, the schools had no effective management facilities plan that permitted them to determine the vacant, excess or underutilized schools. Today, this plan exists and helps guide the schools' leadership in making property management decisions, but for much of the period in which charter schools sought access to public schools property it was not always evident which facilities could be made available. Moreover, there has been substantial turnover in the Real Estate Office and for the past seven months, that office has had no director. Thus, some of the concerns of charter schools regarding lease agreements and renewals – and a sense of overall uncertainty – have been well-founded.

There are larger considerations with regard to the disposition of the school properties that I would like to share with you. In November 1996, the Emergency Transitional Education Board of Trustees and the new superintendent faced a complex set of obligations regarding the public school facilities. They were called on to: 1) consolidate an overbuilt system whose student population had shrunk; 2) generate millions from the sale of excess buildings in order to rehabilitate those remaining in the active inventory; 3) assist in the growth of the charter schools and their need for property. Then the emphasis in the sale of property, frankly, was to receive for the school system top dollar. Congress made it clear in the FY 1997 amendments to the Appropriations Act that the excess properties should be disposed of in order to generate "millions of dollars in potential revenue that could be used for the repair and renovation of existing public schools."

Many of the elected and appointed leaders of the District of Columbia now believe that there should be a review of the policies guiding the disposition of the public school properties. Questions should be asked about the criteria to be used by the school system in permanently disposing of the properties. What weight should be given to community uses? How is the community to be involved in that and other decisions? How should a lease or sale decision be made where the demographic studies indicate potential increase in the school-age population within the next 10 years? What policies would further the charter school movement and its purpose to improve public education for all children? Should there be an increase in the sharing of facilities? Should the "hub" concept be expanded? Would it be better for the charter schools to be physically apart from the systems' schools?

The questions above and many others will be the subject of policy review over the summer and fall. In the meantime, the Authority, working with the District of Columbia Public Schools, is attempting to address the immediate needs of the charter schools that have viable organizations and immediate needs to begin school this next September. We also believe it necessary that there follow the policy review a clear statement of both the policy and procedures. The latter have not been clear to the public, nor do they appear to have been implemented in a consistent manner.

Mr. Chairman, I believe we are turning the corner on this problem. In recent months the public schools have made some progress in this area. A new, experienced Director of

Real Estate was hired in April 1999 and a contractor, Staubach Education & Municipal Services, was hired to help support this important office. While it is clear that some schools transactions were delayed, and some may not have occurred at all, this period certainly seems to be over. With the help of Staubach, the property office has generated and updated a complete inventory of the status of all pending transactions; made recommendations on delayed transactions; organized excess schools and lease agreement files; and generally helped to restore order and direction to this critical function.

Real Estate office priorities now include completing lease agreements with public charter schools opening in schools facilities for the fall of 1999; finalizing the Oyster School public/private partnerships and expeditng other public/private partnerships; and further strengthening the schools disposition process. There remains a considerable amount of transaction business associated with excess properties still to be implemented, and I am confident that a revitalized real estate office can accomplish these tasks.

In summary, Mr. Chairman, the Authority believes that much progress has been made in creating a strong charter schools environment in the District in the three years since the law was created. Yes, there are challenges that the schools still face in making sure that effective charter schools have an equitable opportunity to grow and succeed. There is considerable appreciation for what those problems are and real solutions now being implemented to eliminate obstacles. I know that all stakeholders in the charter schools development process have the same goal – to ensure the best possible education and opportunity for the District's children. If we focus on this goal, I know we will succeed.

This concludes my testimony. I would be pleased to respond to any questions that the Committee wishes to ask.

SCHOOL SYSTEM NOT CREATED TO MANAGE REAL ESTATE

Mr. ISTOOK. Thank you very much, Ms. Newman. I think you did a good job, and it was good to have you closing on the panel, to emphasize those very issues, the conflict between what's your real goal with the property; is it to make it available to the charter schools, or is it to achieve top dollar? And I realize that problem is compounded by the fact that the public school system was not created to hold and manage real estate. That's not the purpose. The real estate that's necessary for your needs, of course you have, you want to manage it, you want to take care of it, you want to improve it and keep it in proper condition for the students, but you were never established to be a real estate holding company, and now you're somewhat in that position. What do you do with that? And I think sometimes a lot of timidity and overcaution creep in when people are asked to do something that's outside of their area of expertise. I don't think you were hired because you had an expertise in managing vacant real estate. If so, they hired the wrong person, and I know they didn't hire the wrong person.

FLOW CHART OF DECISON MAKING PROCESS

So, with that in mind, I very much appreciate the frustrations expressed by persons involved in charter schools and the uncertainty that the schools feel on how do we make these decisions. I would appreciate receiving, if someone's drafted one, kind of a flow chart of the decision making process through which you must go, you know, all of the people that have input and who either are required to give approval or must be consulted or can otherwise generate some form of delay in the process. I have the feeling it would be a pretty sad mess to look at from the perspective of somebody that's trying to get a decision made, and the challenge is to help streamline that.

TODAY'S PROBLEM SHOULD BE RESOLVED BY NEXT YEAR

You know, we have the problem today. I want to make sure we don't have it a year from now. What you may see as some difficulties in knowing what priorities are, I hope you can see that from the perspective of someone involved in a charter school. From the charter school's prespective you can easily see how it can appear to be a deliberate obstruction of what they are trying to do because the competition for students, the money follows the students, you've had declining enrollment for so many years, you're making heroic efforts to fix things in the public schools, and it's kind of an inherent conflict, but that's the nature of competition.

INCENTIVES LACKING FOR ASSISTING CHARTER SCHOOLS

I would like your feedback on what we need to do to create incentives for the school system to assist the charter schools to have the property that they desire and need and also incentives for the schools to get out from under the administrative load and the other burdens of dealing with your vacant real estate. I think a program that doesn't have incentives is not well designed, and it doesn't appear to me like it has the current incentives.

So I would appreciate from everyone here suggestions on what we can do to streamline that process and make sure that something happens in this appropriations bill to assist it. You don't need those headaches that you are experiencing on the public school side, and they don't need the headaches that they are experiencing on the charter school side, and I am—if you have some comments on that now, fine, but otherwise, you may want to submit those for the record.

Let me ask first if there are some particular incentives that any of you see would be helpful for the public schools to assist in the way I have described.

FLOW CHARTS OF FACILITIES PROCESS

Ms. NEWMAN. May I just say something about the flow chart? We really ought to give you two flow charts, and the one is the way it has gone in the past and I think it would not be a pretty picture, but I think the superintendent and others have brought in the Staubach firm and a new director and there are new procedures now, and they need to be transparent.

One of the problems in the past was that everyone didn't understand what the process was, and in fact, from time to time, it did change, and so what I would like to give you are two flow charts. I do believe that what the school has to do is to have a conversation with the public, and I am not talking about a long drawn-out conversation, but some of what has happened was a change in how the communities viewed the use of the community property.

And I do think, through the hearings and the Council through the summer, that there will be more of a consensus about how to handle these properties.

And this doesn't answer your question about incentives, but I think it would go a long way toward making it easier for the school system because they will be operating based on what it is the public wants and expects of them.

SCHOOLS SHOULD EDUCATE STUDENTS, NOT MANAGE REAL ESTATE

Mr. ISTOOK. Certainly. We expect you to be in the business of educating children, not in real estate management. Certainly.

Mr. McCarthy?

60 EMPTY SCHOOL BUILDINGS

Mr. MCCARTHY. Mr. Chairman, I think everything Ms. Newman says makes sense, except there is just one part of it that I think you're sensitive to and we really need to focus on.

The D.C. School Reform Act passed in 1996. There are 19 schools that have been in operation, and 10 more have been chartered. Now, these kids who are going to charter schools are going to schools which are not—facilitieswise are not as good as they could be. And we have 60 empty buildings.

This one building that we competed for has been empty for 18 years, Mr. Chairman; and in researching this building we came upon one quote from the dedication of it in 1868 which I think applies here, and I would like to read it. It was by District of Columbia Alderman W. H. Chase at the time of the dedication of the

Franklin School; and he said, "I hope the time may never come when we would make less beautiful and attractive the places where our children are to receive an education, where lasting impressions are to be made on the young mind, than we would the offices of state. It has been well said by an eminent thinker, show me the churches and schools of a Nation and I will tell you what is its civilization and enlightenment.".

And there is a temptation to go and want to do studies and go ahead and think about this. But we have a school that has been open for a year. The facility that we are in is only available to us for 2½ years, and it takes a lot of time to plan the renovation and capital formation and take one of these buildings and make it into a functional school facility.

And we are shortchanging the kids who are going to these charter schools because they are not going to schools—by and large, going to school in buildings that are symbols of our enlightenment right now. And there is a sense of urgency that requires us to move forward quickly.

Mr. ISTOOK. I think the purpose of the schools is to help young people to have minds full of knowledge, not vacant buildings. And I want the appropriations to go to fill kids's heads with good knowledge and values, not to manage vacant property, especially when it has been vacant for 5, 10, 15, 20 years.

Mrs. Cooper, you wanted to say something?

Ms. COOPER. I think Ms. Newman is on the right track with this.

PUBLIC SCHOOLS—OWNING PROPERTY IS A DISINCENTIVE

When we first started looking at our properties was in a different environment. General Becton was there. All of us were there, well intended and did not know anything about real estate; and we relied, sometimes to our detriment, on those who purported to be experts.

But now it is time to step back and look at this. We can look at incentives, but owning property for us is a disincentive. We worry about them. People are breaking into them. We board them up. They take the boards off——

Mr. ISTOOK. You are carrying a burden you shouldn't have to carry.

VACANT SCHOOL PROPERTIES—EYESORES AND DISREPAIR

Ms. COOPER. I totally agree. And so in that light there is already an incentive to get rid of these properties. They are being broken into. They are eyesores. And we do get the community ire when we have these buildings standing there. And despite the fact that we may have made some mistakes, we do know that, prior to our coming on board and the control board's role, nothing was being sold. So while we can take some credit, we can also share in the blame for not moving them quickly.

Mr. ISTOOK. We want to help find ways to streamline that.

CONTROL BOARD INTEREST IN ASSISTING CHARTER SCHOOLS

Ms. NEWMAN. I just want to say, in response to Mr. McCarthy, we do feel an obligation to assist and work with the charter schools

during this period. And I don't mean to imply that we are going to have a hiatus and study and let them wander around for the next school year. In fact, he knows or many of the people in the system know, that the Staubach firm has helped to identify facilities for them this school year. And we will feel that obligation. It is part of what is necessary to make the charter school movement work.

Mr. ISTOOK. Thank you, Mrs. Newman.

Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

Do you know I used to work with Mrs. Newman in the Nixon administration?

Ms. NEWMAN. What administration was that?

Mr. MORAN. You didn't want—do you want me to repeat it? She was one of the real whiz kids, and she had worked for Mayor Lindsey in New York City and probably managed property. I know—in New York City.

But, anyway, it is great to have her as the vice chair of the school board. You obviously didn't know that. I wouldn't have mentioned it, but I thought you would be interested to know she has a great background, not to mention running the Smithsonian Institution.

REVOKING CHARTERS—MARCUS GARVEY SCHOOL

What I want to ask about is revoking charters when charter schools don't work out. Marcus Garvey is a problem. Now, the elected Board of Education in its chartering role revoked Marcus Garvey's charter, and I understand they're working on revoking a second. But the Public Charter School Board has not revoked any, and I am concerned about the oversight mechanism we have. Because although we hear a lot of good words, basically it really is requiring compliance with a memorandum of understanding.

OVERSIGHT PROCESS FOR CHARTER SCHOOLS

What if people don't comply with the memorandum of understanding? What kind of real oversight and accountability can you exercise?

Ms. BAKER. I would like to speak to that.

Mr. MORAN. I think you would want to.

Ms. BAKER. Of course, we came on board after Marcus Garvey, so it was somewhat a lesson to be learned. We have a motto that says: We charter success. And I think part of it was we said we never wanted to see ourselves in that position so we decided to move slowly and carefully. In the process, we start at the beginning of our application process really looking at accountability.

It was interesting. There was an awards ceremony, a joint one with charter schools, about a week and a half ago, and they had to pull questions out of the basket, and one person pulled out the question: What is the first word that comes to your mind when you think about your process this year? And he said the one word is accountability.

We have an accountability process that runs side by side with the charter. When they get the charter, we work diligently to devise an accountability plan that they have input into. It isn't a top-

down situation. That accountability plan was sought after at the National Conference on Charter Schools by jurisdictions around the country because they see it as a model.

We continue to work on it. We continue to work to improve it. We had a pre-opening audit for our schools before they opened their doors. We needed to see that certain things were in place which meant that they were ready to open their doors, not just that they had received the necessary fire code clearance and all of that, but a number of other things.

And so we start there. We started even before that. We have recently had an "Implementation Review". It looks at what it is they said they expected to be able to do to see if those things are beginning, and where they are not where we think they ought to be.

There is indeed that memorandum of understanding to say, here is where you ought to be. Here is what we will look for. You need to tell us right now what it is that you will do to move in that direction.

Mr. MORAN. Can you stop the funding if you have to, if they don't comply?

Ms. BAKER. Yes, eventually you could. But we feel that what you do is you have in place the kinds of steps that say here is what we are concerned about. Tell us how you are going to fix it.

Mr. MORAN. Well, in fairness, most charter schools have not been around that long. As they are trying they ought to have some honeymoon period.

Ms. BAKER. We have to see indicators that they are moving in the right direction.

CHARTERING AUTHORITY EXPIRES IN 2001

Mr. MORAN. But the D.C.'s Board of Education chartering authority sunsets in 2002; right?

Ms. BAKER. No, you mean——

Mr. MORAN. Yours does.

Ms. BAKER. Yes, it's 2001.

Mr. MORAN. It's 2001? Do you continue to maintain authority after the chartering authority sunsets?

Ms. BAKER. It would appear to us that that is something that we're asking you to take a hard look at, because we say that we have set up guidelines for our charter schools that are very clear. It would be unfair to the schools that we charter to not have the body that chartered them move forward with them.

Mr. MORAN. So you think you should continue to exercise the oversight mechanism?

Ms. BAKER. We have a strong oversight mechanism——

Mr. MORAN. And you would anticipate it being sustained after the sunset?

Ms. BAKER. We would certainly anticipate that it should be sustained, and we would feel that this board would be the board that would be able to do that.

Mr. MORAN. And it would be up to the Congress to do that?

Ms. BAKER. We operate under the law that came from the Congress, yes.

Mr. MORAN. All right. Thank you.

Mr. ISTOOK. Thank you, Mr. Moran.

Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

SUCCESS OF CHARTER SCHOOLS

Perhaps, Ms. Baker, in your view could you tell us about the success of charter schools?

Ms. BAKER. Generally or those which we have chartered?

Mr. MOLLOHAN. The ones you chartered.

And also I'm aware that enrollment has been pretty successful. What about the academic achievement? Has that been successful and have studies been done? Can you speak to that?

Ms. BAKER. We're talking about one academic year coming to a close. This is the year in which you get your benchmark. Some of the schools have materials from their students that are enabling them to see where they are. But this is the year they say here is where we are. This is where we started.

Mr. MOLLOHAN. Do you plan to benchmark this year?

Ms. BAKER. Oh, yes.

Mr. MOLLOHAN. And how do you do that?

Ms. BAKER. The SAT-9 is the benchmark as well as the academic plan that each of their charters has clearly described. And what we look at is where they are in that, and we expect each year to see fuller implementation of that charter which would also impact on the progress the students make academically.

Mr. MOLLOHAN. Is there going to be an evaluation process on this first year?

Ms. BAKER. Yes, the Implementation Review is a part of that evaluation process; and we have reviewers that went to every school. They are in the process now of giving us those reports, and those reports will then trigger a memorandum of understanding as to where they are and what our expectations are for the coming year.

Mr. MOLLOHAN. Do you have any preliminary indication of how successful academically——

Ms. BAKER. Academically, no. For instance, we're getting our SAT-9 scores later than the school system. We thought we got them at the same time. So we don't even have those scores at this time. So here, again, there is an issue that a number of our schools, for instance, never really got complete cumulative records for the students that are in charter schools, so we don't necessarily have where those kids were this time last year because they never completely got all of those records. So we can certainly deal with what we know starting here from the SAT-9 this year.

Mr. MOLLOHAN. Right. But just so I understand, between now and the beginning of this year you are going to sort through those issues so that you are——

Ms. BAKER. They will certainly look at where they are, and then they will devise a plan for implementation that will support the needs of the students based on the test scores that they have.

Mr. MOLLOHAN. And who is "they" again?

Ms. BAKER. Each school. Each school will get a report. They will——

Mr. MOLLOHAN. They will get a report or prepare a report?

Ms. BAKER. They will get a report on the SAT–9, and they will then prepare what they will do in order to implement the academic program to ensure progress.

IMPACT OF CHARTER SCHOOLS ON POPULATION OF TRADITIONAL PUBLIC SCHOOLS

Mr. MOLLOHAN. Okay. How have charter schools impacted the population of the D.C. public school system?

Ms. BAKER. We have 3,662 students which would mean that there are that many fewer. The majority of them did indeed come from DCPS. A few may have come from private schools back into the public system. So the impact there is that count that we know. They would have to speak to any other impacts that they feel exist.

Ms. Newman.

Ms. NEWMAN. Well, oh, the public school count—I was hoping you were going to take this. The public school count is 76,000. So of that it is the 3,600 who are in the charter schools this year.

Mr. MOLLOHAN. That is about 5 percent in the first year?

Ms. NEWMAN. But there is—if you look at the number of schools that have been approved in this next year, there will be a growth probably—some are saying 5,000, some others are saying 7,000. But you're still looking at a fairly rapid rate of growth of the charter school students. And, as a matter of fact, the growth in the number of schools in the 3-year period and the students in the 3-year period of time here is much faster than in most jurisdictions around the country.

Ms. BAKER. Right. But we also need to emphasize that a lot of that growth is growth already planned for next year. Because many of the schools started small with one grade. They are adding a grade each year. So that is part of the increase that we are talking about.

Mr. MOLLOHAN. It is built-in growth.

Ms. BAKER. Yes.

FACILITIES ARE MAJOR IMPEDIMENT TO GROWTH OF CHARTER SCHOOLS

Mr. MCCARTHY. I was going to say, Mr. Mollohan, growth was about 5 percent the first year. It easily could be 10 percent the second year, but the major impediment facing the schools expanding really is facilities. In the two schools that we are involved with, we have about 35,000 square feet in what is called an incubator, where two schools started and we have some space that the schools can stay in for up to 3½ years. But there are limitations to how large those schools can grow in that space.

If some of these facilities were available, it would more naturally facilitate the growth of these schools.

Mr. MOLLOHAN. What facilities are available?

Mr. MCCARTHY. Some of the 60 empty school buildings that are in Washington today.

PER PUPIL FACILITY ALLOWANCE

Mr. PEABODY. I might add that the facility allowance is also an important factor. The schools get a facility allowance which is ac-

cording to a formula. Last year the formula was cut to $617, where the formula called for about $1,100. This year, the formula again calls for $1,100, but we don't know how much is in there. That facilities' budget is extremely important in whether or not they will be able to get good facilities, either commercial or renovate existing DCPS facilities.

CHARTER SCHOOLS IMPROVE PUBLIC SCHOOL REAL ESTATE

Ms. BAKER. The thing that is important about renovation is that what you do is you get improved real estate within the city. And the schools are putting a tremendous amount into—and at Edison Friendship, where you have an outside organization that is able to get the kind of loans that enable renovation, it means that buildings are truly being saved in the sense that they enhance the neighborhood as opposed to detracting from the neighborhood.

Mr. MOLLOHAN. I know the Chairman spoke to property issues. I don't know whether he got into those areas, but three people have spoken to the problems. I would be interested in the next round in hearing what suggestions you have for solutions in this area.

I know I am on the red light. Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Mollohan.

100 PERCENT INCREASE IN CHARTER ENROLLMENT

Let me ask because when it comes to charter school provisions there are concerns with the facilities' allowance. There is concern with the facilities' availability. You provided me with a checklist of different things that the charter schools are seeking on it.

Mr. McCarthy, I think you said something about the growth rate going from 5 percent to 10 percent, but are you talking about 5 percent growth or are you talking about going from 5 percent of the public school population to 10 percent? What are the projected numbers again for this fall compared to this year's numbers?

Mr. MCCARTHY. Well, actually, Mike, I think, might be able to answer that better.

Mr. PEABODY. It's about a doubling, going from 3,600 to——

Mr. ISTOOK. Five percent of the student population to 10 percent of the student population. Which is a 100 percent growth rate within the year on that.

Mr. PEABODY. Yes.

Mr. ISTOOK. And I don't know if anyone is doing trend line projections. I don't know, frankly, if anyone can. But that's why we focus on making sure that the dollars follow the child wherever they may be.

SIBLING PREFERENCE

But, realizing this, I wanted to ask Ms. Ackerman, for example, let's take the sibling presence. That is one factor that I know the charter schools have asked about. Do the District schools have a position on that?

Ms. ACKERMAN. No, we have open choice, so families—usually when a family gets into one school, the siblings go to that school, also.

IMPACT OF CHARTER SCHOOL GROWTH ON TRADITIONAL PUBLIC SCHOOLS

Mr. ISTOOK. Sure. I can only imagine some of the thoughts that might go through your mind. You are talking about bringing back a public school system that has already halfed its student population over recent years. Now you have the charter schools with about 5 percent. They are saying next year they will be 10 percent. What impact is that having upon the D.C. public schools? And I'm talking about in terms of whether it complicates different things for you on your planning or anything else.

Also how it's doing as far as incentivizing teachers or administrators or students. What impact is it having upon the D.C. Schools, from your perspective?

Ms. ACKERMAN. Well, I would like to start by saying that I think choice is certainly something that should be every parent's option. As a parent myself, I certainly wanted that available to me.

And I think competition is healthy. I think it is healthy within the District. Having an open choice for parents means that parents across the District get to choose where their children go, and they don't have to go necessarily to their neighborhood schools.

But again, having been a former parent, I would like to choose close to home. That would most likely be my choice.

There have been some issues and there are still issues that we have to address related to charter schools when I hear the 3,600 number. I also know that for the public schools that at the semester we got a number of students back. I'll get the number of students that did come back to the public schools. And so that number does—we get most of our——

Mr. ISTOOK. There is a two-way flow.

Ms. ACKERMAN. That is right. There is a two-way flow. They do come back.

And indeed it is not until January that our numbers reach a peak because we have students that are mobile in and out of the District. Some of those students did come back. So I don't want us to—it may be misleading to only look at that number. We may want to look at how many students ended up at the end of the year in charter schools.

But there are issues that we have found that have been sort of troublesome for us. Trying to put in place some kind of process so that we can anticipate, for instance, how many teachers and administrators we are going to lose. They can let us know up until the last minute, and last year we had up to 100 teachers leaving at the very last minute. For any school system that would be disruptive. What we tried to do was put in place some kind of time line so that we can then anticipate and then recruit the staff that we need.

To tell you the truth, in terms of administration—administrators, we have had a hard time in some ways keeping our administrators because the pay is better in charter schools. There are bonuses that are given to some of our most seasoned administrators; and we can't match, you know, $10,000 and $20,000 pay raises, although we are improving.

So those kinds of issues have been troublesome, and it would be helpful if we could put in place some kind of strategies, procedures that would help us anticipate what some of the issues would be. And then we can plan for them.

REDUCING ADMINISTRATIVE COSTS

Mr. ISTOOK. Does that help you, by the way, having incentives to try to find where do we streamline our own administration so maybe in order to pay some people the bonuses or pay them more you streamline and don't have as many other people? I suppose that is one way.

Ms. ACKERMAN. We have streamlined. We have gone from 15 percent of our budget, total budget, for administrative costs down to 5.3 percent. So we are probably as small as we are going to be able to get and smaller than I would say the majority of school districts now. So it is a matter of trying to find incentives to get the best quality of staff, including principals.

Now, that is what we are trying to do. We are trying to recruit the best teachers, as well as the best principals——

That is where we are. Those are just some of the issues. What happens when students come back?

There are some things we need to work out with special education students, the services. What happens when students are expelled from a charter school? Often they come back to us.

Mr. ISTOOK. Sure. That is something I would appreciate your expanding for the record.

Mr. Mollohan. I didn't want to leave you out here.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

EFFORTS TO ADDRESS FACILITIES PROBLEMS

Well, let me ask a follow-up: What recommendations would you make to address the facilities' issues and problems that you all were alluding to in answer to my previous line of questioning? Anybody?

Mr. PEABODY. Well, first of all, we would love to be at the table with Mrs. Newman when she develops this policy. That would be very important to us. I'm sure that in working with her we can work out a better policy.

In my testimony, I also indicated that I think charter schools should get first preference on these extra facilities, rather than to be put in the same level with the private developers.

I am a private developer myself, so I think private developers are just fine. But, quite frankly, I think that the children should come first; and they are not being first in this policy.

The policy was originally set up to get top dollar. Mrs. Newman has now raised questions about that policy. We certainly also raise questions about it.

Mr. MOLLOHAN. About maximizing the return?

Mr. PEABODY. About maximizing. Because, frankly, the way you maximize the benefit to the District is get a first-class education system. That will produce more dollars for the District than anything that could conceivably be gotten out of these properties.

Mr. MOLLOHAN. On what basis would you recommend these facilities be transferred?

15-YEAR LEASES AT NON-PROFIT RATE

Mr. PEABODY. I think they ought to be either—at the choice of the charter school, ought to be leased for 15 years on a very modest basis, which is the same rate that the school system leases to non-profit groups, which is $1.14 a square foot at this time, and I think they should receive credits for any improvements that they make in the buildings. I think those leases should run for 15 years and that those leases should be subordinate to bank financing; otherwise, you can't finance the improvements.

Mr. MOLLOHAN. Mr. McCarthy.

RETURNING FACILITIES DISPOSITION TO MAYOR'S OFFICE

Mr. MCCARTHY. Mr. Mollohan, I think—a couple of things. As we are moving back toward home rule I think it makes sense to move powers back to the mayor's office that were taken away during the crisis of the last few years. I think disposition of surplus property is one of those areas that I think it would make a lot of scnse to put back into the Mayor's hands as the the Mayor's office regains a lot of their power. And this I think is one area that they could be well suited for if they desired this power at that time.

Mr. MOLLOHAN. How does that impact this issue?

Mr. MCCARTHY. Well, what I think it does is it takes the disposition activity away from the public school system, which is just not—from a manpower point of view—is just not equipped to manage this kind of thing. The Director of Facilities I think has to do 3,000 use agreements a year just for the existing schools. I mean, every time there is an event at a public school the Director of Facilities has to do that. There is a tremendous amount of paperwork, and it is not a heavily staffed office.

When you start talking about a complex process of sending out competitive bids and then going through and culling those bids and then communicating with everybody, it really requires an office that I think is more attuned to that. And the Director of Facilities just isn't that.

Just echoing something that Mike said, talking about the quality of education versus the quality of real estate, these 60 school buildings were built by taxpayers to educate children; and we shouldn't lose sight of the fact that these 60 empty buildings were schools. We competed in the fair market against private developers with the 15 percent discount.

FRANKLIN SCHOOL

There was an appraisal done on the Franklin School building for $4.2 million. The transferable development rights were taken away from that, and a bid was accepted of $3 million by the Emergency Board of Trustees. We competed with a 15 percent discount in that fair market environment.

So I mean, even with the current policy, we are maximizing value. We just need to see the process through to a conclusion rather than suspending it at points in time and leaving kids and teachers and parents hanging on what the resolution is going to be.

Mr. MOLLOHAN. Right. Thank you, Mr. McCarthy.

Ms. Newman, do you have an observation on the idea or, Ms. Ackerman, on a more sympathetic consideration of these facilities when charter schools are interested in acquiring them? Which is what I think he is——

POLICY AGREEMENT NEEDED

Ms. NEWMAN. I think one of the questions really ought to be in the discussions that we will have over the summer, whether or not there shouldn't be a decision to have long-term 15-year leases for a very low rate and except the charter schools to add value by renovation. I think that makes a lot of sense.

People think if they move the activity from one place to another they are going to get something better. I don't know that that is necessarily the case. Because wherever the activity is going to take place they are going to need more people and more resources.

I think it is more important for the city, the community, and the charter school movement to come to some agreement about what the policies ought to be.

Mr. MOLLOHAN. The policy ought to be with regard to—.

Ms. NEWMAN. With regard to what ought to be the criteria for disposing of the properties and the waiting and what kind of terms and what kind of consideration.

Mr. MOLLOHAN. For charter schools vis-a-vis some other purpose?

Ms. NEWMAN. Exactly.

Mr. MOLLOHAN. So you are sympathetic to——

Ms. NEWMAN. I am sympathetic to the community's interest in having these properties used in a way that enhances the community. And, generally speaking, there is an interest in the facilities being used as schools. As Mr. McCarthy says, that is what they were at the outset.

But there are also other public purposes for some of these facilities.

Mr. MOLLOHAN. That should compete on a priority basis?

Ms. NEWMAN. I don't know whether they should compete on a priority basis.

QUESTION OF CHARTER SCHOOLS COMPETING WITH OTHER PUBLIC PURPOSES

Mr. MOLLOHAN. Or should charter schools compete on a priority basis with other public purposes or nonprofit purposes?

Ms. NEWMAN. That is a little hard for me to answer for this reason. Let me give you an example, that the police want to use one of the school facilities for one of their regional community centers; and the community is very interested in having that there. Now, should you say that that's more or less valuable for that community? It depends on what else is there. That's why I am trying not to——

Mr. MOLLOHAN. A little policy guidance would be good in this area.

Ms. NEWMAN. Yes, and the community saying in this particular community at this time, given everything else, it is more valuable to us to have a charter school in this building or it is more valuable for us to have a social service center.

Mr. MOLLOHAN. I got it.

I am way on the red light, but Ms. Ackerman——
Mr. ISTOOK. That is fine. We have 2 minutes left.
Mr. MOLLOHAN. Can we actually get to the vote?
Mr. ISTOOK. Two minutes remaining on the clock.

FACILITIES PROCESS FOR 12 CHARTER SCHOOLS

Ms. ACKERMAN. The only thing I wanted to say is, because we have spent a lot of time talking about at least these two schools, but we do have 12 charter schools in our facilities; and while we are looking at this, I would like us to focus on what went well there. How did it work? How did the process work for those 12 schools? Because we spent a lot of time talking about these two. And I have been in a couple of those charter schools and they are working well.

Mr. ISTOOK. I understand.

COST TO MAINTAIN EXCESS SCHOOL PROPERTIES

We have run out of time. I have some things I would like to ask for the record.

One of them, Ms. Ackerman, I would appreciate what you can put together on what it really costs the schools to maintain the properties. Not only the cost of maintaining them, but security for them, the salaries, the people that are charged with trying to find a use for them, a comprehensive look about what it is really costing the schools to carry those properties.

Ms. BAKER. You are talking about the schools that she——

Mr. ISTOOK. Let's call it the excess property.

Ms. BAKER. But what is it costing the charter schools to maintain the buildings that they are going into. You are not interested in that?

Mr. ISTOOK. That is not my question. We have to bring the hearing to a close right now. I don't want to open up a whole new area.

We are going to close out the hearing. I appreciate everyone taking time this morning.

We will be hearing tomorrow morning from the Mayor and members of the Council and the Control Board concerning the overall fiscal year 2000 budget. We will have the other questions for the record.

Thank you very much. I apologize for having to rush away, but in order to make the House floor vote that is going to be necessary, without staying to greet you further. Thank you.

We are adjourned.

COMMITTEE'S QUESTIONS FOR THE RECORD

[The Committee's questions and the Superintendent's responses follow:]

RESPONSES TO QUESTIONS FROM THE HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

General Questions

1) In the wake of the recent Columbine tragedy, parents, teachers and students are increasingly concerned about violence in schools and values education. I understand that a program called "Values First" is being implemented in 10 schools in the District:

a) Discuss your experience with the program.

DCPS entered into an agreement with Values First, Inc. in March 1998 to seek funding from the US Department of Education to support implementation of the program in several schools. That grant application was not funded by DOE. However, the program has been implemented by a number of schools using funds under their individual control.

b) Do you believe it would help to implement this program in all District schools?

The District has adopted a different approach -- called Peaceable Schools -- to address the issue of character education and violence prevention in our schools on a system-wide basis. That program is described in the response to question #-6 below.

c) Discuss how much such an effort might cost, as well as potential savings from this program (if schools using the program had less violence, vandalism, etc.)?

It is difficult to estimate how much is saved through character education and violence prevention programs in schools in terms of dollars saved by the school system. We believe that the Peaceable Schools program mentioned above will generate substantial benefits for our students, the school system, and the DC community at large, through fewer incidents of violence and vandalism as well as higher levels of academic achievement resulting from reduced truancy and dropout rates. Improved academic achievement, of course, will lead to higher rates of employment and higher wages for DCPS graduates.

2) There are currently discrepancies between the two DC statutes that determine the number of charter school students from the upcoming school year. One uses October of the previous year, and the other September of the coming year, to determine the number of students. In your opinion, what is the best way to determine the number of students actually attending public charter schools and DCPS schools?

DCPS has taken a number of steps to ensure the integrity of its enrollment count, which is conducted in the fall of each year and reported to Congress is October. The results of independent

audits have supported the accuracy of DCPS' count in both of the past two years. We believe that charter school enrollment also should be audited for accuracy. The FY00 consensus budget includes a 5 percent set-aside in the DCPS budget to be allocated between the public and public charter schools based on the outcome of the October 1999 count. This provision is designed to ensure that charter schools receive adequate funding based on their actual enrollment for the year in which funding is being provided. In addition, we believe that attention must be paid to the number of students who leave DCPS for charter schools in the fall but return during the middle of the school year, since funding reallocation also may be warranted at that time.

3) Please explain a $69,129,000 increase over FY1999 while showing a decrease of 414 FTEs from FY99, coupled with a decline in student population?

The FY99 FTE number included in the budget document submitted to Congress by the city was a projection, not a reflection of the actual number of DCPS employees in place in FY99. The actual figure is much lower. For instance, DCPS initially intended to use a $10 million federal grant to hire approximately 150 reading teachers. Later, it was decided that the funds would be used to support the Summer STARS program and a grant amendment was submitted to the Department of Education and approved. Because the funds ultimately supported summer school teachers, who are treated as temporary employees and not considered to be FTEs, the District's employee count was reduced accordingly. The funding increase in the FY00 budget is needed to support a five-percent pay increase for all school-based personnel, instructional technology and information systems improvements, and special education costs.

4) In the DCPS budget, $2 million has been budgeted for after-school initiatives, in addition to the Mayor's $15 million youth fund, which contains after school initiatives. Is there overlap in these requests?

No. The $2 million included in DCPS' budget for FY00 will be used to support extended-day and extended-week educational programming, which, with a few exceptions, will take place on Saturdays. Students participating in the Saturday STARS program will receive two additional hours of reading instruction and two additional hours of mathematics instruction every Saturday morning. This intensive, standards-based program will support the school system's academic achievement goals. In addition, parenting education and support will be made available to the parents of participating students. It is my understanding that the Mayor's after school initiative will provide recreational and enrichment activities to students primarily after school on weekdays, although more information on this program can probably be secured from the Mayor's office directly. A copy of the Council approved legislation authorizing the Mayor's program is attached for your review.

5) What has been done to decrease the backlog of special education assessments?

DCPS has entered in a compliance agreement with the US Department of Education regarding the evaluation and placement of students with special needs under the Individuals with Disabilities Education Act. Under the agreement, DCPS reports on its progress to eliminate the

backlog on a quarterly basis. Over the past six months, DCPS has reduced the number of students waiting for assessment from 3,388 to 712 by increasing the number of assessments conducted by DCPS staff and contracting with private assessment teams to evaluate students' needs during the week and on Saturdays. We also have undertaken an intensive effort to assess students throughout the summer months. Finally, we are creating a number of new programs in the fall to ensure that our placement capacity is adequate to accommodate these students.

6) We have in our possession DC school violence statistics -- what new programs are being developed to decrease school violence?

DCPS has adopted a comprehensive violence prevention program called "Peaceable Schools." The program, which is funded through the federal Safe and Drug-Free School Act (Title IV), will include training for teachers, administrators, and students in conflict resolution, mediation, and substance abuse prevention. The program is being implemented over four years, first on the middle and junior high levels (SY98-99), then in senior high schools and alternative education centers, and finally in the system's elementary schools. The progress of local schools in implementing the program will be reflected in the annual school evaluation under the sections on discipline and safe and secure learning environments. In addition, at least one security officer is stationed in each school and our Security Division works closely with the Metropolitan Police Department to ensure a coordinated effort. All secondary schools are equipped with walk-through and hand-held metal detectors and fourteen schools that are deemed high-risk are equipped with closed-circuit television systems and x-ray machines.

7) Under your assistance program, schools that "continue" to have difficulties achieving the necessary level of academic performance will receive $4.9 million in FY2000. Please explain the reasoning of awarding schools that "continue" to fail in their mission.

Under DCPS' reconstitution policy, targeted assistance schools receive support and technical assistance for two years and must show tangible progress in terms of academic achievement during that time or they are reconstituted. When a school is reconstituted, all staff are removed and the principal is replaced. This is a drastic step, which can be very disruptive to students and the community, and we believe that it should only be taken as a last resort, after substantial efforts to provide support to the school have been made. This is especially important since the school system's central administration has not been as effective as it should have been in supporting local school activities in past years. The system currently in place creates clear standards of performance for schools and principals and holds them accountable if those standards are not met, but does so in a way that is fair to all.

Buildings and Facilities

8) Provide the Committee with the average cost of maintenance per square foot of classroom space.

The total budget for custodial operations for FY99 is $20.7 million. In addition, DCPS's FY99 maintenance budget -- which includes the salaries of the school system's plumbers, electricians, carpenters, painters, and other skilled tradesmen -- is $14.9 million. Because custodians are assigned to schools on the basis of the number of programs and the size of the student body in those schools, rather than simply by the square feet in the facility, and additional maintenance is provided on an as-needed basis, it is not possible to provide the Subcommittee with the average cost of these activities per square foot of classroom space. The newly appointed Chief of Facilities, Mr. Kifah Jayyousi, would be happy to brief the subcommittee staff on this and any other facilities issues of interest.

9) Discuss the current facilities plan.

a) What is the estimate of the current value of the school's excess and vacant school properties?

The total appraised value of surplus property currently available for sale is approximately $50 million. In addition, the school system has sold eleven properties, raising revenue of approximately $8.5 million. Properties valued at approximately $10 million are currently being leased by charter schools, private schools, District agencies (including the Departments of Human Services and Corrections) and other entities.

b) provide a date by when you expect to have a current facilities plan to the subcommittee.

The Financial Authority recently charged the Board of Education with revising and updating the school system's Long-Range Facilities Master Plan. That plan is due to the Authority on or before December 30, 1999.

c) DCPS has repeatedly promised a facilities plan, but it has failed to materialize. What is being done this year to insure that the plan is delivered as promised?

Through the Army Corps of Engineers, the Board of Education has retained a private consultant, Baker and Associates, to assist them on this project. In addition, community meetings have been scheduled for July and August to provide member of the public with the opportunity to give input to the Board of Education regarding school facility design specifications.

d) Will the facilities plan include charter school provisions?

We expect that it will. However, this question is best addressed to the Board of Education.

e) What impediments are you currently facing in assisting charter schools in obtaining "excess" school properties?

The school system's Real Estate Office is currently working to ensure that all charter schools seeking to lease space in DCPS buildings for the coming school year are accommodated in a timely fashion. The primary difficulty DCPS has experienced in assisting charter schools to lease or purchase excess school building has been the conflict between the Financial Authority's directive to the school system that "market value" be achieved in all school leases and sales and the limited budgets of charter schools. Last year, charter schools were allowed to lease school properties at the "non-profit" rate of 48 cents per square foot. Those leases were renegotiated this summer to reflect market value of the properties (less the charter school discount). Incidentally, all non-profit organizations using DCPS facilities also will have their lease rates renegotiated to reflect market rates. In addition, there have been instances where DCPS has experienced difficulty finding suitable space for charter schools in locations they deem to be acceptable. Finally, some charter operators have been surprised by the magnitude of the repairs and renovation needed in surplus properties and found that it took longer than expected to make those repairs. Of course, this is a problem that has plagued the entire district for a number of years. Only recently have we begun to implement a systemic capital maintenance and improvement program.

f) With the large amount of excess property, what is the reasoning behind the building of a new school (Kelly Miller)?

When Kelly Miller was closed (and its students relocated to Evans Junior High) in 1996, the community was promised that a new facility would be constructed to replace Kelly Miller, since both Kelly Miller and Evans were in need of substantial repairs and renovation. As the Subcommittee knows, the majority of the District's schools are now well beyond their useful life (in fact, many were built over 50 years ago). In addition, the fact that routine maintenance was neglected for years has contributed to the failure of major systems in many schools. As a result, we believe that in some instances it will be more cost effective to build new schools than to repair and renovate existing ones. The construction of new schools (beyond Kelly-Miller) will be considered by the Board of Education as part of the Long-Range Facilities Master Plan development process.

g) What plans are in effect to decrease the amount of vandalism and depreciation that is occurring in these vacant school buildings and class rooms?

This aspect of operations is currently under review by DCPS' recently appointed Chief of Facilities. We anticipate implementation of a comprehensive policy to board, secure, or demolish vacant properties. In addition, preventive maintenance, capital improvement (on a limited basis), and increased security also are options being considered.

I) How much is budget for protection services?

None at this time. The Facilities Division intends to negotiate a repayment agreement with the Security Office to create a budget for this function.

ii) Are these protection services coordinating with the Capitol or DC Police Departments?

Yes they are.

10) **Space**

a) List all the school buildings in DCPS inventory and list their square footage and current enrollment as established by the most recent survey and list any non-DCPS uses

See attached documents.

b) Forward the latest utilization survey and include the mini-floor plans showing usage.

The utilization survey is currently being developed and should be completed by October 1, 1999.

c) Forward the last two annual activity reports on public school building and grounds required by Section 31-201.1 of Chapter 4 of the city code.

See attached.

11) Disposition

a) List the employees now in the realty office and their job descriptions and qualifications. Give a history of who has been assigned to this office for the past three years and the dates of their employment and qualifications.

The resume of Gerald F. Cook, Director of the Real Estate Office, is attached. The other employees play administrative roles. Ms. Suzanne Conrad was the previous director of the Real Estate Office. She is no longer employed by DCPS.

b) Explain why the applications from the Hyde School for McKinley and Washington Math, Science, Tech School for Franklin were delayed after October 1998.

Concerns were raised about the entity seeking the lease of the Franklin School and its relationship with the Washington Math, Science, and Technology Public Charter School. As a result, the lease was not approved by the Emergency Transitional Education Board of Trustees. The Control Board has since returned the property to the surplus property inventory (see attached letter to Mr. William McCarthy, Managing Director, Appletree Institute for Education Innovation, from Francis S. Smith, Executive Director, DCFRMA). Regarding the Hyde

School's application for McKinley Tech, at the beginning of June, DCPS was instructed by DCFRMA to withdraw McKinley Tech from disposition list. DCFRMA has since entered in negotiations with Hyde directly, for a lease of the adjacent property, the former Langley Middle School.

12) **Planning**

a) When will DCPS submit a Long-Range Facilities Plan to the City Council?

See response to question 9 above.

b) What work has been done so far on this plan?

Although the Board of Education has been given the lead on long-range facilities planning by the Control Board, DCPS and the U.S. Army Corps of Engineers have a role to play in this effort, providing technical assistance and support to the Board. Toward this end, DCPS is working closely with the planning/educational consultants (Baker and Associates) who are assisting in the development of the Master Plan, and with the architectural consultants (Einhorn, Yaffe and Prescott) who are developing Facility Design Guidelines for the school system, as well as Educational Specifications for the nine schools (8 elementary, 1 middle) selected for modernization. DCPS also is developing a computerized Geographic Information System, which will incorporate demographic and enrollment data, to support the master planning effort. More information on the status of the final product should be requested from the Board of Education.

c) What DCPS planning staff have been assigned to this process and what are their qualifications?

Under the leadership of a new Chief of Facilities, the Facilities Management Division is being restructured to ensure that the Long Range Master Plan development process is adequately supported by DCPS. Currently, Mr. Otis Daniels is assigned as DCPS' point person on the Facilities Master Plan. Mr. Daniels is an architect, planner and project manager. He is a graduate of Howard University School of Architecture and Cornell University School of Architecture and Planning. He has extensive experience in architectural design, urban design/planning, and construction management. He has served as the Senior Facility Planning Manager for DCPS since April 1997 and has been very much involved in the master planning process.

d) List the standards DCPS uses to allocate space by grade and type of program and state the date such standards were adopted.

The standards currently used by DCPS -- called the Architectural Graphics Standards Profile – were adopted between 1948 and 1969. These standards are currently being updated and a revised profile will be in place by December 1999.

13) Property Leasing

a) List the names of all non-profit and for-profit organizations or individuals who rent, lease, or have use agreements for either excess or vacant DCPS property. List the number of square feet and the amount they pay per square foot, plus if a maintenance allowance agreement is in place.

This information is not compiled in an easily accessible format. DCPS hope to computerize this data in the near future. If information is needed about specific sites or programs, we would be happy to research those questions on an individual basis.

b) We understand that the following public charter schools have been in negotiations for leasing DCPS space for months and still do not have signed leases. They are listed below:

1. New Vistas Academy
2. Kwame Nkrumah International
3. Richard Milburn
4. IDEA
5. Hyde School

c) when do you expect to finalize these leases?

Leases for all five charter schools mentioned above should be completed before school begins or shortly thereafter, and all charter operators have been given access to their buildings already, to ensure that they are ready to receive students when school begins.

d) Will the schools that will occupy Rabaut be able to rent on the same terms as were established for the Milburn charter school in the past year?

As noted above, these leases are being renegotiated to comply with the Control Board's order that DCPS obtain market value (less the charter school discount) for the properties.

e) Will they be able to lease or rent space on the same basis as other non-profit organizations? If not, why not?

All leases with non-profits also will be renegotiated to comply with the Control Board order.

14) Maintenance and Security of Vacant Buildings

a) Describe policy now in place for securing and maintaining unused school buildings, the staff assigned to the task and the funds spent on this activity in FY98.

At present, each vacant DCPS property is assigned to a Business Services Specialist whose responsibility it is to oversee and coordinate all aspects of property maintenance and monitoring. Business Services Specialists report to the newly appointed Chief of Facilities. This policy went into effect in July 1999. Prior to that, the Real Estate Office had only one person on staff to supervise the function. Thus the policy change. In addition, the Real Estate Office employed a contractor, Horton & Barber, to provide site maintenance services, including lawn cutting and light rubbish removal. This contract is currently under review.

TITLE XXIV. CHILDREN AND YOUTH INITIATIVE

Sec. 2401. This title may be cited as the "Children and Youth Initiative Establishment Act of 1999".

Sec. 2402. There is established a Children and Youth Initiative ("Initiative") to provide out-of-school programs for District of Columbia children and youth. Note, §§ 1-2601, 1-2621

Sec. 2403. The Mayor is authorized to make grants to a single non-service provider, non-profit organization of which at least 95% shall be used to make sub-grants for the purpose of providing services to District children, youth and their families, including, but not limited to, early childhood development opportunities, safe and enriching centers of learning in and out of school, and other training, recreational and educational services.

Sec. 2404. The Council provides $15 million for FY 2000 from the reserve for the Initiative as a nonrecurring priority expenditure designed to improve child and youth development in the District of Columbia. The funds shall be available for conveyance to a non-service provider, nonprofit organization for the purposes identified in section 2403 when the Mayor has submitted to the Council for approval a resolution containing the following:

(1) A needs assessment that identifies the kinds of services that are needed for children and youth;

(2) The bylaws of the non-service provider, nonprofit organization referred to in section 2403 that have been adopted and which provide that:

(A) The Board of Directors is composed of 7 members. Four members shall be appointed by the Mayor and 3 members shall be appointed by the Council;

(B) At least 4 government officials from related disciplines shall serve as non-voting advisors to the Board with the Mayor and Council appointing an equal number;

(C) On an annual basis, the Board shall develop a description of the specific outcomes for child and youth development in the District that address the problems and issues identified in an annual needs assessment;

(D) The Board develop an annual report that describes the nonprofit organization's performance in achieving stated outcomes;

(E) The grantee and sub-grantees provide any information, documents and reports relating to the grant required by the Mayor or a member of the Council with the proviso that non-compliance shall be grounds for grant termination;

(F) Each grant shall specify, on an annual basis, the specific performance measures that grants shall seek to achieve;

(G) A formal reporting mechanism be established to annually keep the community aware of the results being sought and achieved as this pertains to child and youth development; and

(H) A non-server provider, nonprofit entity has grant-making, administrative, and management procedures in place to ensure fiscal and programmatic accountability.".

Sec. 2405. Fiscal impact statement.

There shall be designated $15 million from the FY 2000 Budget (reserve unfunded), for implementation of this act.

-4 4-

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

School Name	*Bldg. Sq. Ft.*	*Official Enrollment as of 10-8-98*
ELEMENTARY SCHOOLS		
Adams	59,400	372
Aiton	57,100	550
Amidon	70,800	426
Bancroft	79,800	577
Barnard	67,000	520
Beers	77,500	536
Benning	70,900	284
Birney	86,800	566
Bowen	71,900	403
Brent	47,500	332
Brightwood	40,000	487
Brookland	98,200	363
Bruce-Monroe	110,700	492
Bunker Hill	69,400	438
Burroughs	63,900	382
Burrville	95,000	406
Clark	53,800	342
Cleveland	37,100	338
Cook, J.F.	43,500	300
Cooke, H.D.	64,000	490
Davis	71,100	507
Draper	54,000	448
Drew	72,800	435
Eaton	49,100	401
Emery	63,800	414
Ferebee-Hope	193,800	355
Gage-Eckington	86,500	516
Garfield	58,908	552
Garrison	60,200	506
Gibbs	64,800	519
Green	77,700	402
Harris, C.W.	56,000	583
Hearst	17,400	184
Hendley	73,200	608
Houston	59,900	391
Hyde	20,000	171
Janney	43,400	443
Kenilworth	57,100	392
Ketcham	88,300	526
Key	17,400	202
Kimball	83,400	494
King, M.L.	65,500	511
Lafayette	113,600	474
Langdon	101,400	401
LaSalle	63,000	389
Leckie	65,000	502

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

School Name	*Bldg. Sq. Ft.*	*Official Enrollment as of 10-8-98*
Ludlow-Taylor	66,900	359
Malcolm X	110,800	781
Mann	21,903	216
Marshall (Ft. Lincoln)	103,800	367
Maury	46,800	334
McGogney	55,500	427
Merritt	90,400	532
Meyer	62,200	543
Miner	63,500	507
Montgomery	73,700	417
Moten	99,700	376
Murch	47,700	488
Nalle	83,900	442
Noyes	49,700	355
Orr	75,900	452
Oyster*	29,700	301
Park View	82,200	528
Patterson	65,200	401
Payne	83,800	366
Peabody	37,800	208
Plummer	69,400	411
Powell	38,500	310
Randle Highland	52,900	423
Raymond	73,600	606
Reed, Marie	162,700	514
River Terrace	62,800	234
Ross	22,400	184
Rudolph	84,400	514
Savoy	64,800	424
Seaton	65,000	451
Shadd	72,100	491
Shaed	67,200	334
Shepherd	79,700	335
Simon	66,200	491
Slowe	54,500	534
Smothers	43,000	277
Stanton	83,800	584
Stevens	39,500	328
Stoddert	17,400	204
Takoma	119,000	534
Terrell, M.C.	112,000	314
Thomas	87,600	464
Thomson	40,950	359
Truesdell	69,600	391
Tubman	66,600	653
Turner	77,500	579
Tyler	69,600	313

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

School Name	*Bldg. Sq. Ft.*	*Official Enrollment as of 10-8-98*
Van Ness	49,400	336
Walker-Jones	104,200	612
Watkins	69,300	405
Webb	103,700	508
West	69,600	362
Wheatley	87,200	488
Whittier	66,600	475
Wilkinson	144,900	727
Wilson, J.O.	98,900	512
Winston	137,700	571
Young	70,400	458
104	**7,357,361**	**45,040**
EDUCATIONAL CENTERS		
Fletcher/Johnson	302,000	485
Harris, P.R.	348,700	772
2	**650,700**	**1,257**
MIDDLE SCHOOLS		
Backus	126,800	481
Brown, Ronald (Roper)	156,000	553
Evans	125,800	292
Garnet-Patterson	82,700	352
Hardy (Rosario)	91,100	232
Hart	210,700	605
Kramer	154,000	284
Lincoln	185,000	414
MacFarland	110,000	357
Sousa	160,000	336
Stuart-Hobson	105,900	338
11	**1,508,000**	**4,244**
JUNIOR HIGH SCHOOLS		
Browne	215,400	499
Deal	143,700	1,017
Eliot	155,100	450
Francis	95,100	457
Hine	131,300	667
Jefferson	109,000	785
Johnson	182,500	515
Paul	128,400	728
Shaw	230,400	693
Terrell, R. H.	143,700	342
10	**1,534,600**	**6,153**

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

School Name		*Bldg. Sq. Ft.*	*Official Enroll. as of 10-8-98*
SENIOR HIGH SCHOOLS			
Anacostia		247,000	636
Ballou		271,300	1,137
Banneker		180,000	426
Bell		98,000	687
Cardozo		355,400	779
Coolidge		271,300	977
Dunbar		343,400	855
Eastern		288,800	1,426
Ellington		167,500	475
Moore, Luke Academy		26,911	251
Phelps		136,000	403
Roosevelt		331,900	753
School Without Walls		32,000	326
Spingarn		225,000	712
Washington, M.M.		89,700	376
Wilson, W.		271,300	1,436
Woodson, H.D.		251,100	1,022
	17	**3,586,611**	**12,677**
CITYWIDE SPECIAL EDUCATION SCHOOLS/PROGRAMS			
Lee, Mamie D.		45,800	272
Goding (Prospect)		59,200	142
Sharpe Health		80,500	176
	3	**185,500**	**590**
	147	**14,822,772**	**69,371**
SWING SPACE SCHOOLS			
Douglass		137,700	N/A
Taft		194,300	N/A
	2	**332,000**	**N/A**
	149	**15,154,772**	**69,961**
OTHER EDUCATIONAL PROGRAMS			
Hamilton		180,700	N/A
Weatherless		50,000	N/A
	2	**230,700**	**N/A**
ADMINISTRATIVE BUILDINGS			
Penn Center		105,500	N/A
Kramer Annex		19,800	N/A
Logan		47,200	N/A
Sumner		28,320	N/A
	4	**200,820**	**N/A**
TOTAL	**155**	**15,586,292**	**69,961**

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

School Name	*Bldg. Sq. Ft.*	*Official Enrollment as of 10-8-98*
SURPLUS PROPERTIES		
Addison	12,450	N/A
Armstrong	109,900	N/A
Blair	16,851	N/A
Blow	83,600	N/A
Bruce	32,800	N/A
Bryan	54,700	N/A
Bundy	47,700	N/A
Burdick	41,800	N/A
Chamberlain	77,100	N/A
Carver	73,100	N/A
Congress Heights (Old)	34,800	N/A
Crummell	20,022	N/A
Eckington (Old)	19,368	N/A
Emery (Old)	35,586	N/A
Fillmore	15,600	N/A
Franklin	41,000	N/A
Gales	12,762	N/A
Giddings	55,900	N/A
Grimke	46,100	N/A
Hardy	17,500	N/A
Harrison	48,900	N/A
Hayes	32,800	N/A
Jackson	18,300	N/A
Keene	50,600	N/A
Kingsman	54,700	N/A
Langley	110,100	N/A
Langston	22,300	N/A
Lenox	39,300	N/A
Lewis	49,500	N/A
Logan	47,200	N/A
Logan Demountable	7,760	N/A
Lovejoy	52,400	N/A
Madison	17,940	N/A
McKinley	282,200	N/A
Military Road	9,332	N/A
Miller	160,000	N/A
Morgan Annex	44,241	N/A
Morse	17,097	N/A
Nichols Avenue	35,900	N/A
Perry	44,288	N/A
Petworth	46,900	N/A
Pierce	18,288	N/A
Rabaut	176,900	N/A

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Inventory with Square Footage and Current Enrollment

	School Name		*Bldg. Sq. Ft.*	*Official Enrollment as of 10-8-98*
	Randall		126,400	N/A
	Reno		12,882	N/A
	Richardson		7,760	N/A
	Slater		18,300	N/A
	Woodridge		37,600	N/A
	Woodson, Carter		156,000	N/A
TOTAL		49	2,594,527	N/A
GRAND TOTAL			**18,180,819**	**69,961**

Attachment A

DC PUBLIC SCHOOLS
REAL ESTATE OFFICE

FY1998 LEASING INCOME

	FY 1997 Balance Carried Forward	$327,618.02
Monthly Deposits	**Amount**	
October-98	$122,702.09	
August-98	68,439.74	
July-98	99,360.85	
May-98	102,097.11	
April-98	10,636.78	
March-98	121,264.91	
February-98	25,530.70	
January-98	69,642.05	
December-97	32,052.56	
November-97	64,029.15	
October-97	142,665.09	
Total Leasing Income		$858,421.03

FY1998 OVERTIME INCOME

Monthly Deposits	**Amount**	
August-98	$19,865.07	
July-98	13,738.29	
May-98	25,176.38	
April-98	6,464.40	
March-98	21,293.47	
February-98	11,315.32	
January-98	20,249.80	
December-97	6,735.64	
November-97	12,143.59	
October-97	18,357.62	
Total Overtime		$155,339.58
TOTAL FY1998 INTRA-DISTRICT BUDGET MODIFICATION		$2,413.00
	TOTAL FY1998 REVENUE	$1,016,173.61

Building Condition Assessment Ranking

Ward	Building	Site	Roof	Exterior Walls	Doors	Windows	Structural	Flooring	Plastering	Ceiling Tile	Plumbing	Mechanical	Electrical	Fire Alarm	PA Security	ADA Complaint	Graffiti	Adverse Envir	Kitchen Equipment
1	ADAMS ES	3	5	2	2	3	3	3	2	5	2	2	2	2	2	2	4	2	4
1	BANCROFT ES	1	5	2	1	1	1	2	2	2	1	1	1	1	2	1	2	1	3
1	BANNEKER HS	3	3	3	3	1	3	3	4	4	2	2	4	4	4	2	3	2	3
1	BELL HS		5									4							
1	BRUCE-MONROE ES	2	5	4	2	2	5	2	3	4	3	1	3	3	2	2	4	2	4
1	CARDOZO HS	3	5	4	1	5	4	1	2	5	1	3	4	4	3	2	4	1	3
1	CLEVELAND ES	2	5	3	1	1	4	4	3	4	2	3	1	3	3	1	2	1	4
1	COOKE, HD ED	2	2	2	1	1	3	3	3	3	3	2	2	1	2	1	1	1	4
1	GAGE-ECKINGTON ES	2	5	4	2	3	3	2	3	3	4	4	2	4	4	3	4	2	2
1	GARNET-PATTERSON MS	1	5	3	2	4	4	1	1	4	1	2	3	4	4	1	4	2	1
1	LINCOLN MS	1	4	1	2	2	3	3	3	3	3	2	2	2	2	1	1	2	3
1	MEYER ES	1	1	2	1	1	3	3	2	3	2	2	3	2	2	1	3	3	1
1	PARK VIEW ES	3	5	4	5	1	4	3	3	5	2	2	3	2	3	2	4	2	4
1	REED LC	2	2	2	3	3	3	2	3	3	3	5	3	3	3	1	1	2	2
2	AMIDON ES	3	2	3	2	2	2	2	4	3	3	2	2	2	2	2	4	2	3
2	ELLINGTON HS	2	2	2	2	4	2	2	2	4	3	2	3	4	4	3	4	1	3
2	FRANCIS JH	5	5	3	5	1	4	2	2	4	2	2	4	4	2	1	2	1	4
2	GARRISON ES	2	5	1	2	4	4	1	3	2	3	3	3		3	1	3	1	2
2	HYDE ES	2	1	3	4	1	4	4	3	2	3	2	2	2	3	1	4	1	4
2	JEFFERSON JH	2	5	3	5	1	3	3	3	2	2	3	3	3	4	2	4	2	4
2	MONTGOMERY ES	1	1	2	1	1	4	1	2	2	1	5	3	3	2	1	3	1	3
2	ROSS ES	1	5	3	2	4	4	4	3	3	3	2	2	2	1	2	3	2	4
2	SEATON ES	3	5	4	1	1	2	4	4	4	2	2	3	3	3	1	1	1	3
2	SHAW JH	3	2	4	3	3	2	2	2	3	4	2	4	4	2	3	3	2	4
2	STEVENS ES	3	1	3	1	1	4	2	1	3	1	4	4	1	4	1	4	1	4
2	SWW HS	2	1	3	4	1	3	2	2	4	2	2	2	2	2	2	4	2	4
2	TERRELL, RH JH	2	5	2	2	1	4	2	2	4	3	5	1	1	4	1	3	1	4
2	THOMSON ES	3	4	3	1	1	4	2	2	4	1	3	4	4	4	1	4	1	3
2	WALKER-JONES ES	2	2	3	2	2	4	2	3	4	2	4	3	2	2	2	1	2	1
3	OEAL JH	3	5	3	3	4	3	2	3	3	2	1	2	1	4	2	4	1	
3	EATON ES	4	5	4	3	4	4	1	2	2	4	4	4	4	3	4	2	2	4
3	HEARST ES	3	1	4	1	5	3	3	2	4	3	2	2	1	4	1	4	1	4
3	JANNEY ES	3	5	3	1	1	4	3	3	5	3	5	2	3	5	4	4	1	4
3	KEY ES	4	4	4	5	5	4	3	4	2	3	2	3	2	3	2	4	2	
3	LAFAYETTE ES		5																
3	MANN ES	2	2	4	1	4	4	3	2	4	1	1	1	1	3	1	4	1	4
3	MURCH ES	4	5	3	2	1	4	3	2	4	1	1	1	1	1	2	2	2	3
3	STODDERT ES	3	5	2	2	5	4	3	3	3	3	3	1	4	3	3	5	2	3
3	WILSON HS	2	5	1	1	4	2	4	4	2	2	2	4	5	4	3	3	1	3
4	BARNARD ES	4	5	3	1	1	4	2	3	3	1	3	2	2	1	2	3	1	4
4	BRIGHTWOOD ES	4	2	4	2	3	4	1	3	3	3	2	4	4	1	1	2	2	4
4	CLARK ES	3	2	3	1	1	4	4	4	2	4	1	4	3	3	1	3	2	4
4	LASALLE ES	3	5	4	2	2	4	1	3	1	2	2	2	1	1	1	2	1	2
4	POWELL ES	3	2	4	2	2	2	2	3	4	2	2	3	2	2	2	2	2	4
4	RAYMOND ES	3	2	4	2	2	4	2	3	4	2	4	3	2	2	2	3	2	3
4	RUDOLPH ES	3	2	4	2	2	4	3	4	2	3	2	2	2	3	1	4	2	4
4	SHEPHERD ES	3	2	3	2	2	4	2	4	2	2	4	2	3	4	2	2	2	4

1-Unsatisfactory 2-Poor 3-Fair 4-Good 5-Excellent

Building Condition Assessment Ranking

Ward	Building	Site	Roof	Exterior Walls	Doors	Windows	Structural	Flooring	Plastering	Ceiling Tile	Plumbing	Mechanical	Electrical	Fire Alarm	PA Security	ADA Complaint	Graffiti	Adverse Envir	Kitchen Equipment
4	TAKOMA ES	3	1	3	2	2	5	3	3	3	3	3	3	2	3	3	4	1	4
4	TRUESDELL ES	1	5	3	1	1	4	2	2	3	1	3	2	3	3	1	1	1	3
4	WEST ES	4	5	5	3	3	5	3	4	3	3	2	4	4	4	4	3	2	4
4	WHITTIER ES	2	2	2	1	1	3	2	3	3	3	4	2	2	2	2	4	2	3
4	MACFARLAND MS		5																
4	PAUL JH	2	5	3	2	3	2	2	2	4	2	2	4	4	4	2	1	1	4
4	COOLIDGE HS	2	5	3	2	2	3	3	3	3	2	2	2	2	4	2	4	2	4
4	ROOSEVELT HS	3	5	4	2	1	5	3	3	3	1	1	2	1	3	2	4	1	3
5	BROOKLAND ES	4	4	4	4	4	4	2	3	3	3	2	3	3	2	2	4	2	4
5	COOK, JF ES	3	5	4	2	4	4	2	2	4	4	2	2	2	2	2	4	2	4
5	EMERY ES	3	5	4	2	2	2	2	3	2	3	4	3	4	4	2	2	2	4
5	LANGDON ES	2	1	3	1	1	4	3	3	3	1	4	2	1	2	1	4	1	2
5	MARSHALL ES	3	4	3	2	3	1	2	3	3	3	1	3	3	3	4	3	1	3
5	NOYES ES	2	2	3	4	2	4	2	3	4	2	2	2	4	4	2	4	2	3
5	SHAED ES	2	5	3	1	1	3	1	2	2	2	2	2	2	2	1	1	1	3
5	SLOWE ES	3	3	2	2	2	4	4	2	3	3	1	1	1	4	2	4	2	3
5	WEBB ES	2	4	3	2	1	4	2	3	4	3	3	2	1	2	1	3	1	2
5	WHEATLEY ES	3	5	3	1	4	1	2	2	3	2	1	1	4	4	3	1	2	4
5	YOUNG ES	2	5	2	1	5	4	3	2	3	3	5	3	3	3	2	4	1	4
5	BACKUS MS	3	3	3	5	1	3	2	4	2	2	2	2	2	2	3	1	2	3
5	BROWNE JH	3	5	4	4	5	4	3	3	3	2	3	4	4	3	1	3	2	4
5	DUNBAR HS	4	5	4	3	3	4	4	3	3	3	4	4	4	3	3	3	2	4
5	PHELPS HS	2	5	4	1	1	3	1	3	3	2	1	4	3	4	2	4	2	3
5	SPINGARN HS	2	5	3	1	3	5	3	2	4	2	1	3	3	3	2	3	1	3
5	WASHINGTON, MM HS	2	5	3	1	1	3	3	3	3	2	4	3	2	2	1	4	2	3
6	BRENT ES	3	3	3	2	1	4	3	4	2	3	2	3	2	3	1	5	1	4
6	GIBBS ES	3	3	3	3	3	4	4	4	3	3	4	4	2	2	3	4	2	3
6	KETCHAM ES	2	5	3	1	2	4	3	2	3	2	2	2	2	2	2	2	1	3
6	LUDLOW-TAYLOR ES	3	2	3	2	2	4	4	4	3	3	3	2	1	3	3	1	1	3
6	MAURY ES	3	5	3	2	1	4	2	4	4	1	1	5	5	4	2	4	1	4
6	MINER ES	3	2	4	2	2	4	2	3	4	2	2	2	4	4	1	1	2	3
6	ORR ES	4	5	4	2	2	4	2	3	4	2	2	2	4	4	1	1	2	3
6	PAYNE ES	4	1	2	1	1	5	3	4	4	2	1	2	2	3	1	2	1	3
6	PEABODY ES	3	2	2	4	5	3	2	3	4	3	2	2	2	2	1	4	1	4
6	STANTON ES	5	2	4	1	2	5	4	4	4	3	4	3	4	1	2	2	1	2
6	TYLER ES	2	1	3	3	2	4	3	2	3	2	4	2	2	3	1	3	1	3
6	WATKINS ES	3	2	2	2	2	4	2	4	3	3	3	2	2	2	1	4	1	3
6	KRAMER MS	4	1	4	2	4	4	3	2	2	3	1	4	4	4	1	1	1	3
6	STUART-HOBSON MS	4	2	2	5	2	3	2	2	3	3	2	2	3	3	3	4	2	2
6	ANACOSTIA HS	3	5	3	3	3	3	3	3	3	3	4	3	3	3	3	3		
6	EASTERN HS	3	1	3	3	4	4	4	2	4	3	2	2	4	3	2	4	1	3
7	AITON ES		5																
7	BEERS ES	3	5	4	4	2	4	3	4	2	2	4	1	1	2	2	4	2	3
7	BENNING ES	4	5	3	1	1	4	2	3	3	1	1	2	2	1	2	3	1	4
7	BURRVILLE ES	4	5	5	2	2	4	3	4	3	3	3	2	2	2	3	3	2	3
7	DAVIS ES	3	1	2	1	5	3	4	4	3	2	2	2	1	4	2	4	1	4

1/99

1-Unsatisfactory 2-Poor 3-Fair 4-Good 5-Excellent

Building Condition Assessment Ranking

Ward	Building	Site	Roof	Exterior Walls	Doors	Windows	Structural	Flooring	Plastering	Ceiling Tile	Plumbing	Mechanical	Electrical	Fire Alarm	PA Security	ADA Complaint	Graffiti	Adverse Enter	Kitchen Equipment
7	DREW ES	3	5	2	1	1	3	2	3	2	3	3	2	2	2	1	2	2	0
7	HARRIS CW ES	2	2	4	1	1	4	3	4	2	2	3	3	1	4	2	4	1	3
7	HOUSTON ES	3	1	4	3	4	4	3	3	3	4	3	4	4	3	2	1	1	3
7	KIMBALL ES	3	2	3	2	2	4	2	3	4	2	2	2	2	2	2	4	2	1
7	MERRITT ES	2	1	4	4	3	4	4	4	2	4	2	4	4	4	2	4	1	4
7	NALLE ES	3	5	1	3	2	4	3	3	4	3	3	2	3	3	1	2	1	3
7	PLUMMER ES	2	5	4	2	2	4	2	3	2	2	2	2	2	4	2	2	2	4
7	BROWN MS	2	3	3	2	3	3	3	4	3	2	5	2	2	3	2	2	1	3
7	RANDLE HIGHLANDS ES	3	5	3	1	1	4	4	3	4	3	3	1	1	3	2	5	2	4
7	RIVER TERRACE ES	3	2	3	2	2	4	4	4	5	3	2	5	5	4	3	1	1	3
7	SHADD ES	4	2	4	3	1	4	3	4	4	3	2	2	1	2	2	3	1	1
7	SMOTHERS ES	3	2	2	2	2	4	2	4	4	2	4	2	2	2	2	2	2	4
7	FLETCHER JOHNSON EC	1	5	3	1	1	3	2	3	3	2	2	3	4	3	1	2	2	3
7	WINSTON EC		5																
7	EVANS MS	3	2	3	2	2	4	3	3	3	3	3	3	3	3	1	2	1	2
7	SOUSA MS	3	2	3	2	1	4	2	3	3	2	2	4	4	4	1	2	1	3
7	WOODSON, HD HS	2	1	2	1	1	1	1	1	3	1	1	1	1	2	1	2	1	3
8	FEREBEE-HOPE ES	3	2	2	3	3	3	2	3	3	2	2	2	1	3	3	2	2	3
8	GARFIELD ES		5																
8	GREEN ES	3	5	2	3	2	3	4	2	4	3	3	3	4	4	2	4	3	3
8	HENDLEY ES	2	2	2	2	1	4	2	2	3	3	2	3	2	3	1	5	2	4
8	KING ES	4	3	4	4	3	4	3	4	2	3	4	3	2	3	2	4	2	4
8	LECKIE ES	4	1	3	2	4	3	4	3	3	2	2	3	4	4	1	2	1	3
8	MCGOGNEY ES	2	5	4	2	2	5	3	3	3	2	2	3	4	4	1	2	1	3
8	PATTERSON ES	2	2	2	1	3	4	2	2	4	2	2	2	1	2	2	1	1	4
8	SIMON ES	3	5	4	2	2	4	2	2	0	3	4	2	3	3	2	2	2	3
8	TERRELL, MC ES	4	3	2	3	4	4	3	4	2	3	2	3	3	3	3	4	3	4
8	TURNER ES	2	1	3	1	2	4	4	3	3	1	3	1	3	2	1	1	1	3

1-Unsatisfactory 2-Poor 3-Fair 4-Good 5-Excellent

February 24, 1999

To the Emergency Transitional Education Board of Trustees
of the District of Columbia

Ladies and Gentlemen:

SUBJECT: FY 1997-1998 ANNUAL LEASING INCOME REPORT

Attached for your review and appropriate action is the FY 1997-1998 Annual Rental Income Report. The report is submitted in accordance with the requirement of D.C. Law 4-158 and District of Columbia Municipal Regulations Title 5, Chapter 35, Section 3508.9. In addition, Attachment B contains information pertaining to the actual condition of the major structural components of each building leased during FY 1997-1998.

During FY 1997-1998, $858,421 was collected in User fees by the District of Columbia Public Schools' Realty Office for use of space in schools by non-D.C. Government entities, and $2,413 was collected in Intra-District Budget Modifications, as noted in Attachment A. Additionally, a total of $155,229 was collected to cover overtime fees for the use of the school facilities. No fees were waived for use of space. The total amount collected in FY 1997-1998 was $1,016,174.

Respectfully yours,

Arlene Ackerman
Superintendent

AA:tp

Attachments

cc: District of Columbia Board of Education

	School Name	Constr Date	Bldg. Sq. Ft.	Design Capacity	Comments
	SURPLUS PROPERTIES				
1	Addison	1885	12,450	288	Pending Lease Negotiation to Dept of Human Services
2	Armstrong	1902	109,900	909	Not Adequate to Sell, Recommend for use by Charter School
3	Berret School	1889	19,744	288	Sold to Jefferson Builders, Inc.
4	Blair	1884	16,851	240	Pending Lease Negotiation to Dept of Human Services
5	Blow	1969	83,600	712	Leased to *Friendship House Public Charter School*
6	Bruce	1892	32,800	520	Leased to City Wide Learning Centers, Inc. (Child Development Center)
7	Bryan	1909	54,700	563	
8	Buchanan	1895	57,000	600	Sold to National Graduate University
9	Bundy	1936	47,700	600	Pending Lease Negotiation to Dept of Human Services
10	Burdick	1939	41,800	348	Leased to The Excel Institute/DHCD/*Community Academy Public Charter School*
11	Chamberlain	1939	77,100	561	Leased w/Option to Purchase to *Friendship House Public Charter School*
12	Carbery	1887	20,088	240	
13	Carver	1930	73,100	573	Leased to *Buena Vista Charter School*
14	Congress Heights (Old)	1896	34,800	480	
15	Crummell	1948	20,022	240	Closing Pending to RJA Social Engineer Co.
16	Dent	1900	20,000	240	Sold to the Capitol Hill Day School
17	Eckington (Old)	1898	19,368	240	
18	Edmonds	1903	20,600	240	Sold to D.C. Teachers Credit Union
19	Emery (Old)	1902	35,586	480	Pending Lease Negotiation to Dept of Human Services
20	Fillmore	1892	15,600	280	
21	Franklin --	1869	41,000	875	Competing bids of Bernstein and Washington Math Science
22	Gage	1904	29,190	360	Sold to Peoples Corporation
23	Gales	1881	12,762	288	Several Bids Received
24	Giddings	1887	55,900	670	Closing Pending to Congressional Squash & Athletic Club
25	Grimke	1887	46,100	640	Pending Lease Negotiation to Fire Dept & Corrections Dept
26	Hardy	1933	17,500	201	Leased to Rock Creek International School
27	Harrison	1890	48,900	308	*Children's Studio and Maya Angelou Public Charter Schools*
28	Hayes	1897	32,800	240	Purchaser back out of deal.
29	Jackson	1889	18,300	240	Leased to A. Salon, Ltd.
30	Keene	1934	50,600	472	Closing Pending to Promise International, Inc.
31	Kingsman	1922	54,700	530	Bids Pending
32	Langley	1923	110,100	708	Leased to *Young Technocrats Math/Science Public Charter School*

	School Name	Constr Date	Bldg. Sq. Ft.	Design Capacity	Comments
33	Langston	1902	22,300	168	Leased to *Associate for Renewal in Ed. Public Charter School*
34	Lenox	1889	39,300	384	Fedora, Inc. ?
35	Lenox Annex	1908	17,016	240	
36	Lewis	1962	49,500	472	Housed Oyster School during construction of Oyster
37	Logan	1935	47,200	650	DCPS Professional Development Training Center
38	Logan Demountable	1956	7,760	288	Leased to Metropolitan Police Department
39	Lovejoy	1901	52,400	484	Post RFP bid received for housing development at full appraised price.
40	Madison	1889	17,940	280	Pending Lease Negotiation to Dept of Human Services
41	McKinley	1928	282,200	1,491	Bidder cannot complete transaction.
42	Military Road	1912	9,332	144	Leased w/Option to Purchase to *World Public Charter School of Washington*
43	Miller	1949	160,000	870	To be razed and rebuilt
44	Morgan Annex	1891	44,241	520	
45	Morse	1883	17,097	240	
46	Mott	1909	57,867	790	Razed, Parking Lot for Howard University
47	Nichols Avenue	1901	35,900	480	Pending lease negotiation with the Smithsonian
48	Perry	1890	44,288	480	Metropolitan Police Boys and Girls Club
49	Petworth	1902	46,900	428	Bids Pending
50	Pierce	1894	18,288	240	No Bids Received
51	Rabaut	1966	176,900	1,200	*Richard Milburn/New Vistas Prep./Kwame Nkrumah Int. Charter Schools*
52	Randall	1907	126,400	1,291	Pending demonstration of financial capacity by Southwest Arts Center
53	Reno	1903	12,882	144	Pending Lease Negotiation to Dept of Human Services
54	Richardson	1956	7,760	288	*The Robert Louis Johnson Arts and Technology Academy Public Charter School*
55	Shaw (Old)	1902	146,551	1,037	Converted to Housing
56	Slater	1980	18,300	180	Leased to *Associate for Renewal in Ed. Public Charter*
57	Syphax	1901	62,200	584	Sold to Manna, Inc.
58	Webster	1884	27,344	432	Closing Pending to Culinary Arts Group
59	Woodridge	1927	37,600	404	*Edison-Friendship Public Charter School*
60	Woodson, Carter	1956	156,000	860	DCPS own if used for school purposes, revert back to National Park Services if not.
61	Wormley	1884	17,200	240	Sold to Georgetown University
	TOTAL		**3,089,327**	**29,483**	

FILE COPY

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Office of the Chief Operating Officer/
Director of Facilities
415 12th Street, N.W., Suite 903
Washington, D.C. 20004-1994
202-724-4202, fax: 202-724-5580
www.k12.dc.us

March 12, 1998

To the Emergency Transitional Education Board of Trustees
of the District of Columbia

Ladies and Gentlemen:

SUBJECT: FY 1996-1997 ANNUAL RENTAL INCOME REPORT

Attached for your review and appropriate action is the FY 1996-1997 Annual Rental Income Report. The report is submitted in accordance with the requirement of D.C. Law 4-158 and District of Columbia Municipal Regulations Title 5, Chapter 35, Section 3508.9. In addition, Attachment B contains information pertaining to the actual condition of the major structural components of each building listed in Attachment A.

During FY 1996-1997, $616,243.09 was collected in user fees by the District of Columbia Public Schools' Realty Office for use of space in schools by non-D.C. Government entities, and $15,752.00 was collected in Intra-District Budget Modifications, as noted in attachment A. Additionally, a total of $151,618.68 was collected to cover overtime fees for the use of school facilities. Thus, the total amount collected in FY 1996-1997 was **$783,613.77.**

Respectfully submitted,

J.W. Becton, Jr.
Chief Executive Officer

JWB:tp

Attachments

cc: District of Columbia
Board of Education

Attachment A

FY 96-97 LEASING INCOME REPORT

NAME OF USERS	SCHOOL	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	TOTAL
Alexander Memorial Baptist Church	Francis JH											137.00	$137.00
All About Children	Shepherd ES			970.00									970.00
*American Personal Communication	Eastern HS	9,000.00	22,500.00	14,400.00	14,400.00	14,400.00	14,400.00	14,400.00	14,400.00	14,400.00	14,400.00	14,400.00	158,400.00
*American Personal Communication	Douglass JH												
*American Personal Communication	Ellington HS												
*American Personal Communication	Fletcher-Johnson EC												
*American Personal Communication	Randle Highlands CS												
Advisory Neighborhood Commission 4D	Truesdale ES									50.00			50.00
Arts Ensemble Reunion	Gibbs ES									137.00			137.00
A Salon, Ltd.	Hobson School		12,615.00	4,205.00	4,205.00	4,205.00	4,205.00			10,507.50	4,205.00	4,205.00	49,352.50
AT&T Wireless	Ellington HS								2,400.00	1,200.00	1,200.00	2,760.00	7,560.00
Bellevue Bible Christian Church	Garnet Patterson JH	1,187.34		593.67		1,210.16	605.08		605.08				4,201.33
Betty Entzminger	Maury ES										137.00		137.00
Black Top Runners	Ballou HS										1,187.33		1,187.33
Busy Bee Summer Camp	Backus JH											630.00	630.00
Capitol East Children's Center	Brent ES											360.00	360.00
Capitol Hill Coop Nursery	Peabody School											1,000.00	1,000.00
Caring Hours	Beers ES											900.00	900.00
Catholic Charities	Taft JH	541.90	541.90	541.90	541.90	541.90	541.90	541.90	541.90	541.90	541.90	541.90	5,960.90
*Cellular One(Southwestern Bell)	Amidon ES	820.00		820.00	1,020.00	1,420.00		1,430.00	2,730.00	2,130.00	2,435.00	2,130.00	14,935.00
*Cellular One(Southwestern Bell)	Ellington HS												
*Cellular One(Southwestern Bell)	Francis JH												
*Cellular One(Southwestern Bell)	Jefferson JH												
*Cellular One(Southwestern Bell)	Kine JH												
*Cellular One(Southwestern Bell)	Ross ES												
*Cellular One(Southwestern Bell)	Stevens ES												
*Cellular One(Southwestern Bell)	Stuart Hobson MS												
Cellular One(Southwestern Bell)	Terrell JH												
Christian Faith Center	Bruce Monroe ES	800.00	400.00	300.00	400.00	500.00	300.00						2,500.00
Cleveland Park Group	Francis JH					548.80							548.80
Crusaders Baptist Church	Smothers ES	745.33	745.33	745.33	745.33	745.33	745.33	460.00	460.00	460.00	460.00	460.00	6,671.99
D.C. Christain Ministries	Terrell, MC		300.00			600.00						600.00	1,500.00
D.C. Self Defense Karate Assoc.	Bancroft ES										1,440.00	480.00	1,920.00
D.C. Teachers' Federal CU	Edmonds Building	3,981.48	1,980.74	1,980.74		1,980.74	36,846.74	1,980.74	3,981.48		1,980.74	3,981.48	60,634.69
Deep Impact/Dream Works Productions	Hyde ES											500.00	500.00
Deliverance & Praise Temple	Sousa ES										840.00	840.00	1,680.00
El Shaddai Ministries Summer Camp	Sharpe Health School											600.00	600.00
Environmental Protection Agency	Amidon ES				548.00								548.00
Faith Temple	Cleveland ES			360.00	360.00	360.00	360.00	360.00	332.00		385.00	170.00	2,887.00
Far SE Community Organization	Congress Hghts School	2,663.80		3,995.70									6,659.50
Filmore Arts Workshop Summer Program	Ellington HS										500.00		500.00
Flea Market at Eastern Market	Kine JH	2,634.24		1,317.12	1,317.12				3,292.80	1,646.40	1,646.40	3,292.80	15,146.88
Galilee AME Church	Bowen ES	720.00	630.00			360.00	720.00		360.00				2,790.00
Georgetown Flea Market	Rosario Pkg Lot	3,380.00	1,690.00		1,260.00	420.00			6,893.20	3,446.60	6,893.20	3,446.60	27,389.60
Georgetown University	Ellington Field Houses	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	1,377.00	15,147.00
Gethsemane Bible Center	Evans JH	958.00	274.00									1,233.00	
Girl Scouts Council Summer Camp	Reed LC	200.00										516.50	716.50
Glad Tidings Assembly	Banning ES	720.00	360.00	360.00	360.00								1,800.00

*Combined Payment

Attachment A

FY 96-97 LEASING INCOME REPORT

NAME OF USERS	SCHOOL	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	TOTAL
Greater Faith Pentecostal	Ketcham ES		137.00	274.00									411.00
Greater Washington Boys & Girls Clubs	Wilson HS				500.00								$500.00
Guerilla Marketing International	Reed LC										172.00		172.00
Hearst Afterschool Program	Hearst ES		200.00		200.00	200.00							600.00
Holy Trinity Church	Wormley Pkg Lot	500.00	1,000.00	500.00		500.00	1,000.00		1,000.00	500.00	500.00		5,000.00
Hoop It Up Kids	Lafayette ES										480.00		480.00
Hopes & Dreams Summer Program	Garnet Patterson JH										200.00	200.00	400.00
Jabbok Ministries	Hart	631.67	641.96	641.96		641.96	1,283.92	641.92	641.96	641.92	641.92	641.92	7,051.11
Jump Start Summer Camp	Lafayett ES					100.00							100.00
Key School PTA Summer Camp	Key ES											378.88	378.88
Kingdom of Zion Baptist Church	Mckinley School									137.00			137.00
Lafayette Before & After Program	Lafayette ES	549.80	549.60										1,099.20
Lesbian & Gay Bands of America	Hine JH						327.75						327.75
Liberty Temple Church	Congress Heights Schoo	1,889.46			1,000.00								2,889.46
Marcus Garvey Charter School	Langley School		6,000.00		9,000.00	9,000.00	9,000.00		6,000.00	6,380.00		3,000.00	30,380.00
Market 5 Gallery	Hine JH	550.00					550.00	1,100.00	1,050.00				3,250.00
Marsha Summer	Roosevelt HS											137.00	137.00
Mathews Memorial Baptist Church	Evans JH							100.00				137.00	237.00
*Metricom	Brookland ES			500.00									500.00
*Metricom	Ellington HS												
*Metricom	Douglass JH												
*Metricom	Wilson HS												
Metropolitan Baptist Church	Garrison ES							5,000.00					5,000.00
Mt. Pleasant YMCA Summer Program	Reed LC										200.00		200.00
Mt. Pleasant Baptist Church	Hamilton School	6,865.00	2,724.00		2,176.00								11,585.00
Muhammad University of Islam	Gidding School											137.00	137.00
National Child Day Care Assoc.	Shaw JH	1,619.33	1,619.33	1,619.33	1,619.33	1,619.33		1,619.33	1,619.33		1,619.33	1,619.33	16,379.97
*National Child Day Care Assoc.	Ludlow-Taylor ES	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00		1,600.00	1,600.00		1,600.00	1,600.00	14,400.00
*National Child Day Care Assoc.	Montgomery ES												
*National Child Day Care Assoc.	Wheatley ES												
*National Child Day Care Assoc.	Wilson ES												
National Community Church	Giddings School	593.67	593.67										1,187.34
National Public Radio	Francis JH		411.00						411.00				822.00
Nation House Positive Action	Bruce Monroe ES										140.00		140.00
Oyster Community Council	Patricia JH										400.00		400.00
Police Boys & Girls Club	Ellington HS								500.00				500.00
Project Northstar Summer Program	Francis JH											500.00	500.00
Renwit Unlimited, Inc.	Backus JH										137.00		137.00
Redemption Ministries	Ballou HS									860.00	1,097.00	960.00	3,017.00
Red Suspenders, Inc.	Hine JH											3,900.00	3,900.00
*Scoobie's B/A Program	Noyes ES	2,140.00	2,140.00	2,140.00		2,140.00	2,140.00	2,100.00			2,100.00	8,700.00	29,600.00
*Scoobie's B/A Program	Ketcham ES												0.00
*Scoobie's B/A Program	Nalle ES												0.00
*Scoobie's B/A Program	Burroughs ES												0.00
Southeast Ministry	Wilkinson ES						411.00						411.00
Spirit of Faith	Anacostia HS	1,903.33	2,524.33		2,524.33				3,787.50		2,400.00	1,058.27	14,197.76
St. Francis DeSales	Raleigh School				548.00								548.00

*Combined Payment

FY 96-97 LEASING INCOME REPORT

NAME OF USERS	SCHOOL	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	TOTAL
*St. John's Community Services	Anacostia HS					11,904.00	2,976.00	1,536.00			6,768.00	2,256.00	25,440.00
*St. John's Community Services	Kramer JH												0.00
*St. John's Community Services	Green ES												0.00
St. Mary AME Church	Maury ES									137.00			$137.00
Stoddert PTA Summer Program	Stoddert ES										200.00		200.00
Stonewall's Athletic Club	Eastern HS	1,710.00										875.75	2,585.75
Sullivan & Crowell	Wilson HS				300.00								300.00
Tasha Carrol Summer Program	Hine JH										200.00		200.00
The Hope Center	Tyler ES				2,880.00	960.00	960.00	960.00	960.00	960.00	960.00	960.00	9,600.00
The Saturday Club	Rabaut School	274.00			274.00		274.00		274.00				1,096.00
Universal Church of God	Cardozo HS	593.67	593.67	593.67	616.50	616.50	616.50	1,096.50	616.50	616.50		960.00	6,920.01
*Urban YMCA After School & Summer Prgm	River Terrace ES	2,669.34									8,880.00	1,400.00	12,949.34
*Urban YMCA After School & Summer Prgm	Randle Highlands ES												0.00
*Urban YMCA After School & Summer Prgm	Terrell ES												0.00
*Urban YMCA After School & Summer Prgm	Benning ES												0.00
*Urban YMCA After School & Summer Prgm	Tyler ES												0.00
Washington Chiel Athletic Club	Cardozo HS	990.00	995.00										1,985.00
Washington Sports League, Inc.	Francis JH			822.00									822.00
													616,243.09
Total Leasing Income		$57,589.16	$65,833.53	$40,957.42	$43,972.51	$52,150.72	$75,640.22	$36,623.39	$56,033.75	$48,259.12	$68,553.62	$72,949.43	$616,243.09
Agency					DC Board of Elections						DC Board of Elections		
Intra-District Budget Modifications					$3,687.00						$12,065.00		$15,752.00
Overtime Total		$17,041.36		$18,851.82	$12,135.03	$9,500.28	$11,126.85	$11,322.13	$18,906.31	$9,899.06	$17,288.04	$27,546.80	$151,618.68
Grand Total Collected FY 1996-1997													$783,613.77

*Combined Payment

GERALD F. COOKE

PROFESSIONAL SKILL PROFILE

Corporate & Project Management * Risk Analysis & Mitigation * Corporate Analysis, Reorganization, Alignment & Workout * Project Finance * Strategic Planning * Corporate & Sovereign Debt Management * Portfolio Analysis & Management * Liability Management * Debt & Equity Syndications * Trade Finance * Financial & Credit Analysis * General Investment & Commercial Banking * Transaction Negotiation & Closing * Computer Literate * Excellent Spanish & French

PROFESSIONAL EXPERIENCE

September 1998 - April 1999 Manager of Cash & Investments - Office of Finance & Treasury, **GOVERNMENT OF THE DISTRICT OF COLUMBIA** (Washington, D.C.). Responsibilities included: Daily management of cash and short term investment positions; Daily management of city wide accounts payable; Long & short term financial planning; Bank relationship management; Financial forecasting; Financial management of federal grants - payables and receivables; Staff management. **ACHIEVEMENTS:** Investment portfolio realignment; Definition of departmental strategy and policies; Definition of financial model for federal grants management; Definition of internal controls.

April 1996 - September 1998 Credit Review Officer – Financial Management & Statutory Review Department, **OVERSEAS PRIVATE INVESTMENT CORPORATION**, (Washington, D.C.). Responsibilities included: Cross border risk analysis and management; Definition of risk ratings; Project monitoring; Credit review; Regulatory compliance; Management reporting. **ACHIEVEMENTS:** Structural design of closed end fund and on-lending facilities; Assessment and restructuring of projects; Introduction of various internal control mechanisms.

August 1995- April 1996 Independent Financial Consultant, (Washington, D.C.).

April 1992 - August 1995 Senior Investment Manager - Debt & Equity, **KUWAIT INVESTMENT OFFICE** (London, England). Responsibilities included: Management of substantial geographically diversified portfolio of real estate and unlisted equity projects; Risk analysis & mitigation; Strategic planning; Corporate management & reorganization; Liability Management; Debt & equity restructuring; Cash management; Asset acquisitions and disposals; Bank relationship management; Budget definition & management; Management reporting. **ACHIEVEMENTS:** Organizational restructuring and alignment of various corporate entities; Definition of asset valuation policies and financial analytical models. **CORPORATE DIRECTORSHIPS:** Granfel Holdings LTD (leisure / hotels).

February 1986 - April 1992 Advisor - Sovereign & Corporate Debt, **KUWAIT INVESTMENT AUTHORITY** (Safat, Kuwait). Responsibilities included: Strategic planning, Design and implementation of asset trading programs; Debt restructuring, sovereign and corporate; Portfolio management; Liability Management; Organization and implementation of banking relationships; Infrastructure finance; Management of USA real estate portfolio; Budget responsibility; Management reporting. **ACHIEVEMENTS:** Definition of State of Kuwait's initial international borrowing for U.S. $ 5.5 billion, U.S. real estate portfolio realignment; Various cross border asset swap transactions (debt/equity, debt/commodity); Re-negotiation of various equity

investments in Bahrain, Venezuela, Guyana, Niger, Yemen, Senegal, Pakistan; Completion of policies and procedures manuals; Establishment of provisioning, country risk and financial analysis policies; Definition of Kuwait Privatization Program. **CORPORATE DIRECTORSHIPS**: Banque Senegalo Koweitienne, Kuwaiti Representative to the Paris Club.

July 1982 - January 1986 Senior Manager, Head of Syndications, **THE NATIONAL BANK OF KUWAIT, S.A.K.** (Safat, Kuwait). Responsibilities included: Strategic planning for sovereign risk lending; Management of all aspects of global syndication activity; Asset swapping; Transaction structure & negotiation; Trade Finance; Debt rescheduling; Project Finance; Financial services marketing; Budget responsibility; Management reporting; Departmental management. **ACHIEVEMENTS**: Policy & Procedure definition; Various transactions.

June 1980 - July 1982 Senior Syndications Officer, Assistant Vice President, **BANK OF AMERICA NT & SA** (Caracas, Venezuela). Responsibilities included: Bid for, market and close investment banking transactions; Project Finance. **ACHIEVEMENTS**: Various transactions.

March 1976 - June 1980 Senior Lending Officer, Assistant Vice President - Construction & Engineering Group, **BANKAMERICA INTERNATIONAL** New York, New York). Responsibilities included: New business development; Co-financing; Project Finance; Trade Finance; Marketing of financial instruments and services.

June 1975 - March 1976 Internal Consultant, Market Planning Division, **MERRILL LYNCH** (New York, New York). Responsibilities included: Financial & marketing analysis and reporting; Test market studies; Cost analysis.

January 1973 - September 1974 Assistant Director, Project Upward Bound, **UNION COLLEGE**, (Schenectady, New York). Responsibilities included: Program Planning & implementation; Maintenance of budget and accounting records.

EDUCATION

September 1974 - June 1976
NEW YORK UNIVERSITY, (New York, New York) Graduate School of Business
Master of Business Administration (MBA) - Finance/Marketing

September 1969 - March 1973
UNION COLLEGE, Schenectady, New York
Bachelor of Arts - International Studies

FOREIGN LANGUAGE PROFICIENCY
Spanish, French

District of Columbia Financial Responsibility
and Management Assistance Authority
Washington, D.C.

July 16, 1999

Mr. William McCarthy
Managing Director
AppleTree Institute for Education Innovation
401 M Street, SW
Washington, D.C. 20024

Dear Mr. McCarthy:

This is in response to your letter regarding the status of the Franklin School property.

On, June 2, 1999, the District of Columbia Financial Responsibility and Management Assistance Authority ("Authority") returned the Franklin School property to the surplus property inventory of the District of Columbia Public Schools ("DCPS"). This decision was consistent with the recommendation of the District of Columbia Emergency Board of Education Trustees. The Authority was particularly concerned about the relationship between the bidder, Washington Math Science Technology Public Charter High School Partners, LP and the charter school of record, Washington Math Science Technology Public Charter School, Inc.

It is the understanding of the Authority that DCPS plans to review the policy regarding the sale of surplus property.

If you have questions, please contact my office at (202) 504-3400.

Sincerely,

Francis S. Smith
Executive Director

cc: Hon. Eleanor Holmes Norton
Hon. George Voinovich
Hon. Ernest J. Ishtook

WEDNESDAY, JUNE 23, 1999.

BUDGET FOR FISCAL YEAR 2000

WITNESSES

PANEL 1

WILLIAM BEACH, DIRECTOR, CENTER FOR DATA ANALYSIS, HERITAGE FOUNDATION

PANEL 2

HON. ANTHONY A. WILLIAMS, MAYOR, DISTRICT OF COLUMBIA

HON. LINDA M. CROPP, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA

ALICE M. RIVLIN, CHAIRMAN, DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY

VALERIE HOLT, CHIEF FINANCIAL OFFICER, DISTRICT OF COLUMBIA

CHAIRMAN ISTOOK'S OPENING REMARKS

Mr. ISTOOK. The committee would come to order, please.

We are meeting this morning to receive testimony concerning the budget for the District of Columbia for fiscal year 2000, and we have two panels of witnesses.

On our first panel, we will be hearing from William Beach, who is the Director of the Center for Data Analysis at the Heritage Foundation.

After Mr. Beach, the second panel includes the Mayor of our Nation's capital, Anthony Williams; the Chairman of the Council of the District of Columbia, Councilwoman Linda Cropp; Alice Rivlin, the Chairman of the D.C. Financial Responsibility and Management Assistance Authority; and the District's independent Chief Financial Officer, Valerie Holt.

And also I always like to recognize Eleanor Holmes Norton, the Delegate from the District. Always pleased to have you, Ms. Norton.

The testimony we receive this morning will be very important to this subcommittee as we are moving to markup on the Consensus Budget that has been worked through by the Mayor, the Council and, of course, the D.C. Control Board. We are all anxious to work together with everyone to continue the progress that we see happening here within the District of Columbia and to help it achieve its goals and to become the city that I know everyone in the Nation wants it to be as our Nation's Capital.

We take very seriously, of course, our responsibility regarding the District's budget concerning schools, roads, public safety and all the services.

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TAX CUTS

One thing that I know we will be discussing this morning, of course, is what is on the District's agenda regarding tax cuts. I want again to commend the Mayor and the Council for their work on the historic tax cuts that they are putting in place for the District. I am concerned to make sure that we assist with the process that they have under way. I know you are looking at the economic stimulus that it will be for the District as well as helping people keep more of what they earn; and, frankly, I think you are setting a good example for the rest of the country in what you are doing.

We want to make sure that nobody gets cold feet regarding the tax cuts. There was a Council vote yesterday having to do with whether certain economic conditions might cause the tax cuts to diminish.

I recognize the need for fiscal responsibility. The District wants to make sure that its budget is balanced and there is a proper reserve. I question, however, the wisdom of doing it by making any tax cuts conditional, rather than saying if certain conditions materialize we will make adjustments on the spending side of the ledger to assure financial responsibility. We want to delve into that this morning as part of the testimony.

SAVINGS AND FINANCIAL MANAGEMENT PROGRAMS

I also want to hear testimony concerning what is necessary with the different financial management programs the District is trying to put in place that achieve a number of savings. It is a very daunting and challenging task and a very worthwhile task, and I want to make sure that the tools are in place so the Council and the Mayor can achieve those particular goals. I know it is very much a challenge and I want to make sure that we have the structure that enables the Mayor and the Council to pursue those administrative and internal savings. That again is something that we want to pursue in the hearing this morning.

Before swearing the witnesses, Mr. Moran, do you have any opening comments?

CONGRESSMAN MORAN'S OPENING REMARKS

Mr. MORAN. No, I don't need to comment, Mr. Chairman, other than to say that I think I have seen a real rebirth within the District of Columbia. I am very proud of its citizenry for having elected an outstanding individual to be their Mayor. They have fine people on their D.C. City Council. They have a good representative to the Congress.

My own feeling—my bias is that they know best what should be the priorities for their city. The Mayor particularly is someone with a background of fiscal responsibility and, along with the D.C. Control Board, can rightfully take significant credit for turning this city around.

This city, as you know, was in very deep debt. And I was looking through some old papers over the weekend and, boy, the budget deficits that had been forecast would have given anyone every reason to turn their back on this city and give up on it. But here we are in a period of time when we actually have a surplus.

But in addition to that surplus, we have tremendous need, and it seems to me that that balancing act which requires astute judgment between the needs of the people of the District of Columbia and the benefits of a tax cut in terms of stimulating their economy and attracting the middle class and businesses that you need for a stable economy, that balance is a very difficult one. I do not have confidence personally that I know what the right decisions are, but I do have confidence particularly in the Mayor to make the right decisions.

I think a moderate tax cut that enables us to only spend money where it needs to be spent to address the socioeconomic needs of the city and strengthen its people and to make sure that we do not slip back into the days of deficit—that, it seems to me, should be our priority. I know it is going to be mine.

So I am going to defer for the better part to the Mayor's judgment, with the support of the Council and the Financial Control Board.

So that is where I stand, Mr. Chairman. I appreciate your having the hearing today.

Mr. ISTOOK. Thank you, Mr. Moran.

I wanted to recognize one other member of the D.C. Council that is present, and if there are others I am sorry if I fail to recognize them. But David Catania, one of the other Council members, is here. He is not a witness, but we are pleased to have you here.

WITNESSES SWORN

It is the standard practice that all witnesses be sworn in before the subcommittee. So if I could ask all persons who are to be witnesses if you would stand, and I will administer the oath.

[Witnesses sworn.]

Mr. ISTOOK. The record will show all witnesses were present and answered in the affirmative. Ms. Rivlin is the one witness who is not yet present.

OPENING STATEMENT OF WILLIAM W. BEACH

Mr. Beach, we're pleased to have you here; and we are happy to hear from you. I will mention to you and all witnesses that the entirety of your written statements will be put in to the record. And I think it is, frankly, better if, rather than rereading the statement since we have copies of it, if you would summarize or expand upon your testimony instead. That sometimes is much more useful for us and more efficient. Go ahead.

Mr. BEACH. Thank you very much.

Mr. Chairman and members of the committee, my name is William Beach. I am senior fellow in economics with the Heritage Foundation and director of our Center for Data Analysis. It is an extreme pleasure to be here.

The Foundation has been a long-time citizen of the District. Many of our employees work there. We have been 25 years in business in the District. We have worked in the past for pro-growth public policy changes that helped the District, and we are delighted to support what the District is now proposing.

Much of the context for what we're discussing today comes from long work, hard work, courageous and heroic work done by this

Congress and by the District over the past many years. In fact, we could go back into the 1980s and take a look at the remarkable tax cuts of that time which set the tone and the environment for entrepreneurship whose abundant fruits we are now harvesting throughout the economy. We can look at the prudent financial management at the State and Federal level of the 1990s and understand the extreme importance of financial stability in lowering interest rates and creating an economic environment for growth.

And last year we saw the fruits of what was done 2 years ago in the Taxpayer's Relief Act of 1997. In that Taxpayer's Relief Act key elements of the District of Columbia Economic Recovery Act, for which the Heritage Foundation was strongly supportive, Delegate Norton's economic act, were enacted, signed by the President and are now in force.

TAX CUTS AND TAX CREDITS

We saw strategic capital gains cut throughout the District, which has been important for the District's recovery. We saw a $5,000 tax credit for first-time home buyers, which has, remarkably, produced a headline. The District is now the fastest-growing market for new and used homes in the United States.

HIGH TAX BURDEN FOR THE DISTRICT

It is with this context in place that the City Council, the District's Council, has taken a remarkable and stunning move to propose large tax cuts. The reasons are fairly abundant. The District's three individual income tax rates, 6, 8 and 9.5 percent, are all higher than the highest rates in Maryland and Virginia, 5 and 5.7 percent respectively. Business taxes in the District are also higher than in the surrounding states. D.C. Businesses pay a franchise tax of 9.975 percent, compared to a corporate tax rate in Maryland and Virginia of 7 and 6 percent respectively. Business and personal property taxes are all steeper in the District than in Maryland and Virginia.

The Washington Post reported in February that D.C.'s own Office of Tax and Revenue found that a typical middle-class D.C. Family paid 50 percent more in taxes than it would pay in the Virginia suburbs. In short, District of Columbia residents pay a substantial tax premium to live and work in the District, and many residents have found this premium far too high.

POPULATION DECLINE FROM 750,000 TO 525,000

Let me give you some numbers. In 1970, the District of Columbia enjoyed a population of over 750,000. By 1997, however, the District's population had fallen to 525,000. If current trends continue, the District's resident population and much of its tax base will shrink even further.

According to WENA, which is an internationally recognized forecasting firm, current trends imply a population of 487,800 by the end of 2004, and 471,900 by the end of 2009. At the same time, the populations of the surrounding Virginia and Maryland counties are expected to continue growing at near double-digit rates.

Now this downward drift in the resident population is mirrored by declines in total District employment. District employment stood at 248,000 at the beginning of 1999. If trends do not soon reverse themselves, the end of 2004, we will see total employment fall to 219,000. By the end of 2009, the Council could be trying to collect taxes from only 212,000 worker resident workers. That number would represent a 15 percent drop in total employment in a mere 10 years.

Obviously, the District's school system and historically higher rates of crime have played a part in the hollowing out of the D.C. Tax base. But high tax rates also matter. If the District is to avoid a 40 percent fall in its population by 2009, the Council should take action on all of these fronts.

The District's Council argues that now is the time to begin to work on the tax leg of the District's set of problems, Mr. Chairman. Certainly with budget analysts forecasting general fund surpluses over the next 4 years and many economists expecting a continuation of the current economic expansion it is very hard to argue with their timing.

We think this is a very good idea, a very positive step. Congress has clearly signaled to the American people that it is interested in changing tax policy to reduce taxes on savings, on capital, and to give middle-class families tax relief. Throughout the United States in States and municipalities that policy is being echoed in action, and here it is in the District.

BALANCING TAX CUTS WITH CIVIC RESPONSIBILITIES

Many people have argued that there are some problems with this, and let me just mention one in particular. As Congressman Moran noted, we need to balance tax cuts with the civic responsibilities of the District, and part of that is the delivery of key services.

PRODUCTIVITY OFFSETS ARE REAL?

The District's budget, which is here on the table—it is a magnificent document, and I have complimented the staff on the preparation of that. I have looked at a lot of these kinds of documents, and this is wonderful—pays for some of the tax cuts through productivity offsets. I think those productivity offsets are real, and I will mention them, if need be, in questioning.

But in my experience working in a major American corporation and with then-Governor Ashcroft in the State of Missouri, there are two key elements to achieving efficiency: Significant attention and substantial attention.

Significant, the chief executive officer must have the power to oversee and drive productivity and efficiency savings. That must be vested in a person.

We have, of course, Congress' and the Council's oversight and authority and support. That has to happen. It can't be divided.

Substantial attention. Substantial attention means that each of the senior officers, each of the senior executives must have as their top priority squeezing efficiency out of mismanagement. If that can happen, as it did in the Sprint Corporation when we went from a regulated to a deregulated operation, in the State of Missouri

through Governors Bond and Ashcroft when we turned that government around, then I am confident that the productivity and management offsets are present.

These are disjointed remarks, Mr. Chairman, but in the recognition of your admonition, I close my oral testimony and submit my written testimony.

Mr. ISTOOK. Thank you very much, Mr. Beach; and of course your written testimony will be in the record.

PREPARED STATEMENT OF WILLIAM W. BEACH

[The prepared statement of Mr. Beach follows:]



The Heritage Foundation 214 Massachusetts Avenue, N.E. Washington, D.C. 20002-4999 (202) 546-4400

Congressional Testimony

Why Cutting Taxes in the District of Columbia Will Lead to Economic Growth And Stronger District Finances

Testimony Before the
District of Columbia Subcommittee
of the Appropriations Committee of the House of Representatives

June 23, 1999

William W. Beach
Director
Center for Data Analysis
and John M. Olin Senior Fellow in Economics
The Heritage Foundation

Testimony

On June 1, 1999, Mayor Anthony Williams transmitted the District of Columbia's fiscal year 2000 operating budget and financial plan to President Clinton and Alice Rivlin (Chair of the District of Columbia Financial Responsibility and Management Assistance Authority, "the Control Board"). This important budget contains one of the most dramatic tax reduction initiatives in the District's long history. If approved by Congress, District taxpayers will save $892 million between FY2000 and FY2004, as the District reduces individual tax rates and business taxes to levels more like those taxpayers face in Maryland and Virginia.

The long economic expansion and wise tax policy changes in the last two Congresses account in part for the District's stunning decision to cut taxes. The tax policy changes of the 1980s and prudent fiscal stewardship in the 1990s produced the economic setting for what the District now proposes. On the one hand, the environment for entrepreneurship that tax cuts in the last decade enhanced led to vast improvements in economic efficiency and productivity that we now see bearing abundant fruit. On the other hand, the prudent management of state and federal budgets and our money supply led to lower interest rates and greater financial stability, especially as Congress and the Administration delivered on their promise to balance the federal budget. Congress's recent tax policy changes have only brightened the economic setting: lower capital gains tax rates, expanded access to tax sheltered savings plans, and, yes, the child tax credit have clearly signaled to taxpayers that the federal policy makers want to accommodate continued economic expansion.

Additionally, the Taxpayer's Relief Act of 1997 contained some important elements of Delegate Norton's innovative District of Columbia Economic Recovery Act. While the Congress did not adopt Delegate Norton's call for a District-wide capital gains tax of zero, it did permit certain especially distressed sections of the District to enjoy lower capital taxes. While the Administration resisted the Delegate's wise call for a flat tax in the District, the President did sign the legislation that gave all first-time home buyers a federal income tax credit of $5,000. Evidence now streams into the District's economic development offices that the tax credit and other Congressional tax actions have made the District of Columbia one of the fastest growing cities for new and previously-owned home sales. Who would have thought that possible just a few years ago?

Now the District owns a handsome fund balance that is in surplus from its own revenue sources. Its fiscal health appears real, and its management team (aided by an energetic and talented Control Board) seems up to the important task of long-term economic recovery.

With these factors in hand, the District Council adopted the Tax Parity Act of 1999 to address one of the most harmful legacies of D.C.'s past mismanagement: the high District tax rates.

The District's three individual income tax rates (6, 8, and 9.5 percent) are all higher than the highest tax rates in Maryland and Virginia (5 and 5.75 percent respectively). Business taxes in the District are also higher than in the surrounding states. D.C. businesses pay a franchise tax of

9.975 percent compared to corporate tax rates in Maryland and Virginia of 7 and 6 percent, respectively. Personal and business property taxes also are steeper in the District than in Maryland and Virginia. The *Washington Post* reported in February that D.C.'s own Office of Tax and Revenue found that a typical middle-class D.C. family paid 50 percent more in taxes than it would do in the Virginia suburbs.

In short, D.C. residents pay a substantial tax premium to live and work in the District, and many residents have found this premium far too high. In 1970, the District of Columbia enjoyed a population of over 750,000. By 1997, however, the District's population had fallen to 525,000. If current trends continues, the District's resident population (and much of its tax base) will shrink even further. According to WEFA (an internationally recognized economic forecasting firm in Philadelphia), current trends imply a population of 487,800 by the end of 2004 and 471,900 by the end of 2009.[1] At the same time, the populations of the surrounding Virginia and Maryland counties are expected to continue growing at near double digit rates.

This downward drift in resident population is mirrored by declines in total District employment. District employment stood at about 248,000 at the beginning of 1999. If trends do not soon reverse themselves, the end of 2004 will see total employment fall to 219,000. By the end of 2009, the Council could be trying to collect taxes from only 212,000 workers. That number would represent a 15 percent drop in total employment in a mere ten years.[2]

Obviously, the District's school system and historically higher rates of crime have played a part in the hollowing out of the D.C. tax base, but high tax rates also matter. If the District is to avoid a 40 percent fall in its population by 2009, the Council should take action on all of these fronts. The District's Council argues that now is the time to begin work on the tax leg of the District's set of problems. Certainly with budget analysts forecasting general fund surpluses over the next four years and many economists expecting a continuation of the current economic expansion, it is hard to argue with their timing.

Every good idea, however, has its critics. While the general public reacted to the Tax Parity Act of 1999 with enthusiasm, some in the District fear that proposed tax cuts will benefit only high income taxpayers and that the "productivity savings" that pay for a portion of the cuts will be unrealized. The Council's decision to cut the lowest tax rate most and the highest least addressed apprehensions about who would benefit from the tax savings. Also, the jobs this policy change should produce would benefit those who currently do not have work as well as those D.C. residents looking to improve their economic position.

The concern about productivity offsets also is misplaced. The District just passed through a financial crisis that focused the attention of the Mayor's Office as well as the Control Board on numerous opportunities for reducing government's cost while improving its services. In the FY2000 budget, for example, the Mayor proposes implementing simple but proven management tools for bidding and administering contracts. This "managed competition" initiative may save the

[1] WEFA, Inc., Regional Services, Spring 1999 State Economic Model for the District of Columbia. Data available from the author upon request.
[2] Ibid.

District $20 million in FY2003. Additional "productivity savings" are expected as the District finds old practices that high technology and ordinary common sense can correct. We know, however, from the efforts of large corporations to realize such productivity savings that their achievement requires significant and substantial attention: significant, in the sense that the CEO must play a central role in driving the process of change and substantial in the hours spent by senior management on attaining higher quality at lower cost. The Mayor also projects $15.7 million in "general supply schedule savings" in FY2003. This figure stems from growing already realized supply savings in FY99 by no more than the rate of inflation. In other words, if the District did no more than hold the current line, it would meet this spending reduction target.

Unease about the District's tax cut plan run aground on the strength of the District's current and near-term economy and on Congress's clear intent to support economic growth in the nation's capitol. They likewise run against the continued and pressing need to bring greater prosperity to District residents. If declining population and employment are not enough to spur critics of tax reduction to think again, then they should contemplate a District unemployment rate that is still nearly twice the national average. While most of the country has succeeded in bringing the economic boom to Hispanics and African-Americans, Washington remains a "neverland" of employment if you are young, Black, and hold a high-school degree.

Delegate Eleanor Holmes Norton heard these same arguments against tax cuts when she attempted to secure Congressional passage of the District of Columbia Economic Recovery Act in 1997, a measure specifically designed to jump start the District's then sluggish economy. She wisely denounced them. Delegate Norton and her colleagues Senators Joseph Lieberman (D-CT), Sam Brownback (R-KS), and Connie Mack (R-FL) called for federal tax law changes that would have created a flat tax for the District, eliminated federal capital gains taxes in D.C., and given all first-time home buyers a $5,000 tax credit. Then, as now, the critics of this innovative proposal were more concerned with income maintenance programs than with jobs, with funds for emergency food programs than with micro enterprises. Despite a showing that D.C.'s own revenues would rise with lower federal taxes, that thousands of new jobs would be created, and that the suburbs as well as the central city benefited from new economic life in Washington;[3] the critics prevailed and much of Delegate Norton's plan failed.

But not all of it. President Clinton signed the Taxpayer's Relief Act of 1997 that contained the District of Columbia tax credit for first-time home buyers and a limited version of capital gains tax abatement. Many observers credit the tax credit with a significant portion of today's vibrant D.C. housing market and the special capital gains treatment given certain Washington neighborhoods with stimulating new business development.

Indeed, these remnants of Norton's tax proposal in concert with the reduction in the federal capital gains tax rates from 28 to 20 percent and from 15 to 10 percent may have a great deal to do the District's improved economy and its current budget surplus. As the Center for

[3] See William W. Beach and Gareth Davis, "An Economic Analysis of the District of Columbia Economic Recovery Act," Presentation to Delegate Norton, Senator Lieberman, Senator Mack, and Senator Brownback (July, 1997). This presentation resulted from analysis performed jointly by The Heritage Foundation and WEFA, Inc. A copy of this analysis is available upon request.

Budget and Policy Priorities correctly notes, budget surpluses bless the balance sheets of nearly every state and most major municipalities in large part because of unexpectedly high capital gains tax revenues.[4] Reductions in the after-tax cost of capital, which stem in part from the lower taxes on capital gains, have stimulated housing construction and purchases. Taxes from these activities also fill the coffers of the District and other governments.

It is just these kind of positive economic effects that the Council can expect from its proposed tax cuts. The WEFA/Heritage analysis of Delegate Norton's Economic Recovery Act (which saved taxpayers almost as much as the Council's plan) showed that disposable incomes throughout the metropolitan area would rise by a total of $115 billion over a ten-year period, and 15 percent of that increase would go to District residents. This analysis also showed that employment would rise by 112,600, with the District reversing its downward drift and gaining 24 percent of this increase. Likewise, District wage and salary income (upon which the District raises most of its income tax) would expand by $6.3 billion above its growth without the tax changes. Perhaps the most telling result of all from this analysis of the Norton plan was our finding that nearly all of the revenue decrease came back to the District over a ten-year period in the form of new taxes from new jobs and higher wages.

Tax policy stands at the center of our effort to get public policy right for economic growth. Tax policy mirrors our view of the role of government in everyday life and parallels the level of spending and the diversion of resources to the state. It reflects as well our opinions about the social worth of achievement and financial prudence and shapes our practice of the principle of equality before the law and equal access to due process.

Tax policy matters, whether it is in far away places or the District of Columbia. We know from our study of over 130 other countries that those with low tax rates on labor and capital relative to the average have adopted other public policies that promote growth: free trade, minimal restrictions on the import and export of capital and labor, rule of law, stable money, and light regulations on the use of one's private property in production. We know as well that those countries with below-average tax rates on labor and capital have long-term growth rates that are about 0.6 of a percentage point higher than those countries at or above the average.

Numerous studies conducted over the past four years by The Heritage Foundation and by other think tanks with economic specializations show that reductions in tax rates on labor or capital--or both--lead to higher levels of economic activity. Tax policy changes that provide credits or deductions for some and not for others, however, have little effect on the overall level of economic growth, even though they may achieve greater equity in tax law. In fact, it is commonplace for economists to give low economic growth scores to tax policy proposals that reduce the tax burden on targeted classes of taxpayers. For example, the recently enacted child tax credit, although important for reversing the growing inequity in the code stemming from allowing the personal exemption for children to lag behind inflation and the exemptions for adults, hardly causes the standard economic models to stop for breath. Drop the taxes on capital gains or

[4] Lav, "From Rags to Riches to Rags?": p. 4.

reduce marginal tax rates on ordinary taxable income, however, and these same economic models register significant increases in economic activity and long-term growth rates.

Getting tax policy right is a task that knows no particular season. This year's opportunity for redirecting tax policy down the seldom-trodden road to righteousness, however, happens at a time of unexpected, rather large budget surpluses. This bounty, however, raises a troubling question: Once the revenue requirements of government have been determined in our constitutional system of representative decision-making, must tax revenues above the needs of government be returned to taxpayers immediately; or does the national legislature have an expansive authority to seize taxpayer income beyond the budget law it has enacted?

Members of Congress and, indeed, the general public may not see the important connection between how this question is answered and future economic performance. If Congress and the District get policy right, then District residents are on the verge of unprecedented prosperity. If this opportunity is missed, they may find themselves the subject of endless academic essays diagnosing their failure to grab the chance for greater well-being when the fortunes of economic events offered it.

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$59 MILLION TAX CUT; $41 MILLION ADMINISTRATIVE SAVINGS

Mr. ISTOOK. I want to ask, recognizing the Council has acted, and I think very prudently, to start many good things in motion that begin with the tax cuts. However, the success of the tax cuts also requires that you keep the budget within balance in D.C.; and we have a reserve fund requirement that was imposed previously by Congress. The amount of the tax cut package the first year, I believe, is at $53 million—$59 million.

Mr. BEACH. Yes, that's about right. Why guess when you can know?

Mr. ISTOOK. $59 million, is that correct? I just want to have it correct in the record. I didn't want to misstate it. You have first year tax cuts of $59 million.

One of the key elements that I see in the budget that relates to this is squeezing out some $41 million in administrative savings through different management reforms.

The Council, I think, has acted very responsibly in pushing for the tax cuts. I believe the success of the tax cuts will heavily depend upon the success of the administrative savings that have to materialize, $41 million out of the $59 million, if you will.

You alluded to that. There has been, of course, all sorts of shifting between the Council, the Mayor, and the Control Board. Now we have, as you testified, a need to make sure that the chief executive has the tools that he needs to squeeze out those savings in reforming management practices.

TOOLS TO REALIZE $41 MILLION IN MANAGEMENT SAVINGS

My question is, does he have those tools? And if not, how can we make sure that he does to work cooperatively with everyone else in the process?

Mr. BEACH. Well, necessarily, those tools are in part absent because of the division of power right now following the creation of the Control Board. In 2001, God willing and the budgets are all in balance, more authority will be moving to the Mayor's office. But it is my impression that this body in deliberation with the Mayor's office could craft even more explicit powerful tools for the Mayor to use.

Let me just point to one area where slippage could occur. There is in this budget a statement, and I believe you will find it on line—let's see—on line 31 of the budget, and that's in section 2, page 5. General supply schedule savings.

General supply schedule savings, if they are affected throughout this budget period by 2003, will bring about reductions in expenditures of $15,706,000. And all the District has done there, Mr. Chairman, is take what they have accomplished in fiscal year 1999 and increased the number for each succeeding fiscal year by the rate of inflation. But if attention isn't spent to maintain the fiscal 1999 accomplishments, then that very conservative estimate could slip badly backwards.

So that's the sort of thing. It is a small thing, but it is a large part of the budget where the Mayor needs to be on the line. And everyone in his administration needs to know that his eyes are on

that particular initiative. That goes for all of the initiatives in there.

So I would strongly recommend that you look at powers of the Mayor with respect to these kinds of budget objectives.

Mr. ISTOOK. Okay. I would appreciate if you would supplement for the record something further on where you think some of that power needs to be restored to the Mayor's office, and I think it is an open question on something such as that, if this is something that is transitional as opposed to permanent.

[CLERK'S NOTE.—Mr. Beach did not supply any additional information for the record.]

Mr. ISTOOK. But, again, my objective is just trying to help the Mayor and the Council to accomplish what they are already trying to do on the administrative savings and on the tax cuts and to doing it within the framework of a balanced budget.

Thank you very much, Mr. Beach.

Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

MANAGEMENT REFORM SAVINGS ACHIEVED?

It seems to me that the Mayor has shown substantial initiative in achieving management reform savings, would you not agree, Mr. Beach?

Mr. BEACH. That's my impression, Mr. Moran, yes.

Mr. MORAN. Do you think that, within the context of fiscal responsibility, that you would be better off postponing the tax cut until you are sure that the management reform savings can be achieved? You don't want to drive yourself into a deficit situation, rather, it may be more appropriate to provide the tax cuts subsequent to the management reform savings, since the Mayor has shown that he is determined to achieve those savings? Or do you feel that you cut the taxes first and then hope that you can achieve the savings to pay for them?

Mr. BEACH. Well, happily, we are not in that position. I wouldn't be an advocate of hoping for management savings unless they were real on the books and moving forward, especially in the District's case. But we have a record through the past year, I think, and it is abundant and it shows up in various notes in this budget, that the management team in place now, and that includes the Control Board, are able to find those savings and create efficiency, at the same time improving the provision of public services. And that's the key.

Now with that record in place and with the bad tax imbalance which we have in the District compared to the counties around us, I think you can do both simultaneously, but absent that record I think you would want to be careful. But we have that record. And, as I mentioned, one instance of it where we have the savings from the supply schedule, all we have to do is manage that and we can go forward with, hopefully, $16 million in savings just from that line. So I would do both. And it's very important to give the signal that financial stability is accompanied by economic opportunity.

As I was mentioning to Delegate Norton prior to this hearing, we have really seen the District come around. And you made this

point, and it is astounding, it is wonderful. And the initiative can be taken to further that through prudent tax cuts. Clearly, we have an imbalance. I think that that should move forward at the same time.

Mr. MORAN. I don't necessarily argue with anything you are saying. Just what I'm trying to get at is the judgment and balancing these priorities that we all agree on.

Mr. BEACH. Yes.

BOND RATING AND BALANCED BUDGETS

Mr. MORAN. One of our problems is the interest rates that the District has to pay to borrow money because they had a junk bond rating. Now very recently their rating has improved. But if it improved to the point of the suburbs' rating we would save a lot of money, for example. But with the bond rating agencies, my experience as a Mayor was that the first thing they wanted to make sure was that you could virtually guarantee that your budget would be balanced, that you would not go into deficit, that you have covered your bases and that you had played it conservatively.

And I remember at one point we were going to cut property taxes and one of the advisors, I don't know whether it was Moodys or Standard & Poor's, suggested perhaps, rather than cut property taxes this year, you should make sure that the revenue estimates are as strong as you are hoping they will be, your management reforms are successful, and then cut them in the subsequent year after you have achieved the surplus.

But we are far more concerned about you balancing that budget, not taking any chances. And my concern, while I agree with you, the economic opportunities that tax cuts present are substantial, and I want the District to be competitive with the suburbs in terms of the tax incentives, right now, there is a disincentive. But if we cut taxes now and we find that the management reforms, no matter how determined we are to achieve them, are more difficult than we thought because of bureaucratic inertia or the civil service requirements or any number of other things or the economy doesn't go as well as we thought through unforeseen circumstances. If we don't factor in the management reform and a tax cut right now but we do the tax cut when we are sure we have the surplus, I think it may engender even more confidence.

So while I want the tax cuts, a higher priority it seems to me is to ensure a balanced budget and even a surplus so that we don't lose the momentum that has been developed really recently. We are only talking about a couple of years now. And to sustain that pace would seem to be the highest priority and not to take any chances that it might be arrested by premature action.

IMPORTANCE OF GROWING TAX BASE

Mr. BEACH. And I don't disagree with what you have said.

Just one little piece of my own experience in working with Standard & Poor's and Moodys on State general obligation bond ratings. Not only do they want to look at the bottom line and your financial management practices, but in the case of a taxing authority, they also want to know that the tax base is growing and not shrinking. And especially for the Moodys people, this is a key element.

That tax base in the District is growing now, and what we can do in the District to keep it growing but to particularly bring in businesses that are going to create jobs by lowering that differential, that should only support a better bond rating, a better tax rating, a better rating for the District than not, and that is why I think we should do both at the same time. They are both supported. If they are phased in like they are in this budget and that is the schedule and you keep to it, I think it should be positive. I do not see anything in the assumption set here which would say that we are being overly optimistic with respect to the economy.

Mr. MORAN. I know that they are both complementary. I guess I may be a little more conservative. You may have a little too liberal an attitude towards balancing the budget first, and I don't want to push it further, and I appreciate your testimony and your interest in the District.

Mr. ISTOOK. Mr. Moran, we could arrange for you to register Republican.

And for the witness, I actually don't know your party registration, but we could arrange a swap.

Mr. MORAN. It may not happen today or tomorrow.

Mr. ISTOOK. Thank you.

I want as much as possible to let members ask questions on our side in the order of arrival, so I will move next to Mr. Aderholt. And Mr. Cunningham has a thing he has to get to at 11, so I may not get that perfectly, but Mr. Aderholt.

Mr. ADERHOLT. I don't have any questions at this time.

Mr. ISTOOK. That was easy.

In that case, I need to bounce back to Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

SUPPORT OF COMPROMISE ON TAX CUT PROPOSAL

Mr. Beach, do you agree with the basic outline provisions of the compromise that was reached on the tax cut proposals?

Mr. BEACH. Yes. Yes, to an extent. And as I have perhaps said, we are following this in a macro sense, so the details with respect to spending and so forth I would prefer that my colleagues behind me address that.

But, in general, I think that we think that the move is right. I would have liked, to be quite honest with you, the original Evans and Catania approach to have been taken.

Mr. MOLLOHAN. It would be perfect for you to be open about it.

Mr. BEACH. I think that the original approach was good. It was aggressive. It moved in the right direction. In that sense, my focus was on dropping that differential between the District and the surrounding counties.

Now——

Mr. MOLLOHAN. You were in favor of the more aggressive approach?

Mr. BEACH. Yes, I think the more aggressive approach from the tax side was a good move. Naturally, not being the budget officer here, I have to say that my attention on the budget side wasn't as extreme. And so the balance seems to be right. It seems to be a good balance between what we have to do and be prudent and make sure we don't overstep and the tax cut side of it.

"TRIGGER" CONDITIONS PLACED ON TAX CUTS

Mr. MOLLOHAN. If you feel comfortable doing so, would you comment on the provisions that are conditions precedent to the tax cuts contained in the agreement?

Mr. BEACH. Well, the triggers are somewhat problematical from an economic standpoint. Let me explain why.

Once you institute a tax cut, especially when you are cutting rates, people don't instantaneously respond. Just take a situation where businesses signed a lease for a couple of years in Alexandria. It can't immediately move to the District. And so the District needs to have in place a commitment over the long term to the lower tax rates. That's where you begin to see these good things happen in the economy, such as the commitment to the first-time homeowners tax credit. People know now that when they are ready to sell in Fairfax City, as my wife and I might do, and move into Georgetown or move into northeast or wherever we are going to move, that tax credit is going to be there.

So the commitments—I like to think that commitment is the dynamic of change. And you have to have that commitment in place.

So the triggers kind of bother me because they say, hmm, maybe our commitment isn't as solid as we are saying it is.

Mr. MOLLOHAN. But they are only keyed to performance.

Mr. BEACH. That's right. And the macroeconomic triggers seem reasonable.

For example, there is a trigger in there that says if the economy—if the national economy drops below a 1.2 percent growth rate after inflation has been taken out, then we reassess. That is a fairly low growth rate and I doubt that we are going to achieve that over this 4-year budget window, so that is prudent.

Mr. ISTOOK. You doubt we will achieve it or you doubt we will fail to achieve it?

Mr. BEACH. I doubt that we will achieve such a low growth rate.

Mr. ISTOOK. So you think it will be higher. I just wanted that clearer for the record. Thank you.

Mr. BEACH. But, even so, the trigger has the effect of mitigating the District's commitment to the tax changes, which if I were a businessperson would mean that maybe I am not going to achieve those lower franchise tax rates. That is problematical.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Thank you, Mr. Beach.

Mr. ISTOOK. Thank you.

Mr. Tiahrt?

Mr. TIAHRT. Thank you, Mr. Chairman.

TAXPAYER'S RELIEF ACT OF 1997

You referred in your testimony to President Clinton signing into law the Taxpayer's Relief Act of 1997——

Mr. BEACH. Yes, sir.

Mr. TIAHRT [continuing]. And you note that there was a good, strong housing market that you think that is related to. You also made two references here, certain neighborhoods were given special treatment, sort of focused on certain neighborhoods. Do you think that has been productive? Are there numbers to back that up?

TAX CUTS AND INCREASED REVENUES

I looked at the revenues, and it looks like the revenues are continuing to increase, and yet we have tax relief, and that is contradictory to what we have seen. With the District's Tax Parity Act we have a line item in the budget that is actually a $59 million deduction for fiscal year 2000. Is it possible to have tax relief and yet have increased revenues?

Mr. BEACH. Oh, I think that that's common—that's common practice. What we are seeing in the District is not historic. We have had rapid growth in the District before over the long history of the District, but there is a truly amazing turnaround.

IMPACT OF TAX CREDIT FOR HOMEOWNERS

There is an important report that just came out that I am sure the Chairman has—or if he doesn't we would be happy to give you—which quantifies the tax credit for homeowners and the reasons why people say they are moving into the District. They are moving into the District in part to take advantage of that.

Now, that has brought a tax base increase into the District which is partly responsible for increased sales taxes, increased income taxes and, indirectly, increased business taxes. So just that one provision has produced a virtuous feedback in revenues for the District.

Mr. TIAHRT. Have you—the Heritage Foundation or any think tank—done some study of what impact the Taxpayer's Relief Act of 1997 has had as far as for every dollar in tax reduction there was some type of an increase in revenues? Do you know of any studies in the District of Columbia or about the District of Columbia?

Mr. BEACH. Well, our work on the Taxpayer's Relief Act of 1997 is a study that looks at the country as a whole, and there we are seeing about a 38 percent revenue feedback. And it may be much higher if the capital gains revenues continue to feed back as they have been in the last year.

We conducted a special study for Delegate Norton in support of her District of Columbia Economic Recovery Act, and had the entire package been put into law—there were several elements that didn't make it into law but are proportional to what we have before us in the Tax Parity Act of 1999—that would have meant a metropolitan-wide increase of 112,000 jobs, of which 24 percent of those jobs would have been in the District. Everybody would have been a winner from a stronger District of Columbia. It would have meant $115 billion over 10 years in additional household income.

So we know from that study that the District is ripe for tax policy changes that stimulate the economy because the feedback was so strong. And I think that what you're looking at now in the proposal, the Tax Parity Act of 1999, would have very similar effects.

Mr. TIAHRT. In the movie, Field of Dreams, the big line that was remembered was: Build it and they will come. I guess what you are saying in the dreams of tax relief is: Pass it and they will come.

DISTRICT TAX BURDEN DISCOURAGES SOME JOB SEEKERS

Mr. BEACH. Indeed, I used to have a business in Fairfax City. I was head of an educational foundation. I could almost always hire very, very good people who were working in the District by paying them less. And the reason for that is that, one, they avoided the commute, which is part of the overall cost that somebody has to bear, and that is related to tax rates, too; and they paid less taxes. That employment should have stayed in the District. Why should I have had it in Fairfax City 20 miles away? And I think with lower taxes that may be.

Tax rates cannot do anything with the highway system, and that may be our next challenge.

Mr. TIAHRT. I think you are right. Anything that reduces the traffic on the bridges I think is a good thing.

Thank you, Mr. Chairman.

Mr. ISTOOK. Mr. Cunningham.

CONGRESSMAN CUNNINGHAM'S OPENING REMARKS

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Beach, I'd like to speak, and I know the Mayor is back there, too, and I want his ears to pop open on this.

As I have mentioned before, I am one of the few members who volunteered to stay on this committee. There are a lot of committees that I could do for my own district—transportation, or Energy, Commerce or others. Sometimes people enter into charities and think they can do good. I think if you look at my tenure on this committee it has been one of flexibility and to help. I bent over backwards to help in the Anacostia River, in education, on health care, and the waterfront; and I want to continue to do that.

FISH WHARF AND SOUTHWEST WATERFRONT NEGLECT

But I'm concerned because this committee put in $3 million into the District of Columbia to improve a neglected waterfront. The neglect of the Southeast Waterfront has been disastrous. It is run down, and it has caused loss of revenue instead of gaining revenue. If you are any kind of economist or businessman, you cannot operate one-year leases. Just the management of it is stupidity. The city cannot expect people to invest on a one-year lease system.

So we changed that. We put the $3 million in for the waterfront, and I have seen very little movement. The Corps of Engineers is working hard, but the city continually drags its feet on this issue.

This money expires in September. I want to know when before September are we going to have a resolution for this waterfront? I don't get a single guppy out of the fish market, and I don't have any of my constituents there. I don't get a dime from there. The Washington Marina that has been there for 80 years, I don't get a dime from them.

But I want to help those people because it is the right thing to do. But when are we going to get off the dime and resolve this thing?

Mr. BEACH. With all due respect, I think I will let the Mayor answer that question.

Mr. CUNNINGHAM. I will be most anxious.

Secondly, I want to compliment the city, Delegate Norton, the Mayor, the Chairman of this committee, John Porter, Chairman of Labor-HHS, because we are working in this fall a health care town hall meeting. I plan on having a series of town hall meetings where you have the highest incidence of prostate cancer of anywhere in the world in Washington, D.C., and health care concerns worse than most places in the United States. I think a lot of it is information, and I have had nothing but support in doing that from all the agencies.

GARBAGE-FILLED ANACOSTIA RIVER

Also, on the Anacostia River. Yesterday I went down the Anacostia River in my little boat. I got about a mile this side of Bladensburg and couldn't go any farther because of the garbage and the trash and the cans and the plastic debri just literally blocked the way before you get to Bladensburg. I want to be very supportive of what you do, and I understand that there has been an agreement with Maryland, and if you could provide just even for the record instead of taking time, what are those agreements?

For example, I see the Navy— I am a big supporter of the Navy, but is the Navy polluting? I see the electrical plant there. I see a sand and gravel plant. The parts per fecal in that river are worse than any river in the United States. Have we identified what we have to do to clean that river up and where are the sources of the pollution?

I want to help you to help clean up that river. I mean, it is a disgrace, and it is a health hazard.

DC/MARYLAND AGREEMENT ON ANACOSTIA RIVER CLEANUP

You can provide that for the record if you want.

[The information follows:]

Toward a Restored Anacostia Watershed

Like many urban rivers, the Anacostia and its tributaries have been the victim of more than 300 years of abuse and neglect. Covering 176 square miles of once beautiful land in Maryland and the District of Columbia, the Anacostia watershed has been extensively farmed and urbanized. These land-intensive practices have taken a tremendous toll. Loss of habitat, erosion, sedimentation, flooding, destruction of wetlands, channelization, toxic pollution, decaying older communities and waterfront areas and loss of river-based recreational opportunities such as boating, fishing and swimming all characterize what had become of the Anacostia River and much of its watershed.

This began to change with a landmark agreement between Maryland and the District of Columbia in 1984 that officially recognized the need for restoration. A 1987 agreement added Montgomery and Prince George's Counties into the restoration partnership. In 1991, this partnership adopted, through its "Six-Point Action Plan," six broad-sweeping goals designed to restore the Anacostia River and its tributaries. Through this partnership and with the indispensable assistance of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Park Service and the Maryland-National Capital Park and Planning Commission, significant progress has been made toward all six goals. However, far less would have been achieved without the dedication of the community-based groups who have both galvanized support and effectively mobilized the watershed's citizenry in the restoration effort.

While much has been accomplished, the restoration is far from complete. Tremendous challenges and opportunities await. The partnership needs to be strengthened. Funding commitments need to be reaffirmed and continued. With a growing human population, more resources will be required for the protection, restoration and management of the watershed's natural resources. Additional resources are needed to continue the economic revitalization and environmental restoration of the watershed's older communities. Reconnecting the watershed's citizens to the river and its tributaries also remains a challenge. Finally, greater effort is needed to enlist both the community and private businesses in the restoration.

As we approach the 21st century the river and its tributaries must once again become a focal point for the watershed's communities, schools, churches and private businesses. The larger goal of a restored Anacostia watershed is achievable. The vision encompasses a watershed that supports a clean, healthy river system, is economically vibrant, and is a desirable place to live, work and recreate in.

The attainment of these goals and objectives can, however, only be realized through a sustained major commitment on the part of government, citizens and private businesses. Therefore:

WHEREAS over the last three hundred years, the Anacostia watershed has been extensively logged, farmed, mined and urbanized resulting in a major decline in water quality and habitat; and

WHEREAS beginning in 1984 Maryland and the District of Columbia officially recognized the need for restoration, leading in 1987 to the landmark "Anacostia Watershed Restoration Agreement" which both expanded the membership to include Montgomery and Prince George's Counties and resulted in the formation of the Anacostia Watershed Restoration Committee; and

WHEREAS through the 1991 Anacostia Watershed Restoration Agreement the Anacostia Watershed Restoration Committee developed "A Six-Point Action Plan to Restore the Anacostia River" which set forth specific watershed restoration goals and implementation strategies through a unique cooperative local/state, federal and grass-roots partnership; and

WHEREAS since 1987 over $100 million dollars have been spent restoring the Anacostia watershed resulting in the reduction of storm flows and associated pollutants from nearly 10 square miles of developed area, the restoration of degraded habitat in over eight miles of stream, the restoration of 32 acres of tidal wetland and the creation of approximately 100 acres of non-tidal wetland, acquisition of over 300 acres of stream valley parkland for the protection of sensitive aquatic resources, riparian buffer reforestation of nearly 10 linear stream miles and the support for and participation in the restoration effort on the part of both private businesses and thousands of the watershed's citizens;

NOW THEREFORE BE IT RESOLVED that the Signatories reaffirm their commitment to continue to work toward completing the restoration of the Anacostia watershed through the pursuit of the following interim 1999-2000 restoration goals and targets:

Anacostia Watershed Restoration Goals and Interim Targets for the Period 1999-2000

Goal #1: Dramatically reduce pollutant loads, such as sediment, toxics, CSOs, other nonpoint inputs and trash, delivered to the tidal river and its tributaries to meet water quality standards and goals.

- Reduce stormwater related impacts through the control of runoff by stormwater retrofitting 400 additional acres of existing developed area within the watershed by the year 2000.
- Develop a short and long-term plan for effectively reducing the occurrence of CSO events from the District of Columbia's combined sewer system by the year 2000.
- Develop a comprehensive trash and floatables reduction strategy for the river and its tributaries, which includes an actual demonstration of a promising trash reduction system(s) by the year 2000.
- Work toward a more coordinated effort for routinely monitoring physical, chemical and biological conditions in the watershed necessary to accurately measure restoration progress and protect human health and aquatic life.

Goal #2: Protect and restore the ecological integrity of the Anacostia River and its streams to enhance aquatic diversity, increase recreational use and provide for a quality urban fishery.

- Protect ecologically sensitive headwater tributaries and targeted stream reaches within the watershed through the use of zoning and master planning tools and techniques, stream valley park acquisition, special protection area designations, and other appropriate watershed management approaches.
- Restore physical aquatic habitat in an additional two miles of degraded tributaries by the year 2000.
- Continue to support interagency efforts to protect and restore Paint Branch's unique brown trout fishery.
- Expand and improve recreational fishing opportunities for anglers, of all ages, throughout the watershed.
- Continue to support efforts which expand recreational use in the watershed and increase direct access to the river.

Goal #3: Restore the natural range of resident and anadromous fish to historical limits.

- By the year 2000, open up an additional two miles of the tributary system to anadromous and resident fish.
- Support annual monitoring of anadromous fish runs in the tributary system by the year 2000.
- Complete a watershed-wide inventory of existing fish barriers by the end of 1999; develop an action plan for the modification or removal of designated key blockages by the year 2000.

Goal #4: Increase the natural filtering capacity and habitat diversity of the watershed by sharply increasing the acreage and quality of tidal and non-tidal wetlands.

- Permit no additional net loss of existing non-tidal or tidal wetland acreage within the watershed.
- Restore and/or create an additional 41 acres of tidal wetland by the year 2000.
- Develop five new non-tidal wetland projects for wildlife habitat by the year 2000.
- Expand watershed monitoring efforts to include wetland areas and their associated wildlife.

Goal #5: Protect and expand forest cover throughout the watershed and create a continuous riparian forest buffer adjacent to its streams, wetlands and river.

- Develop a watershed-wide green infrastructure plan which integrates both passive recreation with the protection of open space areas, including remaining large stands of forest, by the year 2000.
- Reforest one additional mile of stream corridor by the year 2000.
- Continue to encourage and assist private landowners in the watershed to both protect existing woodland and reforest their properties.

Goal #6: Increase citizen and private business awareness of their vital role in both the cleanup and economic revitalization of the watershed, and increase volunteer and public-private partnership participation in watershed restoration activities.

- In cooperation with the Anacostia River Business Coalition (ARBC), continue to pursue restoration support and implementation opportunities with the private sector.
- Continue to support and expand the exposure and participation of the watershed's citizenry in the restoration effort through the Anacostia Watershed Citizen's Advisory Committee.
- Continue to encourage the creation of watershed-based environmental curricula, with associated community service, for all Anacostia watershed schools.
- Expand efforts to enlist environmental groups, universities, private businesses and citizens in restoration-related activities such as stream monitoring, cleanups, tree plantings, etc.
- Encourage community-based advocacy support and environmental education programs for the river and all of its major tributaries.
- Expand and integrate monitoring and reporting efforts to more effectively evaluate and share restoration progress with the public and elected officials.
- Continue to support and expand efforts which lead to both economic revitalization and environmental improvement of the watershed's older communities.

Be It Also Resolved that the Signatories will finalize, through a public participation process, a suite of specific, long-term restoration indicators and targets by mid-year 2000, and that they

pledge to continue implementation of a basin-wide strategy to equitably achieve the six fundamental goals and associated targets by the year 2010.

The Signatories Further Affirm that beginning on or about Earth Day in the year 2000, and biennially thereafter, they will reconvene to assess progress, provide general direction and examine the needs and means to further the goals of the restoration effort.

Attest, this tenth day of May in the year 1999:

By: _____
Hon. Anthony Williams; Mayor
District of Columbia

By: _____
Hon. Parris Glendening, Governor
The State of Maryland

By: _____
Hon. Douglas Duncan, County Executive
Montgomery County, Maryland

By: _____
Hon. Wayne Curry, County Executive
Prince George's County, Maryland

In Support Of:

By: _____
U.S. Senator
Paul Sarbanes
U.S. Senator

By: _____
District of Columbia
Eleanor H. Norton
District of Columbia

By: _____
USEPA
USEPA

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

Mr. CUNNINGHAM. The education system, I'm very pleased with what—the direction that the city is going. There is good movement in the direction of our public school systems, and I am happy with the charter schools and the direction that they are going as well.

FISH WHARF AND SOUTHWEST WATERFRONT—NO MOVEMENT

My biggest concern is the Southwest Waterfront, that I see no movement. I have been promised for 2 years now that we are going to get off the dime and do the studies and get this thing done, and I would sure like to see that come to fruition. I want to remain a strong supporter and not have to put a horse's head in bed with somebody.

Mr. BEACH. We are all excited about what could happen.

One of the things that the Mayor will probably speak about is his initiative on managed competition. Managed competition is extremely important in addressing some of the issues that you have raised. How do we find the contractors? How do we find the suppliers that will do the job efficiently and under cost?

Mr. CUNNINGHAM. In all due respect, the waterfront has gone in and done that. They looked and showed exactly what they have to do to make those investments. They have the costs already drawn up. They are ready to go. They are ready to put in the piers. They are sitting ready to clean out the piers as far as the hazardous waste material and the cost. The city needs to get in and look at the inspection of those underground pylons which haven't been inspected in 20 years, in total disrepair that the city is responsible for.

Let's get it done. This thing expires in September. I would like to see it to fruition when we come back in August to make sure that, okay, this is going to be a done deal.

Mr. ISTOOK. Thank you, Mr. Cunningham.

Mr. Beach, we very much appreciate your testimony; and we appreciate your being here this morning.

Mr. MORAN. Mr. Chairman, could I just ask a real quick—just a point here?

INCOME TAX RATE COMPARISON WITH SUBURBS

In Mr. Beach's testimony he compares D.C.'s individual income tax rates with the suburbs, which is an important thing to do. But in referring to 6, 8, 9.5 percent rates in Maryland, you say that they pay 5 in Virginia, 5.75. But in the Maryland suburbs, the Washington metro area suburbs, in addition to the 5 percent they also pay an additional 60 percent surcharge. So it is actually 8 percent in Maryland compared to 6, 8 and 9.5 in D.C. And we're also paying a car tax on top of the 5.75 percent State tax. That may be phased out, but I want to make sure that the record shows that they are actually not as disparate as they might appear to be.

Mr. BEACH. Thank you for that. We were comparing the District to the State governments.

Mr. MORAN. But the District is both a local government and a State; and that is, of course, a difference.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Moran. Keep being more and more aware of taxes, and that will keep you moving in that conservative direction that you were describing. Appreciate it.

ALICE RIVLIN SWORN IN

We are happy to have the witnesses on the next panel. Chairman Rivlin has arrived. We administered the standard oath to the other witnesses that I would like to administer to you. Ms. Rivlin.

[Ms. Rivlin sworn.]

Mr. ISTOOK. Let the record show she answered in the affirmative, so all the witnesses have been sworn.

I think we can manage to keep the testimony going during the vote.

We are very pleased to have the Mayor, Council Chairman Cropp, Control Board Chairman Rivlin and CFO Ms. Holt. Thank you for being here.

Mr. Mayor, thank you for being patient as we heard from Mr. Beach. We would be pleased to receive your testimony at this time.

OPENING STATEMENT OF MAYOR ANTHONY WILLIAMS

Mayor WILLIAMS. Thank you, Mr. Chairman; and thank you Mr. Moran.

I want to compliment Mr. Beach on his outstanding testimony, particularly as it relates to the quality of our budget document.

But, in all seriousness, as some members of the Committee know who have been with us for some time, we have put an enormous amount of time in the building of a financial organization that we hope year by year will continually improve our budget document. And I am very, very proud as a former CFO to hear those words, and I am sure that everyone in our organization who has produced that document is proud as well, and I want to thank them.

MAYOR'S THANKS TO MARY PORTER

I also want to thank Mary Porter, who has worked at our office for a long, long time producing the legislation, the background legislation, and for her work with us over all of these years. It is appreciated, and I commend her for it and thank you for it. The staff work goes a long way.

CONSENSUS BUDGET

Mr. Chairman, because we have submitted our testimony for the record I'm just going to paraphrase and give you highlights of our testimony and some commentary on it.

I think the thing that I'm most proud of is our budget document, our consensus budget document. I believe we in our city are laying a foundation for the return of full home rule in our city, laying a foundation in our city for what we hope some day will be realization of full democracy in our city.

As I stated in my inaugural address, I believe that democracy is not always a pretty process. It's not always a perfect process. It is sometimes a messy process, really. But democracy is about people and their elected leadership making the right decisions, going in the right direction. Democracy is about admitting mistakes. Democ-

racy is about bringing people together, coming together, working together and succeeding together; and I believe in this budget we have done that.

HEALTH CARE FOR LOWER-INCOME WORKERS

We have done this in, one, squarely addressing in this budget and now, in some of the work that we're doing with greater Southeast with our hospitals, squarely addressing the crisis—I hate to use a dramatic term—but the crisis, certainly the major challenge we confront in our health care industry, matching supply and demand, bringing down costs, addressing the needs of our uninsured, to give our citizens the same kind of dignity, the same kind of choice, that we think all citizens should have, and giving our potential employers a workforce that has its health care needs taken care of.

When I was out in Las Vegas, I received a lot of positive comments from potential retailers in the District who felt that providing health care for our lower-income workers was actually a benefit to them. So we are very, very proud of that. Alice Rivlin is working very, very hard on that, and Linda Cropp and all of our staffs. It is something we need to do. I am very, very proud of the work that we're doing, moving in a new direction toward not just managed competition but creating in our city for the long term a labor strategy that I think is going to result over the short term, over the next year, in a workforce that has the investment in workforce conditions, has the investment in assistance, has the investment in training, has the investment in readiness, has good evaluation, enjoys the fruits of good labor, but also is ready to compete.

MANAGED COMPETITION

It's my profound belief that in our city, we are not introducing competition, and we face competition every day. It is the role of government to try to manage the risk for our workers and institutions, manage that risk and give our workers the ability to compete. And I think, given the ability to compete, I am very, very confident that our workers will compete and win in the competition and whether it is in trash pickup or whether in providing driver's licenses over in DMV.

I think that long-term benefits of this cannot be understated. I think they are very, very important.

EDUCATION IMPROVEMENTS

We make a major investment in our budget, Mr. Chairman, in the area of education. In the area of education, we are jointly committed to major capital investment in modernizing our schools. We're jointly committed in making the kinds of improvements in our school system to improve operations and to support a stronger curriculum and achievement by our students.

YOUTH INVESTMENT PARTNERSHIP

And very, very importantly, make a commitment not only in terms of reprogramming our dollars to achieve better mileage in areas such as child care but setting aside for the first time in our

budget something we're calling the Youth Investment Partnership where we will be able to leverage government dollars with dollars from the foundation community, dollars from the private sector, initiatives from the faith community, to provide that out-of-school support for our children.

I think it is our joint consensus recognition that launching a child is like launching a rocket. If we don't launch that child right at the very, very beginning, like a rocket, by the time the child is 10 years old or the rocket is 10,000 feet in the sky, there is going to be a crash or at least it is going to take enormous intervention to keep that child moving in the right direction.

NEIGHBORHOOD REVITALIZATION

Neighborhood revitalization is an area where we jointly agree a lot of work needs to be done. There is a joint agreement in our budget on investment in substance abuse and treatment, very important in crime prevention; a joint agreement that we need to make investments in everything from tree trimming and tree planting to street sweeping and landscaping, very important in providing that sense of stability in our neighborhoods.

TAX CUTS AND FISCAL RECOVERY

Finally, Mr. Chairman, in the area of tax cuts, I believe that tax cuts are very important in our city for a couple of primary reasons. One, because I think they can provide in selected areas a stimulus effect in bringing new residents and businesses to our city; and, secondly, because I do believe that it helps us establish what we should establish and that is the proper role of government. But I do believe that, having said that, we have to ensure that we are staying on track with this fiscal recovery. We have to ensure that we maintain a fiscal soundness and a fiscal stability which is ultimately I think the guarantor of realizing the kind of home rule and democracy that we all seek.

THREE MAJOR PROBLEMS

And I would just urge on the Committee that we remember that—I think it was 2 years ago in testimony before this Committee and other places—we talked about the three major problems facing the District, that our size of government was too big, that our economy was too small, and that we had a disjointed Federal relationship. I think that what's happened since that time is the economy has done very, very well and we have done well in our expenditure controls; but my latest assessment on our improvement in revenue is that about 50 percent of this is something that we are really controlling, about 50 percent of it is more episodic and related to the economy.

And I would say that while we are dedicated to achieving this consensus budget and dedicated to achieving these tax cuts, I would urge that we keep this in context. That the need for tax cuts is there but there is also a need, again, for fiscal integrity, stability. There is a need to make the investments, the long-term investments in our workforce, for example, the long-term investments in education, the long-term investments in our schools, that provide

as well as a right tax policy, the foundation for really putting this District on a competitive posture with his suburbs, a competitive posture with other cities.

CONSENSUS PROCESS

I believe that even though the process wasn't very pretty and even though I made my mistakes in the process and even though I don't agree with everything in this budget, it is a result of a consensus process. It is something that I am proud of, on the whole; and I urge this committee to give its steadfast support to this document. And I thank the committee for this opportunity to testify.

PREPARED STATEMENT OF MAYOR ANTHONY WILLIAMS

[The prepared statement of Mayor Williams follows:]

ANTHONY A. WILLIAMS
MAYOR

District of Columbia FY 2000 BUDGET

Testimony of Mayor Anthony A. Williams

Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives

June 23, 1999

Chairman Istook, Congressman Moran and Members of the Committee, thank you for the opportunity to testify before you today. It is indeed an honor and a privilege to share with the Committee the District of Columbia's fiscal year 2000 budget. This is a budget that we can be proud of on a number of different levels. This budget reflects all of the strengths of democracy forged out of intense and thorough negotiations between the Office of the Mayor, the City Council and the Control Board. This budget is also a product, as is often the case in this country, of a political movement that resulted in higher expectations of the District's elected officials. I have tried to live up to those expectations in the Executive Branch. In the first five months we have made steady and substantial progress toward a government that works for everyone.

I am proud of the progress we have made in the past five months, and I am committed to doing even more. But ultimately, the success of our efforts will depend not on short-term fixes, but on long-term planning and strategic investments in our infrastructure. Over the last few years, largely through the work we did in the CFO's Office, we have stopped the financial bleeding and stabilized the revenue stream. Through cooperation and hard work we have put the District temporarily on sound footing. However the fiscal health of the District needs to be pointed in a long-term corrective position. The people of the District deserve innovative initiatives reflecting the results of the election.

The time has come for us to make the crucial decisions that will put us in a competitive position for the next millennium -- decisions about what the government can and cannot

do, should and should not do. Decisions that will determine, to a large extent, whether our city ultimately succeeds or fails.

This budget takes those tough decisions head on. It will put the District on a path to a stable future, ensuring for years to come that Washington will be a source of pride for all Americans. Most importantly, it strengthens our investment in critical areas such as supporting children, improving government services, rebuilding the human service network, and expanding the economy.

At this point, I would like to briefly discuss how the budget affects each of these priority areas, and submit my full testimony for the record.

As Mayor, I am acutely aware that our government has a moral obligation to do more for children. The Annie E. Casey Foundation recently released a report that measured the well being of children. The District rated worst in the Nation in every category but one, from infant mortality to the rate of teenage births to statistics chronicling child poverty. Clearly, we have serious work to do.

Education. In FY 2000, the District of Columbia Public Schools will begin using the per-pupil funding formula as described in the School Reform Act of 1995. The use of this formula provides $526 million, an increase of $67 million and state education costs of $74 million over FY 1999. Regarding higher education, $500,000 is provided for FY 2000 to establish the Institute for Public Safety and Justice in the University of the District of Columbia.

University of the District of Columbia. UDC 's campus desperately needs an overhaul costing in excess of $125 million. The proposed move of the University across the river unfortunately diverted the attention away from the necessary review of its mission. The question is do we go down the same track allowing it to continue unfocussed or invest so that it survives and thrives. Two weeks ago, the New York Times has run a series of stories on the report, by former Yale University President Benno Schmidt, that recommended the dramatic overhaul of the CUNY system. Once a jewel in the crown of a public higher education system, the University has fallen off track. The public officials in charge of its oversight realized that in its present form it was failing the needs of its constituents. Their willingness to take on entrenched interests and refocus their mission to save the institution should be a model for UDC.

The children and youth investment partnership will distribute $15 million for out-of-school programs. This approach allows services to be competed for by community organizations and government agencies. This is part of a new paradigm of public-private partnerships that is a core principle of my administration.

Some people have questioned whether it makes sense to provide these services through community organizations rather than government agencies. While I believe that our agencies have a critical role to play in the lives of our children, we need to make use of the energies and expertise of service providers in the community. I feel strongly that

these programs should be community based—designed by people familiar with particular neighborhood needs, and implemented by performance-driven, efficient non-profit organizations.

In addition to the $15 million, I have included more than $21.3 million for new and expanded District programs. These funds support child care, foster care programs, youth employment and internship programs, resources for public libraries, and services for youth in the juvenile justice system. Investments in foster care and juvenile justice will help better serve children and meet mandated court requirements and specific performance criteria.

A second focus of the consensus budget process was to make our government more efficient and to ensure our ability to deliver the basic government services our residents deserve and demand. The following investments are part of our proposed budget.

Managed competition. The FY 2000 budget includes $400,000 for the development of a managed competition program in the District. These initiatives are projected to produce almost $45 million in savings over the course of the financial plan. Because the goal is to improve services through competition, rather than simply outsourcing or cutting, the current workforce can participate in the bidding process.

Workforce investment strategies. Beginning in FY 2000, all non-union District employees will receive a 6 percent base pay increase, which will take effect at the beginning of the third quarter. This increase narrows the pay disparity between the union and non-union workforce. On the same timeline as the non-union pay increase, the financial plan includes over $1 million to provide optical and dental benefits to the non-union workforce. These initiatives reflect the efforts of the District's leadership to reduce the growing disparity between union and nonunion pay schedules.

Savings from improved operations. The District has begun a new era of accountability and reform, and as such has committed to producing dramatic improvements in service delivery and in cost efficiency. The efficiencies achieved are projected to produce over $40 million in savings in FY 2000, growing to $80 million by FY 2003. To maintain a fiscally responsible and conservative approach, however, the District is committed to maintaining a reserve of the same amount in case actual savings fall short of these targets.

Management Report. Part of our overall effort to improve government services is a performance management system that will hold our agencies accountable to measurable, high standards of efficiency and effectiveness. In accordance with the Federal Payment Reauthorization Act of 1994 and the Government Managers Accountability Act of 1995, the District must develop a performance accountability plan addressing every agency and activity in our government that uses public funds. The District of Columbia Management Report, which we provided as part of our proposed budget, sets the performance baseline for FY 2000 and will be supplemented by regular interim reports throughout the fiscal year. This is a valuable management tool that will help our government work more effectively.

A third focus of this budget is rebuilding the human services network. During the financial crisis, and because of many years of mismanagement and neglect, many of our basic human services have been slashed. Nearly a third of our human service network has been allowed to lapse into receivership. The District currently has a 17 percent-uninsured rate and a number of other pressing human services needs. To address these issues, the budget includes investments in the following areas.

Health Care. The FY 2000 includes local funding increases for a number of health care investments within the Department of Health over FY 1999 levels. Investments include increases for Medicaid, for community based substance abuse services, expansion of HIV/AIDS services, staff for STD and TB clinics, and funding for a Women's Health Initiative. In addition to these increases, the FY 2000 budget calls for shifts of $6 million in Medicaid Disproportionate Share Funds to provide health insurance to 2,500 childless adults and 500 children District residents with incomes under 200 percent of the federal poverty level. The City Council enacted part of my initial budget proposal to expand health care to those who are uninsured and underinsured; however we are only part of the way there. I call on the Council to pass the second part of my health care plan as part of the FY 2001 to build on this year's progress.

Greater Southeast One example of our commitment to both reinvent the way health services are delivered while maintaining quality care for our most needy residents is the ongoing effort to save Greater Southeast Hospital. Greater Southeast is experiencing grave financial troubles that endanger the health care options of our residents living east of the river. Under an agreement reached between the District Government, Greater Southeast Hospital will seek reorganization protection. The District Government has agreed to extend a loan, loan guarantee, or advance to the Hospital to help them operate for the next 90 days, while they reorganize and assess--in conjunction with District officials--how to best meet the needs of residents east of the River.

Welfare, childcare, and homelessness. The FY 2000 proposed budget contains an increase of $13 million over FY 1999 for childcare subsidies. This increased funding supports subsidized child care for approximately 2,000 more children and increased childcare subsidy rates. The FY 2000 budget includes an increase of $5.2 million in local funds for homeless services, which includes $200,000 for homeless shelter maintenance. The FY 2000 proposed budget also includes $140.3 million for the Temporary Aid to Needy Families (TANF) program. This budget supports the placement of 8,000 TANF recipients into work activities.

The fourth focus of the FY 2000 budget is on expanding the economy. The continued success of our financial recovery depends in large part on our ability to maintain a robust economy, and create new opportunities for job growth and small business development. Our strategy is based on fiscal responsibility and a commitment to revitalization of our neighborhoods and communities. The following proposals are included in the FY 2000 budget.

Neighborhood revitalization. The FY 2000 budget invests resources in neighborhood revitalization, which is a multi-agency initiative designed to improve the District's

capacity to address a variety of economic development issues. The policy invests needed resources in neighborhood initiatives to ensure that streets and alleys are clean and vacant buildings are stabilized or demolished. Specifically, the Department of Public Works' (DPW) FY 2000 proposed operating budget includes an increase of $2.5 million to finance equipment needs in the FY 2000 Master Lease Program. This funding will be used to ensure the timely replacement of equipment within critical service areas including Solid Waste Management, Division of Parking Services, Division of Transportation, and Fleet Management Division.

Tax Cuts. District leaders have agreed to the largest tax reduction in the history of our city, one which I believe will stimulate job growth and bring the District's tax code closer in line with surrounding jurisdictions. Combined with critical service improvements and better education, these tax cuts will help reverse the outflow of residents and businesses from our city. I am particularly proud of the targeted tax relief for businesses, which will have maximum economic benefit for our city. Even though returning surplus tax revenue to workers and families is a worthy goal—one that I fully support—we must continue to safeguard our recovery. We must be vigilant against the temptation to overpromise on tax cuts while underdelivering on services. As we move forward, I will continue to insist on sound financial planning, increased efficiency, and fiscal prudence.

Debt Restructuring. The FY 2000 appropriation request for Repayment of Loans and Interest is $328,417,000, which is a decrease of $53,753,000 from the FY 1999 approved budget. The substantial decrease in debt service from FY 1999 to FY 2000 is attributable to debt restructuring. This entails refunding certain outstanding bonds by issuing new bonds that mature at later dates. This has the effect of reducing the District's debt service expenditures over the next several years and increasing such expenditures in future years. However, because the District's existing debt service is heavily front-loaded—i.e., debt service is relatively high over the next several years and then declines sharply in subsequent years—restructuring is a prudent option (for further discussion of debt restructuring, see the Financial Strategy section). The budget includes the projected debt service on bonds expected to be issued in FY 2000 to finance capital expenditures.

Pre-payment of debt service. To best capitalize on current economic growth, the District has planned to pre-pay $30 million in debt service during FY 1999. The benefit of this transaction will accrue in FY 2002 and FY 2003, thereby helping to protect against potential economic downturns in the future.

Metro. In addition, the FY 2000 budget for the Washington Metro Area Transit Authority includes $2.6 million in additional funding to increase bus service to the opening Metrorail segments, relieve Metrobus overcrowding, implement a small bus service plan, and to plan and develop the proposed New York Avenue Metrorail station.

As a final point, it is important for the Committee to note that all of the investments that I've discussed were made despite a great burden placed on the District. The Congress has required that the District budget a $150 million reserve in each fiscal year, beginning

in FY 2000. The District has complied with this requirement, however, I strongly believe that the provision for the reserve is an excessive requirement for three reasons:

First, it is unnecessary due to the current financial position of the District government. Based on the financial results of Fiscal Year 1998 and preliminary Fiscal Year 1999 revenue and expenditures projections, the District will have a positive fund balance of more than $300 million at the end of Fiscal Year 1999. This is over 6 percent of general fund expenditures, which is higher than the norm of 5 percent for a positive fund balance.

Second, it would prevent needed investments to improve service delivery in the District. Setting aside an additional $150 million reserve would severely limit the funds available for critical initiatives such as health care, education, and economic development.

Third, it is inconsistent with budget stabilization practices in other jurisdictions. Many states establish a 'rainy day' fund and use prior year revenues as a cushion against potential economic downturns. The District has projected a fund balance that can be used as a reserve without the need to contribute additional resources.

Even though it is well intentioned, setting aside a $150 million reserve is not the best strategy for putting the District on stable footing for the 21st Century. I am proposing strategic investments to train and prepare our workforce, repair our crumbling schools, and secure our infrastructure. We must address the problems that are steadily eroding the long-term viability of our city.

At its core, this is a budget about ideas. Efficient ideas like using managed competition to improve services. Innovative ideas like partnering with community organizations to provide programming for children, rather that relying on government bureaucracies. Fair and just ideas like putting patients first and expanding health insurance to the working poor. This budget reflects the commitment of the elected leaders of the District of Columbia to chart a new course for our city. It demonstrates our ability to work together to develop a budget that is fiscally responsible, and makes strategic investments in our future. It is not a perfect budget, but it is a sturdy platform for us to stand upon as we rebuild the District into the great city it can and must become.

I look forward to working with you, Mr. Chairman, and the other members of the Committee, to pass this budget as quickly as possible. At this time, I would be happy to answer any questions the Committee may have.

Thank you.

COMMENDING MAYOR'S STATEMENT

Mr. MORAN. Excellent statement. I know I am not supposed to butt in here. God, I wish I was as articulate as the Mayor is, but a perfect statement, thank you.

Mr. ISTOOK. We appreciate that, Mr. Moran. We are going to keep having these positive witnesses just keep on coming.

REMARKS ABOUT STUDENT'S EXCELLENT TESTIMONY

Mr. Mayor, you should have heard the young lady that testified. She is a student at one of the charter schools and testified yesterday and you should have heard the superlatives that Mr. Moran was also putting on her. And Ms. Norton was present and listening and she started worrying about her job when she found out how articulate that young lady was. It is nice to have positive feedback. I appreciate that.

Ms. Cropp, we are happy to have you here.

Ms. CROPP. Thank you very much, Chairman Istook.

Mr. ISTOOK. Just to make sure things are clear for the record, because we have a vote on, when one of the other members returns I am going to have them assume the Chair while I go vote because I do want to keep things going.

Ms. CROPP. We will miss you.

Mr. ISTOOK. I will hurry back.

OPENING STATEMENT OF COUNCIL CHAIR LINDA CROPP

Ms. CROPP. Chairman Istook, Mr. Moran, other members of Congress, good morning, it is indeed a pleasure to be here with you.

Let me say, I was happy to hear Mr. Beach in his testimony suggest that he may move into the District of Columbia. We need to broaden our tax base. In fact, we will look for a real estate agent, Mr. Mayor; and we will try to help facilitate that process.

REMARKS ABOUT STUDENT'S EXCELLENT TESTIMONY

I was not here, Chairman Istook, for the young lady's testimony yesterday, but I will sit here as a representative of the District of Columbia and say her foundation was laid in the District of Columbia public schools. As a former attendee of public schools and attendee of the School Without Walls, I would invite you to look at the history of the School Without Walls, a special school that was created in the District a long time ago on that same idea of trying to look at something outside of the box for public education. They have consistently had some of the highest test marks in the city, up above the national scale. And we are very proud that she's a product, and I just wish I had been here.

Mr. ISTOOK. And that young lady had been to the School Without Walls previously.

Ms. CROPP. That's right. That's right. I'm very happy to hear that, and we've got plenty more like that in the District of Columbia, a lot of bright people coming up. And thank you for recognizing her. We appreciate that.

COUNCIL'S APPROVAL OF CONSENSUS BUDGET

On May 11th, the Council unanimously approved a consensus budget package and tax package—and, boy, was I happy that that part was over—not only for the fiscal year 2000, but for future years as well as we looked at this whole budget process. There are tax breaks in it for our citizens, tax relief for our business community, more programs to serve our young, our old, and a host of top-priority service improvements. We are confident this budget has real potential to dramatically improve the city, provide long-awaited tax relief that will expand the District's economy and ensure long-term fiscal stability.

During the past several weeks, the Council has worked extremely hard with the Mayor and the Authority to produce this financial plan that was conceived out of numerous consensus meetings, many hours of discussions, protracted negotiations and tough decisions. Throughout the process, the Council has always been determined to present a consensus balanced budget to the Congress. No doubt, the process was tedious, long and, at times, contentious. However, we have strived to ensure that the priorities of the Mayor and the Council are aligned and have successfully compromised on a budget that will make the city a much better place to live.

And I think at this point I want to stress that it is a consensus budget process. The budget that is before you is the budget that all of us have agreed upon, and we would hope it would be the budget that would be approved by Congress based on an awful lot, believe me, of hard work between all of us. And we didn't all agree on many factors of this budget, but we are here together at this point as a united front presenting a budget, that we look forward to your support and, hopefully, also that we will not get a lot of riders on this budget.

REVIEW OF MAYOR'S BUDGET

When the Mayor submitted the budget to us in mid-March, the Council had already developed and adopted a list of priorities. We went on a retreat, looked at issues dealing with financial/debt management, economic tax relief, economic development, health care for the indigent, an improved school system for our children, clean-up programs for our neighborhoods and looking at the overall city-wide service delivery.

As part of the budget review process, 21 hearings on the fiscal year 2000 budget were conducted by standing committees, not to mention the number of oversight and accountability and performance hearings we had on agencies earlier in the current year. So this budget reflects all of the hard work and public hearing process that the Council went through.

Besides giving the public a chance to be heard, these hearings contributed to and culminated in the decisions and recommendations of each committee in the markup of the final budget. Following a review of the standing committee's recommendations, the Committee of the Whole made additional revisions in order to bring the budget into balance.

In making these decisions the committee considered many factors: Our goals and objectives raised by the consensus meetings

with our stakeholders; revenue, baseline budget, expenditure assumptions, budget adjustments and spending options proposed by the CFO; discretionary funding versus mandatory funding; consensus in allocating resources for the Mayor/Council's priorities; implications of the Council's tax plan, which was a high priority for the Council; findings from various working groups on key budget issues; and our commitment to avoid an annual operating deficit for the year 2000.

CLEAN AUDIT OPINIONS AND SURPLUSES

We are proud that D.C.'s finances are no longer in shambles. For a second consecutive year, we have earned an unqualified clean bill of health as we did in 1997. We ended 1998 with an operating surplus and judiciously used $332 million to pay off the accumulated deficit. Not only did we not borrow, but we have $112 million in reserve; and as for fiscal year 1999 the District is projected to have another fund balance of approximately $282 million at the end of the year.

In addition, the city has regained the confidence of Wall Street; and we are very proud of this. This renaissance has been touted as one of the most rapid and remarkable recoveries of any city in the Nation; and there are many, many reasons for this:

Legislated reductions in programs and personnel throughout the government by the Council which were politically difficult. We still have our wounds from it. Not easy to cut. As politicians, we are used to giving, but we took some very tough decisions and we cut.

Tight control over spending.

Better and improved tax collection by the District government.

A robust economy, national economy, in which we benefit.

And the revitalization plan that transferred many costly State-like functions related to the criminal justice system from the District to the Federal Government.

And I would suggest if any other city in the Nation had some of those responsibilities that the District had in the past, they probably would have gone belly up much earlier than we; and without the other type of support that we would have. But all of those factors contributed to our economy.

I would like to briefly highlight some of our achievements in this operating budget and financial plan and then comment on the tax package that was adopted by the Council and is part of the consensus budget.

ACHIEVEMENTS REFLECTED IN BUDGET

As part of our commitment to improve the lives of the residents we have made the following investments to restore and enhance city services, because we look at this as an overall combination of services to improve the District as a whole:

A $55 million increase to public schools over current year funding, including $2 million for the "Y Care 2000" program.

Allocating $13 million to Public Works to clean up the city, from its gateways to streets and alleys.

$5.8 million dedicated to cleaning up our neighborhoods and abate nuisance properties, because we understand if we want to

make D.C. better, if we want our economy to grow, we must also look at our neighborhoods.

Increased funding for human services in several critical areas, $3 million for HIV/AIDS and for substance abuse programs, $5 million for homeless, $2 million for the Roving Leaders program for our children—in addition to the Mayor's $15 million for the youth initiative—$1.2 million for the elderly.

$4 million to support and bolster the Mayor's plan to promote managed competition and productivity savings.

And a pay raise for our workers.

TAX CUT PLAN

The Council's tax plan, coauthored by two of my colleagues, Jack Evans and David Catania, is an affordable, progressive package that will cut taxes on individual income, personal property, business franchise, bring our tax structure in line moving towards parity and stimulate economic development. And when you put the tax package together with those other programs that I talked about, the specific programs in the budget, whether we are talking about for our youth, for our seniors, to deal with substance abuse, to deal with our neighborhoods and our communities, together these are the things that will bring back a revitalized community.

The Council and the Mayor began the budget process by proposing a tax relief as part of the budget construction. The Mayor initially had different ideas of which tax should be reduced than the Council, but we all came together and decided on a package that would benefit the District as a whole.

During the negotiations the final plan was agreed on, but throughout the budget process both parties never doubted the timeliness of reducing taxes beginning in fiscal year 2000.

The assumption of a tax reduction, therefore, drove the budget process in part and paying for the reduction flowed through the process. Because we understood that there needed to be a balance.

PAYING FOR TAX CUTS

Let me reiterate that this tax package will not be paid for out of the accumulated surplus and will be gradually implemented over a 5-year period, subject to specific "trigger controls".

The Council, in the continuation of the consensus budget process, did pass two other amendments yesterday that would strengthen the trigger controls and also deal with the accelerator clause of this tax package.

So this tax plan will not threaten the District's long-term financial stability or crowd out needed new investments to improve services to our citizens because the budget has both. Other beneficiaries of this tax proposal include the commercial property taxpayers, who will receive a 15 percent tax cut; residential rental owners, who would receive significant tax relief; and small businesses.

CONCLUSION OF COUNCIL CHAIR'S STATEMENT

As you consider our appropriations request, we ask that this budget, which has been diligently and responsibly put together by

locally elected officials, be left intact and free of unnecessary riders. At the end of the consensus process the Council, the Mayor and the Authority found themselves on the same page, approving a city budget that makes critical short-term investments in service delivery, continues management reform, and moves towards tax parity for residents and businesses. The Council will continue to exert oversight over the executive operations and expenditures that makes for a good city. That's why we have separation of powers, and I do believe that is probably the best form of government in the whole world.

So the Council will continue to deal with its oversight. We will be responsive to our constituents who call Washington, D.C., their home or their headquarters. We will continue to collaborate with the Mayor, with the Authority, and with Congress and with the surrounding governments to achieve mutually shared goals. We may not always agree with all of our partners, but we will continue to be at the table, asserting ourselves as an institution, and working for the betterment and the future of the citizens of the District of Columbia, our Nation's Capital and home to many.

Please join our consensus team by supporting our budget and endorsing it, because it will move the city forward and in the right direction. Thank you very much.

PREPARED STATEMENT OF COUNCIL CHAIR LINDA CROPP

[The prepared statement of Council Chair Linda Cropp follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D. C. 20001

LINDA W. CROPP
Chairman

TESTIMONY

by

Linda W. Cropp

Chairman

Council of the District of Columbia

House Committee on Appropriations
Subcommittee on the District of Columbia
Wednesday, June 23, 1999
10:00 am
Capitol Building, H-144

Good morning, Chairman Istook and members of the House Appropriations Subcommittee, I am pleased to be here with my colleagues to testify on the District's Fiscal Year 2000 operating budget and financial plan.

Introduction

On May 11, the Council unanimously approved a consensus balanced budget and tax package that offer something for everybody in the District, not only for the Fiscal Year 2000 but for future years as well. There are tax breaks for our citizens, tax relief for our business community, more programs to serve our young and old, and a host of top-priority service improvements. We are confident this budget has the real potential to dramatically improve the city, provide long-awaited tax relief that will expand the District's economy, and ensure long-term fiscal stability.

During the past several weeks, the Council has worked extremely hard with the Mayor and the Authority to produce this financial plan that was conceived out of numerous "consensus" meetings, many hours of discussions, protracted negotiations, and tough decisions. Throughout the process, the Council has always been determined to present a consensus balanced budget to Congress. No doubt, the process was tedious, long, and at times, contentious. However, we have strived to ensure that the priorities of the Mayor and the Council are aligned and have successfully compromised on a budget that will make the city a much better place to live.

Council's Review Process of the Budget

When the Mayor submitted the budget to us in mid-March, the Council had already developed and adopted a list of priorities, e.g., financial/debt management, economic tax relief, economic development, health care for the indigent, an improved school system for our children, clean-up programs for our neighborhoods, and citywide service delivery. As part of our budget review process, 21 hearings on the FY 2000 budget were conducted by the standing committees, not to mention the number of oversight accountability and performance hearings we had on each agency for this current fiscal year.

Besides giving the public a chance to be heard, these hearings contributed and culminated in the decisions and recommendations of each committee in the mark-up of the budgets. Following a review of the standing committee recommendations, the Committee of the Whole made additional revisions in order to bring the budget into balance. In making these decisions, this Committee considered many factors:

i) goals and objectives raised at the consensus meetings of stakeholders;
ii) revenue, baseline budget, expenditure assumptions, budget adjustments, and spending options proposed by the OCFO;
iii) discretionary funding versus mandatory funding;
iv) consensus in allocating resources for Mayor/Council's priorities;
v) implications of the Council's tax plan;

vi) findings from the various working groups on key budget issues, and;
vii) our commitment to avoid an annual operating deficit for FY 2000.

District's Remarkable Fiscal Recovery

In this budget, we are proud to say that DC finances are no longer in shambles. For a second consecutive year, we have earned an unqualified or clean bill of health as we did in FY 1997. We ended FY 1998 with a operating surplus of $445 million and judiciously used $332 million to pay off the accumulated deficit. Not only did we NOT borrow, but we have $112 million in reserves. As for FY 1999, the District is projected to have a fund balance of approximately $282 million at the end of the fiscal year. In addition, the city has regained Wall Street's confidence with its recently upgraded investment bond ratings[1] and there is a new buzz of commercial and residential activities[2] that are clear indicators of its economic rebound. In fact, this "renaissance" has been touted as one of the most rapid and remarkable recoveries of any city in the nation and there are many reasons for this:

i) legislated reductions in programs and personnel throughout the government by the Council which were politically difficult but necessary;
ii) tight controls on spending;
iii) better and improved tax collections;
iv) a robust economy, which we hope will continue but cannot depend upon;
v) the President's Revitalization Plan that transferred costly state-like functions related to the criminal justice system from the District to the federal government, and increased the federal Medicaid share from 50% to 70%.

Highlights of the FY 2000 Budget

I would like to briefly highlight some of our achievements in this operating budget and financial plan and then comment on the tax package that was adopted by the Council. As part of our commitment to improve the lives of the residents, we have made the following investments to restore and enhance services:

- a $55 million increase to public schools over its current year funding including $2 million for the "Y Care 2000" program;
- allocating $13 million to Public Works to clean up the city, i.e., from the gateways to its streets and alleys;
- $5.8 million to clean up neighborhoods and abate nuisance properties;

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[1] Standard & Poor's recently upgraded the District's bond ratings from a BB to a BBB.

[2] In the past year, the District has leased out some 3 million square feet of office space and home sales have jumped by a record high of 29 percent, i.e., 6,300 properties sold in 1998 compared to 4,900 in 1997, according to the DC Department of Housing and Community Development.

- increased funding for human services in several critical areas, i.e., $3 million for HIV/AIDS and for substance abuse programs, $5 million for homeless, $2 million for the Roving Leaders program for our children (in addition to the Mayor's $15 million for the youth initiative), and $1.2 million for the elderly;
- $4 million to support and bolster the Mayor's plan to promote managed competition and productivity savings to improve government service delivery, and;
- a pay raise for our workers, i.e., a $8 million funding for our non-union workers to bring them to parity with the unionized employees.

Council's Tax Plan

The Council's tax plan, co-authored by two of my colleagues, Jack Evans and David Catania, is an affordable progressive package that will:

i) cut taxes on individual income, personal property, business franchises, (I would like to underscore that DC residents in the lower- and middle-income bracket of $20,000 to $50,000 would see the largest tax reductions.[3]
ii) bring our tax structure in line with our neigboring jurisdictions, and;
iii) stimulate economic development.

The President's Revitalization Plan, implemented since 1997, has given the District a chance to rectify the economic distortion by paying off its accumulated deficit, establish a positive fund balance at the end of FY 1999, and achieve structural balance in the budget. This tax reduction is a District initiative to rationalize our tax rates. Our high taxes--combined with other factors--do not allow us to compete with our neighboring jurisdictions and have contributed, over time and along with other actors, to the decline of our revenue base.

We are aware that this city has relied too heavily and for too long on high tax rates which cannot sustain themselves. High tax rates are self-defeating because it will give us more money in the short run but in the longer run, rational taxpayers will take steps to avoid this out-of-line tax rates. In short, we need to invest in lower tax rates just as we must provide community policing, trash pickup, care for our elderly, and good schools for our chidlren. The tax reductions are a basic city service to maintain and bolster our economic environment and the quality of life in our city.

The Council and the Mayor began the budget process by proposing a tax relief as part of the budget construction. The Mayor initially had different ideas of which taxes should be reduced than the Council, but we both started with a net reduction in taxes. During negotiations, the final plan was agreed on but throughout the budget process, both parties never doubted the timeliness of reducing taxes beginning in FY 2000!

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[3] The tax cuts vary from about 32 to 30 percent reduction for those earning less than $50,000 compared to 28 to 19 percent in the $50,000 and more income bracket.

The assumption of a tax reduction, therefore, drove the budget process and paying for the reduction flowed through the process. Let me reiterate--this tax relief package will not be paid out of the District's accumulated surplus and will be gradually implemented over five years, subject to "trigger controls" should there be an economic downturn or if the city's revenues lag behind projections. So this tax plan will not threaten the District's long-term financial stability or crowd out needed new investments to improve services to citizens. Other beneficiaries of this tax proposal include commercial property taxpayers which will receive a 15 percent tax cut, residential rental owners who would receive significant tax relief, and small businesses.[4]

As you consider our appropriations request, we ask that this budget, which has been diligently and responsibly put together by locally-elected officials, be left intact and free of unnecessary riders. At the end of the consensus process, the Council, the Mayor, and the Authority found themselves on the same page, approving a city budget that makes critical short-term investments in service delivery, continues management reform and moves toward tax parity for residents and businesses. The Council will continue to exert oversight of executive operations and expenditures. We will be responsive to our constituents who call Washington their home or headquarters. We will continue to collaborate with the Mayor, the Authority, Congress, and the surrounding governments to achieve mutually shared goals. We may not always agree with our partners, but we will continue to be at the table, asserting ourselves as an institution, and working for the betterment and future of the citizens of the District. Please join our consensus team by supporting our budget and endorsing it because it will move the city forward ***and*** in the right direction.

[4] For the business community, there are proposed tax incentives for technology firms, including the elimination of the personal property tax on the first $50,000, no tax on Internet sales, an accelerated depreciation rate for computer equipment, and lowering the corporate and unincorporated business franchise taxes to 8.5 precent from 9.975 percent.

Mr. TIAHRT [presiding]. Thank you, Madam Chairman Cropp. I want to commend you and the D.C. Council on your rapid turnaround of the city. I think you have taken a long step forward in making this city the crown jewel that we all hope for.

Ms. CROPP. Thank you, Congressman Tiahrt.

Mr. TIAHRT. Madam Chairman Rivlin, you go by many titles. Madam Secretary is one that always sticks in my mind. I want to thank you for your dedication to the D.C. Control Board and the decisions that you have made lately, and we appreciate it and turn the podium over to you.

OPENING STATEMENT OF ALICE M. RIVLIN

Ms. RIVLIN. Thank you very much. I am very pleased to appear with the Mayor and the Council Chair to support the District's fiscal year 2000 budget.

This budget, as my colleagues have emphasized, is the result of a consensus process. It was one in which the Authority played an active role in helping to resolve differences between the Mayor and the Council; and we made sure that the budget was in balance and based on sound conservative assumptions, not only for the next year, but for the years going forward.

DISTRICT'S RECOVERY FROM FINANCIAL MESS

The District has come a long way since the Authority was created in 1995. At that time, the District was effectively bankrupt. It was running large current deficits, it was not paying its bills, it wasn't collecting all of its taxes, and it was not providing services in an acceptable manner. It could not borrow in financial markets. That situation has now begun to turnaround. Fiscal year 1998 ended with an operating surplus. The accumulated general fund deficit has been paid off. We have a positive balance, as my colleagues have noted, in the general fund. And the rating agencies have upgraded D.C. to investment grade.

IMPROVEMENTS STILL NEEDED

Much remains to be done to improve city services, to train and equip the city's workforce, to foster the economic development that the city must have to revitalize the core of this metropolitan area.

FY 2000 BUDGET

The 2000 budget funds the next steps in that continued improvement of the District of Columbia. The Authority worked hard with the Mayor and the Council on this budget, and we are proud to support it. It is a balanced budget. It funds the $150 million reserve or rainy day fund that the Congress mandated. It provides for an affordable tax cut beginning in the coming year and increasing over the next 4 years if economic conditions justify it.

The tax cut is structured to make D.C. tax rates more comparable to surrounding jurisdictions, to make doing business in the city simpler and more affordable, especially for small business, and to make the D.C. income tax fairer by raising the thresholds for income subject to the top bracket rates.

"TRIGGER CONTROL" TO AUTOMATICALLY HALT TAX CUTS

There will be an automatic halt to the planned tax reduction if there is a substantial deterioration of the recent favorable economic conditions.

DEBT RESTRUCTURING

The financial plan also addresses the heavily front-loaded nature of the District's long-term debt. This year the District plans to repay, restructure, and refinance some of its debt. These transactions will provide budget relief over the next 5 fiscal year that will help the District accomplish critical service delivery initiatives and help pay for the tax package. They also will help the District service the additional debt associated with the capital improvements plan.

BUDGET HIGHLIGHTS

The budget funds major increases in funding for the public schools, including charter schools, and for other youth initiatives. It emphasizes improved management of city services and investment in workforce training. It supports continued development of the city's neighborhoods, improved public safety, and wider health insurance coverage.

The Authority believes that the consensus budget and the financial plan, of which it is a part, are responsible and well thought out. We believe that enactment of the proposed budget will continue the District's recovery and contribute to a strong, vital capital city. We also believe that this budget will continue the 4-year string of balanced budgets and enable the Authority to go out of business. Thank you.

Mr. TIAHRT. Sort of an early retirement?

Ms. RIVLIN. Right.

Mr. TIAHRT. Thank you, Madam Secretary.

PREPARED STATEMENT OF ALICE M. RIVLIN

[The prepared statement of Alice M. Rivlin follows:]

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY



Hearing before the
Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives

FY2000 Budget

Alice M. Rivlin
Chairman

Constance Newman
Vice Chairman

Robert Watkins
Authority Member

Eugene Kinlow
Authority Member

Darius Mans
Authority Member

June 23, 1999
For Release Upon Delivery

Good morning Mr. Chairman and Members of the Subcommittee. On behalf of my colleagues of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority), let me say that it is a great pleasure to be here with you today to discuss the District of Columbia's Fiscal Year 2000 Budget and Financial Plan.

I would like to briefly describe the overall historical context for the budget and financial plan and what it seeks to achieve, highlighting the most important aspects from the Authority's perspective. I will then close with a few brief remarks on where we go from here.

As you know, the Authority was created by an act of Congress in April 1995, to assist the District in restoring financial solvency and improving management effectiveness. At the time of the Authority's creation, the District Government was in terrible financial shape. It was running a significant operating deficit and had a large accumulated deficit. The District's bonds could not be sold at market rates. The U.S. Treasury and the Federal Government were the District's only source of non-tax revenue.

Now, four years later, the District is in much better financial shape. Thanks to the efforts of the former members of the Authority, Mayor Williams in his former position as Chief Financial Officer, Members of the Council, the President and the Congress, the District has not only stemmed the deterioration of its finances, it has considerably improved its overall financial condition.

For fiscal year 1998, the District ran an operating surplus for the second straight year and was able to pay off its accumulated deficit and had a positive fund balance of $112 million. The City has greatly improved the integrity and internal controls of its budgeting process and financial systems. With better systems in place, the District is now able to more effectively monitor expenditures, to act in a more financially responsible fashion, and to make financial decisions that accurately reflect policy. The bills get paid, taxes are collected, and the District's debt obligations sell at market rates. Recently, Standard and Poor's and Moody's upgraded the District's credit rating to investment grade. From a financial standpoint, the City's comeback has been remarkable, unlike any to date including New York City, Philadelphia and Detroit.

Despite this progress, it is important to recognize that the City still faces an uncertain financial future. Its tax base is narrow. Vigorous and sustained efforts are needed to attract new residents and enhance business opportunities. Moreover, the District has considerable deferred maintenance and a history of inadequate investment that have left a legacy of decayed and outmoded infrastructure. These problems will take substantial resources to put right.

On the service delivery side, you may recall that when the Authority was created, the District was not responding adequately to the service needs of its citizens. Streets were filled with potholes and often went unplowed in winter. Citizens seeking ordinary services, such as motor vehicle inspections or building permits encountered long delays

and confused records. Medical care for the needy, child welfare services, and assistance to the elderly were often lacking or inadequately provided. Crime was rising, neighborhoods were decaying, and the public schools were deteriorating. Residents and businesses were fleeing the City.

Now four years later city services, including public schools, public safety and public works, have also begun to improve. The Mayor has publicly stated his strong intentions to make immediate, very visible improvements in public services, and has made a very credible start at it. But we are also conscious that many aspects of the delivery of public services in the District are still very deeply broken. Clearly it will take a sustained effort to repair them.

Recognizing the challenges ahead of the District, in January the Authority and the Mayor signed a Memorandum of Agreement. It made clear that, while the Authority retains all its responsibilities under the statute, the Mayor is in charge of the day-to-day running of the City and supervision of executive branch departments. The Mayor also has the responsibility for program and policy matters related to these departments and agencies. The Congress subsequently passed legislation that enacted this basic agreement into law.

To ensure effective cooperation and communication, the Authority has invited the Mayor to attend meetings of the Authority in a non-voting capacity. The Authority has extended the same invitation to the Chair of the Council. We meet weekly under this arrangement and are communicating well. We are very pleased by the strong working relationships that the elected and appointed officials of the City have developed. Together we reached consensus on the Fiscal Year 2000 Budget and Financial Plan.

Mr. Chairman, the Authority and the District government are very pleased to present a budget that balances expenditures and revenues for the fourth consecutive year. Given the City's many structural problems, to which I alluded earlier, this is no small accomplishment. Furthermore, the achievement of four consecutive balanced budgets conforms to the requirements of the Financial Responsibility and Management Assistance Act.

The District has submitted to Congress a FY00 budget totaling $4.65 billion in revenues and expenditures. It provides considerable resources to public safety, public education, public works/infrastructure, and economic development, while ensuring basic services to disadvantaged citizens. In their testimony Mayor Williams and Council Chairman Cropp will describe to the Committee the specifics of the budget agreement. They will explain how the budget will build on the recent efforts to improve public education, promote better government services and a more efficient workforce, begin to improve health care services, help strengthen economic development in the neighborhoods and make significant new investments in children. I would like to highlight six points that are very important from the Authority's perspective.

First, going through the budget process all of us recognized that the decisions we make now have an impact on the city's financial prospects in the coming years. Consequently, budget decisions were made in the context of a multi-year financial framework. In that context I am pleased to note that the FY00 budget is part of a solid four-year financial plan of balanced budgets that will aid in ensuring long-term fiscal health for the District. The financial plan preserves structural balance throughout the plan period, FY00 to FY03, by matching the growth of revenues to the growth of expenditures over the course of the plan.

Second, the financial plan includes significant savings from planned improvements in the efficiency of government operations. Savings are expected from management and productivity improvements in the government that the Mayor intends to make. Savings are also expected from the introduction of managed competition in a number of government services starting this year. The cost of general supplies for the government is expected to decline due to more cost-effective procurement with the implementation of the new computerized procurement system. Together, these measures are expected to produce expenditure savings of more than $40 million in FY2000 and should reach $80 million by 2003. In four years tax collections are expected to improve by at least $25 million once the new integrated tax system is fully implemented.

Third, the budget reflects major tax reforms and reductions that will be implemented over the next five years that will help to improve both our neighborhoods and our business districts across the city. Beginning with a $59 million total reduction in FY2000, the plan reduces taxes on individual income, personal property, franchises and other areas in an effort to stimulate economic growth and bring the District's tax structure in line with those of surrounding jurisdictions. The consensus budget partners have also agreed to a circuit breaker that would halt the planned tax reductions if there is a substantial deterioration of recent economic conditions.

Fourth, the Financial Plan also addresses some of the concerns previously expressed by the Congress related to the heavily front-loaded nature of the District's long-term debt. The District plans to use some of the higher-than-expected tax revenues due to economic growth this year to prepay some of its debt. The Financial Plan also anticipates the restructuring of approximately $420 million of long-term debt and a refinancing of approximately $260 million this year. These measures will help the District pay for the tax reductions and restructuring which are so desperately needed to fuel the economic engine of the District. It should be noted, however, that even after the proposed debt prepayment, restructuring and refinancing the amortization of the District's long-term debt will still remain on the aggressive side of industry norms compared to other cities. But these measures will achieve present value savings and needed budget relief over the next five fiscal years that will help the District accomplish critical service delivery initiatives. It also will help the District to service the additional debt associated with the Capital Improvements Plan.

Fifth, the FY2000 Budget also adheres to a Congressionally mandated reserve fund of $150 million. We believe that the goal of this reserve to finance needed one-time expenditures or revenue shortfalls is very prudent. However, the size of the reserve fund should better reflect the District's actual financial condition. As you may know, the FY 1998 surplus not only eliminated the accumulated deficit, it also created a $112 million positive fund balance. The fund balance is projected to grow to $282 million by the end of FY 1999, which is over 6 percent of the current year's gross budget. We anticipate over the coming years that the District will continue to enjoy General Fund balances of more than 5 percent of general fund expenditures each year, which is a Wall Street benchmark for fiscal health. In light of this, we believe the amount of the reserve should be reduced in the later years in accordance with the Financial Plan to help maximize the District's financial flexibility and meet the pressing service delivery needs of the District.

Sixth, the Capital Improvements Plan also is an important part of the District's budget. The District's leadership is determined to reverse the deterioration that the City has suffered in its streets, bridges, schools and municipal buildings. The deterioration of these important assets over time have had a far-reaching negative effect on business activity, property values, service delivery and operating costs for the City. The Proposed Six-Year Capital Improvements Plan makes major strides by including some important infrastructure improvement projects. Those projects will require a significant commitment of funds. There is $721 million in planned funding for FY2000 and $2.7 billion in planned funding over the six-year period FY2000 and FY2005. We believe that these resources devoted to infrastructure improvements are critical to the successful revitalization of the City.

Mr. Chairman, I would also like to mention some of the priorities that we are working on with the Mayor and the Council, going beyond the FY00 Budget and Financial Plan. One of the fundamental goals that we have agreed upon is accelerating economic development. In collaboration with Congress and the Administration, the District recently completed a strategic plan and funding plan for the National Capital Revitalization Corporation, a new entity that holds great promise for helping the City to facilitate private sector led development efforts throughout the District.

The District, through a collaborative process with the private sector, non-profit organizations and community groups, last fall formulated an economic development strategy that focuses on 40 specific action plans to leverage jobs and growth in the City. Good progress is being made on implementation of those action plans. We view this as the beginning of an intensive effort to make the District more attractive to new business, retaining those businesses and Federal agencies that are already located in the City, and creating greater opportunity for neighborhood development – not just activity in the central business district. The economic health and future vitality of the District are directly tied to the success of our efforts in this area.

The Authority is working closely with the public and charter schools to build on the strides made in the last year to rebuild decaying schools, make school facilities safer,

increase the quality of the education that all children receive, and lay the foundation for sustained improvement in education. The Authority, in collaboration with the Superintendent of Schools, the Emergency Transitional Education Board of Trustees, the elected Board of Education and the charter schools must make the city's schools a beacon of hope and opportunity for the District. We are hopeful that the District's Board of Education will implement successfully the agreed upon transition plan for the return of full authority to the Board on June 30, 2000.

Along with the Mayor and the Council, we are also working closely with UDC to strengthen public higher education in the District. The Authority is also working closely with the Mayor, the Council, and health care providers in the city to improve access to quality and competitive health care delivery in the District.

In summary, Mr. Chairman, we believe that the District is well on its way to accomplishing the goals and objectives of the congressional statutes that established the Authority. But let me stress that we are not there yet. In my testimony today, I have highlighted some of the achievements made so far and some of the issues that we will be working on in the coming months. Through the cooperation that the Mayor, the Council and the Authority have established, I believe we will continue making progress in meeting the goals set by Congress so that the District can make the transition to normal governance as soon as possible.

In closing, I wish to say again how pleased all the members of the Authority are that a new, more promising era has dawned in the District. It is an exciting time of new leadership and new opportunity. There is renewed energy in the District and a sense of hope that, through the cooperative efforts of the city, the metropolitan region and the Federal Government, the progress that the Nation's Capital has made in the past few years will accelerate.

My four colleagues and I, along with Mayor Williams and the Council look forward to working with the Subcommittee to build on the positive results the District has recently achieved. We all have the same goal: to bring about permanent and positive change for the citizens of the District and the Nation's Capital. I know that the Mayor and the Council Chair join me in welcoming opportunities to come back to the Hill and report to the Subcommittee as we move toward the statutory objectives that will help to bring about a timely return to normal governance.

Mr. Chairman, that concludes my testimony. I would be delighted to answer any questions that you or the members of the Subcommittee may have.

Mr. TIAHRT. Next we have Ms. Valerie Holt, Chief Financial Officer of the District of Columbia.

OPENING STATEMENT OF VALERIE HOLT, CFO

Ms. HOLT. Good morning. I'll try to keep my remarks brief. Public Law 104-8, the District of Columbia Financial Responsibility and Management Assistance Authority Act, requires the District to address dual challenges. The District must balance its budget for 4 consecutive years and we are certainly on target to do that. The District must also achieve a broader goal focusing on managerial reform, coupled with continued financial progress.

The fiscal year 2000 budget and outyear financial plan takes a step forward toward the hallmark of any well-run government, the point at which economic policies are geared to compete for new residents and the tax base is matched with service delivery goals to better serve all citizens. The fiscal year 2000 budget and financial plan incorporates the following strategies to meet this goal:

First, the District plans to restructure a significant portion of its debt. Currently, the District's debt, as noted by the Chairman of the Financial Authority and by the Council Chairman, is excessively front loaded, with future capital bonds increasing the projected debt load. The debt restructuring, by providing more capacity to invest in capital improvements, enhancing budgetary flexibility, creating near-term cash flow relief and decreasing the debt service burden, offers the District both programmatic and financial advantages.

The debt restructuring facilitates prudent financial management, and it also reflects the District's recent successes in broadening support for our capital improvement program. We have received substantial funding through Barney Circle for our transportation improvements, through the Sallie Mae funding which has gone to schools, through our equipment leasing, through the ISTEA contributions for Metro. It also reflects the benefits of the Revitalization Act which eliminated the unfunded pension liability and eliminated the necessity for front-loading debt.

Further, the debt restructuring has been received very favorably by the rating agencies. The District has over the last two weeks received two rating upgrades, as well as an earlier upgrade in April. Thus all of our ratings have been upgraded in the recent past.

TAX CUTS

The second strategy that this budget provides is that it restructures the District's taxes. We have already had a lot of discussion on that. Analysts have long agreed that the District's tax rates are high. In fact, the District's tax burdens are the highest in the region for commercial real property, corporate income tax, retail sales, and utilities. The District, when compared with the largest cities in each of the 50 states, had the 14th highest tax burden for a family of four with an income of $50,000.

Certainly these comparisons are not absolute. However, because the District does have to perform both city and county functions, the comparisons show the need for the District to have a tax structure that is more competitive with its neighbors. The pivotal issue for restructuring the District's tax base is how much, when and

what tax? The consensus budget process delivered an agreed-upon scenario for these questions.

5-YEAR TAX REDUCTION PLAN

The fiscal year 2000 budget reflects a tax reduction that will be implemented over the next 5 years beginning with $59 million in fiscal year 2000; $135 million in 2001; $186 million in 2002; and $226 million in 2003. These reductions will affect taxes on individual income, personal property, business franchise, and other areas in an effort to stimulate economic development and bring the District's tax structure in line with neighboring jurisdictions. In the interest of time, I won't go into the tax details—they will be provided for the record with my prepared statement.

$150 MILLION RESERVE

I want to, third, just very briefly talk about the reserve. The District's budget does include the $150 million reserve which was required by Congress. This reserve serves to protect the District against future unforeseen expenditures and revenue shortfalls. The District will spend the funds in such a way that an appropriate balance is available in the first, second, and third quarters to assure balance between revenue and expenditures at the end of fiscal year 2000.

The Authority and chief financial officer, in collaboration with the Mayor and the Council, have established criteria regarding the reserve. The criteria ensures budget balance in case of a shortfall in revenue, and funds expenditures such as nonrecurring initiatives that support sustainable and measurable increases in revenue, that enhance service delivery, that reduce costs, that are unforeseen or unforeseeable demands on District spending, or that constitute an investment in fostering the District's economic well being.

In the fiscal year 2000 and outyears financial plan, the District maintains a portion of the reserve to cover any unrealized savings projections. The reserve is also sized to appropriately reflect the District's fund balance and resource requirements.

Adjustments to the reserve reflect prudent fiscal planning and responsibly balances that need for conservative and prudent budgeting by not including significant one-time spending items year after year, but investing in service delivery and tax relief.

IMPACT OF TAX CUT ON CITY'S FINANCES

A lot has been discussed about our taxes and how we're going to do in our tax relief. It is important to note that the District's ability to sustain fiscal balance will, of course, continue to be influenced by the United States economy.

The United States is enjoying the longest peacetime economic expansion in history, and the District of Columbia is sharing in the prosperity. Improved tax collections and a strong economy led to the District's $445 million excess of revenues over expenses. The budget improvements that the District is experiencing are in fact being experienced by 46 of the 50 States, which also enjoy surpluses. And, in fact, the Federal Government enjoyed a surplus.

Against this backdrop of strong national and regional economic growth, the District is forecasting steady growth in fiscal years 1999 and 2000. However, these are at rates slightly below what we have seen in the last 2 years. The real estate sector, as noted earlier in the discussion, should continue to sustain our economy.

In 1998, over 3 million square feet of new office space was added while the vacancy rate declined 2 percent from 1997 levels. In addition, more than 32 percent of the available residential inventory was absorbed in 1998. Housing sales in 1997 were up 35 percent. In fact, I think currently realtors are saying that if a house remains on the market in the District for more than a week, it is not appropriately priced. Our housing market is going very well.

In looking ahead to the years 2001 to 2003, the key economic issues are how much of the national economy can continue to expand and the extent to which the District's economy will reflect the national conditions. These conditions enhance our ability to improve service delivery, reduce costs, and stimulate economic demand.

We in the District must continue to make fiscally prudent decisions in order to realize the benefits of a healthy economy. Over the next 2 years, the District should move forward toward more traditional government operations. During this period, the District must achieve the right balance of authority and support as it evolves from its current control structure. In doing so, we must remain committed to sustaining the financial and service delivery gain achieved over the last 3 years.

FY 2000 BUDGET

The fiscal year 2000 budget and outyear financial plan is an ambitious effort and will require the commitment of the Mayor, the Council, the Authority, and the staff to achieve the right results. We must all continue to understand that the District is competing to attract residents, businesses, and jobs well into the next millennium.

Our best chance to successfully compete is to work together to provide affordable services and equitable taxes. The fiscal year 2000 budget provides the framework for meeting these challenges. Thank you.

PREPARED STATEMENT OF VALERIE HOLT, CFO

[The prepared statement of Valerie Holt follows:]

Government of the District of Columbia
Office of the Chief Financial Officer

Testimony of
Valerie Holt
Chief Financial Officer

Before the
House Appropriations Subcommittee on the District of Columbia
Committee on Appropriations



FY 2000 Budget Hearings for the District of Columbia

Washington, D. C.
June 23, 1999

Testimony
of
Valerie Holt, Chief Financial Officer
District of Columbia Government
June 23, 1999
10:00 a.m.

Good Morning, Chairman Istook and members of the House Appropriations Subcommittee, thank you for the opportunity to appear before you today to present the District's Fiscal Year 2000 Budget and Out-Year Financial Plan.

Public Law 104-8, the District of Columbia Financial Responsibility and Management Assistance Authority Act, requires the District to address dual challenges. First, the District must balance its budget for four consecutive years. A second, broader goal is to have in place a management structure and operating processes to support effective and efficient service delivery. The District is on target to achieve its fourth consecutive balanced budget in FY 2000. We now must focus on the broader based goals of managerial reform coupled with continued financial progress; an emphasis on improving government services, expanding the economy and enhancing the District's fiscal health through the institutionalization of proven financial processes.

The FY 2000 Budget and Out-Year Financial Plan takes a step forward toward the hallmark of any well run government: that point at which economic policies are geared to compete for new residents and the tax base is matched with service delivery goals to better serve all citizens. The FY 2000 Budget and Financial Plan incorporates the following strategies to meet this goal.

Debt Restructuring

The District plans to restructure a portion of its debt to take advantage of the substantial opportunity to invest in initiatives that will accelerate infrastructure improvements and expand the local economy. Currently, the District's debt is excessively front-loaded, with future capital borrowing increasing the projected debt service. The debt restructuring, by providing more capacity to invest in capital improvements, enhancing budgetary flexibility, creating near-term cash flow relief and decreasing the debt service burden, offers the District both programmatic and financial advantages.

The debt restructuring facilitates prudent debt management and reflects the District's recent success in broadening the funding sources supporting the CIP, including Barney Circle monies, Sallie Mae funding, equipment lease, increased ISTEA (T-21) contributions for the METRO joint venture and intermediate (10-15 year debt) financing. It also

reflects the benefits of the Revitalization Act which eliminated the unfunded pension liability and eliminated the necessity of front loading our debt.

Further, the debt restructuring has been received favorably by the rating agencies as demonstrated by the fact that, as of last week, all three rating agencies had upgraded the District's bonds to investment grade. These upgrades will provide the District with lower interest rates in the future; thereby freeing up more funds to invest in our community.

Tax Restructuring

The second strategy is to restructure the District's taxes. Analysts have long agreed that the District's high tax rates required revision. In fact, District tax burdens are the highest in the region on commercial real property, corporate income, retail sales and utilities. The District, when compared with the largest city in each of the 50 states, has the 14th highest tax burden for a family of four at the $50,000 income level. Total District taxes are 35 percent higher than Montgomery County and 22 percent higher than Prince George's County. Certainly, these comparisons are not absolute, since the District performs some state and

county functions, as well as city responsibilities; they do show the need for the District to have a tax structure that is more competitive with its neighbors.

The pivotal issue for restructuring the District's tax base is how much, when and what tax? The consensus budget process delivered an agreed upon scenario for these questions.

The FY 2000 Budget and Financial Plan reflects a tax reduction that will be implemented over the next five years, beginning with a $59 million total reduction in FY 2000 and including $135 million in 2001, $186 million in 2002 and $226 million in 2003. These reductions will affect taxes on individual income, personal property, business franchises, and other areas in an effort to stimulate economic development and bring the District's tax structure in line with those of neighboring jurisdictions.

The key provisions include:

- Increasing the filing thresholds on the personal property tax and Arena Fee so that fewer businesses would pay each of these taxes.
- Accelerating the depreciation of computer equipment under the personal property tax.

- Changing the net operating loss deduction to assist start-up businesses and eliminate carryback of losses.
- Eliminating the sales tax of 5.75 percent imposed on Internet access.
- Reducing real property tax classes and tax rates (hotel rate reduced from $1.54 to $0.96, commercial property rate reduced from $2.15 to $1.85, vacant property rate reduced from $5.00 to $1.85).
- Lowering corporate and unincorporated business franchise taxes (from 9.975 percent to 8.5 percent).
- Lowering individual income tax rates and increasing the top bracket from $20,000 to $40,000 ($1 to $10,000 bracket from 6 percent to 4 percent; $10,000 to $40,000 bracket from 8 percent to 6 percent; over $40,000 bracket from 9.5 percent to 8.5 percent).

The Reserve

Finally, the budget includes the $150 million reserve required by the Congress, for each fiscal year beginning in FY 2000. This reserve serves to protect the District against future unforeseen expenditures and revenue shortfalls. The District will spend the funds in such a way that an appropriate balance is available in the first, second and third quarters to assure balance between revenue and expenditures at the end of FY 2000. The Authority and Chief Financial Officer, in collaboration with the Mayor and the Council, have established criteria regarding the reserve. The criteria ensures budget balance in case of a shortfall in

revenue and funds such expenditures as non-recurring initiatives that support sustainable and measurable increases in revenue, that enhance service delivery, that reduce costs, that are unforeseen or unforeseeable demands on District spending, or that constitute an investment in fostering the District's economic well being. In the FY 2000 and Out-Years Financial Plan, the District maintains a portion of the reserve to cover any unrealized savings projections. The reserve is also sized to appropriately reflect the District's fund balance and resource requirements. The adjustment to the reserve reflects prudent fiscal planning and responsibly balances the need for conservative and prudent budgeting by not including significant "one-time" spending items year after year, but investing in needed service delivery and tax relief.

Economic Outlook

Of course, the District's ability to sustain fiscal balance will continue to be influenced by the United States economy. The United States is enjoying the longest peacetime economic expansion in its history, and the District of Columbia is sharing in that prosperity. Improved tax collections and a strong economy led to the District's record $445 million excess of revenue over expenses in FY 1998. The budget improvement experienced by the District parallels comparable improvements all across the country – 46 states had excess revenues in FY 1997 and even the federal government enjoyed a surplus in FY 1998.

Underlying strength in the economy and continued improvements in tax collections bode well for continued revenue growth.

Against the backdrop of a strong national and regional economy, the District of Columbia's economy is forecast to show steady growth in FY 1999 and FY 2000. Although at rates below the preceding two years, the District is expected to have some small increase in employment. In addition, the population decline has abated. Between 1990 and 1997, the District's population declined by 12.6 percent. Between 1999 and 2004, it is estimated that the population will decline by less than one percent.

Growth in the real estate sector should also continue to sustain our economy. In 1998, over 3 million square feet of new office space were added, while the vacancy rate declined 2 percent from the 1997 level of 9.2 percent. In addition, 32 percent of available residential inventory was absorbed in 1998. Moreover, housing sales in the District are up 35 percent over 1997. In fact, realtors are currently saying that if a house remains on the market for more than one week it is not properly priced.

In looking further ahead to the years 2001 through 2003, the key economic issues are how much the national economy can continue to

expand and the extent to which the District's economy will reflect national trends.

These conditions enhance our ability to improve service delivery, reduce costs and stimulate economic development. We, in the District, must continue to make fiscally prudent decisions in order to realize the benefits of a healthy economy.

Conclusion

Over the next two years, the District should move forward to more traditional government operations. During this period, the District must achieve the right balance of authority and support as it evolves from its current control structure. In doing so, we must remain committed to sustaining the financial and service delivery gains achieved over the last three years, which include more accurate budgets and revenue forecasts; restored credibility in the financial markets; and improved expenditure control, cash management and financial reporting.

The FY 2000 Budget and Out-Year Financial Plan is an ambitious effort and will require commitment from the Mayor, the Council, the Authority and staff to achieve the right results. We must all continue to understand that the District is competing to attract residents, businesses and jobs, well into the next millennium. Our best chance to successfully compete

is to work together to provide affordable services and equitable taxes. The FY 2000 Budget provides the framework for meeting these challenges.

TAX PARITY ACT OF 1999

BUSINESS TAX REDUCTIONS:

Tax Type	Current Rate	Proposal	FY 2000 Rate	FY 2001 Rate	FY 2002 Rate	FY 2003 Rate	FY 2004 Rate
Personal Property			Effective 7/1/2000				
	All Property Taxable	Exclude $50,000 value	$1.5 M	$6.0 M	$6.3 M	$6.6 M	$6.9 M
	Old depreciation schedule	Accelerate depreciation	$2.25 M	$2.25 M	$2.25 M	$2.25 M	$2.25 M
Franchise Tax						Rate of 9.0%, effective for tax years after 12/31/2002	Rate of 8.5%, effective for tax years after 12/31/2003
	9.975%	Reduce Tax Rate	$0	$0	$0	$16.7 M	$28.7 M
Real Property			Class 2 $1.34 Class 4 $2.05 Class 5 $2.05 Eff. 10/1/99	Class 2 $1.15 Class 4 $1.95 Class 5 $1.95 Eff. 10/1/2000	Class 2 $0.96 Class 4 $1.85 Class 5 $1.85 Eff. 10/1/2001		
	Class 2, $1.54 per $100	Reduce to $0.96 per $100	$13.1 M	$25.6 M	$38.1 M	$38.1 M	$38.1 M
	Class 4, $2.15 per $100	Reduce to $1.85 per $100	$16.8 M	$33.5 M	$50.3 M	$50.3 M	$50.3 M
	Class 5, $5.00 per $100	Reduce to $1.85 per $100	$4.1 M	$4.3 M	$4.4 M	$4.4 M	$4.4 M
Miscellaneous			Years after 12/31/1999				
	NOL, not DC specific, 3-year carryback	NOL, DC specific, no carryback	$0	$0	$0	$0	$0
			10/1/1999				
	Arena Fee imposed on all DC businesses	$2 million Arena Fee threshold	$0	$0	$0	$0	$0
Business Tax Reductions			$37.8 M	$78.4 M	$108.6 M	$126.1 M	$138.9 M

U.S. GROSS DOMESTIC PRODUCT, 1960-1997
NOMINAL AND INFLATION ADJUSTED

YEAR	GROSS DOMESTIC PRODUCT (% CHANGE FROM PRECEDING PERIOD)	INFLATION ADJUSTED GROSS DOMESTIC PRODUCT (% CHANGE FROM PRECEDING PERIOD)
1960	3.8	2.4
1961	3.5	2.3
1962	7.4	6.1
1963	5.5	4.3
1964	7.4	5.8
1965	8.5	6.4
1966	9.5	6.5
1967	5.8	2.5
1968	9.2	4.7
1969	7.9	3.0
1970	5.4	.1
1971	8.7	3.3
1972	9.9	5.5
1973	11.7	5.8
1974	8.3	-.6
1975	8.9	-.4
1976	11.5	5.4
1977	11.4	4.7
1978	13.0	5.4
1979	11.6	2.8
1980	8.9	-.3
1981	11.9	2.3
1982	4.1	-2.1
1983	8.4	4.0
1984	11.0	7.0
1985	7.1	3.6
1986	5.8	3.1
1987	6.1	2.9
1988	7.6	3.8
1989	7.7	3.4
1990	5.6	1.2
1991	3.0	-.9
1992	5.5	2.7
1993	5.0	2.3
1994	5.9	3.5
1995	4.6	2.3
1996	5.4	3.4
1997	5.9	3.9

*Source: Economic Report of the President, February 1999, Tables B1 and B2

Mr. ISTOOK [presiding]. Thank you very much, Ms. Holt.

I appreciate your testimony and that of everyone else.

CHAIRMAN'S CONCERNS OVER TAX CUT "TRIGGER CONTROLS"

Let me mention a couple of concerns that I have so that you will understand the things that I am trying to explore in dialogue with you.

The Council has acted, the Mayor has acted for significant tax cuts that are seen as a key to the future of the District to reversing economic trends, housing trends, population trends, a number of trends in the District.

I congratulate the people that have worked on that. I share your optimism about the great benefits that can be achieved by it. I recognize that it must be done—and I think the control board has certainly emphasized this also—it has to be done within an atmosphere of fiscal responsibility.

My personal analogy, the District is still somewhat like someone riding a bike with training wheels on. That may not be the best analogy for some people, but that is the one that comes to my mind and like anyone doing that, you are anxious to have the training wheels off, and everyone else is also.

But that is why certain control mechanisms have been put in place, whether it be the control board or whether it be reserve fund requirements and so forth. But everyone shares the objectives of wanting to get the training wheels off.

I am concerned that the action that was mentioned in the paper this morning about what happens if certain economic benchmarks are not achieved, whether the tax cuts will still happen.

As the first witness testified this morning, if you send a message of uncertainty regarding tax cuts, you are not going to get the same stimulus and beneficial response that you seek in them. And I am very concerned that if the circuit breaker in case problems develop, if that circuit breaker is to say tax cuts might not happen, then you can undercut the entire benefit that you want to achieve from the tax cuts.

I want to explore what that circuit breaker needs to be and what tools needs to be in place. Whether, for example, a circuit breaker mechanism that says, if necessary to have the tax cuts and keep things in balance, these are the programs where cuts would occur first, rather than backing up on the tax cuts, how well that does as a circuit breaker.

But the so-called trigger mechanisms are, frankly, of concern to me, and I want to explore them further with people.

But even before we get into that, certainly, Mr. Mayor, you campaigned on fiscal responsibility. You have a proven track record of eliminating waste and correcting mismanagement from the time that you were CFO for the District. Of course, I know that means everybody is watching you, Ms. Holt, to see what you are going to be running for next.

Ms. HOLT. Absolutely nothing.

Mr. ISTOOK. We got that on the record.

Mayor WILLIAMS. Thank you, Valerie.

MANAGEMENT SAVINGS OF $41 MILLION IN BUDGET

Mr. ISTOOK. That was a major selling point of course for the Mayor in his campaign and you have proven credentials. But yet as I mentioned before, a lot of the success in achieving savings within the District budget depends upon the management savings, whether it be managed competition, the savings bank, or all these other things. There are some $41 million in savings that are rolled into the FY 2000 budget. And the budget relied upon those particular savings. If they don't materialize, you have got major problems.

MAYOR LACKS POWER THAT CFO HAS

So the first question I wanted to pose is to Mayor Williams, which is, what could you do as CFO in trying to squeeze out savings and bring efficiencies to government that you cannot do as Mayor? I realize you don't have the same powers as Mayor as you did as CFO in some of those ways. What's the difference? I want to make sure that you and everyone else have the necessary tools for the job.

Mayor WILLIAMS. As CFO I had extraordinary authority over personnel. Number two, in many, many instances, certainly early in my tenure as CFO, I worked with the Financial Authority to bypass a crumbling dysfunctional procurement system. But when I ran for Mayor, I ran for Mayor on the pledge that I would make the existing system work to achieve the savings that I know we all have to realize. And my commitment was made, understanding what great mayors like Ed Rendell have done in Philadelphia; Steve Goldsmith in Indianapolis; Dennis Archer, Mayors who have a civil service system.

They are working in a union environment but through force of will creating unity of purpose in their communities were able to craft labor agreements that achieve the kind of productivity savings that I think we have to realize through the same devices as we are able to achieve changes. Maybe not absolute as some government managers would like, but achieve some real significant changes as well in civil service work rules. That's what I pledged to do.

And whatever I did, whatever background authority I had, I would work through the labor management process—and I'm not saying by saying that, oh, everything is fine and I agree with labor on all issues. I don't. But it has to be a collective-bargaining process.

I think that we can make through real leadership that process work. I think that's what the voters' expectation was that I would go in, work that process aggressively, and make it work for our citizens and that I wouldn't come in and say, can't do this, I need the same authority as I had as CFO. As a manager, would I like to have that authority, sure. But that's not the commitment and the contract I made with the voters.

Mr. ISTOOK. Certainly. And, of course, everyone has made commitments to the voters regarding achieving these savings and achieving these tax cuts, and we want to make sure that we have a mechanism in place that will help all of you to achieve that.

CITY COUNCIL VIEWS ON ACHIEVING MANAGEMENT SAVINGS

Ms. Cropp, let me ask you, you have a CFO that has certain authority; you have splits of authority with the Control Board and the Council. The Mayor has certain authority. From your perspective or the Council's perspective—sometimes you can speak for the whole Council and sometimes you can't—but from those perspectives, what are the keys as far as who needs to have the authority to make sure that you achieve these personnel savings and these procurement savings that the Mayor was mentioning?

Ms. CROPP. It is a thing where both components have to work together. It is the executive who runs the government, who implements what the legislative branch says. Sometimes that line gets a little blurred. I think ofttimes the Council wishes it could implement some things and the legislative branch does, but we cannot.

We can work with the Mayor in developing a policy that would enable the Mayor to achieve certain things. For example, in the Budget Support Act right now, the Council has approved certain things such as streamlining contract approval, something that the Mayor had requested that would enable him to be able to continue in a positive vein, to look at reorganization power that the Mayor has to make sure that the Mayor has the appropriate reorganization power to deal with the workforce and place the workforce in the appropriate place; and also to give the Mayor the ability to deal with early-out retirement so that we can have the right size of government.

So what you will find in this budget process as we look at taxes, as we look at ways to improve service delivery to our citizens, you will also see the legislative side of the government trying to give that type of support system necessary to the chief executive so that he can implement the appropriate management reforms and carry those things out.

I would like to also say, Mr. Chairman, that as you look at the history of the District over the past couple of years, we are moving into another phase. We reached this phase of, quote, "a budget surplus," through hard times. We reduced the size of our workforce by more than 10,000 citizens. We reduced services. Human services, for example, I recall the human services budget one year was cut by $70 million.

You looked at the service delivery to our citizens. The challenge for us was to try to keep service delivery up at some point while we were also cutting the budget. So in order to get to the point where we are now, the revitalization plan where the President and Congress took some steps to help offset some unusual cost that the District had that no other city had, we took some Herculean steps. We got out of the box in reaching this point.

We are now at the phase where we have to do some other things to help our economy to grow to sustain it. That's why we are coming up with this tax cut. We are looking at ways to make it grow. That's why we need the management reform. That is why the Council is supporting in the Budget Support Act the initiatives that will hopefully give the Mayor the tools that he needs to accomplish those things.

So we are in phase two, and we will not continue to see the type of progress we want unless we take a combined approach of service delivery, improving that and supporting the executive with the tools necessary, and looking at ways such as how we deal with taxes to help our economy to grow.

TAX CUTS; SERVICE DELIVERY; AND BALANCED BUDGETS

Mr. ISTOOK. I appreciate that and I need to yield time to Mr. Moran. I appreciate your mentioning the need for a combined approach. I am well aware, of course, as I mentioned before, I applaud the Council in moving aggressively on tax cuts. I realize that the political dynamic is such that the tax cuts the Council has pushed for are greater than the Mayor wants because the Mayor wants to make sure that things stay in balance and continue the positive trends.

Ms. CROPP. Wait a minute. The Council wants that to happen too.

Mr. ISTOOK. I realize that. I realize that.

Ms. CROPP. The Council wants to balance the budget too.

Mr. ISTOOK. I know that. I know that. But I also recognize that the Mayor has had concerns about being able to keep everything in balance with the level of the tax cuts that the Council wanted to push a little farther than the Mayor did in that area. I understand that. I think it is great.

MAYOR NEEDS MANAGEMENT TOOLS

But I also wonder out loud to therefore help the Mayor to make the Council's level of tax cuts happen, if it's also necessary that the Mayor has all the tools that he needs to do the job to achieve these savings in personnel and procurement, in reorganization, and in all the other areas. So that's what I'm trying to get to, what do we need to do in approving this budget to make sure that we approve a package that has all the elements necessary for success which can include not only the tax cuts and the spending controls but also the management tools; and that's what I'm trying to look at. Mr. Moran.

CONGRESSMAN MORAN'S REMARKS

Mr. MORAN. That's terrific, Mr. Chairman. That's exactly the statement I would want to hear and I know the D.C. government appreciates hearing. That sums it up entirely.

We need to know how we can be helpful and not hurtful, how we can underscore your priorities; direct what resources we have; any influence over to where they are going to do the most good; and how we can support the level of confidence that has built up under D.C.'s elected leaders and, in fact, the D.C. Financial Control Board.

So I completely agree with Chairman Istook. I do think, though, that the initial tax cut proposed by the D.C. Council was too deep and fiscally irresponsible. But it's good to show that the D.C. Council wants to cut taxes. I think it serves some political purposes, at least individually if not collectively.

I'm glad we now have a consensus budget. I want people to be talking about cutting taxes in the District, as long as it is done in a prudent manner so that we can be sure that we never fall back into the old days of mammoth deficits.

What I want to hear from you, though, is specifically what we could do beyond supporting the consensus budget, because I think that's what we are going to do, and it looks like the mark that we have will basically accomplish that. I hope we can keep some of those poison pills off the bill which are extraneous to the appropriations process. I think that might be helpful. But beyond that, if there were initiatives, what would be those initiatives?

For example—and I don't think we should be proposing tax cuts. I don't think that is particularly appropriate for an Appropriations Committee, but the twin pillars of the new economy that all of you know, but particularly Ms. Rivlin as vice chair of the Federal Reserve Board understands, are technology and trade.

How do we maximize what is happening in technology and trade, the new productivity? I see the D.C. School System probably has more classrooms wired, at least as many as virtually any other school system, and yet we have the lowest math and science scores. So obviously we have to hire more math and science teachers, we have to put more emphasis; we have to catch up to the facilities that are available.

For example, if the D.C. Government were able to say it will never impose an Internet tax, maybe that would get some more of these tech firms. The tech firms in the suburbs are just doing beautifully, and hiring—we've got 19,000 unfilled positions. I wish we could fill more of those with District residents. But it would also be nice to attract more tech firms into the District. Maybe something like that would work. Maybe even a free trade zone to get more international trade.

So I just want to elicit some ideas if there were initiatives that you think might be constructive. I guess we go to the Mayor first and then Ms. Rivlin and then Ms. Cropp.

ECONOMIC DEVELOPMENT PARTNERSHIP WITH COMMITTEE

Mayor WILLIAMS. I think, Congressman, that aside from our productivity and management improvement, if we talk about economic development, I think we can pursue economic development; and there would certainly be partnerships that we could pursue with this Committee in two different ways, outright expenditure or by way of tax subsidy. For example, a tax subsidy would be the homeownership tax credit which has a marked effect.

I traveled with Senator Voinovich to Cleveland. They have the highest rate of housing production in the country now in Cleveland. Subsidies by the government by way of tax abatements or other incentives to bring in homeowners to a city, that is a no brainer. It is a direct gain to your city in terms of overall multiplier effects. So whatever we could do to try to pursue a homeownership strategy in our city is going to have, I think, profound effects in our city. The partnership we have with Fannie Mae right now, over a billion dollars, is one step in that direction but there are other things we could do.

Likewise, you mentioned free trade zone, Internet tax-free concept. Exactly. Those are growing areas of our economy. We could say that out of the provision of monies we're going to spend either outright or by tax subsidy, we're going to spend a certain amount of incentives tied directly to economic development. That would definitely would have an effect. You could do it on a case-specific site, for example, in a certain zone. Potential restoration or redevelopment of the St Elizabeth's site. Same kind of concept. So those are things I think we could explore.

SUBSTANCE ABUSE AND PREVENTION PARTNERSHIP

Another area where we are a partnership, and we mentioned this—we sent the Congress as it relates to the 302(b) budget allocation in the whole area of substance abuse and prevention. And this is something where I think all of us believe it is very, very important to the District.

We share the belief that, for example, better testing increased testing, of our probationers is important. But if you are going to do that, you have to back it up with better substance abuse and treatment. That has an economic effect because you are helping stabilize the neighborhood.

Mr. MORAN. Well, we got that drug court that we have been funding and that should help. Ms. Rivlin?

PARTNERSHIPS WITH BUSINESSES TO TRAIN DISTRICT RESIDENTS

Ms. RIVLIN. I think the key is supporting partnerships here, and what can be done to foster partnerships between business, including the high-tech businesses from Northern Virginia and both the D.C. public schools and the charter schools and efforts to train the D.C. workforce who are not even in school but who need computer training. That's in the mutual interest of the city and the suburbs and needs strong support.

TECHNOLOGY PARK IN NEW YORK AVENUE AREA

The city is already, within the context of the economic development plan, looking at a technology park in the New York Avenue area. And that can be a very important initiative.

$25 MILLION ECONOMIC DEVELOPMENT FUND AND TAX ABATEMENT

As to what the Congress can do, I had a conversation yesterday with Senator Hutchison who thought that the National Capital Revitalization Corporation should have an extra power to use some of its funds for tax abatement-type purposes to attract businesses into the city within empowerment zones. That sounded to me like a thing worth exploring.

NEW YORK AVENUE CORRIDOR; PENNSYLVANIA AVENUE TRAFFIC PROBLEMS

Mr. MORAN. Let me just jump in here for a moment because you mentioned the New York Avenue corridor. I would love to see some real infrastructure investment there. That is a gateway to the city. It looks horrible now. It has so much potential.

Another thing is all of this traffic pouring into the Federal Triangle area across the 14th Street Bridge and Memorial Bridge, but particularly across the 14th Street Bridge. Congressman Frank Wolf came up with an idea of putting a tunnel that you could start at L'Enfant Plaza and tunnel traffic in under the Federal buildings and have exit ramps and take it under the White House. It is a disgrace, Pennsylvania Avenue now in front of the White House; and you look at E street and it is a dump.

And I think the Secret Service—I just don't agree with them at all. I don't think they could care less about the aesthetic effect or the traffic effect. They just wanted to show how important they were in their authority, and they shut the whole thing down. It is wrong. But maybe a tunnel is the best way to do it.

And if we could do that—and we could do New York Avenue—boy, what a wonderful opportunity that might present to get some of this traffic congestion out of here and make it so much more a livable city. So if you have any ideas on that, I know I am way past my time. But the Chairman is generous, and I guess there is only the two of us anyway, Mr. Chairman. So if you have any ideas on that.

Mr. ISTOOK. That's just the red-light-at-the-end-of-the-tunnel comments.

Mr. MORAN. Well, it is a bright light at least. What do you think about that? I suppose as long as it is Federal money you think it is a great idea.

Mayor WILLIAMS. We are working with the Federal government. We're going to be announcing today a Red Line stop. This is a public-private partnership with the developers, the Federal government, Metro, and the city, to create a Red Line stop on New York Avenue. We have begun tearing down those unsightly houses on New York Avenue, putting in a lot of time and effort in improving that corridor. You are right, Congressman. It is very important. That is an example of investment.

Another example of investment would be traffic. I will say yesterday in our cabinet meeting we told our people in no uncertain terms that we have to up the level of urgency in creating just an interim—forget about fancy long term—an interim transportation plan for downtown because the gridlock needs to get under control. It is a matter of traffic enforcement, it is a matter of towing, it is a matter of just rationalizing everything so it achieves an intended purpose.

It is everything from simple things of creating—they have this in New York and London—a square in the middle of the street. If your car is stuck on the square you pay $100 to prevent the gridlock in the intersections; towing the cars strategically; doing your construction work strategically. All of those things have to be done, and any help we could get would be appreciated.

Mr. MORAN. Absolutely. And that is one of the disincentives of bringing businesses into the city. I think that would help tremendously with the economic incentives to bring them in. Linda?

ECONOMIC DEVELOPMENT—IMPACT ON NEIGHBORHOODS

Ms. CROPP. Thank you very much for asking that question. Let me say that I agree the idea of New York Avenue, a tunnel, is a

possibility. The only thing I would suggest is we really would have to look at the impact on the neighborhoods for the ingress and egress to make sure that we don't destabilize our neighborhoods, because we are trying to make sure that they are strong.

We are looking at New York Avenue and other gateways in trying to clean them up. New York Avenue, Pennsylvania Avenue, Georgia Avenue. As far as what you all can do, you may be able to look at how certain highways—and you have helped us in the past—enter into the city. And you can help to keep those sound for us. Pennsylvania Avenue, 14th Street Bridge, we have South Capitol Street going into the Ward 8 community. Georgia Avenue, which is a highway, coming from Maryland, and helping us with that. Because we are the Nation's Capital, we have an awful lot of traffic that does an awful lot to our city as a whole.

You probably would be happy to know that part of our legislation in this budget act does deal with exactly what you are saying, no tax on Internet sales; and we have specifically said that.

Mr. MORAN. That is proposed interim. I was just suggesting to say we are never going to impose one because States are now looking at the imposition of Internet taxes when the moratorium is lifted. And I think it was the Mayor that said, you know, the long-term expectations are particularly important.

Ms. CROPP. We are looking at that. And let me say, one of the things that we would like to have is consistency. And where folks can look and see what will the future look like in our tax policies and everything else and we are moving in that direction.

LOCAL PRISON SITUATION AND FEDERAL GOVERNMENT

I must also say that the Federal government can continue to help us with regard to our prison situation with the revitalization plan. We still have some problems in that arena that have not totally been resolved, and actually I think we need a lot of help as to when the Federal government would take over the prison, and we need an awful lot of help along those lines.

And finally, but certainly not last, it certainly would be helpful if we had a voting Delegate in Congress. If you can help us along that line also.

Mr. MORAN. You have to ask other people about that. I happen to agree. Okay. Thank you, Linda. Thank you, Mr. Chairman.

TAX CUT "TRIGGER" MECHANISM

Mr. ISTOOK. You bet, Mr. Moran. Thank you. Let me explore—there has been discussion about this trigger mechanism, and I don't have the details. I've just seen a short item about the Council vote yesterday. And Ms. Rivlin, I regret that I missed your call yesterday, but we will get back together.

I know that the purpose of the trigger mechanism that was the subject there is to make sure that you don't destabilize the District government as it's moving back to financial stability. The purpose, the objective I agree with. The need for some sort of—you can call it a trigger mechanism; I call it a circuit breaker mechanism, but the point is I think that there does need to be something to make sure that as the District makes a significant change in tax policy,

that it can handle it in a responsible way within their balanced budget.

What I don't want is to have the value and the benefits of the tax cuts undercut by uncertainty. I don't want to see headlines that say "D.C. Tax Cuts, Fact or Fiction?" I don't want that uncertainty myself because I think it can drastically undermine the benefits that the tax cuts can bring to the District and the people here.

So that's what I wanted to discuss with you, Ms. Rivlin, in particular. What's the difference from your perspective and the Control Board's perspective, of having something that says, well, if some financial problems surface within the budget as we are going through the tax cuts—what's the difference between saying we will manage that by diminishing the tax cuts or saying that we will manage by diminishing some other aspect of spending? Don't either one accomplish the same fiscal objective of stability?

Ms. RIVLIN. Well, maybe yes, maybe no. It would depend on what spending had to be cut. I think we are all hoping for real improvements in the District's service delivery, including schools. And what you need to attract residents into the city is not just lower taxes; it's better services. A family with kids isn't going to come into the city even if the taxes were zero if the schools are bad and the streets aren't safe, and no one would want them to.

Mr. ISTOOK. I don't think anyone would propose that sort of adjustment.

Ms. RIVLIN. So I think you don't want to see a headline that says "Service Improvements in the District, Fact or Fiction" either.

And I just don't see why one should say the tax cut must proceed in all cases even if the District is in deep trouble. I think it ought to be up to the Council what to do in that sort of instance. The tax cut should not proceed automatically if it's going to cause a deficit in the budget, if only because we don't want the Control Board called back in to continue under those circumstances.

EXPENDITURE ADJUSTMENTS TO MAINTAIN TAX CUTS

Mr. ISTOOK. I certainly agree with you that improvement of schools and infrastructure is something that's necessary. I think my question to you—and you don't have to give an immediate answer, but you know a considered answer is much better—is if there were adjustments made on the spending side of the ledger to enable the tax cuts to go forward with certainty, what might those adjustments be in a prudent way?

Ms. RIVLIN. Mr. Chairman, if there were expenditures that we regarded as unnecessary in this budget that could easily be cut out, we ought to cut them out now and not wait for difficult times.

CFO—AGRESSIVE ON PRODUCTIVITY SAVINGS

Ms. HOLT. May I comment also? If you look at the outyear financial planning budget, it actually assumes that we are going to be very aggressive about reducing costs through the productivity savings and others.

Mr. ISTOOK. Which is why I emphasize the need to make sure that the executive branch has the tools to do it, maybe sometimes not quite the way the Council would want; but it helps the Council to meet the tax cut objective.

Ms. HOLT. So that knowing that those cuts are already there, to put more cuts on top of those in the 4 years if you had the precipitous drop that the trigger would call for, is where you would get into difficulty, because you already have the expenditure cuts and you would not have some place to give the revenue adjustments.

CFO—TAX CUT "TRIGGER" MECHANSIM

Let me talk about the trigger itself for a minute. It is a very conservative trigger, and I think if you look all the way back to 1965—and I will give you a table—there is only a couple of years in which we would have hit the trigger, the pull, had there been a tax relief package in effect at that time. The most recent one would have been '90.

[CLERK'S NOTE.—See table "U.S. Gross Domestic Product, 1960–1997" on page 1059.]

In 1990, we did hit the 1.2 gross domestic product after adjusted for inflation, and in that year the District suffered an $85 million reduction in its revenue estimate.

That's very difficult to fix in midstream. Society-wise, the trigger is—it's extremely conservative. It presages a precipitous drop in revenue.

Mr. ISTOOK. But it says if times are bad, taxes go up.

Ms. HOLT. No it doesn't, really, because you would not go back to any of the taxes—let's suppose that it occurred in the third year. You would not take back the tax reductions from the first and second years. You would just not go forward in the third year until the Mayor and the Council had a chance to come together, look at the total financial plan and budget, and decide how much of what they planned——

Mr. ISTOOK. Not reinstate any cuts that have already taken place, but prevent the phasing in of future cuts.

Ms. HOLT. Exactly. And it doesn't mean that those future cuts do not come. It gives recognition, as the Mayor said, that 50 percent over the last couple of years of our revenue surge was brought on by benefits in the economy, that the District is not an island unto itself, although I think sometimes it feels that way, that it is subject to the national economy. So if the economy goes down, the District will suffer equally. And it will have to look at its tax structure then.

PRIORITIZING EXPENDITURES TO RETAIN TAX CUTS

Mr. ISTOOK. Certainly. And you know, Ms. Rivlin, you mentioned, of course, if there are things that are unnecessary in the budget, they should be eliminated now. I totally agree, but we also recognize that there are some things in the budget that are higher priorities than others. So it is not necessarily a matter of taking out something that one person may consider necessary and another unnecessary. It is a matter of having your priorities in place so that there is a consequencing—if you have so much money you do this; if you have additional money this is an additional prudent expenditure. It is a matter of having that——

Ms. RIVLIN. That is clearly right, Mr. Chairman, but all the trigger would do is give the Mayor and the Council the opportunity to

reassess the priorities, including additional tax cuts as a priority. It doesn't say there won't be tax cuts. It only says stop, wait a minute. Think about whether you can afford this and what to do about it.

Mr. ISTOOK. The Council's action yesterday, as I understand it, was done at the insistence and the requirement of the Control Board in the particular choice of trigger mechanisms.

Ms. RIVLIN. We wanted to strengthen the mechanism to deal with the contingency which, as Valerie says, is very rare; but if there were a precipitous drop in revenues, we would not want the tax cut to proceed further.

Mr. ISTOOK. And I think I made my position on that clear. What I want to do, of course, is to look at the specifics of that trigger mechanism to see, as I mentioned, if there are alternatives to make sure there is certainty on the tax cut side and look at the spending side to see if there are adjustments that can be made in priorities.

I think it is important, though, to recognize that, frankly, the Council is acting under good faith—and I think correct belief—that actually the tax cuts will have a stimulus effect. It is kind of like the debate we have in Congress between static and dynamic scoring.

There has been a lot of going back and forth, and I won't reopen that whole debate. But I understand that the budget is put together conservatively presuming that it is static and doesn't create the dynamic situation where the tax cuts actually end up achieving greater tax revenue where you cut the tax rates, but the revenue actually increases and I realize you haven't scored it that way. You scored it as though the tax rate reductions are actually a revenue loss rather than a revenue gain, so you have taken the conservative approach on that.

BOND RESTRUCTURING

I wanted to ask concerning the bond refinancing and structuring that are a part of the budget package. It was mentioned before that the city's bond rating keeps improving. I know you are hopeful that it is going to be better next year than it is this year and so forth, year after year. What level is it at now compared to what the top level is, Mr. Mayor.

Mayor WILLIAMS. For example, it was triple B in Standard and Poors, so we brought it up two notches. But we are still below a benchmark quality rating.

Mr. ISTOOK. Is triple A highest?

Mayor WILLIAMS. Yes, triple A.

Mr. ISTOOK. So there is still some improvement to be had. Now, here is my question: As the city's bond rating improves, does that mean that the potential savings from a bond refinancing would be significantly better a year from now if the city's bond rating were better? Has that been factored into the decision on refinancing and restructuring bonds?

Mayor WILLIAMS. Unless I can be corrected by our CFO, certainly in my participation in formulation of the budget, we didn't factor in savings from bond rating improvements out there in the future, because the fall-down is quick, but the climb back is painstaking, and it would be foolhardy, I think, to factor in savings from im-

provements in the bond rating into the actual financial plans, so we haven't done that.

You know, just as a Mayor and as a former CFO, in my mind I am always trying to factor in the value of the tax cuts, the value of the fiscal strategy, the value of the improved bond rating. But you have everything from trying to pick up the trash, provide the resources so our superintendent can educate the children and very importantly, providing a decent, sound human service network in our city. I come out of a foster-care home. That is very, very important that we have that—it is nothing people want to talk about a lot of times—but it is very, very important.

And as I think this committee and all of us know, sometimes in the past, many times in the past, the way we managed it is disgraceful and we certainly don't want to go backwards that way either. And I am sure you would agree, Mr. Chairman.

Mr. ISTOOK. Certainly. I realize it that the bond refinancing of part of this is because of general economic conditions and part of it is because of a general improvement in the city's bond rating. I would appreciate some further information showing which is which, though. For example, had you been looking at refinancing bonds right now under your former rating, would it even make sense or not? I want to understand both of those dynamics.

BOND RESTRUCTURING RATIONALE

Ms. HOLT. May I comment? I think the first thing, the first two things that really make the refinancing and the restructuring make sense are, one, that it is the rate that the market is changing. And that affects also why we don't adjust our future year projections for that because our projections are already sensitive to changes in the interest markets, in the interest rates, which can literally occur from day to day. So first of all it has to reflect that.

And second, something that made it very attractive for us to refinance and restructure our debt right now is the Revitalization Act because the District's debt was so aggressively front loaded because everybody wanted to get paid before 2004 when our unfunded pension liability would have had a much more substantial impact on our financial planning budget.

Mayor WILLIAMS. Fatal.

Ms. HOLT. Fatal. Right. I always said I would retire from the District before that year. So that those are the factors that I think more drive the restructuring at this time rather than just the Wall Street rating. The Wall Street rating makes it more attractive certainly to investors to pick up on our bonds knowing that they have a better rate. But it's really the underlying financial position of the District that makes the restructuring attractive at this time.

Mr. ISTOOK. Okay. Well, we will continue. There is some further information I want to develop to better understand that and hopefully to become comfortable with it. You have given me information, and I think there is still some further things we want. We will work with you on that.

Ms. CROPP. Mr. Chairman?

Mr. ISTOOK. Yes?

BOND RESTRUCTURING—COUNCIL VIEW

Ms. CROPP. If I could just add out of the financial part of it. The Council looked at the restructuring very critically in our oversight; and, quite frankly, initially the Council was not necessarily inclined to deal with the whole restructuring aspect. And as we looked at it, as we analyzed it more and as we did more research and we looked at all of the things that we wanted to do to help our economy to grow and to look at the financial outyears for the District, we were convinced not only by the executive branch but the Financial Authority and also by outside financial experts, that at this point the restructuring idea for the District, in conjunction with everything we were going to do, that this was the appropriate time for us to do it. And that was almost a 180 degree turn for the Council and we had to be convinced. And at this point we are convinced that that is the approach for us to take.

Mr. ISTOOK. Certainly. And perhaps I need to visit with some of the same people you visited with and review some of that material. I appreciate it.

[CLERK'S NOTE.—The material referred to concerning bond restructuring appears on pages 1077–1142.]

RESERVE FUND OF $150 MILLION VERSUS GENERAL FUND BALANCE

Mr. ISTOOK. The final thing I wanted to ask is, Ms. Rivlin, in your written testimony you discuss the $150 million reserve fund of the District. Isn't it also a misnomer—don't we almost have two different reserve funds and we are using interchangeable terms for it? Because the city has run a surplus in the last couple of years, which is a separate reserve fund from the congressionally mandated $150 million? I would appreciate your, one, explaining that to me; and two, elaborating on your comments from your written testimony, whereas I understand you question whether it's necessary to have the same level of reserve fund that's been mandated. So when the Chair of the Control Board raises that issue, I certainly want to be attentive to it and listen to you.

Ms. RIVLIN. Well, we raised it for the future, not for this year.

Mr. ISTOOK. Yes, I understand that.

Ms. RIVLIN. There are two different things here. There is a general fund balance, which is now not only positive, but by the end of this year, FY 1999, it, I think, will be in a very healthy range, higher than most people think cities really need to have. I think we will be at 6 or 6.5 percent of our revenues.

Mr. ISTOOK. That is still not enough to wipe out the need for some short-term borrowing during the early parts of the fiscal year.

Ms. RIVLIN. No, I guess not, but that is normal. Most cities do that.

Mr. ISTOOK. I understand that.

Ms. RIVLIN. And in addition to our having a healthy general fund balance, the Congress quite rightly, I think, has mandated that the District set aside a rainy day fund, a reserve fund, of $150 million.

Now, that seems to us appropriate. It doesn't mean that you don't spend it. It means that you have it there during the year to make sure that you don't have a revenue shortfall. And then as it becomes clear that you are going to be okay, you can spend it on

needed one-time investments that would meet the criteria that the Congress asked the District to establish.

Mr. ISTOOK. It goes through Control Board approval?

Ms. RIVLIN. It goes to the Control Board. It has to be agreed to by all four people at this table, as I remember the language.

But in the outyears, we thought that if things go well, that the need for that larger reserve was probably not there.

Mr. ISTOOK. And when you say the outyears, how far out?

Ms. RIVLIN. Well, we look 4 years out in the financial plan. And actually in the tax bill, we were looking beyond that.

Mr. ISTOOK. Okay. Well, I realize there has been testimony by people questioning that, and I just wanted to hear whatever you had to say to elaborate on those things. To what extent should the reserve fund be kept separate in bookkeeping from the excess in the general fund operating balance? I mean, do we generate confusion by separating them? Should we combine them for any reason?

Ms. RIVLIN. Oh, I don't think so. I think the rainy day fund is an explicit—has an explicit purpose of protecting against unforeseen emergencies or revenue shortfalls during the year. And that's a sensible thing for a city to have. The question is how big it should be.

Mr. ISTOOK. I think different people may have a different perception of the reserve fund. If I understood correctly your perception and your description, you see the reserve fund as accumulating the money during the year. Make sure that you have it at the end of the year, and then for what would be intended to be one-time projects with proper approval, some or all of it could be spent; but in that case you would have to begin reaccumulating it right away at the start of the next fiscal year. Do I understand that correctly, Mr. Mayor?

$150 MILLION RESERVE FOR "ONE-TIME" EXPENSES

Mayor WILLIAMS. My understanding as a former CFO and as now the Mayor is that they really are achieving two different purposes. So your cumulative fund balance is there for a rainy day, when you have an unforeseen emergency. Despite conservative revenue and expenditure projections, you have got a real problem that is not even solved by your $150 million, so you have got that there. The $150 million is really a device that gets at what we've tried to do in each of these years and that is conservatively manage the budget each year. The $150 million is an added device, if you will, to ensure that in any given year you're managing your finances and your operations conservatively.

But I would agree with the Chairman. If halfway through that year it turns out you're nowhere near any kind of contingency or emergency, there is no reason why you shouldn't be able to use it for one-time purposes; using it for recurring costs would defeat the purpose. But for one-time expenses it makes sense to take part of that, based on certain criteria, and invest it.

Ms. CROPP. Mr. Chairman?

Mr. ISTOOK. Go ahead, Mrs. Cropp.

Ms. CROPP. Just to go back to a question you asked earlier, you asked what tools would you need in the city to be able to keep the city moving in a positive vein. And I think the answer to that ques-

tion is part of it for the city to have the ability when there is this one-time expenditure that's needed, for the city to be able to use those dollars in order to meet that need.

That's a very important tool for the city to be able to have in order to make things function to help with the service delivery, to make sure that if something comes up that the executive can implement something. Not ongoing every year, not part of the base; but we need this for this one time to make sure that we can keep the city going. And that goes straight back to that earlier question that you had asked.

$150 MILLION IS A "BUDGETARY ACCOUNT"

Ms. HOLT. If I could add really briefly just to make the distinctions I think helpful, the $150 million is a budgetary account. It is just like the budget that we would have for the Department of Human Services. It is just that no one has decided in advance how we will use it. And first we will make sure that our revenue stream is covered.

Second, if that is done, then we would use those funds based on certain criteria. But the fund balance, that is the year is over, you had an excess of revenues or what is commonly called a surplus, and those accumulate in your fund balance over time.

$150 MILLION RESERVE—END-OF-YEAR USE

I think that is the harder concept to understand. But the accounting and the budget requirement to comply with GAAP and all of that are such that every year we would budget a specific amount for the reserve or the $150 million, to be specific, and prudent accounting would require that at the end of the year if a certain amount of that is not spent, it can either be prepaid debt service or it will fall to the bottom line.

So you would really like to spend it within the year, but make that amount available in later years. I think our comment is that we don't think that every year we need that amount to be $150 million because your revenue shortfall probably wouldn't be quite that high.

And, second, there is only so much prudent spending for one-time item. That is why we show in the first year the full reserve to comply with the requirement, but in the outyears we show lesser amounts which we think are more reflective of the level of risk that is in the budget, if that is helpful.

Mr. ISTOOK. And I think the concept suffers a bit from some ambiguity and some different perceptions in what it is and what it means, but nothing that, I don't think, can't be worked out by people working together.

This is not like a reserve fund that is there and drawing its own interest in that sense.

Ms. HOLT. No.

$150 MILLION RESERVE—TRACKING AND BENCHMARKS

Mr. ISTOOK. It is a fund that by the end of the year is to have $150 million in it unless special approval has been given for expenditure of it. But is there any requirement for checkpoints along

the way, for example, that there be so much in the first quarter, so much in the second quarter? And since it is a bookkeeping entry, how meaningful is that, because that can be offset against what you have with your general fund unobligated balances, if that is the right term; or it could be offset against what you are doing in short-term borrowing. So how can we track it through the year to be sure that we are on track? What are the benchmarks along the way?

Ms. HOLT. Again, if you just think of it like you think of the budget for the Department of Human Services. At the beginning of the year we know we are going to spend close to $400 million. So that budget is loaded in the system. It is true all the cash to support that budget hasn't come in. It comes in over the course of the year. So that $150, million reserve that assumes that our revenue estimates will hold.

Mr. ISTOOK. I think it is more like you are saying by the end of the year we are going to make a purchase on the last day of $150 million and we have to have the money to make that last day purchase.

$150 MILLION RESERVE—QUARTERLY REVIEWS

Ms. HOLT. Yes, we have to know up until the last day of the year that actually if we need to hold on to some of that budget authority, if you will, not to spend in order to offset a revenue loss. Each quarter, that as we look at the revenue forecast, we will prudently forecast it looks like we're not going to need all of this, if the revenue is still coming in good and all the economic indicators are good. Let's go ahead and spend this portion of it, and we would revisit that every quarter of the year.

Are there investments that we need to make? Do we need to hold on to the money? So that by the end of the year you would have either spent the money on agreed-upon transactions or you would have left a sufficient balance in there to cover any revenue shortfalls.

$150 MILLION RESERVE—NOT FOR AGENCY OVERSPENDING

And I think we all agree that that money should not be used to allow agencies to overspend.

So it is really to cover a revenue shortfall and then to invest in agreed-upon items that come up during the course of the year.

I think this really works in the District especially well because we do our budgets so far in advance of when most jurisdictions do. So it's important that we have some mechanism that allows us to adjust from that, again because we have to go through the congressional review process.

I think it's also—when this reserve concept came, it was difficult. But I believe we have all achieved consensus that it is a good idea and that we need to move forward with it and we need to do it in a way that also assures that it doesn't interfere with us getting a clean opinion, because we have actually used it as a budgetary account and let it fall to the bottom line and so forth.

$150 MILLION RESERVE AND TAX CUT "TRIGGERS"

Mr. ISTOOK. It occurs to me that it certainly has a lot of aspects in common with what we have been discussing and call triggers or circuit breakers, because we can have all of these other protections but that is also intended as one of the fall backs.

$150 MILLION RESERVE—RESTRICTED TO ONE-TIME EXPENDITURES

But it does make a key difference, of course, whether it is a one-time expenditure or capital expenditure or something that is an on-going expense. That makes a very important distinction.

DRUG TESTING OF ALL 20,000 PROBATIONERS

I want to make one other comment in closing things. Mayor Williams, you made reference to substance abuse and prevention programs and testing probationers. And as you know, the Office of the Offender Supervision has proposed a very significant testing program. They have proposed that all 20-some odd thousand persons who are on probation who are required to remain drug free as a condition of being on probation be tested as opposed to the lesser number that are currently now.

As you have mentioned, Mr. Mayor, and as they have mentioned in prior testimony to this Committee, and as I think has become pretty common knowledge, that could have huge benefits in decreasing the rate of crime in the District as well as the rate of drug usage. That's because so many of these persons who are in that probationary status are committing a great number of crimes to support their drug habits. And there are over 20,000 of them. It would be the most ambitious program in the country. But along with the drug testing, we would have to have the necessary increase in the drug treatment programs so that people know that what we really want is not to take them off the streets and lock them up because they are repeating their drug offenses, but what we really want is for them to get off of drugs and not be committing the crimes that are often linked to that drug usage.

I certainly want to use this budget as a vehicle to establish that. And as you mentioned, of course, there are expenses associated with it and we want to work with you and see if we can make it happen. I think that would be one of the most important steps we could take to improve the quality of life in the District, and it would generate major benefits to everyone who lives here or visits here or thinks about moving here. It would be not just dollars and cents, but a huge improvement in one of the scourges that has been a problem for the District. So I look forward to working with you on that.

Is there anything else before I close the hearing? Do any of you have anything further you want to put in the record?

FISH WHARF; SOUTHWEST WATERFRONT; ANACOSTIA RIVER

Mayor WILLIAMS. I would just like to let the record reflect that I will be personally investigating this situation. Congressman Cunningham's remarks about the southwest waterfront relate to some negotiations with leases with some of the shop owners down there. And I will personally intervene to see that the funds are

spent, that we are making progress and keep him personally apprised.

We have a joint interest, as all of us do, in improving our waterfront, and restoring our Anacostia River to the place it should be, not one of the worst but one of the best rivers in our country; and all of us play a part, our Congresswoman, all of us.

Mr. ISTOOK. Very good. If there is nothing further, we stand adjourned.

BOND RESTRUCTING MATERIAL

(See page 1072.)

[CLERK'S NOTE.—The following material was supplied in response to the committee's request for additional information concerning the District's bond restructuring proposal.]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer

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Thomas F. Huestis
Deputy Chief Financial Officer

Finance and Treasury

'99 APR -8 A11:35

April 7, 1999

Dr. Darius Mans, Member
District of Columbia Financial Responsibility
and Management Assistance Authority
One Thomas Circle, Suite 900
Washington, DC 20005

Dear Dr. Mans:

I am providing you a response to your letter to Earl C. Cabbell dated April 5, 1999 requesting certain information be provided to the Authority by today. Mr. Cabbell is out of the office until April 8, 1999 and has asked me to respond to your request.

1) The criteria under which financing proposals are evaluated by the OCFO. This criteria should address both rating agency targets and "best practice benchmarks" as balanced against the District government constraints. Delivery date: Not later than April 7, 1999.

The Office of the Chief Financial Officer evaluated and developed financing proposals, specifically the proposed refinancing and the restructuring in the Mayor's FY 2000 – FY 2003 budget and financial plan, applying the District's overall capital financing strategy to the proposed transactions. In this budget and financial plan, prior year's plans, rating agency discussions, etc. the Office of the Chief Financial Officer has stated the District's overall Capital Financing Strategy as follows:

"The Office of the Chief Financial Officer seeks to execute approved financing transactions that maximize capital project financing capacity, at the lowest cost available, while maintaining long-term financing flexibility."

Notice that the District's Capital financing strategy is a policy guideline and is designed to be flexible and therefore useful in the District's changing (improving) financial position.

The goal of the financing portion of the budget process is to end with a Financing Plan that describes the financing transactions that have come out of the budget process and the general execution plan for each transaction. The Office of the Chief Financial Officer includes a Financing Plan in the final version of each year's Budget and Financial Plan that is approved by the Council, the Mayor and the Authority. In order to get to that goal, the Office of the Chief Financial Officer works with the Mayor, the Council and the Authority to evaluate and develop

specific proposals that meet the District's Capital Financing Strategy and can be included in the budget decision.

To this end, the Office of the Chief Financial Officer evaluates and develops specific proposals on a macro and micro basis. On a macro basis, each year the Chief Financial Officer produces a policy document that provides parameters on which proposals are evaluated and developed for the budget. This document is designed to make the Office of the Chief Financial Officer analysis and decision making transparent and provide a guide for policy makers to propose alternatives. "CAPITAL FINANCING STRATEGIES, Meeting Financial Management Targets" was published in the Our City, Our Future FY 2000 Key Budget Issues, prepared by the Council of the District of Columbia, Submitted by the Mayor of the District of Columbia.

Meeting Financial Management Targets, a slightly revised version is provided with this letter as ATTACHMENT 1, provides the framework that the Office of the Chief Financial Officer used to evaluate and develop the refinancing and the restructuring proposal. This document translates the District's Financing Strategy into the five Budget and Financial Management Targets:

The financial management targets discussed include:
1. Maintaining structural balance,
2. Maintaining an adequate fund balance,
3. Reducing the District's debt burden,
4. Increasing the District's capital financing capacity, and
5. Improving the District's credit position.

On a more micro level, the Office of the Chief Financial Officer generally develops and evaluates transactions with respect to the terms, amounts, specific rating agency ratios and benchmarks with the assistance of its bond counsel and financial advisor. In terms of the Mayor's proposed FY 2000 to FY 2003 Budget & Financial Plan, and specifically the restructuring and refinancing proposal, the OCFO was unable to access advice from its financial advisor since the District has been with out an advisor since December 1998 due to contracting difficulties.

Fortunately, the District's financial advisor had previously evaluated for the Chief Financial Officer a debt restructuring proposed by the prior administration. The Office of the Chief Financial Officer was able to use that analysis as well as unsolicited analysis from various investment banking firms in order to evaluate and develop the refinancing and restructuring transaction included in the Mayor's proposed FY 2000 – FY2003 Budget and Financial Plan. A copy of Public Financial Management's Report on Debt Restructure for the Government of the District of Columbia, dated February 4, 1997 is provided as ATTACHMENT 2.

Armed with this information, the Office of the Chief Financial Officer looked at the following benchmarks and best practices to develop and analyze the Mayor's proposal. Specifically, we looked at:

- Cost of transaction:
  - Present value debt service
  - Gross interest
- Asset liability management balancing factors
  - average maturity of the bonds and the remaining life of the assets
  - other major District liabilities (pension)
- Use of proceeds
- Other credit market considerations
  - District's repayment schedule compare to benchmarks
    - (5 year and 10 year repayment percentages)
    - annual debt service as a percentage of General Fund budget
- capital financing capacity following restructuring
  - shape of debt service including all CIP new money borrowing.

Given these factors, the Office of the Chief Financial Office developed the "CAPITAL FINANCING STRATEGIES, Debt Restructuring " which was published in the Our City, Our Future FY 2000 Key Budget Issues. The proposed change in debt service was included in the Mayors FY 2000 – FY 2003 Budget and Financial Plan.

Since the presentation of the policy book and the budget and financial plan, the Office of the Chief Financial Office has worked with its newly rehired financial advisor to add more detail to and refine the restructuring plan. With the assistance of our financial advisors the Office of the Chief Financial Office has been able to (1) measure the effect of the additional CIP new money debt, (2) measure the benefit of combining the refinancing and the restructuring, and (3) measure the average maturity. This information has been shared with the Authority and the Council in OFCO briefings.

In addition, at the Authority's and District's request, the District's financial advisors are currently evaluating (1) alternative amounts of the total restructuring, and (2) alternative use of the freed up budget capacity (for pay-go-capital, to reduce future debt), instead of the tax restructuring. We look forward to sharing this analysis with the Authority, the Council and the Mayor.

2) An examination and profile of how the District compares against appropriate benchmarks and "best practice models" to determine what steps are needed to achieve the financial strategic goals (i.e. average life of repayment schedule debt per capita, total debt burden(,) debt service as a percentage of gross and total general fund expenditures, among others). Delivery date: Not later than April 7, 1999.

"CAPITAL FINANCING STRATEGIES, Meeting Financial Management Targets" published in the Our City, Our Future FY 2000 Key Budget Issues, prepared by the Council of the District of Columbia, Submitted by the Mayor of the District of Columbia provides an examination of how the District compares against appropriate benchmarks for higher level financial decision making.

The "CAPITAL FINANCING STRATEGIES, Debt Restructuring " in Our City, Our Future FY 2000 Key Budget Issues applies some of these criteria to the proposed debt restructuring. As mentioned above, we are working with our financial advisor to review alternative restructuring amounts, alternative use of proceeds to determine if the debt restructuring proposal can be incrementally improved by applying appropriate benchmarks and financial comparisons. We look forward to presenting this analysis to the Authority, the Council and the Mayor.

3) A timeline for completion of each of the critical action steps identified under Item 2, and also the frequency of measurement. Delivery date: Not later than April 7, 1999.

A revised financing schedule is included as ATTACHMENT 3. Financing schedules are generally updated weekly by the financial advisor or the investment banker in order to keep the transaction on schedule. We would require a weekly update of the financing schedule.

4) A restructured presentation, which outlines debt management strategy for the District, as context for specific transaction included in the March 31, 1999 presentation to the Authority. Delivery date: Not later than April 7, 1999.

A revised presentation is included as ATTACHMENT 4. This is a revision of the presentation made to the District Council yesterday. I recommend updating the presentation again once the work of the District's financial advisor can be incorporated in order to confirm the analysis regarding the size of the restructuring and the use of the freed up budget authority.

In addition, the OCFO had retained our financial advisors to conduct an independent analysis of the Mayor's restructuring proposals against criteria established and an assessment of both short and long-term impact. We understand that this analysis can be completed by April 15, 1999 as requested by the Authority.

Please do not hesitate to call me if you have any questions.

Sincerely,

Thomas F. Huestis
Deputy Chief Financial Officer/Treasurer

ATTACHMENTS

cc: The Honorable Anthony A. Williams, Mayor
The Honorable, Linda Cropp, Council Chairman
The Honorable Jack Evans, Chairman, Council Committee on Finance & Revenue
Earl C. Cabbell, Interim Chief Financial Officer
Dr. Abdusalam Omer, Deputy Chief Financial Officer

ATTACHMENT 1

CAPITAL FINANCING STRATEGIES

Meeting Financial Management Targets

Background

The collective goal of the Mayor, the Council, and the Financial Authority is to establish an effective and efficient local government. The passage of the National Capital Revitalization Act in FY 1997 and its implementation in FY 1998 was a significant step towards that goal. Moreover, the sizable operating surpluses in FY 1997 and FY 1998, which eliminated the District's accumulated operating deficit and produced a positive fund balance, represent monumental improvement in the District's financial position. It remains to be seen whether the District's bond rating will be upgraded to investment-grade status as a result of this improvement, but a number of market participants are optimistic.

The District's FY 2000 financial plan indicates that the District should continue to produce operating surpluses, assuming minimal expenditure growth, and moves towards structural balance. In this new environment, the financial objectives must change. The financial policies of the District must now promote long-term financial health with operating and capital plans that promote economic growth. To produce these results, the Office of the Chief Financial Officer will work with the stakeholders to establish and meet specific financial management targets as part of the FY2000 - FY2003 Budget and Financial Plan.

Financial management targets are policy parameters that are important in the budget and financial planning process and are designed to both guide policy decisions and help meet financial and operating goals. The specified targets should allow the District to retain resources necessary to meet all critical operating and capital needs during the planning period. Furthermore, these targets should allow for the retention of resources necessary to reverse economic decline and facilitate economic development that improves the life of District of Columbia citizens. The financial management targets discussed on the following pages:

1. Maintaining structural balance,
2. Maintaining an appropriate fund balance,
3. Reducing the debt burden,
4. Increasing capital financing capacity, and
5. Improving the District's credit position.

Target 1: Maintaining Structural Balance

Address service delivery, infrastructure needs and management reform without increasing expenditure growth beyond that of conservatively estimated revenues.

One of the most important messages conveyed during the FY 1999 budget process is that the structural balance that currently exists is still fragile, despite the relatively large operating surpluses achieved in FY 1997 and FY 1998. Every spending decision will impact this fragile balance, and that impact must be carefully assessed to ensure that nothing threatens the long-term financial solvency of the District.

Achieving an operating balance or surplus without the use of one-time measures is necessary to sustain a solvent government. Deficits threaten long term solvency as well as adversely affect the District's liquidity, debt burden and capital financing. Furthermore, structural imbalance is a major rationale for not upgrading the District's credit rating to investment grade.

In order to maintain structural balance, conservative revenue and expenditure assumptions are being utilized in the fiscal year 2000 budget. Revenue assumptions factored into the baseline budget are as follows:

- The District's economy is gradually growing and is expected to continue this modest trend into Fiscal Year 2000,
- Additional growth from the enhanced tax administration is not anticipated in fiscal year 2000 nor beyond, and
- Financial markets are expected to increase by approximately 10 percent, compared to the 25 percent increases seen in fiscal years 1997 and 1998.

The General Fund revenue projections contain two distinct elements: local revenues that are allocated by policy makers and non-local revenues including federal grants that are tied to specific programs or agencies. Out-year estimates of non-local revenues depend upon both District and Federal policy decisions concerning grant programs and other issues. Non-local revenues for the out-years are estimated by extrapolating the FY 1999 expenditures at growth rates reflecting inflation and other factors. These non-local expenditure projections also serve as the non-local revenue projections.

While the District has benefited from the relatively healthy national and local economies, which has helped to produce tax revenues in excess of projections, the District's economy has been plagued by a declining population and the consequent decline in the economic activity that residents generate. While it is hoped that improvement in District services spurs a reversal in the population decline, the Office of the Chief Financial Officer has not assumed that there will be a significant up-turn in the District's economy in the year 2000 and beyond. Notwithstanding, tax revenues are expected to remain consistent as the number of jobs and personal income levels increase.

With regard to structural balance, revenues are growing at an average rate of 3.14 percent whereas expenditures in the plan are growing at 3.00% average rate. Positive operating surpluses are being achieved in each year of the plan.

Timeline for completion: Completed

Frequency for Review: Calculation of structural balance should be completed during each stage of the budget process: base budget development, Mayor's budget submission, Council budget proposal and consensus budget submission.

Target 2: Maintain an Adequate Fund Balance

Maintain spending at levels that will not reduce the fund balance. Achieve an ending balance of $300-$350 million by fiscal year 2002, which will significantly reduce or eliminate the need for cash flow borrowings and provide sufficient cash for revenue and expenditure projection variances and other contingencies.

The fund balance is a necessary tool in sound financial management. In order for the District to have financial stability and be in a sound financial position, it is imperative to make available adequate financial reserves that can be used to address unforeseen contingencies. There is always a margin of error in both revenue and expenditure projections. Furthermore, there can be unexpected expenditures for which an unreserved fund balance can provide temporary budget relief.

The District has been carrying an accumulated deficit of hundreds of millions of dollars for the past several years, the net effect of its operating deficits and surpluses in past fiscal years. However, the District eliminated its accumulated deficit and created a positive fund balance by achieving an operating budget surplus of $445 million in FY 1998. The District's fund balance as of September 30, 1998 is $112 million. This fund balance represents approximately 2.6 percent of General Fund expenditures, which is still lower than the target fund balance for most municipalities of 5-10 percent (see Figure 2).

Figure 1

The District Achieved a Positive Fund Balance in Fiscal Year 1998

Fiscal Year	Annual Operating Surplus/(Deficit)	Restatement of Prior Year's Results	Accumulated Operating Deficit
1988	($14,279.00)		($218,872.00)
1989	$5,469.00		($213,403.00)
1990	($118,186.00)		($331,589.00)
1991	$333,159.00		$1,570.00
1992	$1,986.00		$3,556.00
1993	$7,766.00		$11,322.00
1994	($335,428.00)		($324,106.00)
1995	($54,428.00)	($106,027.00)	($484,561.00)
1996	($33,688.00)		($518,249.00)
1997	$185,892.00		($332,357.00)
1998	$444,949.00		$112,492.00

Source: District of Columbia Comprehensive Annual Financial Report, year ended September 30, 1998.

The District's credit ratings were downgraded in early 1995 as a result of the operational and financial deficiencies, which led to the substantial operating deficit in FY 1994. Given that the District had previously financed an accumulated operating deficit in FY 1991, the repeat of this occurrence suggested to the financial marketplace that the District was unable or unwilling to live within its resources.

The fact that the District was able to eliminate its accumulated deficit through operating surpluses as opposed to financing the deficit is viewed very favorably among District stakeholders and the financial marketplace. By not financing the deficit as initially planned, the District reserved debt capacity for capital projects and avoided the impact that additional debt service would have on the operating budget.

Determining the appropriate level of fund balance varies among state and local governments. The "proper" amount of fund balance is based upon a government's ability to meet essential service needs during times of limited liquidity. Items that affect the determination of appropriate fund balance include percentage of fixed costs, as well as the tax burden of a jurisdiction. The appropriate level of reserves or fund balance should also incorporate the likelihood of drawing from such funds and should consider the jurisdiction's history for generating budget surpluses or the degree of certainty regarding their revenue and expenditure forecasting. However, as a benchmark, most municipalities target, and credit rating agencies suggest, 5-10 percent of the General Fund as an appropriate level of an unreserved fund balance.

Figure 2

Comparison of the District's Fund Balance to Surrounding Counties and Comparable Cities

Municipality	Unreserved Fund Balance ($Millions)	Fund Balance as a % of General Fund
District of Columbia	$112.49	2.55%
Fairfax Co., VA	$90.53	5.17%
Montgomery Co., MD	$165.89	11.35%
Prince Georges Co., MD	$103.93	12.08%
Philadelphia	$169.20	6.78%
New York*	$337.97	1.12%
Detroit*	$12.42	0.96%

* Based on FY 1997 Data

Sources: Moody's Investors Service Credit Reports (7/98, 10/98); Fitch IBCA Credit Report (11/98); Comprehensive Annual Financial Reports for the District of Columbia (9/30/98), Fairfax County, VA (6/30/98), Prince Georges County, MD (6/30/98), Montgomery County, MD (6/30/98), City of New York (6/30/97) and City of Detroit (6/30/97)

As indicated, the District's fund balance as a percentage of its General Fund is lower than most of the surrounding jurisdictions and comparable cities listed above, with the exception of Detroit and the City of New York. The District should increase its fund balance to at least 5 percent of its General Fund, given its high percentage of fixed costs, narrow tax base, and its responsibility for funding many entitlement programs. This fund balance will provide a contingency against unforeseen emergencies and lessen the need for short-term borrowings. .

The District currently projects its FY1999 operating surplus in excess of $200 million. Thus the District is expected to achieve an ending fund balance in excess of $300 million (or more that 5% of its general fund budget) at the end of this current fiscal year.

In the FY1999 Appropriations Act Congress established the requirement that the FY2000 District operating budget include a budgeted $150 million reserve. Although this provision is generally consistent with the District's desire to increase its fund balance, combined with the restriction that the District only use current year generated funds (and not the accumulated fund balance) to fund current year operating expenses, creates inflexibility inconsistent with other state and local jurisdictions. .

Timeline for completion: September 30, 1999

Frequency of Review: Calculation of fund balance should be completed regularly during each stage of the budget process.

Target 3: Reduce Debt Burden

Reduce debt outstanding over time. The District can reduce its debt burden by amortizing more debt than it is issuing. The District can also budget pay-go capital in lieu of debt and retire debt early with surplus funds.

The debt burden is a measure of a municipality's ability to pay its debt and other liabilities. Debt burden is usually measured by comparing an issuer's outstanding debt to such factors as its tax base, total income or total expenditures, total resources and population. These ratios are used to determine credit quality of a government and whether the outstanding debt is at a manageable level when compared to these factors. Ratios such as debt per capita, debt per General Fund revenue or expenditures, or debt to total property value ("full value") are sometimes used to determine an issuer's debt burden. .

A state or local government's debt burden is also a good indicator as to whether a jurisdiction can meet its ongoing financial needs. Generally, a municipality's debt burden is considered high when debt service payments equal 15-20 percent of total expenditures. The

Figure 3

Comparison of the District's Debt Burden to Surrounding Counties and Comparable Cities

Municipality	Direct Debt Per Capita	Direct Debt % of Full Value	Overall Debt Per Capita	Overall Debt % of Full Value	Debt Service as a % of General Fund
District of Columbia	$6,128.00	7.40%	$6,128.00	7.40%	9.07%
Fairfax Co., VA	$1,356.37	1.51%	$1,440.03	1.60%	9.30%
Montgomery Co., MD	$1,443.00	3.42%	$1,443.00	3.42%	9.77%
Prince Georges Co., MD	$718.35	3.94%	$1,840.33	10.10%	6.02%
Philadelphia	$1,162.65	5.18%	$2,353.00	10.50%	7.80%
New York	$4,663.00	11.13%	$5,832.00	13.92%	8.70%
Detroit*	$1,379.00	9.40%	$1,666.00	11.30%	9.00%*

* Based on FY 1997 Data

Sources: Moody's Investors Service Credit Reports (7/98, 10/98); Fitch IBCA Credit Report (11/98); Comprehensive Annual Financial Reports for the District of Columbia (9/30/98), Fairfax County, VA (6/30/98), Prince Georges County, MD (6/30/98), Montgomery County, MD (6/30/98), City of New York (6/30/97), and City of Detroit (6/30/97).

following debt burdens are provided for surrounding jurisdictions and those that are most comparable in comparable in terms of size and delivery of services.

As noted during last year's budget process, the District's direct debt burden as measured against population is high relative to other jurisdictions. Furthermore, the District's debt per capita is expected to increase due to its declining population. The District's debt burden as measured by direct debt as a percentage of full value is similar to some of the country's lowest rated municipalities; however it is much greater than the surrounding competitive jurisdictions. When debt burden is measured by debt service as a percentage of General Fund expenditures, the

District's burden appears similar to other jurisdictions. This is, however, a misleading statistic because the District has a higher percentage of aggregate fixed costs and is responsible for funding entitlement programs, together which limit the flexibility and increase the risk of additional debt.

Timeline for Completion: Ongoing

Frequency of Review: The District should review its debt burden during the budget process and at the time of each financing. The District's relatively high debt per capital ratio reflects the District's state, county and city functions, and the fact that the District was primarily restricted to general obligation funding until recently. Its economic character with its relatively high full value per capital and per capita income is a credit offset to the debt per capita credit factor.

Target 4: Increase Capital Financing Capacity

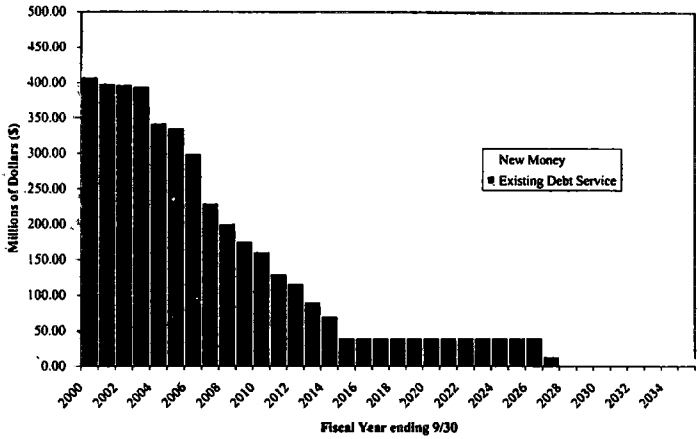
The District can increase its capital financing capacity by restructuring existing debt to provide operating budget relief. Lines of credit or bond anticipation notes can also be used to delay long-term debt issuance. The District can issue revenue bonds and/or leverage other moneys to provide additional funds for infrastructure.

Paying off debt with a portion of the projected surpluses or restructuring of the District's outstanding debt would provide significant flexibility to fund additional capital, as well as relieve pressure on the operating budget. The District has previously considered restructuring its debt, but needed to delay such a refinancing in order to address the unfunded pension liability, as well as to improve the balance between revenues and expenditures.

Stakeholders should consider both early retirements of debt and debt restructuring at this time. Early retirement of debt and/or restructuring a portion of the District's front-loaded debt would provide flexibility to fund additional tax relief, investment in economic growth, investment in capital needs, relieve financial pressures on the operating budget and provide some cushion for the projected variance between revenue and expenditure growth. Unlike reducing debt, a restructuring will only benefit the District in terms of its capacity and will not improve the District's burden, unless freed up sources are used to reduce the need for additional debt. Other considerations which need to be evaluated prior to a final decision being made on any proposed restructuring include local and federal tax laws, and managing the financial market's perception of delaying principal payments.

The District's capital financing capacity is based upon of approximately $3.1 billion of general obligation (GO) bonds outstanding. As indicated by the following debt service graph, the District's debt is highly front-loaded, with the majority of its debt obligations being due and payable over the next 7 years. Although the District has amortized its new money bond issues over 20 and 30 years, the structure is such that approximately 73 percent of its debt will be amortized over the next 10 years. The front-loaded nature of the District's GO debt places greater strain on the District's operating budget.

Graph of Existing Debt with Aggregate New Money Projected Borrowing



The FY 1999 to FY 2004 Capital Improvement Plan (CIP), as approved in the FY 1999 budget process, calls for the District to fund $753.67 million in new and on-going capital projects. Approximately $600 million of capital projects qualify for long-term (30-year) financing and the remaining $153 million qualify for intermediate-term (15-year) financing. Assuming the CIP is financed with 30- and 15-year bonds and assuming that District revenues grow as assumed in the FY 1999 Budget and Financial Plan, the District's capacity as measured by maximum annual debt service, will be moderately reduced.

The Mayor's budget currently includes the following options for funding additional investment in infrastructure:

- Securitizing funds that the District is due to receive as a result of the settlement of a lawsuit against major tobacco producing companies ($175 million over 30 years);
- Using funds from the Barney Circle project which authorizes the reallocation of federal appropriations to other transportation related projects which eliminates bond funding for the transportation program during the planning period; and
- Restructuring outstanding debt, thereby producing significant debt service relief in the operating budget over the next several fiscal years.

Target 5: Improve Credit Position
Achieve investment grade ratings, "A" category, from all three rating agencies by fiscal year 2001.

Figure 4

Comparison of the District's Credit Ratings

Municipality	Fitch IBCA	Moody's	Standard & Poor's
District of Columbia	BB+	Ba1	BB
Fairfax Co., VA	AAA	Aaa	AAA
Montgomery Co., MD	AAA	Aaa	AAA
Prince Georges Co., MD	AA	Aa3	AA-
Philadelphia	BBB+ (Unenhanced)	Baa2	BBB (No GO)
New York	A-	A3	A-
Detroit	BBB+ (Lim Tax GO)	Baa1	BBB (Limited)
	BBB+ (Unlim Tax GO)		BBB+ (Unlimited)

Sources: Moody's Investors Service Credit Reports (7/98, 10/98); Fitch IBCA Credit Report (11/98); Comprehensive Annual Financial Reports for the District of Columbia (9/30/98), Fairfax County, VA (6/30/98), Prince Georges County, MD (6/30/98), Montgomery County, MD (6/30/98), City of New York (6/30/97), and City of Detroit (6/30/97).

Credit ratings evaluate the credit quality of debt obligations. Specifically, credit ratings are intended to measure the probability of the timely repayment of principal and interest on notes and bonds issued by the District. Potential investors utilize credit ratings to assess their risk in loaning the District funds for capital and short-term operating needs. .

There are three major agencies, which rate the District's notes and bonds: Fitch IBCA, Inc., Moody's Investors Service, and Standard & Poor's Corporation.

Figure 5

Summary Rating Agency Credit Ratings of Long-Term Debt

Investment Attributes	Fitch IBCA	Moody's	Standard & Poor's
Highest Quality	AAA	Aaa	AAA
High Quality	AA	Aa	AA
Favorable Attributes	A	A	A
Medium Quality/Adequate	BBB	Baa	BBB
Speculative Elements	BB	Ba	BB
Predominantly Speculative	B	B	B
Poor Standing	CCC	Caa	CCC
Highly Speculative	CC	Ca	CC
Lowest Rating	C	C	C

Source: Public Finance Criteria for Fitch IBCA, Moody's and Standard & Poor's.

During FY 1995, the District's unenhanced general obligation debt was downgraded by all three rating agencies. Although Moody's, Standard & Poor's and Fitch all upgraded the

District's credit ratings in the second quarter of FY 1998, each of these ratings still represent non-investment grade ratings, meaning that the rating agencies view the District's bonds as "speculative."

These ratings indicate that the District generally has the ability to make its debt service payments in a timely manner, but that there is little margin for absorbing any unforeseen negative financial occurrences while still making a debt service payments on time. The agencies currently rate the District's long-term, general obligation bonds, as well as surrounding counties and comparable cities as follows:

Information considered when assessing the District's credit quality includes the District's economic base, financial performance, management structure, demographics and debt burden. As Figure 7 indicates, according to standards established by Standard & Poor's, the District's debt to value and debt per capita ratios are high (which is unfavorable) and its fund balance is low (unfavorable). However, the District's per capita income is very strong (favorable) in comparison with the national average, and the District's rate of debt amortization is adequate. .

Figure 7

Standard & Poor's Typical Ranges for Tax-Backed GO Ratings

	Rating			
Benchmark	Low/ Strong	Moderate/ Adequate	High/ Low	District
Debt to Market Value	<= 3%	3% - 6%	>= 6%	7.57%
Overall Debt per Capita	$1,000	$1,000 - $2,000	>=$2,500	$6,128
Total General Fund Balances	>=15%, w/o cashflow borrowing	5% - 15%	0% - 5%	2.55%
Income as a % of National Average	120%	100%	85%	139.50%
Appropriate Debt Amortization		25% over 5 years 50% over 10 years		38.80% 72.20%

Credit ratings are very important to the District because they affect the District's cost of capital, as well as represent an assessment of the District's financial condition. Achieving the benchmarks that would cast the District in a favorable light with the rating agencies would improve the District's credit ratings and reduce its cost of capital. Moreover, it would place the District on firm financial footing with a capacity to better handle unforeseen adverse circumstances as it forges into the future with a still fragile balance between its revenues and expenditures. Comments received by the rating agencies indicate that in order for the District to receive investment grade ratings, the District must:

Improve economic performance,

- Provide adequate services,
- Sustain balanced budgets, and
- Engage elected officials in the decision making process contemplating the end of the control period.

ATTACHMENT 2

REPORT ON DEBT RESTRUCTURE
for the
GOVERNMENT OF THE DISTRICT OF COLUMBIA

Overview

In recent years many cash-strapped communities have attempted to restructure their outstanding debt as a way to generate cash to solve emergency needs. These restructuring transactions generally involve the deferral of principal payments which allow for near-term debt service benefit at the cost of higher debt service later. Generally, restructuring transactions are net economic losers to the issuing entity. For this reason, they are often viewed by the financial marketplace as a somewhat desperate move by a government that is not in balance. Although debt service is clearly an operating expense, the restructuring of this debt is not seen as a structural balancing move.

Although a government shouldn't set all of its financial policies based on the perception of tax-exempt debt market players, these perceptions are very important to the longer term cost of capital for the District of Columbia. To the extent that the financial markets view a restructure as an avoidance of the tough choices for getting the government in balance then future interest rates will likely suffer.

The economics associated with a debt restructure will depend on interest rates at the time of the restructure and the extent to which the term of the debt can be extended. The greater the number of years the debt is extended, the greater the possible early year savings and the greater the present value cost associated with the overall transaction. A key determinate of the allowable extension period is the requirements of federal and local tax law. Federal tax law effectively limits the maturity of any tax-exempt financing (or refinancing), to be a function of the useful life of the underlying asset. For this reason, bond counsel will likely require a review of the assets financed by prior issues in order to determine whether, or to what extent, an extension of debt is allowed. In addition, the District may have other legal/regulatory restrictions on debt extensions that need to be researched before this issue can be resolved.

Proposed Debt Restructure

PFM has developed a possible restructure scenario which would generate approximately $40 million in savings during the years 1998 to 2003 (base case scenario). The supporting schedules, as well as, certain charts and graphs related to this debt restructure are attached. While extending the term of outstanding debt is not considered conservative financial management, we have attempted to structure this financing in a way that minimizes the amount of cost that is associated with it. The following are the advantages and disadvantages of this transaction.

Advantages

The main benefit of pursuing this debt restructure is to generate early year savings in debt service. This restructure is partially justified because it provides relief from the highly front-loaded nature of the District's current debt service (see the attached graph). This $40 million saving could be used to reduce the amount of the accumulated deficit, offer more capacity for new capital improvement borrowing or reduce the size of cuts otherwise needed to balance the

budget. The credit markets would look most favorably on using the savings to reduce the accumulated deficit and look least favorably on using them to balance the operating budget.

A second benefit of this transaction is that it has the potential to recycle some bond insurance capacity for future issues. Most of the outstanding bonds that would be considered for restructuring are currently insured. In restructuring them, there is the possibility that this limited insurance capacity could be attached to future issues which may provide millions of dollars in interest cost savings on future capital borrowings.

Disadvantages

The single largest negative with this approach is that the transaction results in a net loss for the District. Extending the debt simply extends the period over which the debt must be repaid. On balance, receiving the $40 million in relief during 1998 - 2003, costs the District additional debt service of $143.8 million on a gross basis and $7.3 million on a net present value basis. To illustrate the results of alternative debt restructuring alternatives, we analyzed a scenario which shortened the period of debt service savings to only three years (from 1998 to 2000). This resulted in additional debt service of $63 million on a gross basis and a net present value cost of $2.9 million. Although restructuring over a three year period provides a lower net present value cost than the base case analysis, this scenario provides limited debt service relief. After the initial reduction in debt service, the District would again be faced with a budget gap in the amount of the initial restructuring (approximately $50 million).

As already mentioned, the perception of the rating agencies, investors, etc. will be one of skepticism regarding this transaction. Interest rates on future bond issues may go higher, rating upgrades may be delayed and certainly significant energy will need to expended in order to quell concerns about financial "gimmicks" being used to balance the budget.

Lastly, the mechanics of this debt restructure would reduce debt service in the early years (1998-2003) but raise it in later years (2005-2009). Arguably, similar tradeoffs of longer term benefits for shorter term needs has helped to put the District in its current financial difficulties.

As a result, if the District pursues the restructure and is unable to resolve the structural imbalance in the government over the next few years then the restructure will make it even harder to ever accomplish it later. This is particularly true when the District's current pension obligations are added to the analysis. It is in the year 2005 that this pension cost makes a $100 million jump. Therefore, the most prudent course would be to balance the budget without the debt restructure, get the unfunded pension liability resolved and subsequently use the restructure benefits for other purposes.

Conclusion

The District's current debt profile is aggressively front loaded and can be extended somewhat while still maintaining acceptable levels of debt retirement. A review of relevant federal and local laws is needed to determine how much extending of debt is possible (if any). Financial markets are skeptical of these financings, so if they are pursued, it is very important to carefully communicate how the proceeds will be used.

Prepared by Public Financial Management, Inc

Ideally, a restructuring should be pursued after the FY 1998 budget is balanced and the Clinton Administration's proposal or other structural changes have been acted on. Not only would this avoid the skeptical eye of the financial markets but the District may well be looking at investment grade ratings at that time, making it possible to receive even lower net present value costs.

Summary of Assumptions for the District of Columbia Restructuring Analysis

- Only non-callable bonds are restructured in this analysis: Upon analyzing the District's chance to refund bonds for savings in the future, we found that a number of callable bonds have the potential for creating savings if rates become more favorable and/or if the District receives a rating upgrade. Because a number of callable bonds had the potential for savings, we excluded all of them in the restructuring and only refunded non-callable bonds to maturity.

- Variable rate debt: Although variable rate debt was not restructured, it was included in part of the analysis. Thus, in the graph, variable rate debt is included in the existing debt and in the non-restructured debt. However, to eliminate the chance of variable rate debt skewing the results, variable rate debt was excluded from the calculation of debt amortization.

- Savings: Two savings structures are shown in this analysis. The first structure is designed to create six years of savings with $40 million in savings in the early periods. More savings could be created by refunding more bonds; in contrast if less savings were required, this could be solved by calling fewer bonds. Furthermore, to reduce the need to extend debt, only bonds maturing between the dates of December 1997 and June 2004 were called; thus these are the only periods in which savings are realized. By calling only bonds in these early maturities, present value dis-savings were minimized. A second alternative limits savings to fiscal years 1998-2000. The first subset of this alternative creates approximately $40 million of savings in all three periods. The second subset, on the other hand, creates approximately $50 million of savings in the first period and $40 million of savings in the last two periods.

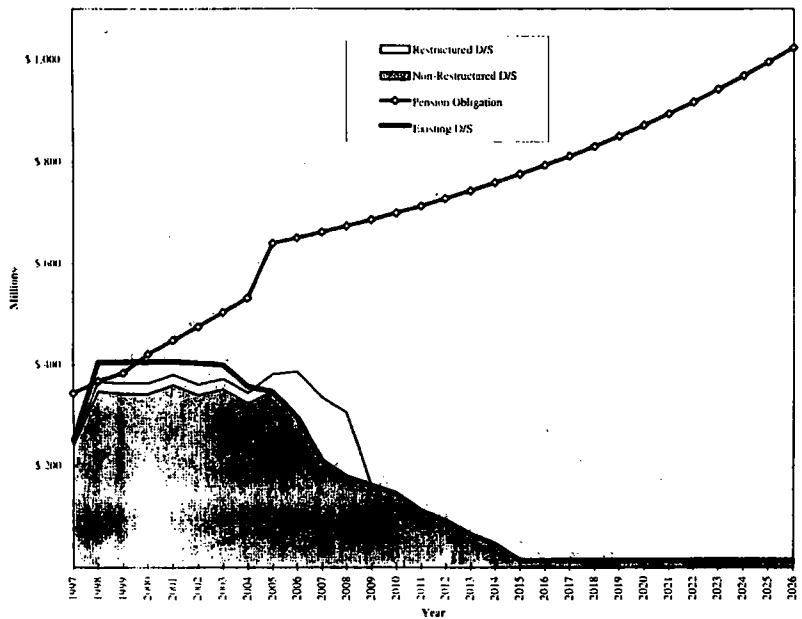
- Rates: This analysis is based on the assumption that the District can issue debt at a high-grade rate plus 175 basis points.

The District of Columbia Restructuring Analysis

Base Case: Savings in Fiscal Years 1998-2004

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Government of the District of Columbia
Debt Restructure and Pension Obligation Analysis



Percent of Debt Service Amortized

Fiscal Year	Existing Debt Service Percent Amortized	Base Case Restucturing Percent Amortized
1997	4.444%	4.450%
1998	10.652%	9.237%
1999	17.011%	13.897%
2000	23.633%	18.700%
2001	30.599%	24.328%
2002	38.262%	29.990%
2003	46.238%	36.381%
2004	54.458%	43.484%
2005	62.977%	52.508%
2006*	70.634%	62.615%
2007	75.966%	71.786%
2008	80.507%	80.478%
2009	84.965%	84.943%
2010	89.112%	89.096%
2011	92.328%	92.317%
2012	94.392%	94.384%
2013	95.570%	95.563%
2014	96.077%	96.071%
2015	96.305%	96.299%
2016	96.547%	96.541%
2017	96.804%	96.799%
2018	97.078%	97.073%
2019	97.369%	97.365%
2020	97.679%	97.675%
2021	98.008%	98.005%
2022	98.359%	98.357%
2023	98.732%	98.730%
2024	99.129%	99.127%
2025	99.551%	99.550%
2026	100.000%	100.000%

* 50% debt retirement in ten years is considered acceptable.

SOURCES AND USES OF FUNDS

District of Columbia
Proposed Restructuring (Base Case)

Dated Date	7/15/1997
Delivery Date	7/15/1997

Sources:	
Bond Proceeds:	
Par Amount	314,655,000.00
	314,655,000.00

Uses:	
Refunding Escrow Deposits:	
Cash Deposit	93.49
SLG Purchases	311,787,000.00
	311,787,093.49
Delivery Date Expenses:	
Cost of Issuance	350,000.00
Underwriter's Discount	2,517,240.00
	2,867,240.00
Other Uses of Funds:	
Rounding	666.51
	314,655,000.00

SUMMARY OF REFUNDING RESULTS

District of Columbia
Proposed Restructuring (Base Case)

Dated Date	7/15/1997
Delivery Date	7/15/1997
Arbitrage yield	6.713656%
Escrow yield	6.250632%
Bond Par Amount	314,655,000.00
True Interest Cost	6.825999%
Net Interest Cost	6.794903%
Average Coupon	6.714451%
Average Life	9.944
Par amount of refunded bonds	318,850,000.00
Average coupon of refunded bonds	5.305696%
Average life of refunded bonds	3.544
PV of prior debt to 7/15/1997 @ 6.713656%	307,422,749.42
Net PV Savings	(7,231,584.07)
Percentage savings of refunded bonds	(2.268021)
Percentage savings of refunding bonds	(2.298258)
Percentage savings of refunding proceeds	(2.298258)

SUMMARY OF BONDS REFUNDED

District of Columbia
Proposed Restructuring (Base Case)

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Series 1992B ($256,780,000), 1992B:					
SERIALS	6/01/1999	5.700%	9,660,000.00	-	-
SERIALS	6/01/2000	5.900%	10,230,000.00	-	-
SERIALS	6/01/2001	6.000%	10,855,000.00	-	-
			30,745,000.00		
Series 1993C ($201,095,000), 1993C:					
SERIALS	12/01/2001	5.000%	28,235,000.00	-	-
SERIALS	12/01/2002	5.250%	16,270,000.00	-	-
SERIALS	12/01/2003	5.250%	17,145,000.00	-	-
			61,650,000.00		
Series 1989B ($217,482,000), 1989B:					
SERIALS	6/01/1998	6.625%	27,935,000.00	-	-
Series 1990B ($181,235,000), 1990B:					
SERIALS	6/01/1999	7.000%	7,480,000.00	-	-
SERIALS	6/01/2000	7.100%	8,005,000.00	-	-
			15,485,000.00		
Series 1991A ($195,600,000), 1991A:					
SERIALS	6/01/1999	6.100%	7,955,000.00	-	-
SERIALS	6/01/2000	6.200%	8,455,000.00	-	-
			16,410,000.00		
Series 1993D ($144,985,000), 1993D:					
SERIALS	12/01/1997	4.600%	13,325,000.00	-	-
SERIALS	12/01/1998	4.900%	13,970,000.00	-	-
SERIALS	12/01/1999	4.700%	14,660,000.00	-	-
SERIALS	12/01/2000	4.900%	15,380,000.00	-	-
SERIALS	12/01/2001	5.000%	15,765,000.00	-	-
SERIALS	12/01/2002	5.100%	14,245,000.00	-	-
SERIALS	12/01/2003	5.250%	9,380,000.00	-	-
			96,725,000.00		
Series 1993E ($231,600,000), 1993E:					
SERIALS	6/01/1999	4.600%	8,450,000.00	-	-
SERIALS	6/01/2000	4.750%	8,905,000.00	-	-
SERIALS	6/01/2001	5.000%	9,400,000.00	-	-
SERIALS	6/01/2002	5.000%	9,935,000.00	-	-
SERIALS	6/01/2003	5.000%	10,515,000.00	-	-
			47,205,000.00		
Series 1994B&C ($233,904,936.40), 1994BC:					
1994BSER	6/01/1999	5.300%	1,770,000.00	-	-
1994BSER	6/01/2000	5.300%	2,485,000.00	-	-
1994BSER	6/01/2001	5.375%	3,260,000.00	-	-
1994BSER	6/01/2002	5.400%	4,105,000.00	-	-
1994BSER	6/01/2003	5.600%	5,035,000.00	-	-
1994BSER	6/01/2004	5.700%	6,040,000.00	-	-
			22,695,000.00		
			318,850,000.00		

SAVINGS

District of Columbia
Proposed Restructuring (Base Case)

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings
Dec 1, 1997	21,936,896.88	7,972,123.56	13,964,773.32	-
Jun 1, 1998	36,240,421.88	10,551,340.00	25,689,081.88	-
Sep 30, 1998	-	-	-	39,653,855.20
Dec 1, 1998	21,350,075.00	10,551,340.00	10,798,735.00	-
Jun 1, 1999	42,352,810.00	10,551,340.00	31,801,470.00	-
Sep 30, 1999	-	-	-	42,600,205.00
Dec 1, 1999	20,676,817.50	10,551,340.00	10,125,477.50	-
Jun 1, 2000	43,752,307.50	10,551,340.00	33,200,967.50	-
Sep 30, 2000	-	-	-	43,326,445.00
Dec 1, 2000	19,926,893.75	10,551,340.00	9,375,553.75	-
Jun 1, 2001	27,685,083.75	10,551,340.00	17,133,743.75	-
Sep 30, 2001	-	-	-	26,509,297.50
Dec 1, 2001	47,521,821.25	10,551,340.00	36,970,481.25	-
Jun 1, 2002	16,461,821.25	10,551,340.00	5,910,481.25	-
Sep 30, 2002	-	-	-	42,880,962.50
Dec 1, 2002	32,577,611.25	10,551,340.00	22,026,271.25	-
Jun 1, 2003	16,822,276.25	10,551,340.00	6,270,936.25	-
Sep 30, 2003	-	-	-	28,297,207.50
Dec 1, 2003	27,393,421.25	10,551,340.00	16,842,081.25	-
Jun 1, 2004	6,212,140.00	10,551,340.00	(4,339,200.00)	-
Sep 30, 2004	-	-	-	12,502,881.25
Dec 1, 2004	-	10,551,340.00	(10,551,340.00)	-
Jun 1, 2005	-	24,761,340.00	(24,761,340.00)	-
Sep 30, 2005	-	-	-	(35,312,680.00)
Dec 1, 2005	-	10,089,515.00	(10,089,515.00)	-
Jun 1, 2006	-	80,434,515.00	(80,434,515.00)	-
Sep 30, 2006	-	-	-	(90,524,030.00)
Dec 1, 2006	-	7,768,130.00	(7,768,130.00)	-
Jun 1, 2007	-	118,308,130.00	(118,308,130.00)	-
Sep 30, 2007	-	-	-	(126,076,260.00)
Dec 1, 2007	-	4,065,040.00	(4,065,040.00)	-
Jun 1, 2008	-	123,625,040.00	(123,625,040.00)	-
Sep 30, 2008	-	-	-	(127,690,080.00)
	380,910,397.51	524,742,593.56	(143,832,196.05)	(143,832,196.05)

Savings Summary

Dated Date	7/15/1997
Delivery Date	7/15/1997
Savings PV rate	6.713656%
PV of savings from cash flow	(7,232,250.58)
Plus: Refunding funds on hand	666.51
Net PV Savings	(7,231,584.07)

BOND PRICING

District of Columbia
Proposed Restructuring (Base Case)

Bond Component	Maturity Date	Amount	Rate	Yield	Price
serials (1997-2017):					
	6/01/1998	-	5.500%	5.500%	100.000
	6/01/1999	-	5.800%	5.800%	100.000
	6/01/2000	-	6.000%	6.000%	100.000
	6/01/2001	-	6.100%	6.100%	100.000
	6/01/2002	-	6.200%	6.200%	100.000
	6/01/2003	-	6.300%	6.300%	100.000
	6/01/2004	-	6.400%	6.400%	100.000
	6/01/2005	14,210,000	6.500%	6.500%	100.000
	6/01/2006	70,345,000	6.600%	6.600%	100.000
	6/01/2007	110,540,000	6.700%	6.700%	100.000
	6/01/2008	119,560,000	6.800%	6.800%	100.000
	6/01/2009	-	6.900%	6.900%	100.000
	6/01/2010	-	7.000%	7.000%	100.000
	6/01/2011	-	7.100%	7.100%	100.000
	6/01/2012	-	7.150%	7.150%	100.000
	6/01/2013	-	7.200%	7.200%	100.000
	6/01/2014	-	7.250%	7.250%	100.000
	6/01/2015	-	7.250%	7.250%	100.000
	6/01/2016	-	7.300%	7.300%	100.000
	6/01/2017	-	7.300%	7.300%	100.000
	6/01/2018	-	7.350%	7.350%	100.000
	6/01/2019	-	7.350%	7.350%	100.000
	6/01/2020	-	7.400%	7.400%	100.000
	6/01/2021	-	7.400%	7.400%	100.000
	6/01/2022	-	7.400%	7.400%	100.000
	6/01/2023	-	7.450%	7.450%	100.000
	6/01/2024	-	7.450%	7.450%	100.000
	6/01/2025	-	7.450%	7.450%	100.000
	6/01/2026	-	7.450%	7.450%	100.000
		314,655,000			

Dated Date	7/15/1997	
Delivery Date	7/15/1997	
First Coupon	12/01/1997	
Par Amount	314,655,000.00	
Discount	-	
Production	314,655,000.00	100.000000%
Underwriter's Discount	(2,517,240.00)	(0.800000)
Purchase Price	312,137,760.00	99.200000%
Accrued Interest	-	
Net Proceeds	312,137,760.00	

ESCROW STATISTICS

District of Columbia
Proposed Restructuring (Base Case)

Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow:						
311,787,093.49	3.055	6.250632%	6.250631%	307,422,749.42	4,364,329.43	14.64
311,787,093.49				307,422,749.42	4,364,329.43	14.64

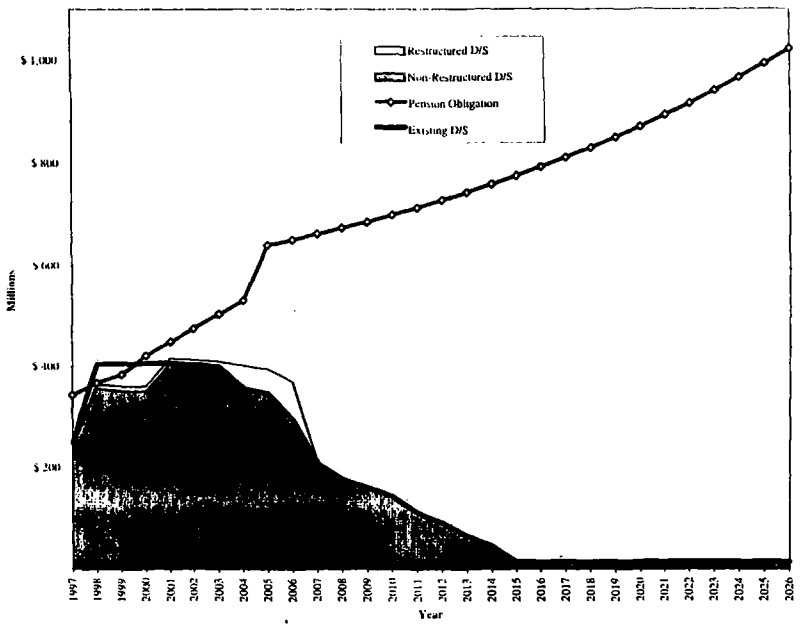
Delivery date 7/15/1997
Arbitrage yield 6.713656%

The District of Columbia Restructuring Analysis

Alternative Case:

$40 Million of Savings in Fiscal Years 1998-2000

Government of the District of Columbia
Debt Restructure and Pension Obligation Analysis



Percent of Debt Service Amortized

Fiscal Year	Existing Debt Service Percent Amortized	Base Case Restucturing Percent Amortized
1997	4.444%	4.441%
1998	10.652%	9.218%
1999	17.011%	13.868%
2000	23.633%	18.661%
2001	30.599%	25.623%
2002	38.262%	33.282%
2003	46.238%	41.252%
2004	54.458%	50.683%
2005	62.977%	60.608%
2006*	70.634%	70.653%
2007	75.966%	75.981%
2008	80.507%	80.519%
2009	84.965%	84.974%
2010	89.112%	89.119%
2011	92.328%	92.333%
2012	94.392%	94.396%
2013	95.570%	95.573%
2014	96.077%	96.080%
2015	96.305%	96.307%
2016	96.547%	96.549%
2017	96.804%	96.806%
2018	97.078%	97.080%
2019	97.369%	97.371%
2020	97.679%	97.680%
2021	98.008%	98.010%
2022	98.359%	98.360%
2023	98.732%	98.733%
2024	99.129%	99.129%
2025	99.551%	99.551%
2026	100.000%	100.000%

* 50% debt retirement in ten years is considered acceptable.

SOURCES AND USES OF FUNDS

District of Columbia
Proposed Restructuring for 3 years of savings

Dated Date	7/15/1997
Delivery Date	7/15/1997

Sources:	
Bond Proceeds:	
Par Amount	145,100,000.00
	145,100,000.00

Uses:	
Refunding Escrow Deposits:	
Cash Deposit	60.98
SLG Purchases	143,585,700.00
	143,585,760.98
Delivery Date Expenses:	
Cost of Issuance	350,000.00
Underwriter's Discount	1,160,800.00
	1,510,800.00
Other Uses of Funds:	
Rounding	3,439.02
	145,100,000.00

SUMMARY OF REFUNDING RESULTS

District of Columbia
Proposed Restructuring for 3 years of savings

Dated Date	7/15/1997
Delivery Date	7/15/1997
Arbitrage yield	6.531308%
Escrow yield	5.966626%
Bond Par Amount	145,100,000.00
True Interest Cost	6.660818%
Net Interest Cost	6.630254%
Average Coupon	6.531639%
Average Life	8.112
Par amount of refunded bonds	143,285,000.00
Average coupon of refunded bonds	5.682426%
Average life of refunded bonds	1.811
PV of prior debt to 7/15/1997 @ 6.531308%	142,244,525.71
Net PV Savings	(2,852,035.27)
Percentage savings of refunded bonds	(1.990463)
Percentage savings of refunding bonds	(1.965565)
Percentage savings of refunding proceeds	(1.965565)

SUMMARY OF BONDS REFUNDED

District of Columbia
Proposed Restructuring for 3 years of savings

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Series 1992B ($256,780,000), 1992B:					
SERIALS	6/01/1999	5.700%	9,660,000.00	-	-
SERIALS	6/01/2000	5.900%	10,230,000.00	-	-
			19,890,000.00		
Series 1989B ($217,482,000), 1989B:					
SERIALS	6/01/1998	6.625%	27,935,000.00	-	-
Series 1990B ($181,235,000), 1990B:					
SERIALS	6/01/1999	7.000%	7,480,000.00	-	-
SERIALS	6/01/2000	7.100%	8,005,000.00	-	-
			15,485,000.00		
Series 1991A ($195,600,000), 1991A:					
SERIALS	6/01/1999	6.100%	7,955,000.00	-	-
SERIALS	6/01/2000	6.200%	8,455,000.00	-	-
			16,410,000.00		
Series 1993D ($144,985,000), 1993D:					
SERIALS	12/01/1997	4.600%	13,325,000.00	-	-
SERIALS	12/01/1998	4.900%	13,970,000.00	-	-
SERIALS	12/01/1999	4.700%	14,660,000.00	-	-
			41,955,000.00		
Series 1993E ($231,600,000), 1993E:					
SERIALS	6/01/1999	4.600%	8,450,000.00	-	-
SERIALS	6/01/2000	4.750%	8,905,000.00	-	-
			17,355,000.00		
Series 1994B&C ($233,904,936.40), 1994BC:					
1994BSER	6/01/1999	5.300%	1,770,000.00	-	-
1994BSER	6/01/2000	5.300%	2,485,000.00	-	-
			4,255,000.00		
			143,285,000.00		

SAVINGS

District of Columbia
Proposed Restructuring for 3 years of savings

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings
Dec 1, 1997	17,390,003.13	3,575,868.78	13,814,134.35	-
Jun 1, 1998	31,693,528.13	4,732,767.50	26,960,760.63	-
Sep 30, 1998	-	-	-	40,774,894.98
Dec 1, 1998	16,803,181.25	4,732,767.50	12,070,413.75	-
Jun 1, 1999	37,805,916.25	4,732,767.50	33,073,148.75	-
Sep 30, 1999	-	-	-	45,143,562.50
Dec 1, 1999	16,129,923.75	4,732,767.50	11,397,156.25	-
Jun 1, 2000	39,205,413.75	4,732,767.50	34,472,646.25	-
Sep 30, 2000	-	-	-	45,869,802.50
Dec 1, 2000	-	4,732,767.50	(4,732,767.50)	-
Jun 1, 2001	-	4,732,767.50	(4,732,767.50)	-
Sep 30, 2001	-	-	-	(9,465,535.00)
Dec 1, 2001	-	4,732,767.50	(4,732,767.50)	-
Jun 1, 2002	-	4,732,767.50	(4,732,767.50)	-
Sep 30, 2002	-	-	-	(9,465,535.00)
Dec 1, 2002	-	4,732,767.50	(4,732,767.50)	-
Jun 1, 2003	-	4,732,767.50	(4,732,767.50)	-
Sep 30, 2003	-	-	-	(9,465,535.00)
Dec 1, 2003	-	4,732,767.50	(4,732,767.50)	-
Jun 1, 2004	-	39,867,767.50	(39,867,767.50)	-
Sep 30, 2004	-	-	-	(44,600,535.00)
Dec 1, 2004	-	3,608,447.50	(3,608,447.50)	-
Jun 1, 2005	-	44,403,447.50	(44,403,447.50)	-
Sep 30, 2005	-	-	-	(48,011,895.00)
Dec 1, 2005	-	2,282,610.00	(2,282,610.00)	-
Jun 1, 2006	-	71,452,610.00	(71,452,610.00)	-
Sep 30, 2006	-	-	-	(73,735,220.00)
	159,027,966.26	221,983,961.28	(62,955,995.02)	(62,955,995.02)

Savings Summary

Dated Date	7/15/1997
Delivery Date	7/15/1997
Savings PV rate	6.531308%
PV of savings from cash flow	(2,855,474.29)
Plus: Refunding funds on hand	3,439.02
Net PV Savings	(2,852,035.27)

BOND PRICING

District of Columbia
Proposed Restructuring for 3 years of savings

Bond Component	Maturity Date	Amount	Rate	Yield	Price
serials (1997-2017):					
	6/01/1998	-	5.500%	5.500%	100.000
	6/01/1999	-	5.800%	5.800%	100.000
	6/01/2000	-	6.000%	6.000%	100.000
	6/01/2001	-	6.100%	6.100%	100.000
	6/01/2002	-	6.200%	6.200%	100.000
	6/01/2003	-	6.300%	6.300%	100.000
	6/01/2004	35,135,000	6.400%	6.400%	100.000
	6/01/2005	40,795,000	6.500%	6.500%	100.000
	6/01/2006	69,170,000	6.600%	6.600%	100.000
	6/01/2007	-	6.700%	6.700%	100.000
	6/01/2008	-	6.800%	6.800%	100.000
	6/01/2009	-	6.900%	6.900%	100.000
	6/01/2010	-	7.000%	7.000%	100.000
	6/01/2011	-	7.100%	7.100%	100.000
	6/01/2012	-	7.150%	7.150%	100.000
	6/01/2013	-	7.200%	7.200%	100.000
	6/01/2014	-	7.250%	7.250%	100.000
	6/01/2015	-	7.250%	7.250%	100.000
	6/01/2016	-	7.300%	7.300%	100.000
	6/01/2017	-	7.300%	7.300%	100.000
	6/01/2018	-	7.350%	7.350%	100.000
	6/01/2019	-	7.350%	7.350%	100.000
	6/01/2020	-	7.400%	7.400%	100.000
	6/01/2021	-	7.400%	7.400%	100.000
	6/01/2022	-	7.400%	7.400%	100.000
	6/01/2023	-	7.450%	7.450%	100.000
	6/01/2024	-	7.450%	7.450%	100.000
	6/01/2025	-	7.450%	7.450%	100.000
	6/01/2026	-	7.450%	7.450%	100.000
		145,100,000			

Dated Date	7/15/1997	
Delivery Date	7/15/1997	
First Coupon	12/01/1997	
Par Amount	145,100,000.00	
Discount	-	
Production	145,100,000.00	100.000000%
Underwriter's Discount	(1,160,800.00)	(0.800000)
Purchase Price	143,939,200.00	99.200000%
Accrued Interest	-	
Net Proceeds	143,939,200.00	

ESCROW STATISTICS

District of Columbia
Proposed Restructuring for 3 years of savings

	Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow:							
	143,585,760.98	1.666	5.966626%	5.966622%	142,244,525.71	1,341,222.38	12.89
	143,585,760.98				142,244,525.71	1,341,222.38	12.89

Delivery date 7/15/1997
Arbitrage yield 6.531308%

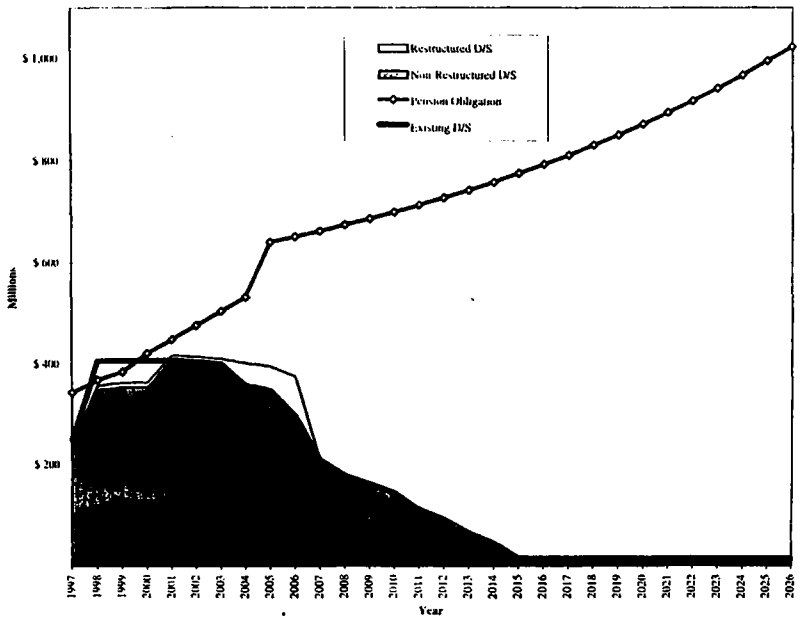
The District of Columbia Restructuring Analysis

Alternative Case:

$50 Million of Savings in Fiscal Year 1998

$40 Million of Savings in Fiscal Years 1999-2000

Government of the District of Columbia
Debt Restructure and Pension Obligation Analysis



Percent of Debt Service Amortized

Fiscal Year	Existing Debt Service Percent Amortized	Base Case Restucturing Percent Amortized
1997	4.444%	4.440%
1998	10.652%	8.925%
1999	17.011%	13.636%
2000	23.633%	18.514%
2001	30.599%	25.476%
2002	38.262%	33.133%
2003	46.238%	41.103%
2004	54.458%	50.533%
2005	62.977%	60.457%
2006*	70.634%	70.655%
2007	75.966%	75.983%
2008	80.507%	80.521%
2009	84.965%	84.976%
2010	89.112%	89.120%
2011	92.328%	92.334%
2012	94.392%	94.396%
2013	95.570%	95.573%
2014	96.077%	96.080%
2015	96.305%	96.307%
2016	96.547%	96.549%
2017	96.804%	96.806%
2018	97.078%	97.080%
2019	97.369%	97.371%
2020	97.679%	97.681%
2021	98.008%	98.010%
2022	98.359%	98.360%
2023	98.732%	98.733%
2024	99.129%	99.129%
2025	99.551%	99.551%
2026	100.000%	100.000%

* 50% debt retirement in ten years is considered acceptable.

SOURCES AND USES OF FUNDS

District of Columbia
Proposed Restructuring for 3 years of savings

Dated Date	7/15/1997
Delivery Date	7/15/1997

Sources:	
Bond Proceeds:	
Par Amount	149,580,000.00
	149,580,000.00

Uses:	
Refunding Escrow Deposits:	
Cash Deposit	62.15
SLG Purchases	148,032,700.00
	148,032,762.15
Delivery Date Expenses:	
Cost of Issuance	350,000.00
Underwriter's Discount	1,196,640.00
	1,546,640.00
Other Uses of Funds:	
Rounding	597.85
	149,580,000.00

SUMMARY OF REFUNDING RESULTS

District of Columbia
Proposed Restructuring for 3 years of savings

Dated Date	7/15/1997
Delivery Date	7/15/1997
Arbitrage yield	6.533556%
Escrow yield	5.945569%
Bond Par Amount	149,580,000.00
True Interest Cost	6.662797%
Net Interest Cost	6.632211%
Average Coupon	6.533874%
Average Life	8.135
Par amount of refunded bonds	147,480,000.00
Average coupon of refunded bonds	5.743373%
Average life of refunded bonds	1.739
PV of prior debt to 7/15/1997 @ 6.533556%	146,649,060.52
Net PV Savings	(2,930,341.63)
Percentage savings of refunded bonds	(1.986942)
Percentage savings of refunding bonds	(1.959046)
Percentage savings of refunding proceeds	(1.959046)

SUMMARY OF BONDS REFUNDED

District of Columbia
Proposed Restructuring for 3 years of savings

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Series 1992B ($256,780,000), 1992B:					
SERIALS	6/01/1999	5.700%	9,660,000.00	-	-
SERIALS	6/01/2000	5.900%	10,230,000.00	-	-
			19,890,000.00		
Series 1989A ($169,180,278), 1989A:					
SERIALS	6/01/1998	7.250%	8,450,000.00	-	-
Series 1989B ($217,482,000), 1989B:					
SERIALS	6/01/1998	6.625%	27,935,000.00	-	-
Series 1990B ($181,235,000), 1990B:					
SERIALS	6/01/1999	7.000%	7,480,000.00	-	-
SERIALS	6/01/2000	7.100%	8,005,000.00	-	-
			15,485,000.00		
Series 1991A ($195,600,000), 1991A:					
SERIALS	6/01/1999	6.100%	7,955,000.00	-	-
SERIALS	6/01/2000	6.200%	8,455,000.00	-	-
			16,410,000.00		
Series 1993D ($144,985,000), 1993D:					
SERIALS	12/01/1997	4.600%	13,325,000.00	-	-
SERIALS	12/01/1998	4.900%	13,970,000.00	-	-
SERIALS	12/01/1999	4.700%	14,660,000.00	-	-
			41,955,000.00		
Series 1993E ($231,600,000), 1993E:					
SERIALS	6/01/1999	4.600%	8,450,000.00	-	-
SERIALS	6/01/2000	4.750%	8,905,000.00	-	-
			17,355,000.00		
			147,480,000.00		

SAVINGS

District of Columbia
Proposed Restructuring for 3 years of savings

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings
Dec 1, 1997	17,583,558.13	3,687,570.11	13,895,988.02	-
Jun 1, 1998	40,337,083.13	4,880,607.50	35,456,475.63	-
Sep 30, 1998	-	-	-	49,352,463.65
Dec 1, 1998	16,690,423.75	4,880,607.50	11,809,816.25	-
Jun 1, 1999	35,923,158.75	4,880,607.50	31,042,551.25	-
Sep 30, 1999	-	-	-	42,852,367.50
Dec 1, 1999	16,064,071.25	4,880,607.50	11,183,463.75	-
Jun 1, 2000	36,654,561.25	4,880,607.50	31,773,953.75	-
Sep 30, 2000	-	-	-	42,957,417.50
Dec 1, 2000	-	4,880,607.50	(4,880,607.50)	-
Jun 1, 2001	-	4,880,607.50	(4,880,607.50)	-
Sep 30, 2001	-	-	-	(9,761,215.00)
Dec 1, 2001	-	4,880,607.50	(4,880,607.50)	-
Jun 1, 2002	-	4,880,607.50	(4,880,607.50)	-
Sep 30, 2002	-	-	-	(9,761,215.00)
Dec 1, 2002	-	4,880,607.50	(4,880,607.50)	-
Jun 1, 2003	-	4,880,607.50	(4,880,607.50)	-
Sep 30, 2003	-	-	-	(9,761,215.00)
Dec 1, 2003	-	4,880,607.50	(4,880,607.50)	-
Jun 1, 2004	-	40,015,607.50	(40,015,607.50)	-
Sep 30, 2004	-	-	-	(44,896,215.00)
Dec 1, 2004	-	3,756,287.50	(3,756,287.50)	-
Jun 1, 2005	-	44,551,287.50	(44,551,287.50)	-
Sep 30, 2005	-	-	-	(48,307,575.00)
Dec 1, 2005	-	2,430,450.00	(2,430,450.00)	-
Jun 1, 2006	-	76,080,450.00	(76,080,450.00)	-
Sep 30, 2006	-	-	-	(78,510,900.00)
	163,252,856.26	229,088,942.61	(65,836,086.35)	(65,836,086.35)

Savings Summary

Dated Date	7/15/1997
Delivery Date	7/15/1997
Savings PV rate	6.533556%
PV of savings from cash flow	(2,930,939.48)
Plus: Refunding funds on hand	597.85
Net PV Savings	(2,930,341.63)

BOND PRICING

District of Columbia
Proposed Restructuring for 3 years of savings

Bond Component	Maturity Date	Amount	Rate	Yield	Price
serials (1997-2017):					
	6/01/1998	-	5.500%	5.500%	100.000
	6/01/1999	-	5.800%	5.800%	100.000
	6/01/2000	-	6.000%	6.000%	100.000
	6/01/2001	-	6.100%	6.100%	100.000
	6/01/2002	-	6.200%	6.200%	100.000
	6/01/2003	-	6.300%	6.300%	100.000
	6/01/2004	35,135,000	6.400%	6.400%	100.000
	6/01/2005	40,795,000	6.500%	6.500%	100.000
	6/01/2006	73,650,000	6.600%	6.600%	100.000
	6/01/2007	-	6.700%	6.700%	100.000
	6/01/2008	-	6.800%	6.800%	100.000
	6/01/2009	-	6.900%	6.900%	100.000
	6/01/2010	-	7.000%	7.000%	100.000
	6/01/2011	-	7.100%	7.100%	100.000
	6/01/2012	-	7.150%	7.150%	100.000
	6/01/2013	-	7.200%	7.200%	100.000
	6/01/2014	-	7.250%	7.250%	100.000
	6/01/2015	-	7.250%	7.250%	100.000
	6/01/2016	-	7.300%	7.300%	100.000
	6/01/2017	-	7.300%	7.300%	100.000
	6/01/2018	-	7.350%	7.350%	100.000
	6/01/2019	-	7.350%	7.350%	100.000
	6/01/2020	-	7.400%	7.400%	100.000
	6/01/2021	-	7.400%	7.400%	100.000
	6/01/2022	-	7.400%	7.400%	100.000
	6/01/2023	-	7.450%	7.450%	100.000
	6/01/2024	-	7.450%	7.450%	100.000
	6/01/2025	-	7.450%	7.450%	100.000
	6/01/2026	-	7.450%	7.450%	100.000
		149,580,000			

Dated Date	7/15/1997	
Delivery Date	7/15/1997	
First Coupon	12/01/1997	
Par Amount	149,580,000.00	
Discount	-	
Production	149,580,000.00	100.000000%
Underwriter's Discount	(1,196,640.00)	(0.800000)
Purchase Price	148,383,360.00	99.200000%
Accrued Interest	-	
Net Proceeds	148,383,360.00	

ESCROW STATISTICS

District of Columbia
Proposed Restructuring for 3 years of savings

Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow:						
148,032,762.15	1.601	5.945569%	5.945565%	146,649,060.52	1,383,688.79	12.84
148,032,762.15				146,649,060.52	1,383,688.79	12.84

Delivery date	7/15/1997
Arbitrage yield	6.533556%

ATTACHMENT 3

District of Columbia
Series 1999 General Obligation Bonds
Financing Schedule

Apr-99						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May-99						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Jun-99						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

	April 9	Mail Underwriter RFP
	April 19	Finalize financing structure
	April 21	Receive Underwriter RFP responses
	April 22	Receive first draft of documents
	April 27	Underwriter interviews
	April 29	Meeting/call on first draft of documents
	May 5	Select Underwriters
	May 6	Receive second draft of documents
	May 13	Meeting /call on second draft of documents
	May 20	Receive third draft of documents
	May 24	Final comments on documents
	May 27	Financing Documents to rating agency and bond insurers
May 15 to	June 15	Consensus Budget is submitted to Congress
	June 1	Regular District principal payment
	June 2	Rating agency visit/call
	June 4	Receive ratings
	June 4	Receive bond insurer bids
	June 8	Mail final Preliminary Official Statement
	June 10	Investor calls
	June 14	Pre-pricing meeting/call
	June 16	Bond pricing
	June 22	Pre-closing
	June 23	Closing

ATTACHMENT 4

Office of the Chief Financial Officer
Office of Finance and Treasury



Presentation to the District Council and the Financial Authority

regarding

Proposed Debt Restructuring

April 7, 1999

Agenda

- Debt Structure Summary.....Page 3
- Refinancing.....Page 6
- General Obligation Bonds Restructuring.....Page 8
- Implementation Issues.....Page 15

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Debt Structure Summary

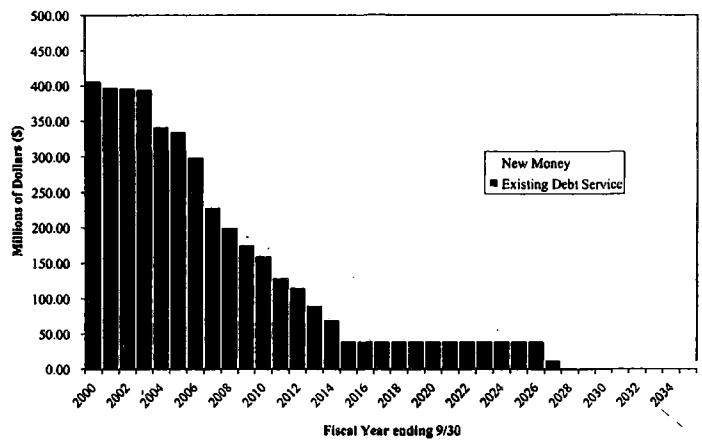
- Prior to 1984, the District issued notes to the federal government (the U.S. Treasury) to finance authorized capital projects.
- Commencing in 1985, the District accessed the public tax-exempt bond market with the issuance of general obligation bonds.
- Virtually all District infrastructure needs have been funded out of general obligation bond proceeds, grants and operating funds.
- The District financed its accumulated deficit in FY 1991 issuing $336.6 million of G.O. bonds with a final maturity of FY2003.

1126

Outstanding and Proposed New Money Indebtedness

- The District's general obligation debt is approximately $3.1 billion, with annual debt service of approximately $400 million in FY 2000.

Graph of Existing Debt with Aggregate New Money Projected Borrowing



1127

Outstanding Indebtedness

- The District's debt is heavily front-loaded as a result of
  - ⇒ the deficit bonds issued in FY 1991 and
  - ⇒ amortization preceding the planned funding of the unfunded pension liability
  - ⇒ twenty year amortization

- The District's repayment of principal is 38.8% within 5 years and 72.2% within 10 years.

- The District's average maturity is 7.5 years.

- The District is at 13% of its 17% debt limit, leaving statutory debt capacity in excess of $1 billion.

- The District's average rate of interest on long-term debt is 6.15%.

1128

Refinancing

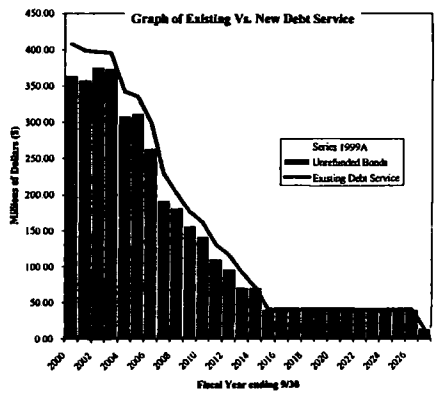
- Refinancing: the District issues refunding bonds take advantage of lower market interest rates
- Mortgage Example: Lowering the interest rate paid on the mortgage loan without changing any of the payment terms.
- Given current interest rates, the District can refinance approximately $250 million for a present value savings of $9 million.

1129

Refinancing Only

Summary of Debt Service
(Millions of Dollars)

Fiscal Year	Existing Debt Service	Series 1999A	Unrefunded Debt Service	Resulting Debt Service	Total Savings
2000	408.30	33.10	365.36	398.46	9.83
2001	399.27	40.63	358.63	399.26	0.00
2002	397.30	20.46	376.83	397.30	0.00
2003	395.23	20.47	374.75	395.22	0.00
2004	342.77	33.20	309.57	342.77	0.00
2005	335.89	23.45	312.43	335.89	0.00
2006	299.98	35.51	264.47	299.98	0.00
2007	229.66	37.25	192.41	229.66	0.00
2008	201.50	19.24	182.26	201.49	0.00
2009	176.60	19.30	157.30	176.60	0.00
2010	161.35	19.35	141.99	161.35	0.00
2011	129.95	19.41	110.54	129.95	0.00
2012	116.37	19.47	96.90	116.37	0.00
2013	91.08	19.56	71.52	91.08	0.00
2014	71.53	0.00	71.53	71.53	0.00
2015	40.45	0.00	40.45	40.45	0.00
2016	40.46	0.00	40.46	40.46	0.00
2017	40.45	0.00	40.45	40.45	0.00
2018	40.46	0.00	40.46	40.46	0.00
2019	40.46	0.00	40.46	40.46	0.00
2020	40.47	0.00	40.47	40.47	0.00
2021	40.47	0.00	40.47	40.47	0.00
2022	40.46	0.00	40.46	40.46	0.00
2023	40.46	0.00	40.46	40.46	0.00
2024	40.47	0.00	40.47	40.47	0.00
2025	40.47	0.00	40.47	40.47	0.00
2026	40.47	0.00	40.47	40.47	0.00
2027	13.96	0.00	13.96	13.96	0.00
	4,256.26	360.41	0.00	4,246.40	9.86



Present Value Savings 8.35
Par Amount of Bonds 256.97

(This includes minimal savings for 1999 Fiscal Year, the realization of which will depend upon timing.)

1130

Debt Restructuring

Summary

- Debt Restructuring: A restructuring is a refunding transaction that materially changes the original principal amortization of the debt.

- Mortgage Example: Changing the payment terms on a mortgage, i.e. 15 to 30 years

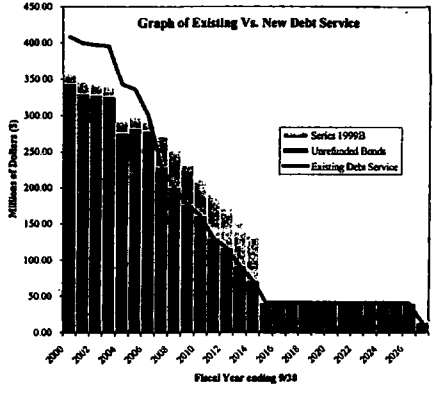
- The proposed restructuring will reduce payments that would otherwise be made FY2000 to FY 2005 and increase payments after fiscal year FY 2005

1131

General Obligation Bonds Restructuring

Summary of Debt Service
(Millions of Dollars)

Fiscal Year	Existing Debt Service	Series 1999B	Unrefunded Debt Service	Resulting Debt Service	Total Savings
2000	408.30	15.07	343.66	358.74	49.56
2001	399.27	16.54	330.23	346.77	52.50
2002	397.30	16.54	328.19	344.73	52.57
2003	395.23	16.54	326.67	343.21	52.02
2004	342.77	16.53	276.28	292.82	49.96
2005	335.89	16.53	282.55	299.08	36.81
2006	299.98	16.53	278.90	295.42	4.55
2007	229.66	42.66	229.66	272.31	(42.66)
2008	201.50	50.82	201.50	252.31	(50.82)
2009	176.60	55.71	176.60	232.31	(55.71)
2010	161.35	50.96	161.35	212.31	(50.96)
2011	129.95	62.36	129.95	192.31	(62.36)
2012	116.37	55.94	116.37	172.31	(55.94)
2013	91.08	61.23	91.08	152.31	(61.23)
2014	71.53	60.78	71.53	132.31	(60.78)
2015	40.45	0.00	40.45	40.45	0.00
2016	40.46	0.00	40.46	40.46	0.00
2017	40.45	0.00	40.45	40.45	0.00
2018	40.46	0.00	40.46	40.46	0.00
2019	40.46	0.00	40.46	40.46	0.00
2020	40.47	0.00	40.47	40.47	0.00
2021	40.47	0.00	40.47	40.47	0.00
2022	40.46	0.00	40.46	40.46	0.00
2023	40.46	0.00	40.46	40.46	0.00
2024	40.47	0.00	40.47	40.47	0.00
2025	40.47	0.00	40.47	40.47	0.00
2026	40.47	0.00	40.47	40.47	0.00
2027	13.96	0.00	13.96	13.96	0.00
	4,256.26	554.76	3,844.01	4,398.76	(142.50)



Present Value Savings:	(0.52)
Par Amount of Bonds Refunded:	312.14

Capital Financing Strategy

The District's Overall Capital Financing Strategy is Execute Transactions that Balance the following factors:

- maximize capital project financing capacity
- at the lowest cost of capital available
- while maintaining future financing flexibility
- meeting District budget targets

Proposed FY 2000 Transactions:

- $200 million G.O. Bond Refinancing (subject to market rates)
- $300 million G.O. Bond Restructuring

1133

Evaluation of the Proposed $250 million Refinancing

Criteria	Evaluation
■ maximize capital project financing capacity	■ yes, increases debt capacity
■ at the lowest cost of capital available	■ yes, lowers cost of capital
■ while maintaining future financing flexibility	■ yes, subject to refunding criteria
■ meeting District budget and financial targets	■ yes, lower expenditure created

1134

Evaluation of Proposed $250 million Refinancing

Conclusion: Execute the Transaction:

- in an amount that is consistent with the District's refinancing criteria, and
- At times that provide stable market access

1135

Evaluation of Proposed $300 million Restructuring

Criteria	Benchmark
■ maximize capital project financing capacity	■ maximum annual debt service assuming full CIP
■ at the lowest cost of capital available	■ present value savings
■ while maintaining future financing flexibility	■ debt service structure after CIP (FY2006)
■ meeting District budget and financial targets	■ use of proceeds for investment

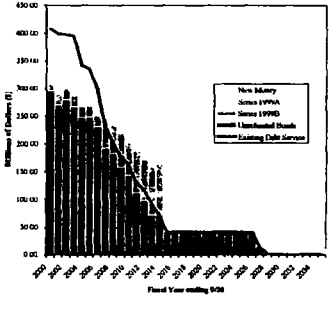
1136

Restructuring, Refunding and New Money

Summary of Debt Service
(Millions of Dollars)

Fiscal Year	Existing Debt Service	Series 1999A	Series 1999B	Aggregate New Money	Unrefunded Debt Service	Refunding Debt Service	Total Savings
2000	408.30	31.82	19.34	7.33	295.96	354.65	53.65
2001	399.27	40.63	21.20	16.57	270.22	348.72	50.54
2002	397.10	20.46	21.20	23.20	279.04	343.90	53.20
2003	395.23	20.47	21.19	37.48	266.58	345.73	51.50
2004	342.77	33.20	21.19	43.05	247.47	344.86	(2.09)
2005	333.89	23.45	21.18	50.57	247.91	343.13	(7.24)
2006	299.98	35.51	21.18	57.47	230.73	344.88	(44.90)
2007	329.66	37.25	34.08	58.11	197.41	341.86	(112.18)
2008	201.30	19.76	32.55	62.62	162.26	336.66	(135.17)
2009	176.80	19.86	62.24	62.61	157.70	321.66	(145.06)
2010	161.55	19.55	62.68	62.63	141.99	306.66	(143.32)
2011	129.95	19.41	78.89	62.62	110.54	291.66	(161.71)
2012	116.37	19.67	77.47	62.62	98.90	276.66	(160.29)
2013	91.08	19.56	87.76	62.62	73.52	261.66	(170.58)
2014	71.53	0.00	91.30	62.63	71.53	246.66	(175.13)
2015	40.63	0.00	0.00	62.62	40.63	123.27	(82.62)
2016	40.66	0.00	0.00	62.63	40.66	123.28	(82.63)
2017	40.65	0.00	0.00	62.62	40.65	123.28	(82.62)
2018	40.66	0.00	0.00	62.63	40.66	123.29	(82.63)
2019	40.66	0.00	0.00	62.62	40.66	123.28	(82.62)
2020	40.67	0.00	0.00	62.62	40.67	123.29	(82.62)
2021	40.67	0.00	0.00	62.62	40.67	123.29	(82.62)
2022	40.66	0.00	0.00	62.63	40.66	123.29	(82.63)
2023	40.66	0.00	0.00	62.63	40.66	123.29	(82.63)
2024	40.67	0.00	0.00	62.63	40.67	123.29	(82.62)
2025	40.67	0.00	0.00	62.62	40.67	123.29	(82.62)
2026	40.67	0.00	0.00	62.62	40.67	123.29	(82.62)
2027	13.96	0.00	0.00	62.62	13.96	96.78	(82.82)
2028	0.00	0.00	0.00	62.82	0.00	0.00	0.00
2029	0.00	0.00	0.00	62.82	0.00	0.00	0.00
2030	0.00	0.00	0.00	70.30	0.00	0.00	0.00
2031	0.00	0.00	0.00	56.76	0.00	0.00	0.00
2032	0.00	0.00	0.00	44.57	0.00	0.00	0.00
2033	0.00	0.00	0.00	29.75	0.00	0.00	0.00
2034	0.00	0.00	0.00	19.65	0.00	0.00	0.00
2035	0.00	0.00	0.00	9.23	0.00	0.00	0.00
	4,230.26	359.13	714.05	2,346.41	3,361.85	6,385.54	(2,129.28)
Present Value Savings:		9.57	(3.72)				0.66
Per Amount of Bonds Refunded:		251.75	403.91				657.64

Graph of Existing Vs. New Debt Service



General Obligation Bonds Restructuring

Rationale for the Transaction:

- Improve asset/liability match
- Use operating budgetary relief for investment purposes (i.e., tax relief or capital projects)
- Produce budget capacity to fund a permanent tax cut due to the District's descending debt service structure

1138

Better Asset-Liability Match

Proposed Transaction:

- Average Life of Debt would increase from 7.5 years to less than 8.5 years
- Principal repayment: 30% and 63% in 5 and 10 years,, versus current 39% and 72% within 5 and 10 years
- Restructuring 1% of debt (approx. $300 million)

Benchmarks:

- District's estimated asset base has a remaining average useful life in excess of 10 years (annual depreciation / net general fixed assets / 2)
- Rating Agency standard: principal repayment of 25% and 50% in 5 and 10 years
- $3.1 billion outstanding

1139

Anticipated Financial Results

- Approximately $50 million in budget relief over the next few years
- Estimated present value debt service cost now $3 million (vs. $5 million shown in policy budget book).
- Estimated $150 million gross interest cost over the life of the bonds (vs. $300 shown in the policy budget book).
- Favorable outlook from credit markets if budget relief used for investment purposes and not to address budget problems

1140

General Obligation Bonds Restructuring

The District is in a different financial situation compared to that in the prior Administration's proposal:

- Pension liability has been eliminated
- Structural budget imbalance has largely been addressed by the Revitalization Act
- Use of budget relief is targeted to long-term investment: tax reduction

1141

Implementation Issues

- Independent Assessment Requested from outside Financial Advisors
  - Proper Amount of Restructuring
  - Evaluation Criteria
- Approvals Required
- Timing of Transaction
  - Setting of the Special Real Property Tax Rate
  - Budget Process
- Final Maturity of Restructuring Bonds
  - Tax Law Limitations
  - Minimize District Cost of Capital

1142

WEDNESDAY, SEPTEMBER 29, 1999.

ENFORCEMENT OF DRUG CONTROL LAWS

WITNESSES

DISTRICT OF COLUMBIA OFFICIALS

HON. ELEANOR HOLMES NORTON, DELEGATE, DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES
HON. BOB BARR, REPRESENTATIVE, 7TH DISTRICT, STATE OF GEORGIA, U.S. HOUSE OF REPRESENTATIVES
ASSISTANT CHIEF BRIAN JORDAN, D.C. METROPOLITAN POLICE DEPARTMENT

FEDERAL ADMINISTRATION OFFICIALS

DONALD R. VEREEN, JR., M.D., M.P.H., DEPUTY DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY
MARY LEE WARREN, DEPUTY ASSISTANT U.S. ATTORNEY GENERAL
WILMA LEWIS, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA

OTHER WITNESSES

KEITH B. VINES, ASSISTANT DISTRICT ATTORNEY, CITY OF SAN FRANCISCO

Mr. ISTOOK. The committee will come to order.

I appreciate people coming to this meeting. I apologize, one, for being late; and, secondly, although I customarily try to keep my own comments brief, I am going to deviate and I have a somewhat lengthy opening statement that I want to make.

STATEMENT OF CHAIRMAN ERNEST J. ISTOOK, JR.

This past summer, just a few months ago, the Clinton administration sent its officials to testify to Congress about America's war against drugs.

From the U.S. Department of Defense, in particular the Drug Enforcement Administration, the DEA, we were warned in testimony that there is a great danger in the efforts to legalize what some misleadingly call medical marijuana. Unfortunately, in trying to simplify their writing—I understand this because I was a reporter for many years—but, unfortunately, in trying to simplify their writing, the media have accepted the use of this misleading label of, quote, medical marijuana. In doing so, the media have helped the cause of those who are pushing to legalize drugs.

I am not alone in remarking about how misleading the label is. Here is a direct quote from that testimony earlier this year to the Congress by the DEA: "medical marijuana is merely the first tactical maneuver in an overall strategy that will lead to the eventual legalization of all drugs.".

That comment didn't come from me. It came from official testimony submitted to Congress on behalf of the Clinton administra-

tion, saying that so-called medical marijuana is a deliberate first step in a strategy to legalize all drugs. Unfortunately for our national anti-drug efforts, now the President of the United States has done a U-turn. This afternoon, because of actions taken by the President, we are meeting to hear testimony about how anti-drug law enforcement will be harmed by efforts to legalize marijuana in the Nation's Capital.

We invited the Attorney General and the "national drug czar" personally to attend and testify. They were unable to be here but have officially sent persons on their behalf.

I note that our witnesses, in the advance copies they have submitted of their testimony, include this statement submitted to this subcommittee by the Department of Justice about the proposal on legalizing marijuana in Washington, D.C.; and I quote from their submitted testimony: "clearly, this will hamper law enforcement efforts to impede the illegal sale and use of the drug. The initiative undermines the administration's consistent and effective national drug policy."

Further, we will be receiving this testimony submitted to us today by the Office of National Drug Control Policy, the so-called national drug czar; and I quote from that submission:

"The administration has actively and consistently opposed marijuana legalization initiatives in all jurisdictions throughout the Nation. Such electoral procedures undermine the medical-scientific process for establishing what is a safe and effective medicine; contradict Federal regulations and laws and, in the Office of National Drug Control Policy's view, may be vehicles for the legalization of marijuana for recreational use. Continued strict regulation of cannabis as a Schedule I drug is essential."

But yesterday the President of the United States endorsed taking that step toward legalizing more drugs. He has pulled the rug out from under our police and law enforcement. Using a pretext, and ignoring the U.S. Constitution, he vetoed the D.C. Appropriations bill because he says the Nation's Capital should be free to legalize marijuana.

I was astounded to read the President's veto message, where he claimed that Congress would not stop any other place in the country from legalizing marijuana. Wrong, Mr. President. We have a national law, Title 16, United States Code, Section 559(b), to cover the entire country, saying that marijuana is illegal; it is a controlled dangerous substance.

His administration even sent people to the States, telling them they should not and could not violate that national law by adopting so-called medical marijuana laws. You cannot have a national war on drugs or even a national anti-drug policy if a patchwork quilt is created, making D.C. or other places safe havens for drugs.

Furthermore, we have an additional special duty and responsibility regarding Washington, D.C., as our Nation's Capital. I will be sending the President a copy of the U.S. Constitution so he can read Article 1, Section 8, which says it is the job of the U.S. Congress "to exercise exclusive Legislation in all Cases whatsoever" over the District of Columbia. Mr. Clinton may not like it, but that is what our Constitution says. Even when Congress passed what is called home rule for D.C., Congress expressly retained for itself the

final say on laws in the District. When it comes to the Nation's Capital, the buck stops here, Mr. President.

His veto was not over anything new. The riders he didn't like are old, not new. Last year, he signed them into law. Several of them he has signed into law several times. Further, there are many more riders which he finds perfectly acceptable. His veto message pointedly did not object to these.

If you want to be technical about it, the bill actually had 72 riders, not just the seven mentioned in his veto message. The President made no complaint about the other 65. And why should he? For some of them, this is the 28th consecutive year they have been included in the D.C. Appropriations bill, a span between both Democratic and Republican control of Congress. Of the riders, 21 were new; 51 were carryovers. Of the seven he claims are the reason for vetoing the bill, only one is new. That is the restriction, added by the Senate, on the salaries paid to the District of Columbia City Council members. The other six cited in his veto message were all signed into law previously by President Clinton. This shows his veto is not over home rule. He is perfectly willing to accept riders, 65 of them. He doesn't truly care about home rule. He and most others who hide behind a cry of home rule care only about supporting a liberal social agenda—legalizing drugs, free needles for drug addicts, treating unmarried couples as though they were married, and so forth.

This is what this is about, not over a principle of self-determination, but over a social agenda far more liberal than the American people. And what is true of the President is also true of my friends on the Democratic side of the aisle. By pushing the President to veto this bill, extremists have ignored and thrown away our efforts to help D.C. children go to college. They have thrown away our efforts to crack down on crime and drugs. They have thrown away our help to clean up pollution in the Anacostia River. They have thrown away our work to get foster kids into stable, safe and loving permanent adoptive homes. They have thrown away all of these and more.

We left alone and respected the budget of the Mayor and City Council. We added dollars which we had no obligation to add because we believed in the new Mayor and in the new approaches being taken by the City Council. And I still respect and wish to work with them. But led by the Delegate from the District of Columbia, city officials went along, grudgingly in some cases I know, and urged a veto. They have said no to our efforts to help make D.C. a better and safer place. They have said yes to what law enforcement—the Clinton administration itself—has told us is "merely the first tactical maneuver in an overall strategy that will lead to the eventual legalization of all drugs."

The President of the United States may not care about this, but I do.

This is the ugly side of what happens when some elevate the buzzword of "choice" to be their most important policy above all else. Having all choices means abolishing all laws. That means abolishing all protections for society and especially for those who are most vulnerable, and that includes vulnerability to drugs. Among other things, it means abolishing the laws that seek to pro-

tect us from the scourge of drugs. Ultimately the lack of law and responsibility removes our ability to make free choices.

The Drug Enforcement administration has warned us: "the medical marijuana movement and its million dollar media campaign have helped contribute to the changing attitude among our youth that marijuana use is harmless. This softening in our attitudes among teens has led to a 140 percent increase in marijuana use among high school seniors from 1994–1995."

The President has pulled the rug out from under the law enforcement effort, but I will not, and I don't believe Congress will. The President has surrendered in the war on drugs. The Congress has not and will not.

There is now no hurry to pass a second D.C. appropriations bill. It is time for the President, the officials who urged a veto and my Democratic colleagues to sit a while in the mess they have created with their soft on drugs attitudes. There is no urgency; we should take the time to let all of America find out what it is really about.

Our hearing this afternoon is not to rehash all of these issues. It is not to discuss whether marijuana has any medical uses, however slight it might be or however insignificant it might be when compared to medicines that are much more effective.

Instead, our hearing is solely about law enforcement. How can they attack our drug problem in Washington, D.C., if Washington, D.C., or any other place adopts laws that conflict with the uniform law of the land—a law that has been adopted by the collective and best reasoning of the whole country.

As has been made clear by drug enforcement officials, there is no need to legalize marijuana in order to alleviate human suffering. Let me share with you what is published by the Drug Enforcement Administration—yes, by the Clinton administration in their publication, "Say It Straight: The Medical Myths of Marijuana". As the DEA publishes, "There are over 10,000 scientific studies that prove marijuana is a harmful addictive drug. There is not one reliable study that demonstrates marijuana has any medical value."

"In 1994, a U.S. Court of Appeals ruled that marijuana should remain a Schedule I drug: highly addictive with no medical usefulness. The court noted that the pro-marijuana physicians had relied on nonscientific evidence."

The DEA additionally published these comments about the so-called medical marijuana ballot initiatives in California and Arizona, comments which I believe also apply to the ballot initiative here in Washington, D.C.:

"The language in these ballot initiatives in California and Arizona are so loosely worded that they basically legalize marijuana for everyone, sick or well, adult or child. Physicians will be able to legally dispense marijuana for migraines, depression or any other ailments."

"The medical marijuana movement and its million dollar media campaign have helped contribute to the changing attitude among our youth that marijuana use is harmless."

"The pro-legalization organizations behind these ballot initiatives deny that there is a drug problem among our youth. As much as they seek to focus on people suffering with illnesses, we must keep the debate properly centered on the safety of our kids. In a time

when drug use among kids has increased 78 percent in the last 4 years, this country cannot afford to undermine drug prevention efforts with these pro-marijuana ballot initiatives."

I congratulate the DEA for printing these and other straightforward comments. Personally, I will side with those seeking to enforce our drug laws, not with those who seek to undercut them. The President and his allies are free to choose the other side.

DISTRICT'S MEDICAL MARIJUANA PROPOSAL—SHORT COMINGS

I will note, however, that the D.C. Medical Marijuana Proposal does not even require a doctor's prescription. An informal comment by a doctor is enough under the District's Proposition 59 initiative. Then a person is allowed not only to grow and smoke their own marijuana but can authorize four friends to grow and keep it, too. Furthermore, it requires that taxpayer's money be used to provide people with marijuana in some cases.

People need to be told the truth about this proposal, rather than just be told that this is just something called medical marijuana. I hope the media will make it clear what this is actually about, rather than just using the term "medical marijuana" as a convenient shorthand term.

We have an obligation to uphold the laws of the land, in all parts of the land, and a special constitutional obligation regarding Washington, D.C.

I look forward to today's testimony about how law enforcement is jeopardized if we let this initiative become law.

I thank you for your patience in putting up with my lengthy comments.

Mr. Moran, I recognize you for any statement that you may wish to make.

Mr. MORAN. Thank you very much, Mr. Chairman. I am sure that the President is going to appreciate getting your copy of the Constitution.

Mr. ISTOOK. I hope he reads it.

OPENING REMARKS OF CONGRESSMAN MORAN

Mr. MORAN. I think he understands the Constitution. He has acted based upon his understanding that we in the Congress have a constitutional mandate to not only provide oversight over the District of Columbia but for making certain that democracy prevails in the District of Columbia. And the thrust of the United States Constitution, I am sure you would agree, is based upon the rights and liberties of the individual and the determination by our Founding Fathers that we have an obligation to respect everyone's democratic rights and the basic sovereignty of every jurisdiction.

That is what this is about. It is not about wanting to take a position on the medicinal use of marijuana or free needle exchanges. It is taking a position that the voters of the District of Columbia have a right to express themselves in a democratic election, in this case a referendum, and that we should respect that right and treat the citizens of the District of Columbia as we would treat the voters in our own congressional districts, and we are not with this D.C. Appropriations bill or, really, with this hearing.

I can appreciate your concerns and the concerns of the other Members, including those on my side of the aisle, the Democratic side, about the harmful effects of marijuana and their concern about the ramifications of Initiative 59 which would legalize the medicinal use of marijuana in the District of Columbia. And I never had any intention of being the point person on the other side of this issue from the prevailing point of view, but while we are all entitled to our own opinions, we are not entitled to our own set of facts. Having had to do the homework on this somewhat reluctantly, but I have done it, and as a result I am confident that the facts may actually be on the side of the voters of the District of Columbia.

The issue as to whether or not to legalize the medicinal use of marijuana and the challenge that it presents to the law enforcement community is a Judiciary Committee issue. That is my first objection with this hearing. This is not an Appropriations Committee matter. It should not have been part of an appropriations bill. It doesn't belong in an appropriations hearing room. It belongs to the Judiciary Committee where you can get experts on either side who are concerned about the enforcement of laws and not about the appropriation of money.

We are 2 days away from the beginning of fiscal year 2000, which is the beginning of the new millennium, October 1st. Our Y2K problems are not computer related, they are the backlog of spending bills that have yet to clear Congress and be signed into law. That is what the Speaker, Speaker Hastert, referred to when he said, if there is anything that we are going to do, it is going to ensure that the train runs on time. He meant getting the appropriations bills funded. That is the most important responsibility we have.

And yet only four of the 14 regular appropriations bills have passed Congress, and of those four only one has been signed by the President, one has been vetoed, and two are still pending. The one vetoed just yesterday is the fiscal year 2000 appropriations bill for the District of Columbia, our bill, Mr. Chairman.

As I have said on the House floor and I will say today, you should receive nothing but praise for the spending parts of that measure. But it was when Congress attempted to legislate on that appropriations bill that the Committee included social riders that did not belong on that bill that we ensured a presidential veto. And we turned it not into an appropriations bill but some kind of referendum on the cultural conservative trends and issues of this country.

It did not belong there, and it should not be there today. You should take those issues off, let the Congress deal with them separately, and we should get the appropriations bill done. That is what we should be doing right now. We should not be having a hearing on this issue. We should be getting our work done in the Appropriations Committee.

But since you insist upon having such a hearing, it seems to me that you could have at least let us present the full spectrum of perspectives on this issue and not limit the speakers only to those in the law enforcement community. No one with medical knowledge or scientific knowledge or the other perspectives that are necessary to

get a full hearing on this issue has been invited or allowed to testify.

I had a number of medical experts and patients who could have presented different perspectives on this issue. We always hear from the people most directly affected, tried to get them to be able to testify. They were not allowed. You said, only law enforcement personnel. We have a law enforcement personnel who also happens to be a patient, and in fact the last panel will be someone who legally uses marijuana for medicinal purposes and will explain how California implements the medicinal use of marijuana in a legal fashion.

Mr. ISTOOK. I would like to ask all of our guests to take a seat, please. Thank you.

Mr. MORAN. Thank you, Mr. Chairman.

Now, Mr. Chairman, you made mention of the fact that other States have passed referenda which allow the medicinal use of marijuana. What you did not make clear was the inconsistency with regard to the way that we treated the citizens of the District of Columbia and the citizens in Alaska, Arizona, California, Oregon, Nevada and Washington State. Every one of those States has passed a referenda which made it legal to be able to prescribe and use marijuana for medicinal purposes.

No Member of Congress got up on the floor and attempted to specifically preclude those States from implementing this law. They left it to their State legislatures.

In the District of Columbia we have the District of Columbia City Council. They have the responsibility to determine how to implement this referendum. They are lawfully elected by the citizens who voted them in, and they should have this responsibility. So we have not treated D.C. like we have treated every other State, and there were Members in every single one of those States who voted to treat D.C. differently than their own constituents even though the majority in all those six States passed that ballot initiative. They respected it for their own constituents, and they don't respect the citizens of the District of Columbia to be able to have their legislature act on the same measures that their State legislatures are able to do.

I think the citizens of the District of Columbia should be accorded equal respect and legislative treatment. If they were, this would not be before us today. I know there are deficiencies, with the referendum but the District of Columbia City Council should be granted the ability to cure those deficiencies, as every other State legislature has been granted that opportunity.

This is a public health issue at least as much as a law enforcement issue. The nonpartisan, nonpolitical Institute of Medicine report, "Marijuana in Medicine," issued the report commissioned by the White House Office of National Drug Control Policy, and it acknowledged substantial consensus among experts on the relative disciplines on the scientific evidence about the potential medical uses of marijuana. Those medical and scientific experts should be testifying today.

If marijuana can relieve the pain and suffering of seriously ill patients but must await the delivery of an alternative delivery system, what is the appropriate humane response we should provide

to the thousands of terminally ill cancer and HIV/AIDS patients who have failed to respond to the regime of legally prescribed substances, but believe, and with some credibility, that they could find relief from pain, nausea and the lack of appetite for the sustenance they need from THC Marinol or marijuana?

Prestigious groups such as the National Academy of Science, the Institute of Medicine, the Federation of American Scientists, the Australian Commonwealth Department of Human Services and Health, the American Public Health Association and the British Medical Association as well as the New England Journal of Medicine have publicly endorsed the limited but legal medical use of marijuana. More than 30 medical groups have endorsed prescriptive access to marijuana under a physician's supervision. Several medical groups, including the American Medical Association, have endorsed the physician's right to recommend or discuss marijuana therapy with the patient. Many medical groups, including the American Cancer Society, the American Medical Association and others, have endorsed the need for additional medical marijuana research.

Several published studies have found smoking marijuana used for cancer therapy, glaucoma and controlling muscle spasms in patients suffering from multiple sclerosis, epilepsy, spinal cord injury, paraplegia and quadriplegia, and I have got lots of lists that we can put in the record for that.

Six State research projects, according to FDA-approved protocol involving at least a thousand patients, found smoking marijuana effective as an anti-emetic for cancer patients, more effective than synthetic THC, which is sold as Marinol. The states conducting the research were New York, California, Georgia, New Mexico, Michigan and Tennessee, all fine States; they all did it properly.

Tens of thousands of cancer and AIDS patients already use medical marijuana, and they report it as effective in reducing the nausea and vomiting associated with cancer and AIDS treatment and effective in helping individuals suffering from what is called AIDS wasting syndrome, where you waste away because you have no appetite. They can regain their appetite and gain weight by smoking marijuana.

Those are the facts. I am not inventing this stuff. The views of the medical community and the views of patients who lack alternative medications to their life-threatening illnesses should also be the part of this hearing. To state public policy without weighing these perspectives disrespects our democratic process and may reflect the viewpoint that is behind where the majority of the public is on this subject and where the public has spoken in at least seven States where it has been put to the vote.

The citizens of those States have their rights respected by their Members of Congress. The citizens of the District have not had their rights respected equally by the Members of this Congress nor of this Committee, and that is why I think that the best thing we could do is to leave it to the citizens and the District of Columbia City Council, get this off the appropriations bill, pass the appropriations bill and stop these kinds of hearings that don't belong here by people who don't have a whole lot to add on the subject

when we have so many studies by scientific experts that seem to be fairly irrefutable.

Mr. Chairman, I am not glad you are having the hearing, but I appreciate what you did in terms of adequately funding D.C. I hope that this does not get as rancorous as it has the potential to, but we are going to stand by our guns, and I think the more truthful information comes out the more that we are going to find that D.C.'s voters deserve respect and, in fact, knew what they were doing when they passed that referendum.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Mr. Moran. I agree with you that we should have uniform enforcement of the drug laws across the country, and I understand that is exactly what the Justice Department is seeking to do, despite what referenda have been adopted.

Do we have any other opening statements?

Mr. Cunningham.

OPENING REMARKS OF CONGRESSMAN CUNNINGHAM

Mr. CUNNINGHAM. I will be very succinct.

I think for most of us it is not the question of medical marijuana. California was brought up. Time after time and center after center has had to be closed because of the violations of the intent of medical marijuana. The chairman has mentioned that the D.C. initiative itself on legalization of marijuana has some liberal interpretations of who can use it and how it will be used, who can grow it and how it will be used.

My own son was caught selling marijuana. He is in the jail system right now. It corrupts. My son's idea when he first went into this thing, oh, dad, we are just selling something like it was used back during the time when they were bootlegging liquor.

It is not. It is against the law.

I have had group after group come into my office wanting to legalize marijuana itself. My concern is that the legalization of this, and this is just the first step, especially in the language of the District's proposition as it was stated at first, is wrong, definitely wrong, because it doesn't limit it just to medical marijuana.

I think if I had the wife, the son, the daughter or something that was suffering from AIDS or cancer or something and I could bring relief to that person and I had the doctor saying this will provide relief to that individual, I wouldn't object to that. But I have seen, in the past, groups use this as a stepping stone for saving their stash, for legalizing marijuana, and I think that is the real objection.

I know in my own family it has caused a lot of heartache. And if you look at every one of our schools—I have private schools where girls have come to me, Duke, you ought to see the bathrooms, they are smoking marijuana in the bathrooms. It is the drug.

If you look at the alteration of chromosomes, how it effects—I think it is definitely wrong for the President to say, I would inhale if I could. That is the wrong message to send out.

On the one hand, my colleagues worked with the trial lawyers to eliminate smoking, but the liberalization of the laws on marijuana, I would say to my friend, Jim Moran, and I am not just say-

ing that, it is from the heart, I would disagree. There is the difference between democratic and Democrat, but it is not necessarily synonymous, and it isn't with our side.

Mr. MORAN. Referring to democratic with the small D.

Mr. CUNNINGHAM. And I would also tell my friend with the objection of law enforcement, every single day our law enforcement agencies live and die with drugs. When I was the commanding officer of a fighter squadron in the Navy, the majority of trouble that our sailors got into was drug related. Whether it was tardiness, indebtedness, family problems with the home, it was drug related; and most of those were with marijuana. The effects of this drug are overwhelming.

I support, which goes against some of my colleagues, the right for D.C. to know the outcome of the referendum. I think that is their first amendment right. I strongly disagree with the first step approach of legalizing marijuana. We don't take this lightly. I don't take home rule lightly. But I have a very strong disagreement with legalization of marijuana or any other drugs, and I support the law enforcement agencies of this country in condemning it and saying it is wrong. I will fight tooth, hook and nail against it.

I yield back the balance of my time.

Mr. ISTOOK. Thank you, Mr. Cunningham.

Mr. Tiahrt.

OPENING REMARKS OF CONGRESSMAN TIAHRT

Mr. TIAHRT. I want to make a couple of observations.

One of the concerns is that we are overriding home rule. There is a little town in Kansas called Pretty Prairie not far from where I live. It is a town of about 1,000 people, and the EPA said their water delivery system is not up to standards and they had to build a system of $2.5 million or $3 million dollars. If you take $3 million and divide it by 1,000, it is a pretty big burden on every person in that city. And the majority decided that they could not provide that alternate delivery system for their water, but yet the EPA did not yield to the wishes of the populous of Pretty Prairie. They imposed their values on them. In their best judgment they thought that the negative outweighed the positive effects for having a system like that.

If you look at our society, sometimes we have to weigh positive versus a negative, and here we have some people who believe that there is a positive and some believe there is a negative effect of marijuana.

I was just reading what was put forward to the District's voters in Initiative 59. It says basically that the District law prohibiting possession of marijuana or cultivating marijuana in Section 5(a), the law shall not apply to medical patients or primary caregivers, and it is based on the oral or written recommendation of the physician.

Now, I have some concern over that, because there are some physicians who can make oral recommendations or written recommendations as a way of generating revenue. I know that we had a problem with a local physician in Kansas. Somebody perfectly healthy would go in and before they got done they had 18 treatments, and that was kind of scandalous, and there were some

changes made because of that. So we have a verbal recommendation by some physicians.

Then it defines what a medical patient's primary caregiver is. Medical patients may designate or appoint a licensed health care provider, which is understandable, or a sibling or parent or child or other close relative or domestic partner or a caseworker or best friend. Well, you can go down Independence Avenue and stop the first car and say, you are my primary caregiver, and they would have license to avoid all marijuana laws in the District of Columbia.

So I think the District's initiative is loosely written. I understand very well why the chief of police, Charles Ramsey, has a problem with this and he opposes legalization of medical marijuana. I think those are the scales that are being weighed here today. When you consider the loss of productivity and the loss of a sense of purpose and the loss of time that people have when they get caught up in this cycle of drug abuse, the negative effects outweigh the positive effects.

I thank you for indulging me, Mr. Chairman.

Mr. ISTOOK. Thank you.

WITNESSES SWORN

On the first panel we have the Delegate from the District of Columbia, Ms. Eleanor Holmes Norton. We have Congressman Bob Barr from the 7th District of Georgia, and we have the Assistant Chief of Police, Brian Jordan. I spoke with Police Chief Ramsey last week, and he was unable to be here personally, and he asked Assistant Chief Jordan to be here.

I would like to ask, whether it be on the first panel or the later panel, that all the witnesses we are to hear from today stand to be sworn. I certainly would not require a fellow Member of Congress to be sworn.

May I ask the other witnesses, if you would stand collectively and let me administer the oath at this time.

[Witnesses sworn.]

Mr. ISTOOK. We very much appreciate all of you coming this morning. First, we would like to recognize Ms. Eleanor Holmes Norton, the Delegate for the District of Columbia.

OPENING STATEMENT OF DELEGATE NORTON

Ms. NORTON. Thank you, Mr. Chairman.

Initiative 59, the District's medical marijuana initiative, is probably before the District of Columbia authorizing subcommittee whenever the resolution of disapproval is introduced. Both the resolution and the bill have been introduced. The old District committee never failed to take up such, the disapproval resolution or bill, when the Democrats controlled the House; and the D.C. Subcommittee today can hardly be expected to shirk that particular duty. It is, therefore, difficult to find a legitimate reason for a hearing by an appropriations subcommittee on this issue of law that has been referred to the D.C. Subcommittee.

I fully appreciate the difficulty that this issue presents for Members. However you choose to characterize the issue, this is still America and what is at stake here are different visions of democ-

racy and home rule. Fortunately, for most Members of Congress, this is a Federal Republic and the people members represent are not subjected to defamation and vilification when they pass laws with which others disagree. Who is legalizing drugs in the Nation's capital and using that as a step stone for the rest of the country? The President? Who with his Attorney General is on record opposing medical marijuana and is bringing prosecution in States with laws similar to Initiative 59 even when medical necessity is offered as a defense?

In light of the President's long-stated opposition to medical marijuana and of this administration's prosecutorial policy, we are left necessarily to conclude that the President's veto must have been on principled home rule grounds. Does legalization of drugs in the Nation's Capital refer to Mayor Anthony Williams who supported Initiative 59 on the merits? Can the ghost of Marion Barry be credibly raised when Marion Barry is no longer raised and the city's new Mayor has just initiated a comprehensive attack on drug markets? How about Council Chair Linda Cropp and the City Council, all of whom have supported the decision of the people on Initiative 59? Do they have a pro-drug agenda?

The inflammatory accusation that this initiative is about the legalization of drugs comes down to the people of the District of Columbia because they and they alone initiated the issue, and almost 70 percent of them voted for Initiative 59 in every ward and every precinct of the city, Republican and Democratic, from the richest to the poorest.

They, not the President nor the District's elected officials, raised this issue and voted for it. Whether or not their decision was wise is a legitimate question. Democracy, however, is not conditioned on the wisdom of the electorate here any more than in the States that have passed similar initiatives.

I refuse to sit by while the people of the District are slurred or marginalized as druggies or soft on drugs any more than the Members of this body would allow that implication to be raised for the residents of Alaska, Arizona, California, Nevada, Oregon or Washington, the six States which have passed similar initiatives.

My constituents are no different from yours. They are in the American mainstream where, according to a recent Gallup Poll, 69 percent oppose the legalization of marijuana for general use but by a margin of 3 to 1 support making marijuana available to doctors to prescribe to reduce pain and suffering.

However, I do not come to this hearing to make a case for medical marijuana. I come only to say that the half million people who live in the District insist that they be respected no less than Americans who live in the six other jurisdictions that have passed similar initiatives.

We will not accept second-class citizenship without a fight any more than Californians or Alaskans would. Nor is Congress left as its only alternative summarily nullifying the will of the majority of the District's people. The D.C. Council in the exercise of its home rule jurisdiction has the full power to review initiatives, and the Council has not hesitated to do so in the past. Initiatives, after all, are drawn by laymen, not legislators. Initiative 59 as worded is subject to legitimate criticism. In a democracy there can be no jus-

tification for changing a provision passed by a large majority of the people unless those changes are made by those who the people have elected and to whom they are fully accountable.

The residents of the District of Columbia do not vote in this body, and the vote in the Committee of the Whole I won for them in 1993 was summarily taken from them, although they are fully taxed by the Federal Government as if they had full voting rights. The Council deserves the right to consider this measure. I have spoken with the Chair of the Council, and she has indicated that the Council is fully prepared to do so.

Mischaracterizing as drug induced the veto of a President who has appointed the toughest drug czar in history, and himself has long opposed medical marijuana, is not credible to the American people, the majority of whom are to the left of the President on prescribed marijuana. The people I represent resent the conversion of their self-governing rights into a drug issue.

This bill contains matters every bit as objectionable as the medical marijuana attachment, none more so than the refusal to allow our D.C. Corporation counsel to review the court papers in the voting rights lawsuit being paid for entirely by a private law firm. The bill has more controversial attachments and other home rule intrusions than any bill that has come to the President's desk in the entire quarter of a century of home rule.

The bill is replete with issues that residents strongly oppose or that lack the District's concurrence: The placement of cell towers in Rock Creek Park, which cut off a hearing in progress; the return of victims' assistance money to the Federal treasury; no local funds for life-saving needle exchange programs, for abortions for poor women, and for gay and straight domestic partners who desire to buy into an existing D.C. Health care plan; nullification of Council actions on leases and on excess property; movement of money from D.C. Priorities. And these are not all of the attachments that deserve mention.

This subcommittee will always find me ready to engage in problem solving. You will never find me engaging in mere protest of your actions or views, even when I profoundly disagree. My job as the only Member representing the District of Columbia in this body is to find solutions. I have not ceased to look for solutions throughout this process, even after the last vote.

The people I represent—and I know we do not live in a perfect world, especially when it comes to the Congress. However, we will never willingly give up our rights. We will never stop fighting for every single right that you and those you represent claim every day. We are Americans, and if we are to be treated as one bit less equal than you and the Americans you represent, it will never be first without civil dialogue, and if that does not work, never, ever, without a fight.

Thank you, Mr. Chairman.

Mr. ISTOOK. Thank you, Ms. Norton.

And I certainly want to assure you and I frankly believe most Members of Congress, certainly the ones that I work with, feel this way. That what we want is uniformity, whether it be in the District of Columbia, California, Texas, Arkansas, you name it, regarding the drug laws at issue. I think that is actually the objective.

I would mention to our witnesses, I realize we haven't really paid attention to the timing before and I didn't want to interrupt Ms. Norton. We do have the light system that blinks red at 5 minutes. I would appreciate people trying to respect that.

Mr. ISTOOK. Congressman Barr.

OPENING STATEMENT OF CONGRESSMAN BOB BARR

Mr. BARR. Thank you, Mr. Chairman, Mr. Moran and the subcommittee. I appreciate the opportunity to be here today.

My colleague, Ms. Eleanor Holmes Norton, certainly is correct when she indicates, she states the obvious, the residents of the District of Columbia are Americans. We are all proud of that. We are very proud of our Nation's capital. But that also carries with it perhaps burdens, and that is our Constitution. They are subject to the Constitution of the United States and to the laws of the United States, including Title 21 in the Schedule of Controlled Substances.

Mr. Chairman, I suppose our Nation's Capital sometimes is nothing if not a city of contradictions, and if it weren't for these matters being very serious, it would be comical. Within 1 week we have the Attorney General launching a massive multi-million dollar lawsuit against the use of tobacco, and the President expressly in his veto statement—he didn't ignore this issue, he addressed it—citing as one of the reasons for his veto of the D.C. Appropriations bill for fiscal year 2000 the provision in there with which he objected, that is the legalization of marijuana provision.

We have also the President making those statements and making it much more difficult for our law enforcement officials at all levels of government to fight the war against mind-altering drugs. And we have the Justice Department representatives doing their best to indicate that it remains the policy of the Justice Department to oppose legalization efforts and to continue to do everything that they can, as the head of the Office of National Drug Control Policy has stated also, to continue to fight against the use of marijuana and against the legalization thereof.

So you have these contradictions, and I appreciate you, Mr. Chairman, focusing on this, as you did during the debate and leading up to the debate on the floor last month with regard to the D.C. Appropriations bill and the amendment that I proposed therein.

Also, it is rather interesting, Mr. Chairman, the brouhaha in the press about the issue. Many of the national media take great exception, write editorials about these nasty folks in the Congress, probably but not necessarily including myself in their eyes, seeking to assert the primacy of Federal drug laws in the U.S. Constitution. One might ask them whether or not, if we were here today debating whether or not Congress should overturn a law or a regulation that the District of Columbia passed imposing censorship on the press, whether they would be labeling us with quite the negative terms that they are. I think not.

The fact of the matter is, as Mr. Moran also stated, we have to deal with facts, and facts are stubborn things. But thank goodness the fact of the Constitution is a stubborn thing, and thank goodness we have laws applicable across the board across the country that say that mind-altering drugs, which includes marijuana as a

controlled substance under Schedule I of the Controlled Substances Act in Title 21, that we do have those laws.

It would send, Mr. Chairman, and has sent a terrible message to the youth of this country not only with the recent vote by the residents of the District of Columbia to legalize marijuana—and that is what this is, make no mistake about it. It is so full of loopholes it makes it patently obvious that it is not simply concerned about medical use.

You have already indicated and other Members have already indicated the tremendous loopholes in here for people other than doctors to become involved, not even requiring a written prescription, allowing for outside groups to start doing this. And then, to add insult to injury, the initiative provides that Congress needs to take steps to start to enact a law that would make marijuana available to those that might need it.

We need to stand firm, Mr. Chairman, against the use of mind-altering drugs, and that includes the legalization of them. We need to stand firm with law enforcement officials and parents across this country that know that marijuana is a mind-altering drug, and we ought to resist efforts to have this cast as a home rule issue. It is not. We ought to resist efforts to have this cast as a health care issue. It is not. It is a law enforcement issue. And I applaud you, Mr. Chairman, for that and urge you to stand firm.

I would ask that my statement be included in the record in its entirety as if read.

Mr. ISTOOK. Thank you, Mr. Barr. Your full statement will be included in the record for the hearing.

PREPARED STATEMENT OF CONGRESSMAN BOB BARR

[The prepared statement of Congressman Bob Barr follows:]

Remarks by U.S. Representative Bob Barr (GA-7)
Before the Subcommittee on D.C. Appropriations
Legalizing Drugs in Washington, D.C.
Wednesday, September 29, 1999

Announcing his veto of the District of Columbia Appropriations Act, President Clinton was careful to avoid talking about the real reasons for his decision. Despite the broad and ambiguous sound bites the President offered us about the virtues of popular democracy, the fact remains that two of the three provisions he found so objectionable were aimed at blocking efforts to legalize mind-altering drugs. By vetoing a spending bill whose financial provisions he supported, solely in order to give drugs and needles to addicts, President Clinton has further solidified his status as the most pro-drug President in American history.

The first provision he objected to blocked the use of federal funds to give free needles to drug addicts. The second provision, which I offered on the House floor, and which was adopted by voice vote, would have blocked the use of any federal funds to implement any District law legalizing illegal drugs.

According to top medical experts, the argument that smoked marijuana has medicinal value is the worst kind of quackery. But don't take my word for it. Ask the President's own Department of Justice, which points out on *its* website that, "there are over 10,000 scientific studies that prove marijuana is a harmful addictive drug. There is not one reliable study that demonstrates marijuana has any medical value." If it is ever conclusively demonstrated that marijuana is healthy, we have a drug approval process run by the FDA and others that is capable of allowing its prescription.

Whether President Clinton likes it or not, a seriously flawed voter initiative is not the appropriate way to make this decision. Under the approach the President apparently advocates, we may as well shut down the FDA, stop requiring clinical trials of drugs, and simply stock pharmacy shelves by voter initiative. Who knows, if we do that, maybe we can even have medicinal heroin.

It is ironic that the President moved to legalize marijuana at the same time his Department of Justice began a legally-absurd witch hunt against tobacco companies. Marijuana smoke contains 30 times as many carcinogens as cigarettes. That's right. President Clinton is going to extraordinary lengths to destroy the tobacco industry, while at the same time moving to make a substance that is 30 times deadlier widely available in our nation's capital.

This is the public policy equivalent of embarking on a crusade to legalize DDT and ban flyswatters. The blatant hypocrisy of treating these two substance in such vastly different ways is shocking. The fact that very few people even notice the hypocrisy is even more disturbing.

Despite the lofty rhetoric we hear about home rule, Washington, D.C. is a unique place. It is the seat of the federal government, and Congress has clear, absolute authority under our Constitution, to legislate all matters involving the city; including drug laws. Congress acts as a state legislature in dealing with the District. Presume a local government decided to allow the use of illegal drugs in flagrant violation of federal and state law. It is unlikely a firestorm of protest would follow state efforts to overturn the local law, and bring the local jurisdiction back in conformity with state drug laws.

Why then, should the congressional response to a similar move by the District of Columbia be treated any differently? What if the subject were something different from marijuana legalization; an issue which the mainstream press clearly and vocally supported? If the voters of Washington passed an initiative allowing for press censorship, would we be sitting here today discussing whether or not to overturn it?

Forget for a moment the fact that Washington's initiative was passed in a legally questionable manner, and think about what it would do in practice. Not only does the initiative flagrantly violate federal law, it goes so far as to allow addicts to get marijuana without even obtaining a doctor's prescription. "Best friends" can grow and provide the marijuana to the user. In some cases, it even requires federal taxpayers to purchase the marijuana. How many of us want to go home to our constituents, and tell them their children will have to go without new clothes or a vacation so the federal government can keep more of their tax dollars in order to pay for free marijuana for Washington's addicts?

Of course, this veto also fits nicely with the White House's obvious strategy of obstructing the appropriations process by vetoing as many bills as possible. Clearly, the President wants to begin next year's elections by blaming Congress for a government shutdown that is actually orchestrated at 1600 Pennsylvania Avenue. In fact, this may be the most likely reason for the President's sudden and unprecedented interest in local politics in Washington. No one should forget the President has signed bills containing similar social riders in the past. For example, last year's D.C. Appropriations Act -- which the President signed into law -- contained an amendment blocking the marijuana legalization initiative.

The District of Columbia government has made a mistake in choosing to fight a battle with Congress over this issue. Earlier this year, it seemed the District was making great strides

in working cooperatively with Congress. However, the demagoguery surrounding this bill provides proof the District is still willing to put partisan politics ahead of good government.

I urge the Subcommittee to hold the line on the Barr amendment. Make no mistake about it, legalizing drugs in our nation's capital would send a disastrous message to America's kids that drugs are good for them.

As the President's own DEA Deputy Administrator testified this year, "medical marijuana is merely the first tactical maneuver in an overall strategy that will lead to the eventual legalization of all drugs." He's right. The police know he's right. America's parents know he's right. Washington's mayor and the President don't. Let's pass legislation reminding the district of Columbia it remains subject to congressional legislative control, and that, unless it can amend our Constitution, it remains subject to federal anti-drug laws.

Mr. ISTOOK. Our next witness is Assistant Chief Brian Jordan of the Metropolitan Police Department. Chief Jordan, we are very appreciative of your being here. We realize the Department is kind of in a hot seat over this, and we look forward to hearing from you.

OPENING STATEMENT OF ASSISTANT POLICE CHIEF BRIAN JORDAN

Chief JORDAN. Good afternoon, Chairman Istook, distinguished members of the subcommittee and guests. I appreciate the opportunity to appear before you today.

My name is Brian Jordan, and I am the Assistant Chief in charge of the Metropolitan Police Department's Special Services Command. In this capacity, I manage the Major Narcotics Unit and other investigatory units of the Department.

I am representing Police Chief Charles Ramsey, who is attending the FBI's National Executive Institute.

The Metropolitan Police Department opposes the legalization of marijuana. Marijuana remains the illegal drug of choice in the Nation's Capital, and crime and violence related to the illegal marijuana trafficking and abuse are widespread in many of our communities.

Initiative 59 proposes to legalize the use of marijuana strictly for medicinal purposes. The initiative would require that several steps be taken by the Director of Public Health, the D.C. Council and others before the proposal would become operational. These steps include establishing procedures for determining who would be qualified to obtain and use marijuana for medicinal purposes and how distribution would take place.

Until these procedures have been finalized, it would be difficult for me to speculate on the possible impact that the medical marijuana initiative might have on law enforcement and public safety in the District of Columbia. The Metropolitan Police Department will continue to monitor this matter very closely, with particular attention to any potential impact on public safety in the District.

Thank you very much.

PREPARED STATEMENT OF ASSISTANT POLICE CHIEF, BRIAN JORDAN

[The prepared statement of Assistant Chief Brian Jordan follows:]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

Statement of Brian Jordan
Assistant Chief, Special Services Branch
Metropolitan Police Department

Before the U.S. House of Representations
Committee on Appropriations
Subcommittee on District of Columbia Operations
September 29, 1999

Chairman Istook, distinguished members of the Subcommittee and guests — I appreciate the opportunity to appear before you today. My name is Brian Jordan, and I am the Assistant Chief in charge of the Metropolitan Police Department's Special Services Command. In this capacity, I manage the Major Narcotics Unit and other investigatory units of the Department.

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P.O. Box 1606, Washington, D.C. 20013-1606

Until these procedures have been finalized, it would be difficult for me to speculate on the possible impact the medical marijuana initiative might have on law enforcement and public safety in the District of Columbia.

The Metropolitan Police Department will continue to monitor this matter very closely, with particular attention to any potential impact on public safety in the District.

Thank you.

Mr. ISTOOK. Thank you very much, Chief Jordan.

POLICE CHIEFS OF MAJOR CITIES OPPOSE LEGALIZING MARIJUANA

Chief Jordan, as you noted, Chief Ramsey was unable to be here. I will place in the record of the hearing a copy of the press release that Chief Ramsey released last October prior to the referendum vote.

[The press release referred to follows:]

METROPOLITAN POLICE DEPARTMENT

Charles H. Ramsey
Chief of Police

MPD NEWS RELEASE

FOR IMMEDIATE RELEASE: **CONTACT: Public Information Office: (202) 727-4383**

October 1[illegible] 1998
Contact: Kevin Morison, 301-363-6781

RAMSEY, MAJOR CITY CHIEFS OPPOSE MEDICAL LEGALIZATION OF MARIJUANA
Chiefs say ballot initiatives in D.C., various states would threaten public health and public safety

Police Chief Charles H. Ramsey was joined today by the nation's other major city police chiefs in opposing ballot initiatives next month in the District of Columbia and several states that would legalize the use of marijuana for supposedly medicinal purposes.

Meeting in Salt Lake City, Utah, the Major Cities Chiefs (MCC) association voted overwhelmingly to oppose medical marijuana initiatives as risky public policy that threatens both public health and public safety. The MCC includes police executives from the 52 largest policing jurisdictions in the United States and Canada. Prince George's County Police Chief John Farrell joined Ramsey and the other MCC members in opposing the legalization proposals that will appear on ballots November 3 in Washington, D.C., as well as Arizona, Colorado and Nevada.

"Decisions about medicine in our country should be based on science, not popular votes," Ramsey said. "Ballot initiative #59 in the District of Columbia, like the state initiatives, circumvents the rigorous research, testing and approval process that the Food and Drug Administration has established to ensure the health and safety of the American public. The fact is that neither the FDA nor any other objective scientific or medical organization has demonstrated that smoking marijuana is a safe and effective medicine," he said.

Ramsey said that in addition to threatening public health, medical marijuana would also undermine public safety. "Legalized marijuana under the guise of medicine is a sure-fire prescription for more marijuana on the streets of D.C., more trafficking and abuse, and more drug-related crime and violence in our neighborhoods," he said.

Ramsey said the safeguards against fraud and abuse in Ballot Initiative #59 are so lax as to render current marijuana laws in the District all but unenforceable. He said the proposal would require someone to have only a doctor's "oral recommendation" to use marijuana, not a prescription or other written documentation. It would also allow District residents to form not-for-profit corporations for the purpose of growing and distributing marijuana, and it would place no limits on the quantity or potency of marijuana that could be grown, sold or possessed.

Ramsey, Chiefs Oppose Medical Marijuana Legalization
AD 1

"This measure would provide adequate cover – in the name of medicine – for offenders whose real purpose is to manufacture, distribute and abuse marijuana," Ramsey said. "Legalization would hamstring the efforts of police and communities to rid our neighborhoods of this dangerous drug and the serious crime problems associated with it," he added.

Farrell warned that legalizing marijuana in the District of Columbia would have dangerous consequences for surrounding jurisdictions as well. "What affects one jurisdiction affects the greater metropolitan area. The negative impacts of more marijuana and more marijuana-related crime would be felt not only in Washington, D.C., but also in Prince George's County and other communities," Farrell said.

Ramsey, Farrell and the other chiefs also cautioned that proposals such as Ballot Initiative #59 send "absolutely the wrong message to our young people, at absolutely the wrong time." Legalization of marijuana for supposedly medical purposes will only add to the conflicting messages that young people already receive about illegal drugs, they said. "At a time when high school drug use in on the rise in our country, and teen's attitudes toward drugs are becoming more lax, our nation must be unequivocal in our message about illegal marijuana use: this is a dangerous substance that threatens the health and safety of our communities," the MCC said in a prepared statement.

Ramsey added, "As well intentioned as Ballot Initiative #59 may first appear – to ease the suffering of people with serious illnesses – a closer look reveals that this initiative would be a dangerous step backwards in the fight against crime in our Nation's Capital."

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Mr. STOOK. We will follow the 5-minute rule regarding questions.

D.C. POLICE DEPARTMENT STILL OPPOSES LEGALIZING MARIJUANA

You are probably familiar with the press release. It has a statement from Chief Ramsey and the Prince George's County Police Chief John Farrell to oppose not only the proposal in D.C., but also those that were pending at the time in Arizona, Colorado and Nevada.

I did want to ask you if you agree, and as Chief Ramsey said in that release, "Legalized marijuana under the guise of medicine is a sure-fire prescription for more marijuana on the streets of D.C. and more trafficking and abuse and more drug-related crime and violence in our neighborhoods." that is his quote. Would you agree that is still the position of the Chief and yourself and of the Department?

Chief JORDAN. I would agree with that statement.

Mr. ISTOOK. Certainly.

It also said in the release, and I quote from it, "Ramsey said the safeguards against fraud and abuse in ballot Initiative 59 are so lax as to render current marijuana laws in the District all but unenforceable," and I presume that is what you were speaking about when you said they have to try to establish some sort of procedures because it certainly is not in the initiative itself.

I will read from his statement again, "This measure would provide adequate cover in the name of medicine for offenders whose real purpose is to manufacture, distribute and abuse marijuana. Legalization would hamstring the efforts of police and communities to rid our neighborhoods of this dangerous drug and the serious crime problems associated with it."

Chief Farrell warns that legalizing marijuana in D.C. would have a detrimental impact on the surrounding areas as well.

POLICE WOULD HAVE DIFFICULTY ENFORCING MARIJUANA LAWS

Chief Jordan, as a police officer, especially on something that relates to drugs, you not only have authority to look at violations of local law, but there may be a violation of Federal law in any sort of drug investigation or arrest. Would the policy of the D.C. Police, if you know, be to continue to be agents assisting in the enforcement of the Federal anti-drug laws as well as those that are particular to the District?

Chief JORDAN. I think our role as a Police Department would be to enforce the laws that are currently on the books. We would have to simply investigate the cases and be guided by the laws and let the case follow the legal mechanisms that are there.

Mr. ISTOOK. Certainly. So although it would complicate, obviously, your work, it is hard to say what you would do about the conflict between the Federal law that might say one thing and a local law that tried to say a different thing?

Chief JORDAN. That is correct.

Mr. ISTOOK. Actually, Chief Jordan, let me yield back any further time. I certainly appreciate your coming forward. I know that this is a very difficult circumstance for D.C. police officers.

I notice the Prince George's County patch, and I don't know if that was Chief Farrell. Oh, it is somebody on his behalf. I certainly

appreciate your being here, officer. We appreciate the statements that he issued on this previously and the efforts of the P.G. Police Department.

I would yield back the balance of my time to Mr. Moran.

PROCESS FOR INITIATIVE TO BECOME LAW

Mr. MORAN. Thank you very much, Mr. Chairman.

Ms. Norton, it seems to me that once the Congress passes a law—let's say this D.C. Appropriations bill were to become law or let's say an initiative is passed by the D.C. citizens. There is a long complex process that it has to go through. If, for example, the referendum that we are so concerned about, Initiative 59, was to have become law, it first goes to the chief financial officer, right? Then it goes to the Financial Control Board?

Ms. NORTON. Yes.

Mr. MORAN. And then it goes to the D.C. City Council, and then I think it has to come to the U.S. Congress, and the Congress even has the power to reject that. Is that true?

Ms. NORTON. These are all possible steps. The Council could change the matter before or after it came over here. The Congress could decide that it didn't accept that.

But in the past what the Council has done after an initiative is passed is to put it under review. Because these initiatives are loosely worded. They are drawn by lay people. They don't go to lawyers to find out what to do. And the ballot system is very loose because it is a democratic system.

Mr. MORAN. So the Corporation Counsel would look at it and your Chief Financial Officer, the Control Board and the City Council.

Let me ask my friend, Mr. Barr, a question. In light of the relatively long and arduous process that an initiative by D.C. voters goes through and then finally, ultimately comes to the Congress which has the power to reject it, why was it necessary to disapprove it before the D.C. Council even gets it?

I also want you to address specifically why it is different when California, Nevada, Arizona, Washington State, all of those other States, pass similar referenda that then had to go to their State legislatures, just as this would have had to gone to D.C. Council, why are we treating D.C. differently and why is it necessary to preclude them from even considering whether this initiative is proper or how it might be implemented?

CONSTITUTIONAL POWER OF CONGRESS OVER D.C.

Mr. BARR. I think the difference is a very profound one, and that is Article 1, Section 8, which provides essentially plenary authority for the Congress of the United States to legislate on all matters within the District of Columbia, that is not a power that Congress has with regard to California, Arizona, Washington or any other State.

With regard to why at least I believed it was necessary to address this matter prior to the final, as you say, tortuous action of the D.C. Council, because I believe that simply because one level of government provides a tortuous and very complicated progress does not mean that Congress has to.

The issue has been joined, and that is very, very clear. And the issue being joined, that is, the residents of the District of Columbia basically thumbing their nose at Federal drug laws, "we want to legalize marijuana in the District of Columbia", I think it is very appropriate and timely for Congress, if Congress reflected the will of the majority of the people of this country, to step in and say, it is the will of the Congress reflecting the will of the people of this country that in our Nation's Capital, which occupies a unique constitutional position and for which Congress has unique authority, to step in and say, no, the District of Columbia shall remain subject to Federal drug laws as our Nation's Capital.

Mr. MORAN. What you are basically saying is that the D.C. Council should not have the right to even consider whether or not to implement this referendum? Ultimately, if all of these other bodies approved it, you are circumventing that process and saying we don't trust—it appears that you are saying, D.C. Council, it doesn't really matter what you think, we are going to preclude you from even considering how the law should be implemented.

It doesn't seem as though if Georgia were to pass such an initiative that we would take the same actions. You are saying that D.C. is special, and basically we get into home rule, and you begin your statement saying this is all about home rule. I think basically it is because that is the only reason D.C. citizens are being treated differently and why we take objection to that treatment.

ILLEGAL DRUGS PRESCRIBED IN DISTRICT

Let me ask assistant Chief Jordan quickly, there is a lot of illegal drugs that are prescribed in the District of Columbia—Percodan, Percocet, Demerol, Dexedrine, Vicodin, Valium, Librium, and you find those——

Chief JORDAN. Yes.

Mr. MORAN [continuing]. Out on the street illegally used. But if you find that they are prescribed by doctors, there is a fairly simple method of determining that, isn't there, whether a doctor prescribed them, and if you find that somebody is possessing that, why would it—why would you not act in the same manner that you act with these other legal drugs which are legal only if used for medicinal uses and only if prescribed by a doctor? What is the difference vis-a-vis marijuana than these other legal drugs only when prescribed?

Chief JORDAN. As I referred to in my testimony, we would have to see what rules governed that legalization before we could determine the impact that would come from it.

So, like many of the drugs that you named, clearly there are certain rules that outline how we would enforce it. And, again, we would have to be guided by those rules to determine whether it was a significant change in how we operate or impact what we do.

Mr. MORAN. But you could conceivably use the same approach as you do now for legal—drugs that are legal when medicinally used.

I am out of time. Thank you.

Mr. ISTOOK. Thank you.

I don't want to get into a second round, but let me do a little followup.

REQUIREMENT FOR WRITTEN PRESCRIPTIONS ABSENT IN MARIJUANA INITIATIVE

Chief Jordan, this is at the heart of the reason why the law on prescribing drugs that are controlled dangerous substances requires written prescriptions and copies of those prescriptions and imposes recordkeeping requirements. Is that basically what we are talking about here? Those recordkeeping requirements and the requirements for written prescriptions which are absent in this initiative, both for the patient and certainly for their friends?

Chief JORDAN. They do provide evidentiary value when we are trying to prosecute.

Mr. ISTOOK. And the law requires a written record and a trail that is available to law enforcement whenever those are prescribed?

Chief JORDAN. That is correct.

Mr. ISTOOK. Thank you very much.

I appreciate the testimony from the first panel and thank you for taking the time to be here.

If the second panelists might come forward.

We have Dr. Donald Vereen, who is a physician as well as Deputy Director of the Office of National Drug Control Policy; Wilma Lewis, U.S. Attorney for the District; and Mary Lee Warren, Deputy Assistant U.S. Attorney General for the District.

CITY COUNCIL RESOLUTION REQUESTING EXPEDITED REVIEW OF INITIATIVE

We have, dated September 22nd, a copy of the transmittal letter from the chairman of the City Council, Linda Cropp, to the Chief Financial Officer requesting that they expedite a review of the initiative to provide the fiscal impact statement that is necessary as one of the requirements for transmitting laws within D.C. So the Council has already, through their chairman, asked for an expediting of the process of moving this along.

Mr. MORAN. The Council is already going about it in a lawful manner, in your judgment?

Mr. ISTOOK. They are not moving slowly.

[A copy of the City Council's letter referred to with enclosures follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

LINDA W. CROPP
Chairman

September 22, 1999

Valerie Holt
Chief Financial Officer
441 4th Street, N.W., Suite 1150
Washington, D.C. 20001

Dear Ms. Holt:

I am requesting your assistance providing a fiscal impact statement for Initiative Measure No. 59, "Legalization of Marijuana for Medical Treatment Initiative of 1998", which was approved by a majority of District voters in the general election on November 3, 1998. I have enclosed a copy of the Board of Elections and Ethics' transmittal of the certification of Initiative Measure No. 59 and the actual text of the initiative as published in the D.C. Register.

Pursuant to section 602(c)(3) of the District of Columbia Home Rule Act, all legislation, which would include Initiatives, transmitted for Congressional approval is required to have a fiscal impact statement. Therefore, I am requesting that you expedite your review of the Initiative. Thank you in advance for your prompt attention to this matter. If you should have any questions, please feel free to contact me or the Council's Budget Director, Arte Blitzstein, at 724-8139.

Sincerely,

Linda W. Cropp
Chairman

Enclosure

cc: All Councilmembers
Alice M. Rivlin

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS
WASHINGTON, D.C.

September 21, 1999

Honorable Linda W. Cropp
Chairman, Council of the District
Of Columbia
One Judiciary Square
441 4th Street, NW, Room 704
Washington, DC 20001

'99 SEP 21 PM 2:29

C
D.C.

Dear Chairman Cropp:

Pursuant to D.C. Code, §1-1320(r)(1), I am herewith transmitting to you a copy of the Board's certification of Initiative Measure No. 59, "Legalization of Marijuana for Medical Treatment Initiative of 1998" which was ratified by a majority of the registered qualified electors voting in the General Election on November 3, 1998. Also, enclosed is a copy of the actual text of the initiative as published in the D.C. Register, and a True Copy Certificate.

If you have any questions, please contact me at 727-2194.

Sincerely,

Kenneth J. McGhie
General Counsel

Enclosure

cc: Phyllis Jones
Secretary to the Council

ENROLLED ORIGINAL

A RESOLUTION

13-278

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 21, 1999

To declare, on an emergency basis, the sense of the Council on respecting the rights of the electorate of the District and request that the Congress of the United States and the federal government not impede the implementation of the voters' decision.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council on Initiative 59 Emergency Resolution of 1999".

Sec. 2. The Council finds that:

(1) The right of Americans to vote, to have their votes tallied, and to have the results of a lawful election put into effect, is at the heart of the American system of democracy.

(2) The District of Columbia Board of Elections and Ethics, in accord with the decision of the United States District Court, has counted and certified the votes cast November 3, 1998 on District Initiative 59, the Legalization of Marijuana for Medical Treatment Initiative of 1998.

(3) Initiative 59 was approved by 69% of District voters overall and by large margins in every precinct of every ward in the city, reflecting the caring and compassionate response of District voters to pleas from patients suffering with cancer, glaucoma, AIDS, and other serious illnesses.

(4) The Mayor has expressed his continuing support for Initiative 59.

(5) Congress continues, as it has for over a half-century, to spend billions of American dollars and to put thousands of Americans in harm's way upholding democracy and the right to meaningful elections around the world.

Sec. 3. It is the sense of the Council that:

(1) The Financial Responsibility and Management Assistance Authority should promptly approve Initiative 59 and the Council urges the Authority to do so.

(2) The Congress of the United States and the federal government should refrain from interference with the mandate of the District's citizens, as expressed through their

overwhelming support of Initiative 59, and from imposing additional life-threatening hardship on patients already stricken with cancer, glaucoma, AIDS, and other serious illnesses.

Sec. 4. The Secretary of the Council of the District of Columbia shall transmit copies of this resolution upon its adoption to the Financial Responsibility and Management Assistance Authority, the District of Columbia Delegate to the United States Congress, and to the chairpersons of the committees of the United States Congress with oversight and budgetary jurisdiction over the District of Columbia.

Sec. 5. Effective date.
This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Council Period Twelve

RECORD OF OFFICIAL COUNCIL VOTE

Docket No PR13-473 **Resolution No** R13-278

Action & Date ADOPTED, 09-21-99

[ ] **Item on Consent Calendar**

[ ] **ROLL CALL VOTE - Result** _____(__ __ __ __)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

[X] **VOICE VOTE - Result** APPROVED

Absent AMBROSE

Recorded vote _____
(on request)

CERTIFICATE OF RECORD

_____
Secretary to the Council

Sept. 24, 1999
Date

Mr. ISTOOK. Dr. Vereen, we are happy to receive your testimony.

OPENING STATEMENT OF DR. DONALD R. VEREEN, DEPUTY DIRECTOR

Dr. VEREEN. Thank you, Chairman Istook. Thank you for convening this hearing.

All of us at ONDCP appreciate your interest on this critical public health issue. We also want to thank Ranking Minority Member Moran for his support for our National Drug Control Strategy, and we look forward to working with you to ensure that the standards and efficacy of our Nation's drug approval process remain the safest in the world.

I also would like to thank a number of individuals and organizations who have helped craft a comprehensive and balanced anti-drug strategy: Mary Hyde, Dean Miller and Erica O'Choa from the Community of Anti-drug Coalitions of America; Johnny Hughes, the National Troopers Coalition; James McGivney from DARE; Mark Hascue from the Family Research Council; Ronald Newbauer from the International Association of Chiefs of Police; Jeffrey Brandauer, he is from the National Alliance of State Drug Enforcement Agencies and the Kansas Bureau of Investigations; Lieutenant Allen Catcher, who is from the National Narcotics Officers Association's Coalition Union, from the New Jersey Police Department; Lieutenant Colonel Charles Pollick, who you acknowledged earlier, Major City Chiefs and from Prince George's County; Wes Huddleston and Jonathan Tobin from the National Drug Court Institute; and also Olive O'Donnell from the National Drug Prevention League.

These are folks from prevention, from treatment and law enforcement who have been behind us. I have prepared a comprehensive written statement, and I ask that it be introduced into the record.

PREPARED STATEMENT OF DR. DONALD R. VEREEN, DEPUTY DIRECTOR

[The prepared statement of Dr. Vereen follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

Statement by Donald R. Vereen, Jr., MD, MPH
Deputy Director, Office of National Drug Control Policy
Before the House Committee on Appropriations,
Subcommittee on District of Columbia Appropriations

"Medical Marijuana" and National Drug Control Policy
September 29, 1999

All of us in the Office of National Drug Control Policy thank the Committee for the opportunity to testify today about "medical marijuana" and national drug control policy. The Administration has actively and consistently opposed marijuana legalization initiatives in all jurisdictions throughout the nation. Our steadfast opposition is based on the fact that: such electoral procedures undermine the medical-scientific process for establishing what is a safe and effective medicine; contradict federal regulations and laws; and in the Office of National Drug Control Policy's (ONDCP) view, may be vehicles for the legalization of marijuana for recreational use.

Marijuana and Medicine

The Administration is adamantly opposed to the use of marijuana outside of authorized research.[1] However, legitimate medications containing synthetic equivalents of marijuana components have proven effective in some medical conditions. Dronabinol, a synthetic form of a psychoactive component of marijuana, tetrahydrocannabinol (THC), has been approved by the Food and Drug Administration (FDA) to control nausea in cancer patients receiving chemotherapy and stimulate appetite in AIDS patients. This pill form of THC has been approved and available for 15 years and sold under the trade name Marinol ®. Recently, dronabinol was rescheduled from Schedule II to Schedule III of the Controlled Substances Act (CSA).

In determining the relative risks and benefits of a given drug, it is important that research-based evidence be the foundation of any analysis. This is the case with all drugs under consideration for approval by the Food and Drug Administration. The purpose of this type of analysis is to protect and promote public health by ensuring that medical products are *both* safe and effective. Research-based standards must provide a rational basis for concluding that the benefits of a medical product outweigh its risks.

[1] As "medical use" may be defined in different ways, it is important to underscore that "medical use" is not the equivalent of "recreational use."

Marijuana is a botanical product. The IOM study points out that botanical products "are complex mixtures of active and inactive ingredients."[2] Concerns about product consistency, potency of active ingredients, contamination, and stability of both active and inactive ingredients would have to be overcome by sponsors to meet the requirements for an NDA, especially those related to safety, manufacturing, and control."[3] The risks of medicines that are not scientifically tested were outlined in a New England Journal of Medicine editorial last September by Editor-in-Chief Jerome P. Kassirer, M.D. and Marcia Angell, M.D.[4] The authors wrote:

- "Until the 20th century, most remedies were botanical, a few of which were found through trial and error to be helpful."
- "All that began to change in the 20th century as a result of rapid advances in medical science."
- "In particular, the evolution of the randomized, controlled clinical trial enabled researchers to study with precision the safety, efficacy, and dose effects of proposed treatments and the indications for them. No longer do we have to rely on trial and error and anecdotes. We have learned to ask and expect statistically reliable evidence before accepting conclusions about remedies."

The IOM study points out that today, a "handful of botanical preparations are on the market, but none received formal approval as a new drug by today's standards of safety and efficacy...." The three marketed botanical preparations are older drugs that came to market years before safety and efficacy studies were required by legislative amendments in 1938 and 1962, respectively.[5]

The Institute of Medicine Study
Marijuana and Medicine: Assessing the Science Base

In light of this need for research-based evidence, ONDCP asked the Institute of Medicine (IOM) in January 1997, to conduct a review of the scientific evidence concerning the potential health benefits and risks of the medical use of marijuana and its constituent cannabinoids. ONDCP believed that an objective and independent evaluation of research regarding the use of marijuana for medical purposes was appropriate given the ongoing debate about cannabis and its health effects. This approach also was consistent with the principles of science-based medicine on which our national drug approval process is anchored.

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[2] *Marijuana and Medicine: Assessing the Science Base*, Institute of Medicine, Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., Editors, National Academy Press, Washington, D.C., 1998, p. 215.

[3] Ibid. NOTE: The FDA encourages the submittal of NDAs for botanical products.

[4] "Alternative Medicine – The Risks of Untested and Unregulated Remedies," *The New England Journal of Medicine*, September 17, 1998, Vol. 339, No, 12.

[5] *Marijuana and Medicine: Assessing the Science Base*, p. 215-216. The three botanical preparations are digitalis (it came to market before 1938 and was "grandfathered" under the law), psyllium, and senna (both were evaluated by the FDA under an over-the-counter drug review.

The IOM began its review in November of 1997 and after eighteen months of rigorous research published the results. This IOM study is the most comprehensive summary and analysis of what is known about the medical use of marijuana. It emphasizes evidence-based medicine (derived from knowledge and experience informed by rigorous medical-scientific analysis), as opposed to belief-based medicine (derived from judgment, intuition, and beliefs untested by rigorous science). We believe that the discussion of medical efficacy and safety of cannabinoids can now take place within the context of science. The two principal researchers (Dr. John A. Benson, Jr. Dean Emeritus and Professor of Medicine at the Oregon Health Sciences University School of Medicine and President Emeritus of the American Board of Internal Medicine & Dr. Stanley J. Watson, Jr. Co-Director and Senior Research Scientist at the Mental Health Research Institute, University of Michigan, Ann Arbor) have provided us the basis for informed public discussion of the potential medical uses of marijuana's constituent cannabinoids.

1. The study concludes that there is little future in smoked marijuana as a medically approved medication

Although marijuana smoke delivers THC and other cannabinoids to the body, it also delivers harmful substances, including most of those found in tobacco smoke. The long-term harms from smoking make it a poor drug delivery system, particularly for patients with chronic diseases and pregnant women.

In addition, cannabis plants contain a variable mixture of biologically active compounds. Even in cases where marijuana can provide relief of symptoms, the crude plant mixture does not meet the modern expectation that medicines be of known composition and quality. Nor can marijuana guarantee precise, controlled doses.

If there is any future in cannabinoid drugs, it lies with agents of more certain, not less certain composition, and controlled delivery of doses. The future of medical marijuana lies on classical pharmacological drug development that results from clinical research.

2. The study does not deny the correlation between adolescent marijuana use and subsequent use of other illegal drugs.

The study notes strikingly regular patterns in the progression of drug use from adolescence to adulthood. The study notes that because it is the most widely used illicit drug, marijuana is predictably the first illicit drug most people encounter. Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users do not begin their drug use with marijuana; they begin with alcohol and nicotine – and usually when they are too young to do so legally.

In a discussion of the progression from marijuana to other drugs, the IOM study concludes that while there is no evidence that marijuana serves as a stepping stone on the basis of its particular drug effect, there is evidence that marijuana serves as a gateway to the world of illegal drugs in which youth have greater opportunity and are under greater social

pressure to try other illegal drugs. The study asserts that the factors that best predict illicit drug use other than marijuana are likely the following: age of first alcohol or nicotine use, heavy marijuana use, and psychiatric disorders.

The study concludes that "in the sense that marijuana use typically precedes rather than follows initiation into the use of other illicit drugs, it is indeed a gateway drug."[6] This correlation between initial marijuana use and subsequent use of other illicit drugs is also noted in the *1999 National Drug Control Strategy.*[7]

The Federal Government supports research into cannabinoid-based drugs

We ought to go where science and medicine lead us. The IOM study suggests that cannabinoid-based drugs might be modestly effective for a variety of indications, particularly for antiemesis, appetite stimulation, and pain relief. The study recommends further research, studies, and pre-clinical and clinical trials so that safe and effective cannabinoids might be added to the pharmacopoeia of drugs that treat these symptoms. Formulations that can rapidly and directly deliver THC to the circulation include deep lung aerosols, nasal sprays, nasal gels, sublingual preparations, and suppositories. Phase I clinical studies are underway for deep lung aerosols, nasal sprays, nasal gels, and sublingual formulations of Marinol ®.

In response to the IOM report's conclusion about the need for more research, the Department of Health and Human Services (HHS), which provides marijuana for medical research, revised its guidance on May 21, 1999 on the provision of marijuana by making research-grade marijuana more accessible to peer-reviewed research programs that are not federally funded. Through this revision, HHS intends to facilitate additional research into the question of whether marijuana and its constituent cannabinoids are useful as a medicine. ONDCP fully endorsed this decision by HHS. Such research will allow us to better understand what benefits might actually exist for the use of cannabinoid-based drugs, and what risks such use entails.

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[6] *Marijuana and Medicine: Assessing the Science Base*, p. 100.

[7] The 1994 report *Cigarettes, Alcohol, Marijuana: Gateways to Illicit Drug Use* prepared by the Center on Addiction and Substance Abuse (CASA) at Columbia University found that smoking, drinking and using marijuana lead a large number of children and adults to experimentation, regular use and addiction involving substances like cocaine. Some of the key findings of the report include: Children who have used marijuana are more than 85 times likelier to use cocaine than children who have never used marijuana. The younger an individual uses any gateway drug, the more often an individual uses any gateway drug, the more gateway drugs an individual uses, the likelier that individual is to experiment with cocaine, heroin, and other illicit drugs and the likelier that individual is to become a regular adult drug user and addict. Sixty percent of children who smoke marijuana before age 15 move on to cocaine; only one-fifth of those who smoke marijuana after age 17 use cocaine.

CONCLUSION

The federal government is committed to ensuring that the analysis of the medical efficacy and safety of cannabinoids takes place within the context of medicine and science. It is imperative that "medical marijuana" ballot initiatives do not remove the discussion from this context and, more importantly, circumvent the drug approval process, potentially endangering public health.

Continued strict regulation of cannabis as a Schedule I drug is essential. Until we fully understand the health ramifications of allowing cannabinoid-based medicines, such uses should only be part of clinical studies to expand the body of scientific understanding. In short, we need to be sure that as we examine cannabinoid-based drugs for possible medical benefit that we do not contribute to reckless use and increased abuse of this psychoactive substance.

Medical considerations, not drug-control concerns, should determine whether cannabinoid-based drugs should be prescribed as medicines. The federal government has already demonstrated its support for these drugs. NIH research was key to the development of the one cannabinoid – dronabinol – that is commercially available.[8] Cocaine and opiates can be used medically. Decisions over what constitute safe and effective medications will be made by appropriate medical authorities, not ONDCP.

Chairman Istook, Ranking Minority Member Moran, all of us at the Office of National Drug Control Policy have appreciated the committee's bipartisan support of our efforts to reduce drug abuse and its consequences in America. Thank you for the opportunity to explain the Administration's opposition to ballot initiatives that seek to legalize the use, possession, and cultivation of marijuana for certain persons.

[8] *Marijuana and Medicine: Assessing the Science Base*, p. 207.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

As of: January 19, 1999

Biography of Donald R. Vereen, Jr., M.D., M.P.H.
Deputy Director, Office of National Drug Control Policy (ONDCP)

Dr. Vereen began duties as ONDCP Deputy Director on June 1, 1998. Prior to that time, he served as Special Assistant to the Director for Medical Affairs at the National Institutes of Health (NIH), National Institute on Drug Abuse (NIDA).

During his tenure at NIH, Dr. Vereen worked on the development of new research strategies to address public health issues like violence, drug abuse, and addiction. From 1992-1994 while at the National Institute of Mental Health, he was charged with the development of community-based research projects on violence. Dr. Vereen carried this interest over to the National Institute on Drug Abuse where he worked on interdisciplinary research projects dealing with the causes and consequences of drug abuse. This work lead to the development of research partnerships within NIDA, NIH, and HHS as well as with other institutions, most notably the Departments of Justice and Education. In addition, Dr. Vereen was appointed to represent NIH on the District of Columbia Task Force on Health Affairs and worked with the Mayor's Health Policy Council.

Dr. Vereen was born on Keesler Air Force Base in Biloxi, Mississippi and spent his early years as an Air Force "brat" in Japan, Massachusetts, Germany, and Virginia. After graduating from Harvard College in 1980 with an A.B. in biology, he attended Tufts University School of Medicine in Boston where he received his M.D. degree. Vereen then completed an internship in internal medicine at Salem Hospital, followed by a residency in psychiatry at Massachusetts General Hospital where he was appointed Chief Resident. His post-graduate work included a Masters in Public Health (M.P.H.) at the Harvard School of Public Health, an associate fellowship in health services research at Johns Hopkins School of Public Health and Hygiene, and a research fellowship in "Clinically Relevant Medical Anthropology" in the Department of Social Medicine, Harvard Medical School.

Dr. Vereen has held membership and leadership positions in several professional societies. He serves on the board of directors of a number of District of Columbia health organizations.

Vereen is married to Susan Collins, Professor of Economics at Georgetown University and Senior Fellow in Economic Studies at the Brookings Institution. The couple has two children: Ana, five and Alec, two.

PREPARED STATEMENT OF DR. MITCHELL S. ROSENTHAL, M.D.

Dr. VEREEN. I would also like to ask that a statement by Mitchell R. Rosenthal, a physician from the State of New York who is the President of Phoenix House—he is calling for "further scientific research into the medical efficacy of marijuana before laws are changed to ease restrictions on the use of the drug," and we ask that be introduced into the record.

Mr. ISTOOK. Without objection.

Dr. VEREEN. Thank you.

[The prepared statement referred to follows:]

N E W S

Phoenix House
164 WEST 74TH STREET, NEW YORK, NY 10023
212-595-5810

Contact: Peter Kerr, Ext. 7851
Isobelle Surface, Ext. 7852

For Immediate Release
September 29, 1999

Marijuana as medicine: The dangers are real.

New York, September 29, 1999 – Mitchell S. Rosenthal, M.D., the President of Phoenix House, today called for further scientific research into the medical efficacy of marijuana before laws are changed to ease restrictions on the use of the drug.

"Those of us who treat drug abusers on a daily basis have good reason to believe that sanctioning the medical use of pot will influence attitudes – particularly among youngsters – towards recreational use of the drug," said Dr. Rosenthal, who heads the national drug abuse treatment and prevention organization. Dr. Rosenthal, a psychiatrist, has treated drug addicts for more than 30 years.

It is understandable that voters in numerous states and the District of Columbia have shown compassion for those who are ill and might benefit from the drug, Dr. Rosenthal said. However, he said that evidence of the effectiveness of medical uses of marijuana so far is anecdotal, while the dangers of marijuana abuse and its physical and psychological effects are clearly documented.

"Clinical experience and common sense indicate that the increased use of pot for fun is a real and troubling possibility as its medical use expands. Studies show that among all users of marijuana, about one in 10 becomes dependent, while the odds double to 1 in 5 for those who continue smoking pot past the experimentation phase. The overwhelming majority of young people at Phoenix House are undergoing treatment for marijuana abuse. Not only are there physiological dangers – to the lungs, the immune system and the reproductive system – but marijuana impairs short-term memory, depletes energy, impedes the acquisition of social skills."

-more-

More study is needed to determine the efficacy of marijuana as an antiemetic for cancer patients, as an appetite stimulant for AIDS and cancer patients, as an anti-spasmodic for multiple sclerosis patients, among other applications, Dr. Rosenthal said. As research proceeds, all appropriate patients should be permitted access to the drug.

However, researchers should attempt to create delivery systems other than smoking for key ingredients in the drug as well as the identification of targeted molecules that deliver beneficial effects without intoxicating effects.

PHOENIX HOUSE BACKGROUND

Phoenix House provides treatment for more than 3,500 adolescents and adults through outpatient and residential programs in New York, California, Texas, Florida and New England. Founded in 1967, Phoenix House has treated more than 75,000 people – saving lives and strengthening families and communities. To learn more, visit up on line at: www.phoenixhouse.org .

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CLINTON ADMINISTRATION POSITION ON LEGALIZING MARIJUANA

Dr. VEREEN. Let me begin with the Administration's position.

This Administration has been actively and consistently opposed to medical legalization initiatives in all jurisdictions throughout the United States. It is part of our science-based National Drug control strategy which has five goals, and 32 objectives.

Our opposition is based on the fact that these electoral procedures undermine the medical-scientific process for establishing what is safe and effective medicine. These procedures also contradict Federal regulations and laws. That is what this is about. And, in ONDCP's view, these procedures may be vehicles for the legalization of marijuana for recreational use.

The Administration is adamantly opposed to the use of marijuana outside of authorized research. That is the context in which its use can only be used and defined. However, legitimate medications containing the synthetic equivalents of marijuana components have proven effective in some medical conditions. Dronabinol, a synthetic form of a psychoactive component of marijuana, tetrahydrocannabinol, which is THC, has been approved by the FDA to control nausea in cancer patients receiving chemotherapy and to stimulate appetite in AIDS patients. This pill form of THC has been approved and available for 15 years and sold under the trade name Marinol. Recently, Dronabinol was rescheduled from Schedule II to Schedule III of the Controlled Substances Act. Again, based on science. That is what determines the movement among the schedules.

Next slide, please.

In determining the risks and benefits of a given drug, research-based evidence must be the foundation of any analysis. The purpose of this type of analysis is to protect and promote public health by ensuring that medical products are safe and effective. Research-based standards must provide a rational basis for concluding that the benefits of a medical product outweigh the risks.

D.C. MEDICAL SOCIETY NOT CONSULTED ON MARIJUANA INITIATIVE

The Medical Society of the District of Columbia makes it very clear where they stood on this issue for the past 3 to 4 years. Furthermore, in the case of the District of Columbia, this Medical Society, the holders of the medical standard for the District of Columbia, was not consulted in the development of this initiative, and this is a medical issue.

MARIJUANA IS COMPLEX BOTANICAL PRODUCT

Marijuana is a botanical product. It is a complex mixture of active and inactive ingredients. Consequently, there are concerns about product consistency, the potency of the active ingredients, contamination—for example, if you grow something using herbicides, the herbicides contaminate the product—the stability of the active and inactive ingredients over time, particularly as they relate to safety, manufacturing and control. Those are the issues in a nutshell, and I can go into those in more detail later on.

The next slide.

SCIENTIFIC STUDIES ESSENTIAL

There are risks when medicines are not scientifically tested, and botanical remedies are typically tested through trial and error, not through scientific methods. You may remember the experience of laetrile in the 1970s before science demanded safe and effective standards. We have learned to ask and expect statistically reliable evidence before accepting conclusions about remedies.

Let me add—and this is a late piece of information which is in your packet—we have evidence now showing how long-term marijuana use not only affects the brain so that you can see it, but we can measure that in terms of behavior and decreased performance in cognitive areas and in learning.

The next slide.

The heart of my comments are right here. The ONDCP asked the Institute of Medicine and the National Academy of Sciences to conduct a review of the scientific research concerning the potential health benefits and risks of the medical use of marijuana and the constituent cannabinoids. ONDCP was seeking to obtain an objective and independent evaluation of the research regarding the use of marijuana for medical purposes.

The study lasted 18 months. It began in November of 1997. The study is the most comprehensive summary and analysis of what is known about the medical use of marijuana today. And let me just briefly go through two major points.

The effects of cannabinoids are generally modest, and there are more effective medicines generally. There are provisions for those patients who may benefit, and those circumstances are explained. While smoked marijuana delivers THC, it also delivers other harmful substances similar to the ones found in tobacco. The point here is the route of administration. There are no medications that we smoke, and that is the reason. It is because of those other exogenous, mostly harmful substances that you get in smoke. So another important point is it is the route of administration of active ingredients. We have already demonstrated that we can remove them from the cannabinoids.

Next slide.

The IOM study emphasizes evidence-based medicine derived from knowledge and experience and formed by rigorous medical-scientific analysis, not belief-based medicine derived from judgment, intuition and beliefs untested by rigorous science. We are just not there any more. Because of this study we believe that the discussion of medical efficacy and the safety of cannabinoids can now take place in the context of science and medicine; that is what our colleagues at the American Society of Addiction Medicine have said, not at the ballot box.

STUDY CONCLUSION—LITTLE FUTURE IN SMOKED MARIJUANA

The study concludes that there is little future in smoked marijuana as a medically approved medication. Although marijuana smoke delivers the THC and other cannabinoids to the body, it delivers harmful substances, including those found in tobacco smoke. The long-term effects, the long-term harms from smoking make it a poor delivery system for THC or any other drug, and that is par-

ticularly true for patients who have chronic diseases where they would have to keep smoking this stuff for a long period of time, and it is especially an important point for pregnant women.

In addition, cannabis plants contain a variable mixture of biologically active components. Even in cases where marijuana can provide relief of symptoms, the crude plant mixture does not meet the modern expectation that medicine of a known composition and quality is used. Marijuana cannot guarantee precise, controlled doses. That is how we prescribe medicines in modern medicine today.

The Partnership for a Drug Free America has done its own research and comes up with some similar conclusions to ours. The study does not deny conclusions related to ours.

MARIJUANA USE AND USE OF OTHER ILLEGAL DRUGS

And one of the other conclusions that we have drawn that is supported to some extent by the IOM report is the correlation between adolescent marijuana use and the subsequent use of other illegal drugs. Because marijuana is the most widely used illicit drug, it is, predictably, the illicit drug that most people encounter. In the sense that marijuana use typically precedes rather than follows the initiation into the use of our drugs, it is indeed a gateway drug.

This correlation between initial marijuana use and subsequent use of other illicit drugs is also noted in the 1999 National Drug Control Strategy, and our partners have picked up on that.

Mr. Chairman, I see that my time has expired, so let me respectfully request that I be permitted to finish. I only have a couple more points.

Mr. ISTOOK. Go ahead.

FEDERAL GOVERNMENT SUPPORTS CANNABINOID-BASED DRUGS

Dr. VEREEN. The Federal government supports cannabinoid-based drugs. The IOM study suggests cannabinoid-based drugs might be modestly effective for a variety of indications, particularly anti-emesis, appetite stimulation and pain relief. Consequently, the study recommends further research, studies and preclinical and clinical trials so that safe and effective cannabinoids might be added to the pharmacopeia of drugs that treat these symptoms.

Formulations that can rapidly and directly deliver THC to the circulation include deep lung aerosols, nasal sprays, nasal gels, sublingual preparations and suppositories. Many of these investigations are underway now in animals. Now, it is a process that is slow, but there are ways to help speed up the process. The IOM report outlines how we can move those procedures faster.

In conclusion, the Federal Government is committed to ensuring that the analysis of the medical efficacy and safety of cannabinoids takes place within the context of medicine and science. It is imperative that the medical marijuana ballot initiatives do not remove the discussion from that context. More importantly, we don't want to circumvent the drug approval process. It has not done us wrong in the past.

CONTINUED STRICT REGULATION OF CANNABIS ESSENTIAL

Continued strict regulation of cannabis as a Schedule I drug is essential. The components of marijuana are what we are after. Those will be scheduled appropriately, so we need to be sure that we examine these cannabinoid-based drugs for possible medical benefit. We are doing that now. Ultimately, appropriate medical authorities, not the ONDCP, will make decisions over what constitutes safe and effective medications.

So thank you for your time, and I thank you for this opportunity to testify.

Mr. ISTOOK. I thank you, Dr. Vereen. I follow the distinction between marijuana and chemical components which may be part of marijuana and could go through the FDA approval process and so forth.

I appreciate your testimony.

Ms. Lewis.

Ms. LEWIS. Actually, Chairman Istook, Ms. Warren will proceed.

OPENING STATEMENT OF MARY LEE WARREN, DOJ

Ms. WARREN. Mr. Chairman and Ranking Minority Member, Mr. Moran, I am Mary Lee Warren. I appreciate the subcommittee providing the Justice Department with the opportunity to testify regarding the Department's enforcement of the Federal drug laws. Notwithstanding the recently enacted State statutes that permit use of marijuana in a medical setting, the Federal drug laws remain fully in force.

All have mentioned the various State ballot initiatives in 1996 and 1998.

Reviewing the Department's efforts following the enactment of the California and Arizona initiatives, on December 30, 1996, the Administration published in the Federal Register a clear and direct response based on effective Federal drug policy and the need to protect our citizens from prohibited drugs.

Our strategic objectives in response to these marijuana ballot initiatives include, first, maintaining effective enforcement efforts within the framework of the Controlled Substances Act and the Food, Drug, and Cosmetic Act; second, ensuring the integrity of the medical-scientific process by which substances are approved as safe and effective medicines, just as the doctor has told us; third, preserving Federal drug-free workplaces and safety programs; and fourth, protecting our children against increased marijuana availability and use.

The Controlled Substances Act continues to prohibit the cultivation, distribution and possession of marijuana except in limited research situations. No existing State law that decriminalizes the possession and cultivation of marijuana affects or otherwise negates the application of any Federal law, including the Controlled Substances Act.

As the State initiatives have taken effect, the Justice Department has continued to prosecute marijuana sales, cultivation and possession as it always has done. We evaluate the merits of an investigation on a case-by-case basis in order to enforce the Federal law and preserve the integrity of the medical and scientific process.

For example, Federal prosecutors in California and the State of Washington have successfully prosecuted individuals for the unlawful cultivation and distribution of marijuana, despite the defendants having raised that the marijuana in question was to be used for allegedly medicinal purposes.

Across the country in fiscal year 1998, 6,052 defendants were convicted and sentenced in Federal court for marijuana offenses as the primary offense, according to Sentencing Commission statistics. But enforcement of the Controlled Substances Act has not been limited to the criminal arena. In the aftermath of the passage of Proposition 215 in California in 1996, nearly 30 cannabis buyers clubs sprung up throughout California. These clubs engaged in the open distribution and cultivation of marijuana, and the Department developed a civil injunctive strategy as a measured response to the proliferation of these buyers clubs in California.

On January 9, 1998, the Department filed suit against six cannabis buyers clubs located in the Northern District of California and 10 individuals associated with those clubs seeking preliminary and permanent injunctive relief. The Department's contention was that the ongoing distribution and cultivation of marijuana violated the Controlled Substances Act.

On May 13 of 1998, the Federal District Judge granted the government's motions for preliminary injunction against the six buyers clubs and individual defendants, determining that their ongoing activities indeed violated Federal law.

The judge entered preliminary injunctions against the six sets of defendants last spring, and four of those six clubs have closed. The litigation continues as to the others.

In addition, the Department of Health and Human Services responded to California Proposition 215 by notifying California physicians that, despite the initiative, doctors providing patients with a recommendation to obtain marijuana risked not only criminal prosecution but also revocation of their DEA prescription authority and exclusion from participation in Medicare and Medicaid programs.

This course of action has been modified somewhat as the result of a physician's lawsuit in Conant v. McCaffrey in the Northern District of California challenging this policy, and the Government has been limited to taking actions only in those cases where, in our best assessment, there is probable cause to believe that the physician had the specific intent to aid and abet the distribution or purchase of marijuana or to conspire to do the same.

In sum, the Department of Justice's position has been unless and until the medicinal value of marijuana can be proven based on scientific research conducted as the doctor has told us, marijuana cannot be sold, cultivated or possessed in the United States under Federal law. We believe that this is the correct course of action based upon current Federal drug law prohibitions.

I thank you.

Mr. ISTOOK. Thank you, Ms. Warren.

6,052 SUCCESSFUL MARIJUANA PROSECUTIONS

I didn't see in your written testimony, I think you used a figure of 6,052 successful prosecutions for marijuana offenses? Is that the correct number? And in what time frame?

Ms. WARREN. Fiscal year 1998, and those are convictions and sentencing in Federal court where marijuana was the primary offense.

Mr. ISTOOK. Very good. I thank you, and I appreciate that information.

Now, Ms. Lewis, I appreciate you deferring to the DOJ.

Ms. LEWIS. Mr. Chairman and Congressman Moran, thank you for your invitation to testify here today.

As you know, Ms. Warren and I have submitted a joint written statement for the record and I know that will be included as a part of the record of the proceedings. I will proceed briefly to respond to that question orally.

JOINT STATEMENT OF DEPARTMENT OF JUSTICE OFFICIALS

[The prepared statement referred to follows:]

Department of Justice

STATEMENT

OF

MARY LEE WARREN

DEPUTY ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

AND

WILMA A. LEWIS

UNITED STATES ATTORNEY FOR THE

DISTRICT OF COLUMBIA

BEFORE THE

SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

STATE AND LOCAL LAWS AUTHORIZING MEDICINAL USE OF MARIJUANA

PRESENTED ON

SEPTEMBER 29, 1999

Chairman Istook, Congressman Moran, Delegate Norton, and Members of the Subcommittee, we are pleased to be here today to testify on behalf of the Department of Justice.

We appreciate the Subcommittee's providing the Department with the opportunity to testify on its position on state and local laws that authorize the cultivation, possession, and use of marijuana for allegedly medicinal purposes, and on the Department's enforcement of federal drug laws that, notwithstanding the recently-enacted state statutes that permit use of marijuana in a medical setting, remain in force.

The Controlled Substances Act, which was enacted by Congress in 1970, establishes a comprehensive regulatory scheme in which controlled substances are placed in one of five "Schedules" depending on their potential for abuse, the extent to which they may lead to psychological or physical dependence, and whether they have a currently accepted medical use in treatment in the United States. Controlled substances in "Schedule I," such as heroin, marijuana, and LSD, have been determined to have a "high potential for abuse," "no currently accepted medical use in treatment in the United States," and a "lack of accepted safety for use under medical supervision." Given these characteristics, Congress has mandated that substances in Schedule I be subject to the most stringent regulation. Federal law makes it unlawful for anyone to distribute,

cultivate, manufacture, or possess these substances, and no physician may dispense -- that is, prescribe -- any Schedule I controlled substance to any patient outside of a strictly controlled research project that has been registered and approved by federal officials.

Congress recognized, however, that the schedules may sometimes need to be modified to reflect changes in scientific knowledge and patterns of abuse of particular drugs, and therefore adopted a procedure which allows the Attorney General to add or delete drugs from, or transfer drugs between, the five schedules, based on rigorous scientific and medical study. Federal law further requires that, before a substance can be legally marketed or made available for prescription use, it must be reviewed and approved for medicinal use based on rigorous scientific research conducted by the Food and Drug Administration. These procedures have served to protect the American public from unproven, ineffective, or dangerous treatments.

On November 3, 1998, voters in five states -- Alaska, Arizona, Nevada, Oregon, and Washington -- approved initiatives which, to varying degrees, decriminalized the possession and cultivation of marijuana for allegedly medicinal purposes under state laws. These ballot initiatives are the second wave of initiatives regarding this controversial issue. In November 1996, voters in California and Arizona passed Propositions 215 and 200, respectively, which likewise decriminalized the possession and cultivation of marijuana for allegedly medicinal purposes under those states' laws.

Following the enactment of the California and Arizona initiatives, the Administration issued on December 30, 1996, a strategic federal response based on the maintenance of an effective, consistent federal drug policy and the requirement to ensure that our citizens are provided safe and effective medicines. The four strategic objectives that form the basis of current federal policy in response to these initiatives include: 1) maintaining effective enforcement efforts within the framework of the federal Controlled Substances Act and Food, Drug, and Cosmetic Act; 2) ensuring the integrity of the medical-scientific process by which substances are approved as safe and effective medicines; 3) preserving federal drug-free workplace and safety programs; and 4) protecting our children against increased marijuana availability and use. This clear statement of Administration policy rejecting the attempts to undermine federal drug law and policy was promulgated in a widespread fashion, including a press release and publication in the Federal Register on February 17, 1997.

Simply put, the Controlled Substances Act continues to prohibit the cultivation, distribution, and possession of marijuana, except for very limited research situations. No existing state law that decriminalizes the possession and cultivation of marijuana affects or otherwise negates the application of any federal law, including the Controlled Substances Act.

Consequently, notwithstanding the various state initiatives that have effectively decriminalized the possession and cultivation of marijuana under state law, the Department of Justice has continued to apply the prohibition on the sale, cultivation, or possession of marijuana, as it has always done, on a case-by-case basis, in order to enforce federal law and to preserve the integrity of the medical and scientific drug-approval process. For example, federal prosecutors in California and the State of Washington have successfully prosecuted individuals for the unlawful cultivation and distribution of marijuana despite the argument by the defendants that the marijuana in question was to be used for allegedly medicinal purposes.

Locally, the United States Attorney's Office for the District of Columbia maintains an aggressive prosecutorial policy with respect to the unlawful possession, distribution and possession with intent to distribute any narcotic or dangerous substance, including marijuana. From a law enforcement perspective, that policy will not change if the District of Columbia's "Legalization of Marijuana for Medical Treatment Initiative of 1998," becomes law since the law does not legalize marijuana per se, but merely purports to legalize the possession and use and cultivation of marijuana for medical treatment only.

Clearly, this will hamper law enforcement efforts to impede the illegal sale and use of the drug. In that regard, the Department is undertaking a comprehensive review of

the potential legal ramifications of the initiative as well as its impact upon the safety of the community.

From a policy perspective, there is little doubt that the initiative undermines the Administration's consistent and effective national drug policy. In the District of Columbia, marijuana is easy to obtain and relatively inexpensive, both for buyers and sellers. Information gathered by the Metropolitan Police Department indicates that some drug sellers have abandoned the sale of other drugs because, except under limited circumstances, the sale of marijuana, regardless of quantity, is a misdemeanor under the District of Columbia Code. Quite simply, marijuana trafficking is a highly lucrative, low risk enterprise in the District of Columbia.

At the same time, the marijuana trade today in the District of Columbia is often characterized by its accompanying violence, as recent investigations have tied 21 homicides to marijuana markets operating in District neighborhoods. The Metropolitan Police Department, the FBI, the DEA, and other law enforcement agencies, and the United States Attorney's Office work closely together to investigate and prosecute marijuana trafficking offenses.

Enforcement of the Controlled Substances Act has not been limited to the criminal arena. In the aftermath of the passage of Proposition 215 in California in 1996, nearly 30

"cannabis buyers clubs" opened in California, with locations in San Francisco, Los Angeles, San Diego, San Jose, Orange County, Oakland, Santa Cruz, Ukiah, and Marin County. These clubs engaged in the open distribution and cultivation of marijuana. After careful consideration, the Department adopted a civil injunctive strategy as a measured response to the proliferation of these buyers clubs in California.

On January 9, 1998, the Department filed suit against six cannabis buyers clubs located in the Northern District of California and ten individuals associated with those clubs, seeking preliminary and permanent injunctive relief. The Department contended that the defendants' ongoing distribution and cultivation of marijuana, and related activities, constituted violations of the Controlled Substances Act. On May 13, 1998, U.S. District Judge Charles R. Breyer granted the government's motions for preliminary injunction against the six buyers clubs and individual defendants, determining that their ongoing distributing and cultivating of marijuana violated federal law. United States v. Cannabis Cultivators Club, (N.D. Cal.). Judge Breyer entered preliminary injunctions against the six sets of defendants on May 19, 1998. Four of these clubs have since closed; litigation against the remaining clubs is ongoing.

Also in the aftermath of California Proposition 215, the Administration's policy included a joint letter from the Departments of Justice and Health and Human Services to the California Medical Association, notifying California physicians that, despite the

initiative, physicians who provided their patients with "recommendations" enabling them to obtain marijuana risked revocation of their DEA prescription authority, and exclusion from participation in the Medicare and Medicaid program, as well as criminal prosecution. However, as a result of a lawsuit, Conant v. McCaffrey, (C 97-0139 WHA, N.D. Cal.), brought in the Northern District of California challenging this policy, the government has been limited to taking actions in those cases in which it in good faith believes that it has probable cause to charge the physician with aiding or abetting or conspiring with another to purchase, cultivate, or possess marijuana.

In conclusion, the Department of Justice's consistent position has been that, unless and until the medical value of marijuana is established by the Food and Drug Administration, marijuana cannot be sold, cultivated, or possessed in the United States under federal law (except for medical research purposes under an Investigational New Drug application that satisfies the requirements of the Food, Drug, and Cosmetic Act and the Controlled Substances Act).

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee. We will now be pleased to attempt to answer any questions that you may have.

IMPACT OF MARIJUANA LEGALIZATION ON D.C. LAW ENFORCEMENT

Ms. LEWIS. In your letter of invitation to me, I was asked to testify regarding how the Legalization of Marijuana for Medical Treatment Initiative of 1998 would affect Federal and local law enforcement efforts here in the District of Columbia.

Let me say first for the record, as we have said in the context of the joint statement submitted on behalf of the Justice Department, the United States Attorney's Office in the District of Columbia maintains an aggressive prosecutorial policy with respect to unlawful possession, distribution and possession with intent to distribute any narcotic or dangerous substance, including marijuana, both Federally and locally.

With respect to the impact of the marijuana initiative on our Federal prosecutions, as Ms. Mary Lee Warren has stated, our Federal law enforcement efforts will remain unimpaired. It is in the District Court where we typically prosecute individuals associated with gangs or crews, as they are more commonly known here in the District of Columbia, who often use violence to further their marijuana-trafficking trade.

In our local Superior Court, we seek to hold accountable in a variety of ways those who possess or traffic in marijuana. It is on this local level that the marijuana initiative, if it becomes law, would have its greatest impact in hampering law enforcement efforts to effectively prosecute those who engage in the illegal sale and use of the drug.

In that regard, the Justice Department is currently taking a look at the initiative in terms of the potential legal and law enforcement ramifications that might result as well as its impact on the safety of the community.

I would be pleased to answer any questions that you, Mr. Chairman, or any members of the Committee may have regarding our enforcement of the marijuana laws in the District of Columbia.

Mr. ISTOOK. I thank you very much, Ms. Lewis.

LOCAL LEGALIZATION LAWS DIVERT SCARCE FEDERAL RESOURCES

Mr. ISTOOK. Let me pose this question to Ms. Warren.

You mentioned, of course, in your testimony not only the criminal litigation where people attempt to raise this as a defense, even though they are relying upon a local or State law rather than the Federal law, also the civil litigation against the so-called cannabis clubs and the efforts there. Would it be correct to say that even though these cannot override Federal law, nevertheless, they have caused extra work, taking some of the resources which we know are limited, that you are attempting to use, in drug prosecutions?

Ms. WARREN. That is correct. They certainly have taken time and resources away.

Mr. ISTOOK. Has anyone ever sought to quantify that? And I know it is hard to get everything down to dollars and cents, but has anyone sought to calculate how much more is it costing the taxpayers through the Department of Justice, through the DEA, through the other related Federal agencies, how much more is it costing?

It is causing difficulty, it is causing confusion and causing extra work because of these so-called medical marijuana initiatives. What is it costing the taxpayers in dollars that ought to be going into direct drug enforcement or prevention efforts that are being diverted by these?

Ms. WARREN. We have not attempted to quantify, and I don't know if we could. As you have pointed out, it has drawn enormous precious resources that we have. The impairment is real and needs to be recognized.

EXTRA EXPENSE CAUSED BY CONFLICTING LAWS

Mr. ISTOOK. I would appreciate it if someone could get a rough estimate of the quantity of those resources. I know that is an inexact task, but an effort would certainly be appreciated if you could put that in motion.

Ms. WARREN. Certainly, Mr. Chairman.

[The following letter from the U.S. Department of Justice was supplied for the record:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 25, 2000

The Honorable Ernest Istook
Chairman, Subcommittee on the District of Columbia
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Istook:

In response to your request, I am providing information about litigation costs incurred by the Department of Justice related to state statutes concerning the medicinal use of marijuana.

The Department's Civil Division has been involved in litigation related to such statutes and reports an estimated cost of their expenditures from January 1997 to May 10, 2000 to be $512,000. This amount includes attorney salaries and benefits, travel and cost of transcripts.

Several U.S. Attorneys' offices have incurred costs related to litigation concerning medical marijuana statutes. Although precise information on time spent on this issue is not available, the Executive Office for U.S. Attorneys (EOUSA) surveyed ten U.S. Attorneys' offices in Alaska, Arizona, California, Nevada, Oregon and Washington because of statutes or local initiatives in those states. Of the offices which reported expenses related to medical marijuana litigation, EOUSA estimates their total cost of the litigation to be approximately $100,000. This estimate includes attorneys' salaries and benefits, clerical support, equipment, supplies, rent and telecommunications.

The Department's Criminal Division reports that, for fiscal year 1999, attorney time at an estimated cost of $4,500 was devoted to work related to litigation on this issue.

Although we are able to provide the above estimates for the litigating components primarily involved in the litigation, we are unable to provide a complete estimate for all costs incurred by every component of the Department, including our leadership offices and investigative agencies, related to medical marijuana litigation. However, I hope the information we have provided is helpful to you.

Sincerely,

Robert Raben
Assistant Attorney General

cc: The Honorable James Moran
Ranking Minority Member

SECRECY PROVISION OF DISTRICT'S MARIJUANA INITIATIVE

Mr. ISTOOK. Let me ask also, you mentioned that there is a revocation with different physicians of the DEA prescription authority which they have to be able to prescribe something that is a controlled substance.

Now, you may have noticed one of the features of the initiative in D.C. is to grant confidentiality to physicians if they are asked to testify "did you or did you not tell somebody that they ought to use marijuana," which obviously could lead them to some sort of liability under the Federal law, including their prescription authority.

What effect does it have on your ability to investigate if someone tries to bring, say, in a criminal prosecution or any other legal proceeding, try to have that testimony not in public, not out in the open, as is normally the case in any sort of litigation, criminal or civil, but to have it behind closed doors with a guarantee of secrecy for what those physicians are doing? What is the impact on your ability to oversee the prescribing authority of doctors to ensure that they are following the applicable Federal laws?

Ms. WARREN. It would make our efforts more difficult. I believe we would be able to overcome it and be able to prove who had participated in this recommendation through different courses, but it would be much more difficult than the recordkeeping, as you pointed out, that is required for prescribing controlled substances, recordkeeping for the physician as well as for the drugstore, the pharmacy.

RECORDKEEPING TRAIL UNDONE IN DISTRICT'S PROPOSAL

Mr. ISTOOK. Frankly, it undoes one of the central tenets of the Federal drug enforcement laws, and that is to require a recordkeeping trail when somebody is dealing with a legal application of a restricted substance?

Ms. WARREN. And the physicians' and the pharmacists' registrations are based on their appropriate handling of those substances according to the regulations.

Dr. VEREEN. Mr. Chairman, the issue of recordkeeping and being open and above board about medical interventions is a part of the standard practice of medicine. To do something under anonymity is not normal medical practice, and medical boards require the use of relevant records in order to make sure that its own physicians are practicing good medicine. So there is a policing issue within the body of medicine as well.

Mr. ISTOOK. So even though some persons attempt to say this is a medical issue and so-called medical marijuana, actually the whole procedure that they seek to set up in this initiative and others is contrary to the normal standards of medicine?

Dr. VEREEN. I give the example of cancer treatments.

Mr. ISTOOK. For the record, if you might say yes or no to the question.

Dr. VEREEN. Yes.

In the example of cancer treatments, dangerous drugs are used to treat people who are terminally ill. Those treatments occur in the context of clinical trials when all alternatives have been ex-

hausted. Those trials are set up with confidentiality, with full disclosure of the risks and benefits, and other doctors can use the information to decide what to do in the future. So it is done in an open and above board fashion.

Mr. ISTOOK. I thank you for that.

I had one final question, but let me go to Mr. Moran.

Mr. MORAN. Well, thank you, Mr. Chairman.

DISTINGUISHING BETWEEN MEDICAL OR RECREATIONAL USE OF MARIJUANA

First of all, let me ask, I guess, Ms. Warren, if you had not gone after the doctors, couldn't you then have distinguished between the legally prescribed use of marijuana and the recreational use? In other words, wasn't it because you went after the doctors and intimidated them from prescribing that you then were able to crack down on anybody using?

Ms. WARREN. Frankly, we were responding to an inquiry request from the medical community, and our advice was to the California Medical Association. The doctors didn't know where the standard was because they looked at the new initiative and they also saw the Federal law, and they asked for clarification of where the line was. And the Department of Health and Human Services and the Justice Department responded.

Mr. MORAN. I think that the reason why we can't distinguish between prescribed use and recreational use is because it is legal for doctors to prescribe. We don't know whether it would be feasible to prescribe or not.

QUOTES FROM INSTITUTE OF MEDICINE (IOM) STUDY

Let me focus on the Institute of Medicine study, since this is what everybody is hanging their hat on, including you, Mr. Chairman, or at least you are hanging one of your hats on the viability of this IOM study.

If I give a quote, I want you to tell me if it is wrong, if it is. In the press conference releasing this study, the principal investigator was Dr. John Benson. Did he not say and I quote, "We concluded that there are some limited circumstances in which we recommend smoking marijuana for medical uses"?

Dr. VEREEN. Yes.

Mr. MORAN. He said that?

Dr. VEREEN. Yes.

Mr. MORAN. Is it not true in the study on page 70 that it says, "The evidence is relatively strong for the treatment of pain and, intriguing although well established, for movement disorders," referring to marijuana?

Dr. VEREEN. Yes.

Mr. MORAN. Page 177, for patients such as those with AIDS or who are undergoing chemotherapy, and who suffer simultaneously from severe pain, nausea, and appetite loss, cannabinoid drugs—i.e., marijuana—might offer broad-spectrum relief not found in any other single medication?

For the record, there is no refutation of these quotes, so if there is, I want you to say for the record that this is not an accurate quotation.

Mr. ISTOOK. Excuse me, are you asking him whether it is an accurate quotation from the document, or it is an accurate refutation of the facts as he understands them?

Mr. MORAN. I am asking if these words that I am reciting are not included in the record.

Dr. VEREEN. They are included in the report.

Mr. MORAN. I will proceed.

Mr. ISTOOK. That is fine.

Mr. MORAN. Because these are relevant statements.

Mr. ISTOOK. You are not asking him whether the statements are true, you are asking whether it is true that you are reading from a document and that is what the document says. Let's be fair. If the witness wants to disagree with the statements, let's give him an opportunity to do that.

Mr. MORAN. I am referring to the document.

Mr. ISTOOK. You are not asking whether he agrees with the statements.

Mr. MORAN. I am referring to the document, and the witness knows what is in the document.

Let me continue with what is in the document.

"The profile of marijuana suggests that marijuana's effects are promising for treating wasting syndrome in AIDS patients. Nausea, appetite loss and anxiety are all afflictions of wasting, and all can be mitigated by marijuana." that was on page 159.

On page 205 and 206, where it is referring to Marinol which is the form of marijuana in pill form, "It is well recognized that Marinol's oral route of administration hampers its effectiveness because of slow absorption and patients' desire for more control over dosing."

On page 217, does it not say, "From a scientific point of view, research is difficult on marijuana because of the rigors of obtaining an adequate supply of legal, standardized marijuana for study."

I point that out, Mr. Chairman, because people are saying "let's just do more study." It is saying that the problem is it is kind of a Catch-22. It is illegal to get the marijuana and to get it in controlled form.

On page 5, does it not say, "except for the harms associated with smoking tobacco, the adverse effects of marijuana use are within the range of effects tolerated for other medications."

On page 159, "Terminal cancer patients pose different issues. For those patients the medical harm associated with smoking is of little consequence. For terminal patients suffering debilitating pain or nausea and for whom all other medications have failed to provide relief, the medical benefits of smoked marijuana might outweigh the harm."

So far these are all accurate statements, Dr. Vereen?

Dr. VEREEN. Yes.

Mr. ISTOOK. Let's be clear. Are you asking if they are accurate statements, or if you are accurately reading from a document?

Mr. MORAN. Okay, as long as I am accurately reading from this document; and if I am not, I want you to catch me on it.

The document also says, does it not, "Finally, there is a broad social concern that sanctioning the medical use of marijuana might

increase its use among the general population. At this point, there are no convincing data to support this concern."

Also when we talk about whether marijuana is dangerous to be used as a medicine, on page 5 it says, "Except for the harms associated with smoking tobacco, the adverse effects of marijuana use are within the range of effects tolerated for other medications."

And on page 159, "Terminal cancer patients pose different issues. For those patients the medical harm associated with smoking is of little consequence. For terminal patients suffering debilitating pain or nausea and for whom all indicated medications have failed to provide," and this is repeating myself I know, but I want to emphasize this, "the medical benefits of smoked marijuana might outweigh the harm."

This is the point that the citizens of the District of Columbia considered, and that is why we wanted to get this on the record. There are other points of view from those of the chairman and those of the majority, and they are even alluded to in this report.

Page 6, "Finally, there is a broad social concern that sanctioning the medical use of marijuana might increase its use among the general population. At this point, there are no convincing data to support this concern."

Mr. Chairman, I have a number of other quotes that address every issue that has been raised. And Dr. Vereen, Ms. Lewis and Ms. Warren can take issue with those, but the point is that studies have shown that there are different points of view. I think that the facts show that there is no proven case study where the medicinal use of marijuana actually increased the use of other illegal drugs.

I have got lots of stuff that has been sent to me to show that, and they appear to be very reputable studies. And it also been shown that when you are dealing in some limited circumstances such as Dr. Benson, the principal investigator for the Institute of Medicine report referred to, in those limited circumstances they would recommend smoking marijuana for medical uses.

Now, I wouldn't recommend smoking marijuana necessarily without knowing what its effects were, and I certainly wouldn't have before this hearing, but after looking at the evidence, I can certainly find reason to respect those people who feel that it has a constructive purpose.

I would want to be the last person to judge and certainly in a self-righteous—I wouldn't want to judge in a self-righteous way people who are terminally ill from AIDS or cancer or other tragic diseases who choose to use this form of relief from pain, from nausea, and from loss of appetite.

So again, Mr. Chairman, the only point I am trying to make is that there are different points of view here. There might be sufficient cause to tolerate a different point of view, particularly when it is expressed by a democratic majority in the democratic country that prides itself on democracy and where you have a D.C. City Council, which would have had authority to implement the law and determine whether it is appropriate to implement.

With that, I yield back the balance of my time, which is absolutely zero.

LOCAL OPTION RELATING TO DRUGS

Mr. ISTOOK. I certainly would suggest, Mr. Moran, to you or anyone else that thinks that we ought to enable jurisdictions to enact these laws if they so choose, then I think an intellectually honest approach would be that you should propose a repeal of the Federal laws on the same. If you want to make this purely the local option issue rather than a national policy issue when it comes to regulating drugs, having an FDA to approve what is effective or proper or not and having—gosh, we could do away with a whole Federal law enforcement network if we didn't have any laws relating to drugs, if we went to local option purely.

Mr. MORAN. I never claimed to favor States' rights over Federal rights. I think there ought to be a balance.

Mr. ISTOOK. I absolutely agree, which is what I think the national drug laws have certainly sought to achieve.

DR. VEREEN'S RESPONSE TO QUOTES FROM STUDY

Let me ask you, in fairness to Dr. Vereen, because Mr. Moran asked you if he was correctly reading statements from a document. That did not give you an opportunity to say whether you agreed with those statements. Certainly I know you testified previously that you would not recommend smoking marijuana in order to receive THC or any other drug, that for medicinal purposes there are more efficacious and superior ways to do it.

So I want to give you the opportunity if you wish to comment on the things that Mr. Moran was reading, because I would not want anyone to mistakenly put those words in your mouth just because you agreed that he was correctly reading from a document that he had in front of him.

Dr. VEREEN. This is the document, not the individual pages, not the individual words or the individual facts that you outlined.

I, with all due respect, would say we don't have a difference in terms of point of view. Everything that you mentioned is clear. That was the purpose of this document.

Mr. MORAN. Those were all accurate statements?

Dr. VEREEN. Yes. What was missing was the context. The IOM did more than collect facts. The IOM pulled the facts together and then painted a picture for us.

Now a lot of the picture is already known in medicine. The reason that a lot of these alternatives are not used is that there are so many better alternatives. That is why. There are many other medications to treat emesis. There are many other medications to treat pain. Some of them are abusable.

The opiates are the most efficient pain medicines that we have out there. THC is not a first-line treatment for pain. At best at this point in time, it is an adjunct. It can be used as an adjunct.

Recently, we have discovered THC receptors in the brain. That is one of the reasons that THC has an effect on the brain. That tells us that perhaps some variant of the THC molecule could be used and perhaps might be more efficient than opiates. That is why we do the research.

Many of the things that you mentioned leave out important concepts like route of administration. We have shown that the power

of science can get us into the plant and pull out the parts that we can actually use. Put them in a form that is measurable and used in a very powerful way. But why isn't dronabinol used more often, when you compare it for other medications for all of the things that you mentioned? I can run through the list—glaucoma, anagesia, nausea, wasting—except for wasting syndrome, and multiple sclerosis, there are so many other alternatives.

Medicine knows that, and this report documents that. It puts it in a perspective. Should we be doing more work, yes. That doesn't mean that the story is finished at this point in time.

So I think I have made the point. I am not in disagreement, but context is important. Context is critical.

Mr. MORAN. It is critical. If the chairman would yield?

Mr. ISTOOK. Yes.

MARIJUANA CONSIDERED A "GATEWAY" DRUG

Mr. MORAN. In the report, and it concludes, and I think this is appropriate context, the principal reason that it is considered a gateway drug is not its addictive capacity, but the fact is that it is illegal. And the fact that it is illegal, one gets into the use of using more harmful illegal drugs, and I do think that it is within this context to suggest that marijuana in and of itself is not a substantially dangerous drug. It is not that you don't recommend, except under some limited circumstances. That is not out of context. And I think that is the fair description of the report.

I don't refute the fact that there are a lot of reasons mitigating against recommending marijuana, but I think to give a balanced context to the report, because it is a fair report, one could make the point that it ought not be that we shouldn't be investing the resources that we are necessarily in marijuana compared to other illegal substances, and that in some cases it has some medical therapeutic effect.

ALCOHOL AND TOBACCO

Dr. VEREEN. To round out the context, alcohol and tobacco are the two most abused drugs by children.

Mr. MORAN. And you can make a case worse than marijuana.

Dr. VEREEN. Perhaps. But those are the three most commonly abused drugs by kids, and we pay a huge societal price for alcohol and tobacco abuse already.

Mr. MORAN. I totally agree in terms of alcohol.

Dr. VEREEN. There is enough evidence to say we do not want to increase the availability of a substance that is already illegal and in the plant form does not offer any medicinal value. The value is within the plant. The value is within the plant. It is the constituents of marijuana that is important. That is what science gets for us.

Mr. ISTOOK. I thank you.

Let me pose one final question, and I appreciate your comments, Dr. Vereen.

PROBLEMS CAUSED BY CONFLICTING LOCAL, STATE AND FEDERAL LAWS

Ms. Warren, realizing that drug enforcement is an interlocking network of local, State and Federal law enforcement officials and there is necessarily a lot of communications and referrals, a lot of joint efforts in this, when you have the jurisdictions that have sought to legalize marijuana, even though you have correctly noted that does not do away with the Federal law nor the Federal prosecution, do you find, however, that because of the confusion or whatever local policy may be, that this diminishes the case referrals on drug violations that come to DOJ from that jurisdiction or in any other way impairs that working relationship because now there is this conflict between the State and the local and the Federal laws?

Ms. WARREN. I don't believe that we have seen any diminution in case referrals just because we have so many, but it certainly does create confusion. In many, many localities, our Federal agents work in task forces with the State and Federal officers, and it becomes a decision in California, are you investigating under State law or Federal law in a particular arrest? And it can be very confusing, and they have sought assistance at the U.S. Attorney's Office for advice on how to handle those situations.

Mr. ISTOOK. I appreciate that. I know that is a part of what I requested earlier about what is the extra expense that is basically generated by the difficulties that this creates.

[CLERK'S NOTE.—See pages 1200-1202 for discussion and material referred to.]

Mr. ISTOOK. I very much appreciate the testimony by each of you. It has been very enlightening and helpful, and we certainly thank you for it.

FINAL WITNESS

We have one final witness on the third panel appearing at the request of Mr. Moran. He is Keith B. Vines, an Assistant District Attorney for the City of San Francisco.

Mr. Vines, please come forward. I believe you took the oath earlier.

Mr. VINES. Before I get started, Mr. Chairman, I flew in last night from San Francisco, and I got in kind of late, so bear with me. And I was wondering, since I feel like I am in the minority, I was wondering if I could have a little more than 5 minutes to cover some of my points.

Mr. ISTOOK. We will see how it goes. We want to try to keep within that time frame because it is stretched out already. We are not trying to be totally strict.

OPENING STATEMENT OF KEITH B. VINES

Mr. VINES. First of all, I thank you, Mr. Chairman, Congressman Istook, and Minority Ranking Member Moran for allowing me to be here today and testify.

I would like to start out and say that my involvement here is not part of any step to legalize marijuana or any other drugs, for that matter. I am not part of any vehicle or subterfuge to legalize mari-

juana. I want that stated very clear. Some have mentioned that—I think the chairman discussed that in some ways in his opening statement with regard to Proposition 59.

I want it clear for the record that it is my humble opinion that California's Proposition 215 and indeed my reading of the District's Proposition 59 is clearly not a step towards legalization of marijuana. That is my interpretation of it, with all due respect, Mr. Chairman.

Please understand that people like me who suffer from AIDS, specifically the AIDS wasting syndrome, and I will talk about that in a little more detail, needed at the time medicinal marijuana not to get high but to stay alive, simply put, and to be healthy.

I am a former captain in the Air Force, member of the JAG Corps, honorably discharged with appropriate commendations, the highest ratings. I was proud to serve my country in that capacity when I did.

I currently, since 1985, have been a prosecutor for the City and County of San Francisco; and, as my statement points out, I have prosecuted the gamut of cases. And specifically for a period of time from 1989 to 1991, I was involved very vigorously in prosecuting the drug cases and specifically was selected—you had to be on the Drug Task Force, which was a Federally funded program, to prosecute those very big cases.

In fact, I prosecuted successfully the second largest drug bust in San Francisco history, involving 400 pounds of bricked marijuana.

I'm proud of those accomplishments. I support the drug laws and I'm not here in any way to say that we should legalize marijuana or any other drugs under the laws. With regard to my story, it's covered in my statement. I'll make it brief.

Unfortunately, I have AIDS. And unfortunately, part of that, one of the side effects that you can get which I got—I seem to catch them all—was wasting syndrome. I lost 45 pounds. You wouldn't know it from looking at me today. But I withered away. And I couldn't sit in a chair, I couldn't really get on a scale, I was terrified. I was told I was going to die and essentially got on a study through the—which is now FDA approved for growth hormone, and I was told the only way to have that drug work was I had to fuel it with eating a lot of food. And I had no appetite. And with wasting syndrome I have no appetite. I challenge anybody to eat three meals a day when you have no appetite and especially the kind of meals that my doctor was recommending that I eat. It was impossible.

So the first thing we tried was Marinol. What Marinol is, my understanding as a lay person, is nothing more than a marijuana pill. It has the THC drug compound and the purpose of that pill was to hopefully stimulate my appetite. But it didn't work for me, as I found out through my own research that it hasn't worked for many others. It worked too much. It wiped me out for 4 or 5 hours. And in fact it didn't stimulate my appetite. And so, I was left again with a wasting away and what was I going to do to stimulate my appetite.

It was at that point that my physician discussed with me the risk, the benefits and the alternatives of considering smoking marijuana. That put me in a very awkward position considering how I

feel about drugs. But, as a patient who is dying, when my physician said that this drug for medicinal purposes might save your life, might give you the appetite so that you could fuel the growth hormone and come back to life, I chose to live. And it worked. And I now continue to be a productive member of the staff of the City and County of San Francisco. And I'm proud of that.

RECOMMENDATION OF DEA CHIEF ADMINISTRATIVE JUDGE

I heard a lot of people—I don't mean to say everybody—say that we need more research on the issue of whether or not marijuana for medicinal purposes is safe and effective. I think it's very interesting because I'm a prosecutor and one of the things I like to do as a prosecutor in my cases is I like to be prepared. So in getting involved in this whole big issue, I tried to get educated as best I could. One of the things I found very interesting is in 1972, the DEA was petitioned to move marijuana from a Schedule I drug to a Schedule II drug. And their chief administrative judge by the name of Frances L. Young, after 2 years of medical testimony—now this is back in 1988 and here we are almost in the millennium, she ruled that marijuana in its natural form—and I'm quoting—"is one of the safest therapeutically active substances known." and she recommended that the Control Act should be changed and it should be transferred, marijuana, from Schedule I to Schedule II.

Now, we hear arguments being made that we should leave it to the process. Well, you had a recommendation from their chief administrative judge to the DEA. And what did the DEA do? Did they follow that recommendation? Did they pay attention to the 2 years of medical evidence? No. In fact it required an appellate decision to say the DEA had a right to ignore that decision, which the DEA did and to this date has. So that leaves patients such as myself and providers in a quandary. It seems to me there's more than sufficient evidence out there.

INSTITUTE OF MEDICINE'S REPORT

We've heard I think testimony today, quoted from a number of sources of the Institute of Medicine's March report, and I summarize a lot of that but I think it's clear that there is substantial consensus among the scientific experts that there is a medical use, a medicinal use of marijuana. And for terminally ill patients or those with deliberate symptoms, the one risk that we hear about is smoking. Well, you know, when you're facing death and you're weighing the risk and benefits of maybe smoking a couple of puffs of marijuana to stimulate your appetite, facing versus wasting away, what did you think the kind of decision you would make or, if asked, you would make if you had to sit down and talk to a family member about it. In the meanwhile what do patients such as myself do if we wait around for the system to do something about it.

"MARINOL" PILL

At any rate, I think the evidence has been substantial that there is a medicinal use of medical marijuana. And that although we have a Marinol pill, there are problems with that. And I think that's been pointed out in a number of reports with regard to the

time it takes to work, how long the effect, too little, too much, and it's not predictable and so forth and so on. And I have found quite frankly that using the inhaled medicinal marijuana has—was helpful for me. It really did make a difference. It really saved my life.

The Physicians Desk Reference has about 3,000 drugs and certainly the PDR doesn't just recommend one drug for one symptom. They recommend many alternative drugs that physicians consider with their patients in trying to deal with a particular health issue. And this is a health issue.

"GATEWAY" DRUG USE

And it's a treatment issue. And one of the other issues that came up I hear, and I know this is raised many times, is what message are we sending to our children, you know.

First of all, on the issue of the gateway drug issue, the—I think that the Institute of Medicine's report in March of '99 is my reading of it, my interpretation of it and I had some quotes and I'm not going to bore the committee with quoting all that now because I think that's been raised appropriately, but I will quote this. It says, "The existing data are consistent with the idea that this would not be a problem if the medical use of marijuana were as closely regulated as other medications with abuse potential."

And it's clear that there is no conclusive evidence that marijuana is a gateway drug to illicit drug use. "no conclusion of evidence" was I think the language from the Institute of Medicine's report.

MR. VINES' PERSONAL OPINION ON CALIFORNIA LAW

Concerning the issue of the law, it was my—and what has my experience been in California where we passed Proposition 215 in November of '96? What happened? What's my experience been as a prosecutor? What can I report to this Committee? Again, this is my personal opinion of my interpretation of what happened. So take it for what it's worth. But, I have found that despite the outcries of concern that I hear that it's going to open the doors to legalizing marijuana and that we're going to see a lot of abuses and a lot of expenses and so forth and so on, surprisingly in California that's not been the case.

DECLINE IN TEENAGE USE OF MARIJUANA IN CALIFORNIA

In fact, statistically, and I know that's been mentioned I think by Congressman Moran, the statistics show opposite. We've had decline in teenage use of marijuana. And I may be incorrect in that, I see a smile from Chairman Istook. So if I am, please correct me. But my experience and the feedback that I'm getting is that Proposition 215 has not created some sort of gateway opportunity for people to illegally obtain marijuana. The purpose of Proposition 215 as with Proposition 59 is to provide legitimate medical needs for medicinal purposes for marijuana when you have a seriously ill patient and you have—in California, we want a recommendation from the physician.

PHYSICIANS CANNOT PRESCRIBE MARIJUANA

Now, somebody talked about prescription. You cannot prescribe medical marijuana. Why? Because the Federal law clearly says it's a Schedule I drug. Now, if the DEA wants to change all that, we wouldn't even have to be here. It could be a Schedule II drug. It could be just like the Marinol pill. It could be something that's done between patients and physicians. But that's not the way it is right now. So we're left in limbo. And I think that's many reasons why the compassionate voters in many states, including California, have stood up and said, "look, we need to do something for these patients who are suffering serious illnesses and need treatment," albeit maybe they're not right for everybody, but if a physician thinks it's appropriate, we should respect that. Because proposition 215 as with Proposition 59 allows seriously ill patients to use marijuana without arrest. We're talking about state level. I realize that we're still subject to Federal law, you know, technically the police could arrest people for possessing marijuana, for cultivating marijuana in California or any of these other states and they have a right to do that if they choose to do that. Those are the prosecutorial decisions that they should make in accordance with their policies around that.

MEDICINAL MARIJUANA PROCESS IN CALIFORNIA

But as far as Proposition 215 goes, each jurisdiction, at least in San Francisco and Oakland and San Jose when Proposition 215 was passed they didn't just sit back and say, you know, we don't want to do anything about this, we didn't like it, we're going to ignore it. The Department of Health, the police department sat down with the DA's offices and said this is the will of the people, let's make it work. And they did. They set up safeguards. Yes, safeguards. Do you know what I had to do to get medicinal marijuana, Mr. Chairman? Did I get to just walk into a buyers club and say, hi, how about a joint? It didn't work like that. They came over to my house, they met me. They wanted to see that I was a seriously ill patient. I had to provide documentation that I had AIDS. That was verified as far as I know. Furthermore, they wanted to see there's a recommendation from a physician that medicinal marijuana is appropriate in my particular situation. Now, that is a safeguard. It may not be a perfect safeguard but it was a safeguard. It made me feel good as a prosecutor that they were checking me out.

Thank you, Mr. Chairman. I know I'm over my alloted time here. I'll try to wrap it up. I appreciate your patience.

Now in July of '99 there was a task force, actually in Sacramento, to implement 215 and the health committee passed by a 9 to 4 vote on July 13th SB 848. It establishes a whole—a system for registration, safeguards and so forth that would be used throughout California to be consistent with the will of the voters. That is a way to provide seriously ill patients medicinal marijuana with appropriate safeguards. And I believe that this—that 848 will pass and so we'll have some uniformity throughout the state. But I believe in the interim, the proposition has worked and I don't

think we've had some of the—some of the concerns that I think were legitimate did not come to pass, I'm happy to say.

CONCLUSION OF MR. VINES' STATEMENT

And in closing, I would just like to refer to my statement, if I may. I agree that this Nation needs an effective war on drugs. But I think it's an outrage with all due respect, Mr. Chairman, that some have thought that this war ought to extend to seriously ill patients. Because right now, seriously ill patients without the states that have passed the propositions are subject to prosecution and arrest. We have enough to deal with in our lives without worrying about whether our doors are going to be busted down and whether we're going to be arrested for having a small quantity of marijuana. So, let's keep it to a war on drugs for people that are doing it for recreation, doing it illegally, inappropriately, and not for seriously ill patients who are doing it under the guidance and privileged protections and recommendations of their physicians. And I thank you for allowing me to have the extra time. I hate to think how much further I went, but thank you, Mr. Chairman.

PREPARED STATEMENT OF KEITH B. VINES

[The prepared statement of Keith B. Vines follows:]

STATEMENT OF

KEITH B. VINES, ESQ.

ASSISTANT DISTRICT ATTORNEY,
CITY AND COUNTY OF SAN FRANCISCO

BEFORE THE

DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON APPROPRIATIONS

U.S. HOUSE OF REPRESENTATIVES

ON

DRUG LAW ENFORCEMENT IN D.C.
AFTER PASSAGE OF INITIATIVE 59,
THE MEDICAL MARIJUANA INITIATIVE

September 29, 1999

Chairman Istook, Mr. Moran, members of the Subcommittee, thank you very much for inviting me to testify before you today regarding drug law enforcement in the District of Columbia following the adoption of Initiative 59 by the voters of the District of Columbia. It would permit physicians to recommend marijuana to their chronically ill patients, and to permit those patients to obtain, use and if necessary grow, marijuana to treat their serious and chronic illness.

I am going to tell you briefly about my experience as a prosecutor, the impact of the California medical marijuana initiative (Proposition 215) on drug law enforcement there, and my prognosis for drug law enforcement in the District of Columbia. In addition I want to address some substantive issues regarding medical marijuana policy. I also want to discuss my struggle to survive AIDS and how medicinal marijuana has saved my life.

I have been an assistant district attorney for the City and County of San Francisco since 1985. I am a former Captain in the U.S Air Force, Judge Advocate General Corps, in which I served as a prosecutor, defense attorney, and one of seven medical-legal trained experts for the Air Force. I served from 1976 to 1981, at which time I was honorably discharged. I received numerous commendations and the highest ratings. I am admitted to the Supreme Courts of California and Pennsylvania.

As a prosecutor in the D.A.'s office, I have tried the entire gamut of criminal cases. From 1989 to 1991 I exclusively prosecuted narcotics cases, both at the street level and then was selected for participation in the Federally funded strike force for large quantity cases. During this time, I prosecuted the second largest drug bust in San Francisco history, a major marijuana case. The defendant had successfully avoided conviction in two prior Federal indictments, but I sent him to state prison.

The Controlled Substances Acts and Medical Marijuana

The Controlled Substances Acts – state and Federal – are a body of law that regulates a wide variety of substances, most of which have the power to do good and the power to do evil. The principle of this law is that drugs with important medical value can also be abused and thus need to be regulated. Drugs that are widely abused – narcotics, pain relievers, tranquilizers, stimulants, and depressants – are critically important medical tools. Marijuana is, in this sense, like these other drugs. Unfortunately, due to the political controversies around marijuana, the Federal law has not yet recognized marijuana's established medical value.

The scientific literature regarding the medical benefits of marijuana are quite extensive and of long standing. Research programs into the medical benefits of marijuana were well known in the medical community by the early 1970s. Consequently, marijuana has been used by thousands of chronically ill patients to save and prolong life, and to relieve the most severe medical symptoms and conditions. Despite the medical benefits, untold numbers of such seriously ill people had been arrested, prosecuted and convicted of marijuana offenses. Before passage of the 1996

proposition, the legislature twice sent medical marijuana acts to Governor Wilson who vetoed them. The initiative process was the only process available to the public.

In 1996 California voters adopted Proposition 215, which removed state criminal penalties for seriously ill medical patients and their physicians for using marijuana upon the physician's recommendation. The proposition also protected the other care-givers for such seriously ill persons in helping immobile patients to obtain marijuana for medical purposes.

Since adoption of the initiative, several things have happened. There has been controversy surrounding the implementation of the initiative. The Federal government threatened physicians with investigation and prosecution with removal of their DEA registration and with other sanctions for merely discussing the benefits of marijuana for their patients for whom it might be indicated.

There has been a variety of lawsuits filed. One of them, brought by some of the most respected physicians in the state, respected associations of medical practitioners, and patients, including myself, was filed in Federal court. U.S. District Judge Fern Smith, a Republican-appointee, in a 50-page opinion enjoined the Federal government from carrying out these threats. The case is still pending.

Most observers recognize that the state legislature needs to create a process for regulating more carefully the distribution of marijuana for chronically and seriously ill patients, and a task force has developed recommendations for the legislature.

Many local governments – large and small – after the initiative was adopted, developed systems to control the distribution of marijuana to patients pursuant to the law.

Several important things are true:

First, there is no epidemic of teenage marijuana use in California. The recent *Monitoring the Future* surveys of the Federal government have found that California teenagers use marijuana at less than the national average.

Second, there have been successful prosecutions of persons who are abusing the protections of Proposition 215, as there should be.

Third, enforcement of the narcotics laws prohibiting the cultivation and distribution of marijuana and other drugs has continued without interruption or handicap.

Three years after Proposition 215 took effect, there is no effort to reverse course. The legislature is considering S.B. 848, to provide for registration of patients, to provide identification cards to aid law enforcement officers, to allow the Department of Health Services to specify quantities of marijuana that may be grown and possessed for medical use, and other provisions.

There is no reason to believe the District of Columbia Council cannot develop similar modifications of Initiative 59 to meet the concerns of law enforcement and other authorities.

The most important thing to note is that no message has been sent to law enforcement to pull back in the battle against the scourge of illegal drugs. In every county in the state, police and prosecutors are working together to fight the cultivation of marijuana, the illicit traffic in the drug, and all of the other drugs of abuse.

California voters, and the voters of other states and the District of Columbia, have made the Controlled Substances Act true to its principle – that drugs with the potential for abuse and with medical benefits to seriously ill persons can be made available under appropriate safeguards and medical supervision.

District of Columbia

Around the nation, people know that D.C. has a serious illegal drug problem. The Metropolitan Police Department, the many Federal law enforcement agencies, and the U.S. Attorney are engaged in a vigorous assault on the drug traffic and its related crime and violence.

D.C. has outstanding medical centers and world-renowned physicians as well. There is no reason to handicap your doctors in the treatment of their patients and in the exercise of their well-trained professional discretion.

The relatively small numbers of persons with AIDS, being treated for cancer, multiple sclerosis and a few other severe medical conditions are not going to jeopardize drug law enforcement in this city.

No competent police officer or prosecutor is going to be confused by any attempts to abuse the protections of this initiative.

The voters in the District recognize what every nationwide poll has shown: that Americans recognize that seriously ill persons deserve every medicine, including the politically unpopular as well as the dangerous ones, if those medications will improve the quality of their lives.

This is a nation based on the rule of law. But that rule only has legitimacy from the consent of the voters. The framers of the Constitution did not envision that the Congress would micro-manage the health care of seriously ill persons, or throw out the results of general elections.

This nation needs an effective war on drugs. It is a tragedy, indeed it is an outrage, that some have thought this war ought to extend to seriously ill persons who use drugs that help them survive, to fight their terrible illnesses.

Medical Marijuana Policy

Does marijuana have medical benefit? Yes. The Institute of Medicine has established that fact. Is it an ideal medicine or a perfect medicine? No, indeed few medicines are. Will medical technology develop replacements for smoked marijuana? Quite possibly, but that does nothing for people who are struggling today to stay alive who depend upon smoked marijuana.

Does making marijuana available to sick and dying persons send the wrong message to the nation's youth about marijuana? Not at all. The foundation of any anti-drug education program is that drugs should not be used except as recommended by a doctor. Drugs may be helpful for certain conditions, but they can be dangerous and should never be used unless directed by a child's parents or a doctor.

Has the national debate about medical marijuana led to increased teenage marijuana use? No. In the face of this debate, with television ads, and front page news stories, teenage marijuana use has continued to decline, and after the increases of the early 1990s, has declined since Proposition 215 was debated and passed in California in 1996.

Medical marijuana should not be different from medical cocaine, medical morphine, medical Ritalin, etc. These drugs – all widely abused – are all available for the use by patients under the direction of their physicians.

My struggle to survive AIDS – medicinal marijuana has saved my life

In 1993 I was diagnosed with AIDS wasting syndrome. I suffered a devastating weight loss of 45 pounds. This affected every aspect of my life. I lost my appetite. I watched my body disintegrate – my ribs protruded, my clothes didn't fit. I couldn't sit in a chair because I was sitting on bone. I was terrified of getting on a scale, frankly. I was afraid of dying. I was wasting away due to the AIDS virus.

Fortunately, I was accepted into an experimental drug testing program using Serono's growth hormone to treat AIDS wasting syndrome. Doctors told me that the treatment would not work unless I fueled the growth hormone with three hefty, high-calorie meals every day. Because I had no appetite, this was impossible.

My physician initially recommended FDA approved Marinol – the pill with THC. Marinol did not work for me. It would knock me out for five or six hours – it over-medicated me, and it was not adequate in stimulating my appetite.

I continued to consult with my physician about my options and discussed smoking marijuana. We discussed the potential benefits, what medical research and investigation revealed about appetite stimulation from marijuana, and the risks from smoking and other potential side effects.

Considering that I was dying, I decided to try smoking marijuana. It worked. I

was able to titrate the dose. It took one or two puffs to obtain an appetite and it did not incapacitate me for hours. With my appetite improved, I could eat sufficiently, and coupled with the growth hormone, I regained my lost weight.

I still have wasting, I still use the growth hormone. I don't need to use marijuana regularly now. Sometimes I do need it to stimulate my appetite. I don't use marijuana recreationally. I don't like being stoned, but I do like being alive.

People who suffer from AIDS who use marijuana are not smoking to get high, we are smoking to get healthy.

Although I have AIDS and AIDS wasting syndrome, I work successfully as a prosecutor serving the public and my nation. I live a productive, satisfying life, and this is due to medical marijuana.

I have been a foot soldier in the war on drugs, and I am proud of my achievements putting drug dealers in prison. I completely agree with most of the nation that we need tough laws to control drugs.

But please understand that people like me need marijuana to stay alive and to get healthy, not to get high. Don't let me and people like me be collateral damage in the war on drugs.

Thank you very much for the opportunity to testify before you today.

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Mr. ISTOOK. Frankly, I wasn't keeping track. It was significant but that's okay. I appreciate that. Since you're here of course at the request of Mr. Moran, I would like to extend him the courtesy if he would like to pose any questions he has first.

CONGRESSMAN MORAN'S REMARKS ON MR. VINES' TESTIMONY

Mr. MORAN. Thank you, Mr. Chairman. I think Prosecutor Vines' statement speaks for itself. I have had my mind opened by this situation. I guess I have you to thank for it, Mr. Chairman, because had you not——

Mr. ISTOOK. You're saying I've been a mind expanding experience? Is that what you're saying?

Mr. MORAN. It's been an enlightening experience and I have you to thank for it, Mr. Chairman, because if you had not been so intransigent on this issue and worked with Mr. Barr to ensure that it would be part of this bill I never would have gotten involved in this. But having gotten involved, I have learned some things that I never would have believed, that the public is certainly not aware of. For example, the administrative law judge's determination after 2 years of study that marijuana was not the dangerous drug that it is described as, but in fact, is relatively safe and can be therapeutic, I never knew that. I never would have believed that there was a recommendation from FDA to treat it like other prescribed substances that can relieve pain. I never would have particularly gotten involved or taken seriously the medical marijuana initiative that D.C. undertook, and yet I can see that this was a thoughtful response to a serious situation. D.C. has one of the worst AIDS crises of any urban area, and that is why they have taken the lead in terms of the free exchange of needles and because they know it has worked in other cities, and why their voters are trying to take the lead in terms of allowing doctors to suggest that there may be some benefit to smoking marijuana.

And I never would have come across somebody like Mr. Vines, who is not just articulate, but speaks from the heart as well as the mind and from experience. This is a credible individual. It is obviously tragic that you have contracted AIDS because you have so much to contribute to our society and to our legal system. And you have proven that by your experience. And you have the courage to come all the way from California, fly here, sit down as the only witness who was willing to go against the grain, and in an articulate manner describe exactly why we should be going against the grain and why we should have the courage to stand up for facts, not prevailing opinion.

And that's why I think that this request to simply respect the majority view of the District of Columbia voters is not an unreasonable one and why this should not be part of the D.C. Appropriations bill but should be considered separately by the Judiciary Committee, where the Judiciary Committee can get this kind of testimony. This needs to be understood by far more people than are ever going to come into contact with the information that people like Mr. Vines are willing to share.

We've got a long ways to go, Mr. Chairman, in terms of trying to relieve pain and suffering and act in the most responsible manner. And when we are burdened by what people might say or think

or what prevailing opinion is, we're not likely to move forward, we're more likely to move backward.

You know, I think it was Plato who said that the minority are oftentimes wrong but the majority always are. Well, on something like this where public opinion is so strong, and may be so wrong, this hearing was constructive. And I appreciate the fact that you gave us the opportunity. And again, I will conclude my statement by saying that Mr. Vines' statement speaks for itself.

Mr. ISTOOK. Thank you, Mr. Moran.

Mr. VINES. Thank you, Congressman Moran.

Mr. ISTOOK. I certainly appreciate your comments and certainly if you feel that that's your position, you know, you may wish to propose this for the people in Virginia. I don't know. I'm certainly not prepared to do so in Oklahoma.

Mr. MORAN. I'm not surprised.

DEA CHIEF ADMINISTRATIVE LAW JUDGE RECOMMENDATION

Mr. ISTOOK. I would say, frankly, that the fact, if it is a fact, and I frankly don't know, whether an administrative law judge made a recommendation to the DEA.

Mr. VINES. That is fact.

Mr. ISTOOK. Whichever. But the point is the recommendation of the administrative law judge is far different from the position of an agency and certainly as you indicated in your testimony, whatever was the underlying situation, when someone chose to try to say to the courts that the administrative law judge ought to be determining how this issue is to be resolved, the court said no. So I think that was very clear there.

QUESTION OF DECLINE IN TEENAGE MARIJUANA USE IN CALIFORNIA

I did note you mentioned in your oral testimony something about I believe you called it a decline in teenage marijuana in California. Certainly we're aware that there is an increase of teenage marijuana use nationally. I know your written testimony didn't say there was a decline in California, it just said that whatever it is, it's still lower than the national average. I honestly don't know which it is but that's the reason I noted that part of your testimony, Mr. Vines, and I appreciate that.

NO DISSENTING VOTE ON MARIJUANA RESTRICTION

I would mention I find it very interesting that the particular amendment that was on the D.C. Appropriations Bill had not a single dissenting vote when it was presented to the House of Representatives. Every Member of the House had the opportunity to say no to the amendment that Mr. Barr offered. Every Member of the House had the opportunity to request a recorded vote. Not Mr. Moran nor anyone else chose to do so. So it was adopted unanimously by the House of Representatives as opposed to the agenda, as some people may say, of any particular individual. There was no dissenting vote in the House.

Mr. Vines, I'm certainly pleased, as I know everyone is, that your condition is although not good, at least better than it was at that time.

Mr. VINES. Thank you, Mr. Chairman.

MR. VINES' TESTIMONY—PERSONAL OR OFFICIAL

[CLERK'S NOTE.—See page 1224, this volume.]

Mr. ISTOOK. Do I understand correctly your testimony is personal, it's not official on behalf of the prosecutor's office in San Francisco.

Mr. VINES. Well, let me state this in response if I may.

Mr. ISTOOK. Certainly.

Mr. VINES. Before I got involved in this and I was asked to join the lawsuit against the Federal government, the class action suit when the ballot 215 was passed in November, the Federal government came out with certain statements that some people characterized as threats against physicians for merely recommending marijuana. A lawsuit was filed. I was asked to be a member of that suit. And actually that case is in Federal court. And Judge Fern Smith, who, by the way I mean this with all due respect, I prosecuted my first felony case in front of her, I think she's wonderful, I have some great stories about that, especially all my faux pas, but she ruled in a 50-page opinion that essentially the threats by the Federal government to take action against physicians for merely recommending marijuana—and again I'm paraphrasing, and I have the decision but I wouldn't dare bore everybody with that—but essentially it's a violation of freedom of speech, violation of the privilege of patient-physician relationships and she issued an injunction against the Federal government.

So this is in California. But I suspect that if such action were taken in D.C. we'd see a similar class action and I wouldn't be surprised if we would see, in my opinion, similar rulings by the Federal court. That case is still pending.

Mr. ISTOOK. I have to agree, Mr. Vines, I'm never surprised at what an individual judge may do, whether it be an administrative law judge or a U.S. District Court judge. We've seen a lot of differences, as we all know, between judges, the ruling of an individual judge and what ultimately happens on appeal. As fellow attorneys we're both well aware of that.

APPELLATE COURT OVERRULED INJUNCTION BY CALIFORNIA COURTS

Mr. VINES. I'm just stating what the current status of the case is. It was very interesting that the attorney I believe up here was talking about the pending—about the action that was taken in California. And the attorney forgot to mention that that case, essentially an appellate court overruled the injunction by the California courts. I thought that was interesting that lawyer forgot to mention that fact to this Committee. But let me set the record straight on that. So again you never know what is going to happen on appeal.

PROSECUTOR TREATED DIFFERENTLY BY CANNABIS CLUBS

Mr. ISTOOK. You never do. And you know, Mr. Vines, we appreciate your coming forward. I notice because I'm aware that the Department of Justice was able to have a number of the cannabis clubs closed because they were not applying even minimal stand-

ards I'll say. I can appreciate that when a local prosecutor went to one of them, they made sure that they tried to dot the I's and cross the T's. I certainly wish that they were that diligent in every instance. I'm sure as a prosecutor you feel the same way.

Mr. VINES. As I said, my experience was and the feedback I'm getting was that that's overall what's been occurring in California. The clubs wanted to make it work and in a way that is consistent with Proposition 215. They don't want to be in hot water with the law. I'm not saying there is not exceptions or problems out there.

Mr. ISTOOK. Which is why a number of them have been closed by legal action.

Mr. VINES. I'm not sure whether I can answer yes or no to that. I don't know the particulars.

Mr. ISTOOK. Certainly. That's what, for example, the Department of Justice was testifying to earlier as well as the Drug Enforcement Administration.

Mr. VINES. They're doing their job, they should be.

DR. VEREEN NOT AVAILABLE TO COMMENT ON MEDICAL ISSUES

Mr. ISTOOK. Certainly. They certainly should. And I'm sorry that we don't have the opportunity to further ask Dr. Vereen about the assertions you made on particular medical issues. Neither you nor I are physicians. And it would have been interesting to hear his comment, although I believe he frankly covered the issues as to the necessity or non-necessity of those.

We do appreciate your taking the time to testify. We appreciate your being here.

CALIFORNIA LAW HAS NOT OBSTRUCTED LAW ENFORCEMENT

Mr. MORAN. Mr. Chairman, may I make one last comment. I do think that Mr. Vines' testimony showed that at least in this situation, in California, in San Francisco, we have evidence that this has not obstructed the enforcement of drug law policy. And that was a critical issue. I think Mr. Vines' statement, when I said it speaks for itself, I think it was clear that it has not obstructed let alone negated enforcement of existing drug law policy as it relates to the truly abusive and properly illegal drugs.

Mr. ISTOOK. I appreciate the comments and I do have a copy of the court orders that have been issued in San Francisco against clubs there that were operating illegally, that were not complying with the law. But I don't want to get going back——

MR. VINES' TESTIMONY—PERSONAL OR OFFICIAL

[CLERK'S NOTE.—See page 1223, this volume.]

Mr. VINES. You know, Mr. Chairman, I didn't answer your question, your first question to me, the capacity in which I come and testify——

Mr. ISTOOK. Personal as opposed to official.

Mr. VINES. I have talked about me getting involved in the case. I actually sat down with my boss Terrance Hallohan, the newly elected district attorney of City and County of San Francisco, with the lawyers and lawsuit and I laid everything out, told them my story, my involvement and I said I in no way want to embarrass

this office or you. And his response to me—I'm paraphrasing—was "Keith, I'm behind you as a prosecutor. I think you're taking an appropriate position and I support you and go for it." So I don't know whether that means that I've got the official stamp okay, but I think I'll still have my job when I go back to San Francisco tomorrow.

Mr. ISTOOK. Well, I understand, and I can only imagine there would be other lawyers that got real busy if you didn't. I appreciate that. Thank you so much, Mr. Vines.

CONCLUSION OF HEARING

Thank you, Mr. Moran. I appreciate everyone's attendance. This hearing is concluded.

PREPARED STATEMENT OF JEFF BRANDAU

[CLERK'S NOTE.—The following statement was received from Jeff Brandau, President of the National Alliance of State Drug Enforcement Agencies (NASDEA):]

Testimony of NASDEA President Jeff Brandau
Before the House Subcommittee on the District of Columbia
September 29, 1999

Mr. Chairman, members of the Subcommittee, good afternoon. My name is Jeff Brandau. I am a Special Agent in Charge assigned to the Narcotics Enforcement Unit of the Kansas Bureaus of Investigation. I am also the President of the National Alliance of State Drug Enforcement Agencies (NASDEA). It is indeed an honor to appear before you. I am here today to voice the Association's strong conviction that Congress should disapprove D.C. Initiative Measure No. 59.

As the name suggests, NASDEA is an association of the state police agencies from throughout the United States. The organization seeks to enhance federal and state drug enforcement effectiveness through legislative input at the state and federal levels. The organization is also dedicated to increasing cooperation among law enforcement agencies in the field of narcotics enforcement.

As we are all aware, the crime and other societal problems associated with drug trafficking and use of illegal drugs continue to threaten the quality of life throughout our country. As a law enforcement professional at the forefront of drug enforcement at the state level, I am witness to the alarming amount of drug-related crime and the consequences of drug abuse on people's lives.

The District of Columbia, as the capitol of our nation, occupies a unique role. Our young people instinctively look to Washington as a symbol of our national sense of right and wrong. I submit that this measure sends precisely the wrong message to our young people at precisely the wrong time. It is reasonable to conclude that children would find the "marijuana as medicine" issue confusing at best. Social attitudes about drugs compel children's behavior regarding drugs. When children associate drugs with risk and view drugs as socially unacceptable, fewer children will use drugs. But, if the opposite happens and children get the message that there is less danger and more social acceptance, more will be willing to use drugs. Parents will be faced with an even more daunting task of keeping their kids drug free.

Drug abuse rates are rising dramatically -- particularly among the future of America --our young people. A 1997 national household survey on drug abuse reports that illicit drug use increased 253% from 1992 to 1996. In 1996/1997, usage remained flat among the general population, but increased among young people ages 12 -17.

Moreover, the statistics tell us that marijuana is still a major "drug of choice" among the young. For these reasons, I submit that we already have a very major problem with marijuana. To tell our kids that this dangerous drug is now medicine -- sends an ambiguous and very WRONG message at a time when we need to be VERY clear.

We all need to be concerned about the insidious, well-financed and coordinated efforts of a very few, high profile people working nationwide who would put more marijuana in the

hands of our kids and tell them "its ok". If there is one thing I have learned from my years as a narcotics investigator, it is that dope dealers are in the business for one thing: money. The movement to legalize marijuana for medicine is more about profit than it is about compassion for the sick and dying. Make no mistake. The "medical marijuana" issue is a clever disguise for the proponents' true agenda: across the board legalization. Dennis Peron, the founder of the California cannabis buyers clubs, admits to making between $5 - $8 million dollars annually from the sale of marijuana. Since the passage of Proposition 215 in California, domestic production has soared, and, as evidenced by the 1997 National Household Survey and usage in California is higher than in the rest of the nation.

I am also concerned about the consequences this measure will have on drug enforcement. In the District of Columbia, law enforcement and prosecutors will be confronted with applying a loosely worded law that is ripe for abuse and may well allow use of marijuana well beyond anything the citizens that voted for the measure ever envisioned. The measure allows legal immunity to those who claim to have "oral prescriptions" for the drug. Persons are given the right to verbally designate "close friends" who are likewise protected by law to grow the drug or otherwise "obtain it" for them. Similarly worded laws in California led to the open storefront distribution of marijuana to essentially anyone who claimed to have a "medical" need for it, no questions asked.

The prospect of curtailing DEA's ability to enforce marijuana laws in the nation's capitol is an ironic contradiction in federal law, to say the least. Allowing marijuana for "medical" purposes contradicts federal controlled substance laws regarding possession and use of the drug, leaving enforcement officials in a dilemma. I submit that the law on the subject of marijuana must be consistent: marijuana is an illegal drug, period.

Despite great sympathy for our citizens who are afflicted with painful disease and medical conditions, NASDEA remains opposed to legalizing marijuana for medical or other reasons, pending the conclusions and recommendations of scientific study. Rather than voters determining what is and is not medicine and thereby by-passing the FDA approval process, NASDEA strongly favors the position reflected in House Joint Resolution 117 that supports the existing Federal legal process for determining the safety and efficacy of drugs, including marijuana and other Schedule 1 drugs.

At its organizational meeting in May 1997, NASDEA unanimously passed a resolution in opposition to efforts to legalize marijuana for alleged "medical" use. We reaffirm that resolution today and stand together with the Office of National Drug Control Policy, the International Association of Chiefs of Police, the Drug Enforcement Administration and the Partnership for a Drug Free America and others in opposing this measure.

Thank you for your time and attention.

CHAIRMAN ISTOOKS' PREPARED STATEMENT AND LETTER TO WITNESSES

[CLERK'S NOTE.—The prepared statement of Chairman Istook and a copy of the invitation sent to witnesses for this hearing follow. The same invitation went to the U.S. Attorney General, Janet Reno; General Barry McCaffrey, Director of the Office of National Drug Control Policy; Donnie Marshall, Acting Administrator of the Drug Enforcement Administration; Wilma Lewis, the U.S. Attorney for the District of Columbia; Chief Charles Ramsey of the Metropolitan Police Department; William Lockyer, Attorney General for the State of California; and Keith Vines, Assistant District Attorney for the City of San Francisco.]

OPENING STATEMENT BY CHAIRMAN ISTOOK

HOUSE APPROPRIATIONS SUBCOMMITTEE

ON THE DISTRICT OF COLUMBIA

SEPTEMBER 29, 1999

This summer--just a few months ago--the Clinton Administration sent its officials to testify to Congress about America's war against drugs.

From the U.S. Department of Justice, in particular the Drug Enforcement Administration ("DEA"), we were warned there is a great danger in the efforts to legalize what some misleadingly call 'medical marijuana'. Unfortunately, in trying to simplify their writing, the media have accepted the use of this misleading label. In doing so, the media have helped the cause of those who are pushing to legalize drugs.

I am not alone in remarking about how misleading this label is. Here is a direct quote from that testimony earlier this year by the DEA:

> **"...medical marijuana is merely the first tactical maneuver in an overall strategy that will lead to the eventual legalization of all drugs."**

That comment didn't come from me. It came from official testimony submitted to Congress on behalf of the Clinton Administration, saying that so-called 'medical marijuana' is a deliberate first step in a strategy to legalize all drugs. Unfortunately for our national anti-drug efforts, now the President of the United States has done a U-turn. This afternoon, because of actions taken by the President, we are meeting to hear testimony about how anti-drug law enforcement will be harmed by efforts to legalize marijuana in our nation's capital.

We invited the Attorney General and the "national drug czar" personally to attend and testify. They were unable to be here, but have officially sent persons on their behalf.

I note that our witnesses, in the advance copies they have submitted of their testimony, include this statement submitted to us by the Department of Justice about the proposal on legalizing marijuana in Washington, D.C.:

> **"Clearly, this will hamper law enforcement efforts to impede the illegal sale and use of the drug. . . . the initiative undermines the Administration's consistent and effective national drug policy."**

Further, we will be receiving this testimony submitted to us today by the Office of National Drug Control Policy (the so-called "national drug czar"):

> **"The Administration has actively and consistently opposed marijuana legalization initiatives in all jurisdictions throughout the nation. . . . such electoral procedures undermine the medical-scientific process for establishing what is a safe and effective medicine; contradict federal regulations and laws; and in the Office of National Drug Control Policy's (ONDCP) view, <u>may be vehicles for the legalization of marijuana for recreational use.</u> . . . <u>Continued strict regulation of cannabis as a Schedule I drug is essential.</u>"**

But yesterday the President of the United States endorsed taking that step toward legalizing more drugs. He has pulled the rug out from under our police and law enforcement. Using a pretext, and ignoring the U.S. Constitution, he vetoed the D.C. Appropriations Bill because he says the nation's capital should be free to legalize marijuana.

I was astounded to read the President's veto message, where he claimed that Congress would not stop any other place in the country from legalizing marijuana. Wrong, Mr. President. We have a national law (Title 16, United States Code, Section 559(b)) to cover the entire country, saying that marijuana is illegal; it is a controlled dangerous substance. His Administration even sent people to the states, telling them they should not and could not violate that law by adopting so-called 'medical marijuana' laws. You cannot have a national war on drugs or even a national anti-drug policy if a patchwork quilt is created, making D.C. or other places safe havens for drugs.

Furthermore, we have an additional special duty and responsibility regarding Washington, D.C., as our nation's capital. I will be sending the President a copy of the U.S. Constitution, so he can read Article I, Section 8, which says it is the job of the U.S. Congress "to exercise exclusive Legislation in all Cases whatsoever" over the District of Columbia. Mr. Clinton may not like it, but that's what our Constitution says. Even when Congress passed what is called 'home rule' for D.C., Congress expressly retained for itself the final say on laws in the District. When it comes to the nation's capital, the buck stops here, Mr. President.

His veto was not over anything new. The riders he didn't like are old, not new. Last year, he signed them all into law. Several of them he has signed into law several times. Further,

there were many more riders which he finds perfectly acceptable. His veto message pointedly did not object to these.

If you want to be technical about it, the bill actually had 72 riders, not just the seven mentioned in his veto message. The President made no complaint about the other 65. And why should he? For some of them, this is the 28th consecutive year they have been included in the D.C. appropriations bill. Of the riders, 21 were new and 51 were carry-overs. Of the seven he claims are the reason for vetoing the bill, only one is new. That is the restriction, added by the Senate, on the salaries paid to the District's city council members. The other six cited in his veto message were all signed into law previously by President Clinton. This shows his veto is not over 'home rule.' He is perfectly willing to accept riders—65 of them. He doesn't truly care about 'home rule'. He and most others who hide behind a cry of 'home rule' care only about supporting a liberal social agenda--legalizing drugs, free needles for drug addicts, treating unmarried couples as though they were married, and so forth.

That is what this is about--not over a principle of self-determination, but over a social agenda far more liberal that the American people. And what is true of the President is also true of my friends on the Democratic side of the aisle. By pushing the President to veto this bill, extremists have ignored and thrown away our efforts to help D.C. kids go to college. They have thrown away our efforts to crack down on crime and drugs. They have thrown away our help to streamline a bloated D.C. bureaucracy. They have thrown away our help to clean-up pollution in the Anacostia River. They have thrown away our work to get foster kids into stable, safe and loving permanent adoptive homes. They have thrown away all these, and more.

We left alone and respected the budget of the mayor and city council. We added dollars which we had no obligation to add, because we believed in the new mayor and in the new approaches being taken by the city council. And I still respect and wish to work with them. But led by the Delegate from the District of Columbia, city officials went along—grudgingly in some cases, I know—and urged a veto. They have said 'No!' to our efforts to help make D.C. a better and safer place. They have said 'Yes!' to what law enforcement--the Clinton Administration itself--has told us is "merely the first tactical maneuver in an overall strategy that will lead to the eventual legalization of all drugs."

The President of the United States may not care about this--but I do.

This is the ugly side of what happens when some elevate the buzzword of "choice" to be their most important policy, above all else. Having all choices means abolishing all laws. That means abolishing all protections for society, and especially for those who are most vulnerable. Among other things, it means abolishing the laws to protect us from the scourge of drugs. Ultimately, the lack of law and responsibility removes our ability to make free choices.

The Drug Enforcement Administration has warned us:

"The medical marijuana movement and its million dollar media campaign have helped contribute to the changing attitude among our youth that marijuana use is harmless. This softening in our attitudes among teens has led to a 140% increase in marijuana use among high school seniors from 1994-95."

The President has pulled the rug out from the under law enforcement--but I will not and I don't believe Congress will. The President has surrendered in the war on drugs. The Congress has not and will not.

There is now no hurry to pass the D.C. bill. It's time for the President, the officials who urged a veto, and my Democratic colleagues, to sit a while in the mess they have created with their soft on drugs attitudes. There is no urgency; we should take the time to let all of America find out what this is really about.

Our hearing this afternoon is not to re-hash all these issues. It is not to discuss whether marijuana has any medical use, however slight it might be or however insignificant it might be when compared to medicines that are much more effective.

Instead, our hearing is solely about law enforcement. How can they attack our drug problem if Washington D.C., or any other place adopts laws that conflict with the uniform law of the land—a law that has been adopted by the collective and best reasoning of all of us.

As has been made clear by drug enforcement officials, there is no need to legalize marijuana in order to alleviate human suffering. Let me share with you what is published by the Drug Enforcement Administration—yes, by the Clinton Administration, in their publication, **"Say It Straight: The Medical Myths of Marijuana":**

"There are over 10,000 scientific studies that prove marijuana is a harmful addictive drug. There is not one reliable study that demonstrates marijuana has any medical value."

* * * * *

"In 1994, a U.S. Court of Appeals ruled that marijuana should remain a Schedule I drug: highly addictive with no medical usefulness. The court noted that the pro-marijuana physicians had relied on non-scientific evidence."

The DEA additionally published these comments about the so-called 'medical marijuana' ballot initiatives in California and Arizona, comments which I believe also apply to the ballot initiative here in Washington, D.C.:

"The language in these ballot initiatives for California and Arizona are so loosely worded that they basically legalize marijuana for everyone, sick or well, adult or child. Physicians will be able to legally dispense marijuana for migraines, depression or any other ailments."

* * * * *

"The medical marijuana movement and its million dollar media campaign have helped contribute to the changing attitude among our youth that marijuana use is harmless. This softening in antidrug attitudes among teens has led to a 140 percent increase in marijuana use among high school seniors from 1994-95. "

* * * * *

"The pro-legalization organizations behind these ballot initiatives deny that there is a drug problem among our youth. As much as they seek to focus on people suffering with illnesses, we must keep the debate properly centered on the safety of our kids. In a time where drug use among kids has increased 78 percent in the last four years, this country cannot afford to undermine drug prevention efforts with these pro-marijuana ballot initiatives."

I congratulate the DEA for printing these and other straightforward comments. Personally, I will side with those seeking to enforce our drug laws, not with those who seek to undercut them. The President and his allies are free to choose the other side.

I will note, however, that the D.C. proposal doesn't even require a doctor's prescription. An informal comment by a doctor is enough under this "Proposition 59" initiative. Then a person is allowed not only to grow and smoke their own marijuana, but can authorize four

friends to grow and keep it, too. Furthermore, it requires that taxpayers' money be used to provide people with marijuana in some cases.

People need to be told the truth about this proposal, rather than just be told that this is just something called 'medical marijuana'. I hope the media will make it clear what this is actually about, rather than just using the term 'medical marijuana' as a convenient shorthand term.

We have an obligation to uphold the laws of the land, in all parts of the land, and a special constitutional obligation regarding Washington, D.C. I look forward to today's testimony about how law enforcement is jeopardized if we let this initiative become law.

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September 23, 1999

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Madame Attorney General:

Earlier this week election results were announced, showing that voters in the District of Columbia have voted for an initiative petition to permit the use, possession and cultivation of marijuana by certain persons. Although the media have accepted the misleading terminology of proponents, claiming this is "medical marijuana", the actual proposal does not require a medical prescription, and even permits friends of a subject to cultivate and possess marijuana. This and similar efforts in other states are part of an aggressive and well-financed effort, seeking to make this drug (and probably others in the future) a matter of "local option" rather than national policy.

Not only does the federal government have the duty to enforce federal drug laws, but it also is funding the operations of the courts, corrections, and probation and parole system within the District of Columbia. These are funded through the Committee that I chair. It therefore is vital that I know clearly how this effort might affect law enforcement within the District, both local and federal. Further, because Congress has ultimate legislative authority concerning the District of Columbia (under Article 1, Section 8 of the U.S. Constitution), it is important that we respond immediately, within the 30-day window provided by D.C. Code, sec. 1-233(c)(1).

Accordingly, the Committee has scheduled a hearing on enforcement of drug control laws for Wednesday, September 29, 1999, at 2:00 p.m., in room 2359 of the Rayburn House Office Building. The Committee requests your participation as a witness at this hearing.

In preparation for the hearing, would you please provide me with prompt and priority responses to these questions:

--What is the official policy toward the jurisdictions that have sought to authorize exceptions to the federal laws against marijuana?

--Whether official or "unofficial", has there been any change or softening of federal policy within those jurisdictions, or any increase or decrease in the level of manpower and resources committed to enforcement within those jurisdictions?

--How has this been communicated to concerned law enforcement and prosecuting authorities (including federal agencies, federal prosecutors, and those at the state and local level)? Copies of the formal communications, and details about their distribution would be appreciated.

--Are any federal entities involved in any litigation over these (including prosecutions in which a defendant asserts a state or federal "authorizing" law as a part of their defense)? Please identify the specific court cases and pertinent information about them.

--To what extent do these various local or state laws diminish the scope or effectiveness of federal anti-drug policy?

--Does the very notion that legalizing any Schedule I drug should be a "local option" constitute a threat to our Nation's ability to have a consistent and effective anti-drug strategy?

I would appreciate receiving any responses you have to the above by COB Monday September 27, 1999, and any written statement you may wish to submit into the hearing record by COB Tuesday September 28, 1999.

Thank you for your immediate attention to providing this information. I will be happy to discuss with you personally any clarifying information you may need.

Very truly yours,

Ernest Istook

Ernest J. Istook, Jr.
Chairman
Subcommittee on District of Columbia Appropriations

[See "Clerk's Note" on page 55]



District of Columbia Management Report

[Excerpt from District's FY 2000 budget document submitted to the Congress on June 1, 1999.]

ANTHONY A. WILLIAMS
MAYOR

June 1, 1999

To the residents of the District of Columbia:

I am pleased to transmit the FY2000 *District of Columbia Management Report* to the United States Congress, the Council of the District of Columbia, and, most importantly, to you, the residents of our nation's capital. This report presents past performance and future goals of District government agencies, offices and commissions against a set of measures identified as priorities by the residents of the District of Columbia.

Behind the numbers are clear commitments of performance and accountability. As the elected leader of the District of Columbia, I expect the residents, businesses and other stakeholders to hold me accountable for progress against these measures. Accountability begins with the leaders. As the residents hold me accountable, I will use this set of measures to hold agency directors—the leaders who report to me—accountable for progress against the measures relevant to their operations.

Selecting meaningful measures to meet this commitment to accountability has been and remains a challenging process. Previous measurement efforts focused on simple outputs and work processes: numbers of clients served or units of work. The missing elements were any context of the populations in need of services or measures of service quality. Last fall's Performance Accountability Plan was a big step in the direction of developing customer-oriented measures: quality, timeliness of services, and customer satisfaction. This spring's development effort focuses on expanding customer service measures and developing outcome measures. For example, desired outcomes such as clean streets, healthy children and quality education will be measured by timeliness of and customer satisfaction with trash collection, the percentage of children immunized before entering school, and improvements in student performance

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on standardized tests. As much progress as we have made, a great deal of work remains in developing meaningful outcome measures for all District agencies.

Data verification is critical in gaining and maintaining the confidence of the District's residents. Agencies will work with the Office of the Mayor to clearly document their data collection and reporting practices. In addition, a customer service task force is designing a program that will enlist residents, area university researchers, and undergraduate and graduate students in conducting customer service testing of agencies. Finally, one of the first tasks I assigned my newly appointed Inspector General was to design and implement performance audits of agency performance data collection and reporting practices. These three elements—self-reporting, external research and independent verification—will ensure that the data upon which agencies and the Mayor will base financial, personnel and policy decisions is valid, reliable and worthy of residents' confidence.

Community expectations have proven valuable in helping us set our sights higher in selecting meaningful measures. The DC Scorecard Partnership has served an effective role in setting initial expectations. The Partnership and their continuing work on monitoring and assessing government's progress against those goals is described more fully in this report. However, the entire community must be engaged in an ongoing goal and strategy setting process if we are to succeed in improving the quality of life for all citizens of the District of Columbia. Government must partner with all of the stakeholders in our community—residents, businesses, and community-based and faith-based organizations—to develop strategies to address problems that are beyond the scope of government control alone. The District of Columbia will engage the larger community in a neighborhood-based strategic planning effort beginning by fall 1999. We will tie those planning efforts closely to the agencies' strategic plans and restructuring activities.

The performance measures contained in this report are part of a broader restructuring effort for the District of Columbia's government. Agency directors are developing strategic plans that focus on people, processes and systems. They are assessing the deployment of their staffs, the design of their business processes and the stability and sophistication of their technology systems with one question in mind: How does the District provide high quality, cost-effective services and programs to its residents? A complete inventory of the strategic reform effort will be available by the end of this summer.

A well-designed performance measurement system is a powerful tool for the Mayor. Having set clear expectations and developed measures of agency operations in meeting those expectations, my office can make resource allocation decisions, personnel decisions and policy decisions. Agency directors will have unambiguous statements of what the residents and the Mayor expect, and their regular reports will document their success or failure in meeting these expectations. Congress and the District of Columbia Financial Responsibility and Management Assistance Authority will have compelling evidence of the progress of the District of Columbia's success in self-governance. And District residents will have clear indicators, designed to their specifications, that the city is moving in the direction they want.

Sincerely,

Anthony A. Williams
Mayor of the District of Columbia

DISTRICT OF COLUMBIA MANAGEMENT REPORT

Baseline Report

The *District of Columbia Management Report* sets forth the baseline measures for performance-based management for results in the District of Columbia. The body of the report is a range of measures for all levels of government:

- A set of outcome indicators and measures defined by District residents: a healthy city, a clean city, thriving neighborhoods, educated and skilled citizens, and a strong economy
- Detailed sets of outcome and customer service measures for selected agencies: crime rates, timeliness of service, and measures of customer satisfaction
- Reports on progress against performance measures from the 1999 Performance Accountability Plan for the balance of the agencies, offices and commissions of the District government

When fully implemented, the performance measurement system will measure the extent to which the District government meets its commitment to significantly improve government service to residents. It will also identify services and processes agencies need to improve further.

The District government has applied a simple rule of thumb in the selection of agencies to develop initial outcome and customer service measures: Which agencies directly impact the lives of District residents in significant ways on a regular, ongoing basis? In the coming months, every agency will develop outcome and customer service measures. The District prioritized the selected agencies to address the most pressing needs of residents and to provide models for the remaining agencies to develop their own measures.

The District is obligated to provide annual reports on the performance of District agencies to Congress, the District of Columbia Financial Responsibility and Management Assistance Authority (DCFRA) and the Council. However, annual reports are not sufficient to monitor performance or drive change in agencies. This report serves as a baseline for regular update reports, the first of which will be issued by fall 1999.

The Mayor's Strategy

Upon entering office Mayor Williams established four strategic goals that would frame all of the efforts of District agencies:

1. Improve Government Services
2. Expand the Economy
3. Support Our Children
4. Rebuild the Human Services Network

The first step in launching this strategy was the short-term action agenda. The Mayor called on agencies to identify and complete significant initiatives that could be completed within twelve months. Agencies have made rapid and substantial progress in addressing this short-term action agenda, but as encouraging as those quick hits are, they are not sufficient to drive lasting change in government.

Agencies are also engaged in a long-term strategic planning effort that focuses on each agency's mission and organizational objectives. Agency directors are identifying the core competencies of their staffs, programs and their agency as a whole. They are asking questions about the businesses they are in, the structures of their agencies, and the deployment of their personnel.

The performance measures will help monitor and improve both the short-term agenda and the long-term strategic planning effort. Where agencies have accomplished improvements as part of the short-term agenda, the measures will indicate whether that new level of performance is being maintained or improved. Performance measurement will also indicate how well the structural changes called for in strategic plans are driving change in the quality and provision of services to residents.

Determining the Priorities of District Residents

The District has many sources of anecdotal and research-based information on the priorities of the residents of the District of Columbia. Residents share their opinions at town meetings and through telephone calls, letters and e-mail to the Office of the Mayor every day. In addition, opinion research data is available on what District residents want. DCFRA conducted a detailed survey of residents' priorities in the spring of 1997.

The District is building on the DCFRA research through its participation in the DC Scorecard Partnership. The Partnership is an alliance of DC Agenda, the Center for Excellence in Municipal Management at George Washington University, and the Alliance for Redesigning Government at the National Academy of Public Administration. The DC Scorecard will be a mechanism to assess the District government's progress on issues important to residents and other consumers of city services. Many other cities in the country produce similar annual scorecards on local government performance.

This spring, the Partnership conducted a series of structured interviews with residents from all eight wards and the District government will follow-up with a set of focus groups later this summer and a survey by fall 1999. The results of this research defined and validated the DC Scorecard indicators:

1. Healthy City
2. Safe City
3. Thriving Neighborhoods
4. Educated and Skilled Citizens
5. Strong Economy
6. Transportation Services
7. Government Performance

The Scorecard Partnership identified three to five data measures that inform each of the Scorecard indicators. Based on the data gathered from the relevant agencies, the Scorecard Partnership will assign a rating for the city's performance against these seven indicators.

To demonstrate the Mayor's commitment to incorporate the priorities of the residents, he has adopted the seven indicators and the associated measures as the initial performance measures for the Office of the Mayor.



The conceptual structure of the District of Columbia Performance Measures is a blending of the Mayor's Strategic Goals with the priorities established by the residents, in the form of the Scorecard Indicators. This set of measures is supported by agency outcome measures that are supported, in turn, by detailed operating measures of input, output and efficiency.

What to Measure

Selecting performance measures in a system intended to be accountable to residents must be based on specific priorities identified by the residents. With access to the data from the 1997 DCFRA survey, the ongoing research of the DC Scorecard Partnership, and a set of resident interviews that will guide the design of a follow-up survey in late summer 1999, the District of Columbia can learn and respond to residents' biggest concerns.

The recent interviews of residents in each ward confirmed much of what we had learned in the 1997 survey. We know that citizens are most concerned about crime and the quality of the

schools. District residents also want assurances of accessible and affordable healthcare, and they want the District government to prioritize improved fire and ambulance responses and drinking water quality.

Initially, measures development has been negotiated between the Office of the Mayor and individual agencies. Together, the Mayor and the agencies have interpreted the priorities identified through the public opinion research and have identified existing or easily modified data already gathered and analyzed by agencies.

In addition, we reviewed performance measures from the International City/County Management Association (ICMA) Comparative Performance Measurement Consortium to support future benchmarking of District performance against best-practice jurisdictions.

Which Agencies to Measure (First)

Developing outcome measures is a labor-intensive process that requires extended conversations about the goals of an agency, the extent to which those goals are responsive to residents' priorities, agreement on an outcome statement, and the appropriate data to measure progress towards the desired outcome.

We did not attempt to conduct these conversations with every agency, office and commission in the District government during the months this administration had to prepare its first budget. Instead, we focused on agencies that have the most direct impact on the lives of District residents to develop measures responsive to residents' priorities.

District of Columbia High Impact Agencies

ECONOMIC DEVELOPMENT AND REGULATION
- Department of Housing and Community Development
- Department of Employment Services
- Department of Consumer and Regulatory Affairs

PUBLIC SAFETY AND JUSTICE
- Metropolitan Police Department
- Fire and Emergency Services Department
- Department of Corrections

PUBLIC EDUCATION SYSTEMS
- D.C. Public Schools
- D.C. Public Library

HUMAN SUPPORT SERVICES
- Department of Human Services
- Department of Health
- Department of Recreation and Parks

PUBLIC WORKS
- Department of Public Works
- Department of Motor Vehicles

GOVERNMENTAL SUPPORT
- Office of Personnel
- Office of Contracting and Procurement
- Office of the Chief Technology Officer
- Office of Property Management

As described above, the initial effort was to identify short-term actions and commit to meeting them within a fixed time-span of several weeks or a few months. Agency directors drafted performance contracts based on those short-term commitments. The measures presented here are continuing measures of the desired outcomes based on those contracts, the 1999 Performance Accountability Plan and agency strategic plans currently under development. The main emphasis of the outcomes measures development process has been to continue a migration from focusing on measures of output and work process (clients served, applications processed) to measures of customer service and satisfaction.

Based on the measures developed for the "high-impact" agencies, the District will continue to develop outcome and customer service measures for remaining agencies throughout 1999. In the meantime, we are reporting those agencies' progress against measures first proposed in the 1999 Performance Accountability Plan. We do not believe those measures are sufficient to fully judge these agencies' performance, but we felt it important to maintain some continuity with last year's report.

Lessons in Performance Measures Development

This effort has been a learning experience for the Mayor and the agencies. In the past, the tendency has been to limit measures to what has always been measured or what current systems allow. The challenge for the Office of the Mayor and the agencies has been to be creative and farsighted in addressing the very real barriers to measurement rather than settling for measures based on current practice. In some instances we have chosen to set ambitious

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outcome measures that reflect the priorities of our residents but that may not be supported by agencies' current capabilities in data collection and analysis.

A common theme in the Mayor's proposed modifications is to restate counts of clients served in terms of the population in need. Understanding the met or unmet need will guide all stakeholders and decision-makers in discussions of policy priorities and resource allocation. In some instances, agencies have identified outcome measures, and in others they have reported output measures but listed a preferred outcome measure for the future.

Whether the barrier to measurement is one of technology, training or simply past practice, the Office of the Mayor will support agencies in sharpening their measures. For example, rather than reporting that the Department of Human Services will have 6,600 daily childcare slots available in FY 1999, we would prefer to measure the percent of children in need of DHS childcare services that will be served. However, DHS cannot currently forecast the number of children in need of their services. To address this, DHS has indicated the current output measure and the future outcome measure they will develop with the Office of the Mayor.

Reporting Results

As discussed above, the Office of the Mayor will issue interim reports to the general public beginning in fall 1999. These reports will document progress against the performance measures already identified and will update information on agencies that are developing more meaningful outcome and customer service measures. The *Management Report* updates will also include information on agencies' development of their strategic plans and progress towards meeting the major milestones in those plans. These reports will also include information on benchmarking District agency performance against a wide range of jurisdictions.

Benchmarking

The District conducted benchmarking research studies in preparing the FY 1999 and FY 2000 budgets. The January-March 1999 study compared selected operating and financial measures for a dozen District agencies with five "best practice" cities: Detroit, Indianapolis, Philadelphia, Phoenix and Portland, Oregon. This summer, the District will mount a more extensive benchmarking effort of services in these five cities and additional jurisdictions. The selection criteria for benchmarking are:

1. Neighboring jurisdictions in the region regardless of differences or similarities
2. Comparable urban jurisdictions around the nation similar in population size, demographic mix, geographical features and on other dimensions
3. Best-practice jurisdictions regardless of differences or similarities

Benchmarking will help us understand how the District compares to our neighbors, identify effective strategies used in similar urban settings, and set our goals as high as the best performing jurisdictions in the nation.

Verifying Results

Verifying results is critical to gaining the confidence of the residents and to maintain the credibility of the performance measurement system and the short-term and long-term planning efforts it supports. To enhance the performance measurement effort, the Mayor's Director of Customer Service has formed a task force of agency staff designated by their directors to manage customer service. Their first initiative is to document agencies' data collection practices and self-testing in meeting the commitments made in the short-term action agenda.

For instance, the Department of Public Works committed to filling potholes within 48 hours of a resident's request. According to DPW, the commitment to responding to 95 percent of requests within 48 hours is being met. However, self-reporting alone is not sufficient to ensure the accountability that is the central commitment of the performance measurement process and the Mayor's overall strategy. A system of accountability requires independent verification that complements clear self-reporting.

We have a two-pronged approach to independently verify the accuracy of agency measures and results. The Customer Service Task Force will also develop an external customer service testing program that they will design with researchers from local universities and that will engage residents, graduate and undergraduate students and agency personnel in checking results of customer service initiatives. Methods of testing will include:

- Follow-up calls to citizens making requests
- Spot-checking results directly (e.g., surveying the pothole sites DPW reports as filled within 48 hours)
- Exit interviews of customers at District agencies such as the Department of Motor Vehicles, the Department of Consumer and Regulatory Affairs and the Department of Employment Services
- Placing work order requests and tracking their progress through agencies

The customer service testing programs will both verify reported results and provide useful information to agencies that need to redesign their processes.

The second element of our plan to verify results will be a formal performance audit program to be administered by the Office of the Inspector General. Mayor Williams requested that his newly appointed Inspector General make auditing performance against the Scorecard measures one of his first priorities. The Inspector General will expand the performance audit function to address the detailed set of outcome measures presented in this report and of all agencies' outcome measures as they develop them.

A Balanced Scorecard for the District of Columbia

The District is engaged in a multi-jurisdictional effort to adapt the Balanced Scorecard, a model of corporate performance, for use in measuring government performance. The Balanced Scorecard assesses performance on four dimensions: customer perspective, financial accountability, internal business processes, and learning and growth. The measures for the District's high-impact agencies address the dimensions of customer perspective and internal processes very well and the District has strong measures of financial accountability for the government as a whole. However agencies need to design better measures of financial

accountability and the District and its agencies need to develop measures of learning and growth: the level of training and education of entering employees and expectations and opportunities for further training for current employees.

Expanding the Conversation

While the performance measures were negotiated between the Mayor and individual agency directors, a true Balanced Scorecard reflects extended and in-depth conversations among a wider range of stakeholders to define and agree on a strategic direction for the entire community. Within the government, those stakeholders include the Office of the Mayor, agency directors, their staffs and the City Council. While the District government can improve service delivery, achieving the quality of life that residents want and deserve will require a partnership with all elements of the community: residents, business leaders and community and faith-based organizations. The District will launch a neighborhood-based strategic planning initiative in the fall of this year that will engage these groups in goal-setting exercises.

Accountability

The design of the current measures reflects the District government's commitment to accountability to the residents of the nation's capital. Decisions on what to measure, which agencies to measure first, how to report results, and how to verify the accuracy and trustworthiness of the data are all guided by the ultimate accountability of the Mayor, agency directors, and every District government employee to the residents of the District of Columbia. The readers of this report can best judge the extent to which we have succeeded in laying the groundwork for an effective performance measurement system. The extent to which we succeed in making further improvements is dependent on all of us—the Mayor, agency directors District employees, residents and all of the stakeholders in the community—carefully reviewing the data and providing input on how to better measure and report those results in the future. Accountability starts with the leaders, but it extends to everyone.

I. DC Scorecard Indicators

The DC Scorecard Partnership is an alliance of DC Agenda, the Center for Excellence in Municipal Management (CEMM) and the Alliance for Redesigning Government of the National Academy for Public Administration. The Partnership is developing a process for tracking changes in community conditions most critical to our residents and for engaging the public in gauging the performance of important services offered by the District government. Mayor Williams has adopted the DC Scorecard Indicators as an initial set of performance measures for the Office of the Mayor.

A. Healthy City	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Quality of Drinking Water – Days designated meeting Safe Drinking Water Act standards	365	365	365
2. Rat Control - (percent service requests abated)[1]	95%	99%	99%
3. Women entering prenatal care in first trimester	58%	60%	62%
4. Lead screening—Children Screened	21,311	25,500 (+20%)	30,000 (+17.6%)
5. Percent children 0-6 immunized against a battery of diseases.[2]	69%	90%	90%
6. Drug Prevention and Substance Abuse Treatment (patients treated)	6,661	NA[1]	NA
7. Uninsured Rate - DC residents not insured under a public or private program	81,368 (15.6%)	81,000 (15.6%)	78,600[3] (15.1%)
B. Safe City	**FY 1998 Actual**	**FY 1999 Target**	**FY 2000 Target**
1. Homicides– number reported annually	260	247 Reduce 5%	227 Reduce 8%
2. Violent Crimes– number reported annually	8,988	8,718 Reduce 3%	8,282 Reduce 5%
3. Property Crimes – number reported annually	37,302	36,184 Reduce 3%	34,374 Reduce 5%
4. Neighborhood Safety – (MPD survey for day time safety)[4]	62%	68%	80%
5. Police: (time until 911 call answered)[5]	6.9 sec avg	<5 sec avg	<3.5 sec avg
6. Fire (call to scene)	4:23	4:00	4:00
7. EMS: (call to scene)	10:53	9:30	9:00

[1] NA=Not applicable

C. Thriving Neighborhoods	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Rate of Poverty - Percent residents living below poverty level	22.5%[6]	N/A	N/A
2. District of Columbia Population	520,422	N/A	N/A
3. Homeownership – rate of homeownership	41%	45%	50%
4. Trash Pickup – Percent of Routes collected on time			
a) Residential Routes	78%	89%	89%
b) Alley Routes	85%	90%	90%
c) Litter Cans	83%	85%	85%
5. Abandoned buildings – number of complaints and abated properties	1,000 complaints[7]	700-1000 abatements[8]	1,000 abatements
D. Educated and Skilled Citizens	**FY 1998 Actual**	**FY 1999 Target**	**FY 2000 Target**
1. Standardized Test Scores for Public School Students[9]	% Below Basic	School level migration[10]	School level migration
a) Fourth Grade Reading	31.2%	-10%	-10%
Math	39.6%	-10%	-10%
b) Eighth Grade Reading	19.9%	-10%	-10%
Math	58.5%	-10%	-10%
c) Eleventh Reading	46.1%	-10%	-10%
Math	76.5%	-10%	-10%
2. High School Attrition Rate[11]	44%	NA	NA
3. Measures of School Safety[12]			
a) Percent Principals rating own school safe	98%	NA	NA
b) Percent Teachers rating own school safe	71%	NA	NA
c) Percent Parents rating own child's school safe	73%	NA	NA
d) Percent Students rating own school safe	53%	NA	NA
4. Percent of Job Training Partnership Act (JTPA) Title 2A (Disadvantaged Adults) participants who were employed during the 13th calendar week after termination.	48.9%	59%	59%[13]
5. Percent of JTPA Title 3 (Disabled Workers) participants who entered employment after termination	48.1%	67%	67%
E. Employment and Business	**FY 1998 Actual**	**FY 1999 Target**	**FY 2000 Target**
1. Unemployment Rate	8.8%	NA	NA
2. Number of Jobs/People Employed in Private Sector	388,300 0.8% gain	NA	NA
3. Number of New Businesses[14]	696 new businesses 3,457 jobs	NA	NA

F. Transportation Services	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Percent federal and local roads rated good or excellent on Pavement Condition Index	65%	71%	72%
2. Metro and Buses – satisfaction with service (Control Board Survey)	79%	N/A	N/A
3. Driver's Licenses and Vehicle Inspection[15]			
a) Licenses (average service time)	17 min	15 min	15 min
b) Vehicle Inspection (average service time)	15 min	15 min	15 min
4. Road Congestion[16]			
G. Government Performance	**FY 1998 Actual**	**FY 1999 Target**	**FY 2000 Target**
1. Financial Health – annual fund balance	$445 million	$170 million	$47,000
2. Financial Health – cumulative fund balance[17]	$112 million	$282 million	$282 million
3. Service Quality – general satisfaction DCFRA 1997 Survey ratings were Excellent (E), Good (G), Fair (F), Poor (P) or Very Poor (VP))	15% E/G 35% F 48% P/VP	N/A	N/A
4. Trust/Confidence in Government	New measure	New measure	TBD[18]

Notes:

[1] The rat control initiative was launched at the April 1999 Mayor's Rat Summit. DPW is gathering initial trendline data to set measures and goals. In the interim, the measure and target used will be DPW responses to residents' requests for abatement. Residents will be surveyed about perceived improvements in rat control in September 1999 and annually thereafter.
[2] Battery of immunizations includes 3 DTP (diphtheria, tetanus and pertussis), 3 OPV (oral polio vaccine) and 1 MMR (measles, mumps and rubella).
[3] FY 2000 Goal reflects 2,400 residents covered under pilot program to expand healthcare coverage.
[4] Percent residents responding "I feel safe alone outside in my neighborhood during the day."
[5] DC MPD reports time until 911 call answered, not time from call to scene arrival. Time from call to dispatch, dispatch to scene and call to scene are data commonly reported by other jurisdictions.
[6] Poverty rate is a three-year average of calendar years 1994-96 from the Current Population Survey. The rate will be more precisely calculated in the FY 2000 census, and District projections will be recalculated accordingly. The FY 2000 and FY 2001 targets will be set after the 2000 Census data becomes available.
[7] Estimate of complaints on file at DCRA – citywide # of unidentified nuisance properties likely higher (approximately 3,000)
[8] See DCRA Performance Measures for explanation of abatement targets.
[9] Score categories are Below Basic, Basic, Proficient and Advanced.
[10] While District-wide percentages are reported here, the improvement goal is not for a 10 percent District-wide improvement. The DCPS Improvement Goal is for 10 percent of students rated "below basic" in prior year at each school improving by one or more levels on the SAT-9 assessment. Schools that meet or exceed the performance objective will not mask schools that do not meet the objective.
[11] The District of Columbia attrition rate is defined as a percentage of 10th graders that graduate within 2 ½ years. The latest data is for the 1996-97 school year. This figure is calculated by DC Parents United based on DCPS data, but is not published or verified by DCPS.
[12] 1997-98 Survey results. DCPS does not set targets for survey responses. 1998-99 survey has not yet been conducted.
[13] FY 1999 and FY 2000 goals for measures 1 a, b and c are U.S. Department of Labor standards for JTPA program areas.
[14] Dun and Bradstreet 1997 totals
[15] Both measures exclude waiting time prior to service – the most significant complaint about DMV services. The DC Scorecard Partnership determined that service time excluding the wait time is not an appropriate measure of customer service.
[16] The Metropolitan Council of Government's (COG) is developing a measure of traffic congestion for the region – it currently measures congestion within a central core of the District of Columbia in terms of access from Maryland and Virginia. The measure is updated every three years and will be updated in a 1999 survey.
[17] An optimal cumulative fund balance is approximately five percent of gross operating budget expenditures. For FY 1999 and FY 2000, this figure is approximately $250 million.
[18] Other jurisdictions have a measure of trust and confidence in government based on survey responses. This measure will be incorporated into the survey of District residents in 1999.

II. Expanded Outcome and Customer Service Measures

The District selected seventeen high-impact agencies to develop outcome and customer service measures for inclusion in this baseline report. The first thirteen agencies were selected because they provide direct services to District residents and significantly impact the quality of their lives on an ongoing basis. The four government support agencies were selected because the direct service agencies rely heavily on their services to support their daily operations and in redesigning their services.

Economic Development and Regulation
- Department of Housing and Community Development
- Department of Employment Services
- Department of Consumer and Regulatory Affairs

Public Safety and Justice
- Metropolitan Police Department
- Fire and Emergency Services Department
- Department of Corrections

Public Education Systems
- D.C. Public Schools
- D.C. Public Library

Human Support Services
- Department of Human Services
- Department of Health
- Department of Recreation and Parks

Public Works
- Department of Public Works
- Department of Motor Vehicles

Governmental Support—Cross-cutting Functions
- Office of Personnel
- Office of Contracting and Procurement
- Office of the Chief Technology Officer
- Office of Property Management

Department of Housing & Community Development

The mission of the Department of Housing and Community Development (DHCD) is to strengthen District neighborhoods by facilitating the production and preservation of housing, commercial and economic development opportunities.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Increase number of residents owning homes in the District of Columbia	682 units	561 units	784 units
a) HPAP homeowners	476	461	569
b) Tax delinquent properties returned to homeownership	206	100	155
c) Conversion of rental to ownership	0	0	60
2. Neighborhood Preservation: Increase the number of renovated housing units	1,041	172	496
a) Rental housing units	1,041	112	428
b) Single family ownership	0	60	68
3. Community Development: Increase the number of new single family homes under construction	712	200	250
4. Reduce processing time for loans/grants	12 months	6 months	6 months
5. Delinquent loans as a percent of total loan portfolio (dollar value)	24%	24%	6%[1]
6. Ratio of leveraging of public/private dollars	$1 to $5	$1 to $4	$1 to $4
7. Customers rating service good to excellent	NA	80%	85%
8. Homelessness—Temporary Hypothermia Beds	310	310	150
9. Job Creation	1,270	500	1000[2]

NOTE: Performance Measures 2a and 3 are predicated upon the results of the outcome of the Strategic Task Force Competition. Selection of awardees will be made on June 30, 1999.

Notes:

[1] DHCD is preparing to sell the current loan portfolio by September 30, 1999. While the expectation is that all outstanding loans will be sold, DHCD will be making new construction, rehabilitation and down payment assistance loans beginning in October 1999.

[2] 14th Street Urban Renewal Parcels The proposed development includes a grocery store, multiplex theaters, single-family sales housing, a nine-story, 432,000 square foot office building, specialty and "big box" retailers, restaurants, and a health/fitness center. DHCD is currently reviewing four proposals for the site. A selection is anticipated by May 20, 1999. 1,000 new jobs are anticipated.

Department of Employment Services

The mission of the Department of Employment Services is to foster economic development and growth in the District by providing workforce training, bringing together job seekers and employers, compensating unemployed and injured workers and promoting safe and healthy workplaces.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Training and Employment Opportunities			
a) Percent of Job Training Partnership Act (JTPA) Title 2A (Disadvantaged Adults) participants who were employed during the 13th calendar week after termination.	48.9%	59%	59%[1]
b) Percent of JTPA Title 3 (Disabled Workers) participants who entered employment after termination	48.1%	67%	67%
c) Percent of Total employment customers obtaining employment	14%	17%	17%
2. Summer Jobs for Youth	INA	6,500 total, 1,000 private sector	7,000 total, 1,500 private sector
3. Unemployed and Injured (UI) Worker Compensation			
a) Percent UI wage disputes resolved within 20 days	60%	60%	70%
b) Percent of Disability/Workers Compensation Hearing decisions issued on time	22.4%	100%	100%
4. Safe and Healthy Workplaces			
a) Percentage of investigative findings within 30 working days for other than serious violations	85%	85%	90%
b) Percentage of investigative findings within 45 working days serious violations	85%	85%	90%
5. Savings as a result of voluntary moves from disability to Federal retirement (net of settlement costs).	New Initiative	New Initiative	$545,000
6. Percent of customers receiving training rating training good or excellent	New Initiative	New Initiative	80%
7. Percent of employers rating overall DOES services as good or excellent	76%	86%	88%

Notes:

[1] FY 1999 and FY 2000 goals for measures 1 a, b and c are U.S. Department of Labor standards for JTPA program areas.

Department of Consumer and Regulatory Affairs

The mission of the Department of Consumer and Regulatory Affairs is to enhance the quality of life and business in the District of Columbia through customer service, continuous process improvement and empowering employees in partnership with stakeholders and other agencies.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Number of nuisance properties cleaned and abated	700	700 -1000 properties	1,000+[1] properties
2. Response time to complaints of sub-standard housing.	30 days	7 days, 70%	4 days, 85%
3. Building Code Enforcement	Not reported in this manner	Not reported in this manner	
a) Voluntary compliance after citation (%)			Establish baseline
4. Electrical Inspection—process time	4 months	48 hours	90% in 48 hours
5. Building Plan Review (complex)—process time	6 months	30 days	95% in 30 days
6. Building Plan Review (non-complex)—process time	60% in 1 day	80% in 1 day	90% in 1 day
7. Interior Demolition Permit Issuance—process time	50% in 3 months	50% in 3 months[2]	90% in 1 day
8. Processing time to renew occupational and professional licenses	3-5 months	70% in 7 days	70% in 7 days
9. Increase inspections per inspector through management and information technology systems	5 per day	8 per day 50% increase	12 per day 50% increase
10. Customers rating services good or better	No survey	70%	80%

Notes:

[1] DCRA's goal for abating nuisance properties is dependent on resources budgeted. DCRA is revising their estimates of 700 buildings abated per year in FY 1999 and FY 2000 due to additional resources allocated in the final budget resolution. A firm projection will be available by July 1999.

[2] Process was streamlined mid FY 1999 to eliminate requirement for post-demolition drawings certified by architect, plumber, electrician, etc. Interior demolitions are now a same-day counter service.

Metropolitan Police Department

The mission of the Metropolitan Police Department (MPD) is to prevent crime and the fear of crime, as we work with others to help build healthy and safe communities throughout the District of Columbia.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Part I Violent Crimes	8,988	8,718 Reduce 3%	8,282 Reduce 5%
2. Homicides	260	247 Reduce 5%	227 Reduce 8%
3. Aggravated Assaults	4,962	4,714 Reduce 5%	4,337 Reduce 8%
4. Part I Property Crimes	37,302	36,184 Reduce 3%	34,374 Reduce 5%
5. Auto Thefts	6,501	6,176 Reduce 5%	5,682 Reduce 8%
6. Burglaries	6,361	6,042 Reduce 5%	5,560 Reduce 8%
7. Homicides Cleared	40%	50%	65%
8. Telephone response time to 911 calls	6.9 seconds	5 seconds	3.5 seconds
9. Funded sworn positions filled	3,518 (97.7%)	3,546 (98.5%)	3,724 (98%)[1]
CUSTOMER SATISFACTION MEASURES	**Current Baseline**	**FY 1999 Target**	**FY 2000 Target**
10. **Service to Victims**: Percentage residents reporting police are doing a good or very good job helping crime victims.	60%	64%	68%
11. **Crime Prevention**: Percentage residents reporting police are doing a good or very good job preventing crime in their neighborhood.	64%	68%	72%
12. **Fear of Crime**: Percentage of residents reporting they feel very safe being alone outside in their neighborhood during the day.	62%	68%	80%
13. **Partnership**: Residents reporting police are doing a good or very good job working together with residents in their neighborhood to solve local problems.	65%	69%	73%
14. **Problem Solving**: Residents reporting police are doing a good or very good job dealing with the problems that really concern people in their neighborhood.	67%	69%	71%

Notes:

[1] 200 additional officers have been funded for FY 2000 raising the funded positions from 3,600 to 3,800. However, MPD's budget request for recruitment was reduced by $500,000 making it difficult to reach this goal.

Fire and Emergency Medical Services Department

The mission of the Fire and Emergency Medical Services Department (FEMS) is to improve the quality of life for those who live, work, visit and conduct business in the District of Columbia by preventing fires, extinguishing fires, providing emergency medical and ambulance services and providing technical rescue services.

DESIRED OUTCOMES[1]	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Residential Structure Fires	658	592 10% decrease	533 10% decrease
2. Commercial Structure Fires	280	258 10% decrease	232 10% decrease
PERFORMANCE MEASURES	**FY 1998 Actual**	**FY 1999 Target**	**FY 2000 Target**
3. Building Inspections-total safety inspections and percentage of buildings inspected	34,978[2] 23%	38,746 26%	42,323 28%
4. Nuisance properties inspected and identified	850	1,000	1,500
5. Trainees participating in "live-fire" exercises on-site.[3]	0%	0%	0%
5. Fire Safety Education Outreach (customers)	11,924	18,000	27,000
6. Percent District residents participating in Education Outreach at schools, ANC meetings, churches and FEMS open houses.	No Data	3.5%	5%
7. Response time of suppression units to fire incidents	4:23	4:00	4:00
8. Response time of ALS providers to critical medical incidents (minutes call to scene)	10:53	9:30	9:00
9. Reduction in civilian deaths	Target: 12 Actual: 10	Target: 7 Actual: 9	Target: 5
10. Reduction in civilian injuries	70	63	57
11. Reduction in firefighter deaths	1	0	0
12. Reduction in firefighter injuries	300	200	175
13. Arson Fires Cleared as a percentage of Arson Fires	11%	19%	20%
14. Fleet Service: Vehicles in reserve to front line apparatus. Eng.= Engine Co. Trk. = Truck Co. RS = Heavy Rescue Squads	Eng. 25% Trk. 25% RS 25%	Eng. 31.2% Trk. 12.5% RS 0%	Eng. 25% Trk. 25% RS 25%
15. Percentage of citizens rating their confidence level in Fire Suppression capacity as Good or Better	No data	88.9%	90%
16. Percentage of citizens rating their confidence level in EMS response efficiency as Good or Better	89.5%	90%	90%

Notes:

[1] A key element of the Fire and Emergency and Medical Services Department's mission is fire prevention. While many factors beyond the control of FEMS contribute to fires, a desired outcome for fewer fires will help the District government and its residents understand the extent of the impact of FEMS staff training and community education efforts in reducing fires.

[2] Total base=149,743 structures to be inspected. FEMS is required to inspect 55,335 buildings. There are also approximately 94,408 buildings FEMS is not required to inspect, but will do so upon request.

[3] FEMS trainees and current staff training at facilities in other jurisdictions for "live-fire" and advanced fire fighting techniques are unavailable for duty. No capital funds are budgeted to upgrade District training facilities to provide this level of training in FY 2000 or beyond.

Department of Corrections

The mission of the Department of Corrections (DOC) is to ensure public safety and uphold the public trust by providing for the safe and secure confinement of pretrial detainees and sentenced inmates. In addition, the agency is transforming itself from a state/county prison system to primarily a city/county jail system in accordance with the National Capital Revitalization Act.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. 25% reduction in inmate on inmate assaults	133	88 57 to date	66
2. 10% reduction in inmate on staff assaults	55	38 28 to date	34
3. Reduction in overtime hours and expenditures.	DOC overtime projections under revision.[1]		
4. Number of inmates transferred to Federal Bureau of Prisons/Private Institutions	Target: 500 Actual: 952	Target: 1,200 To date: 1,556	800
5. Percent prisoners transferred to FBP/PI against scheduled transfer of 5,000 prisoners by December 2001[2]	DOC projections of prisoners to transfer are under revision.		
6. Reduction in operational capacity to meet or exceed court-ordered population limits.	7,408 inmates	5,670 Reduce 24%	4,832 Reduce 15%
7. Percent reduction in incidence of inmate substance abuse.	New Initiative	Set Baseline	Set Target

Notes:

[1] The Department of Corrections overtime expenditures have exceeded projections due to staff instability during the transformation of the Department of Corrections to a city/county jail system. The Director is working with the Office of Budget and Planning to revise projections for FY 1999 and FY 2000, but they were not complete at the time of the completion of this report.

[2] Original schedule was to transfer 5,000 prisoners from CY 1997-CY 2001. However due to intake of new prisoners above projections, the number of prisoners that need to be transferred to the Federal Bureau of Prisons greatly exceeds that original target. The Department of Corrections and the Office of Budget and Planning are revising their projections in concert with the trustee.

District of Columbia Public Schools

The mission of the District of Columbia Public Schools (DCPS) is to make dramatic improvement in the achievement of all students today in preparation for their world tomorrow. DCPS pledges to provide quality education to improve the academic performance of all the District of Columbia's school children, ensure a safe and secure learning environment, and provide effective and efficient support services to every DCPS student and teacher.

STUDENT PERFORMANCE MEASURE	Current Baseline	1998-99 Target	1999-2000 Target
Percent of students progressing from below basic level to basic or higher on the Standard Achievement Test-9	N/A	10%[1]	10%

Student Scores on the SAT-9 by grade level				
Grade 4	**Reading 1997**	**Math 1997**	**Reading 1998**	**Math 1998**
Below Basic	41.5%	DID	31.2%	39.6%
Basic	37.8%	NOT	39.9%	35.8%
Proficient	15.3%	TEST	19.9%	19.0%
Advanced	5.3%		8.9%	5.6%
Grade 8	**Reading 1997**	**Math 1997**	**Reading 1998**	**Math 1998**
Below Basic	30.4%	70.5%	19.9%	58.5%
Basic	47.7%	20.2%	50.8%	29.9%
Proficient	19.0%	7.3%	26.5%	9.8%
Advanced	2.9%	2.0%	2.8%	1.7%
Grade 11	**Reading 1997**	**Math 1997**	**Reading 1998**	**Math 1998**
Below Basic	50.2%	DID	46.1%	76.5%
Basic	36.2%	NOT	39.8%	12.0%
Proficient	11.5%	TEST	11.9%	9.7%
Advanced	2.0%		2.3%	1.8%

NOTE: The Superintendent of the District of Columbia Public Schools does not report to Mayor Williams. However, as the report on performance measures is to reflect the priorities identified through the DC Scorecard process, selected measures have been provided by DCPS and are reported here. DCPS is in the midst of a strategic planning effort with the School Board. Performance measures developed by DCPS and its Board will be incorporated into the next monthly update to the Mayor's Management Report following the completion of that process.

[1] DCPS improvement goals include school-specific migration from the "Below Basic" classification to the "Basic," "Proficient" or "Advanced" classifications. These targeted performance improvements do not translate to a single number for District-wide performance on a standardized test. Scores for the spring 1997 and spring 1998 SAT-9 administrations are provided for information purposes.

CUSTOMER SATISFACTION MEASURES				
Key Measures of Satisfaction[2]				
Response of Parents	ELEM	JR. HIGH MIDDLE	HIGH	SPECIAL ED
My child's school keeps me informed about my child's progress.	85	79	70	91
My child's school gives me opportunities to participate in school events.	91	83	77	93
Student achievement is the main priority of my child's school.	89	85	83	89
My child's school is a safe place.	81	71	55	84
Responses of Students				
I feel safe at this school.	70	57	52	NR
I know an adult at school who can help me when I have problems.	90	77	75	NR
My teachers help me when I don't understand.	93	80	76	NR
My teachers expect me to read a lot.	93	84	76	NR
Responses of teachers				
Teachers at this school believe all students can achieve the standards.	77	65	68	NR
Teachers at my school feel responsible that all students learn.	86	82	77	80
At this school, teachers work together to do what is "best for kids."	83	78	76	78
Teachers at my school regularly stay after school to attend staff meetings, plan, or work with students.	89	83	80	62

[2] DCPS, "1997-98 School Profiles," Vol. 1&2, 2/99.

District of Columbia Public Library

The mission of the District of Columbia Public Library (DCPL) is to acquire and organize information, including books and other materials, to meet the educational, cultural, and recreational needs of adults and children in the community, and to provide free access to these materials and services in a manner convenient to all residents.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Registered patrons: End FY97=471,056 registered.[1]	33,233 increase	36,556 increase	40,212 increase
2. Circulation	1,430,882	1,488,117. 4% increase	1,577,474 5% increase
3. Headcount: Patrons entering facilities	1,718,131	1,889,944 10% increase	2,003,340 6% increase
4. Reference Satisfaction[2]: MLK Branches	61.11% 66.4%	NA NA	65% 68%
5. Percent Washington Post Book Works hardcover bestsellers available within one week of listing.	New initiative	90 %	95 %
6. Residents receiving training through Libraries Online!	New initiative	3,000	6,000

NOTE: The DC Public Library is in the midst of Strategic Planning with its board of trustees, staff and patrons. The traditional library output measures above will be modified based on this planning effort and on changes in the provision of library services. New electronic delivery of library services that will impact traditional service measures are increasing and are not reflected in any of the above measures. DCPL will develop new measures that reflect outcomes based on the priorities identified in the strategic plan now under development. New performance measures will be in the FY2001 budget submission.

Notes:

[1] DCPL database had not been purged of inactive borrowers (no use for 3 years or more) for several years. To date in FY 1999, 97,000 borrowers have been purged, so total patrons will DROP despite increases in registration. New baseline will be set by 12/31/99. In addition, current software does not dis-aggregate registered patrons by DC, MD or VA residence. Preferred measure is percent of DC residents who are registered patrons, but DCPL is currently unable to report that data.

[2] Reference satisfaction is a new measure of library customers' satisfaction with the reference collections and service provided by reference staff. The first administration was actually early FY 1999 (11/98) and will be repeated biannually. The national average for libraries of comparable size is 62.31%. DCPL's goal for FY 2000 is to exceed the national average.

Department of Human Services

The mission of the Department of Human Services is to provide comprehensive, quality human services to enhance life in the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Childcare services			
a) Increase children in all childcare services by 10% annually.	6,000 daily	6,600 daily	7,200 daily
b) PROPOSED OUTCOME: Percent of children in need of DHS childcare served.	No Data	Establish Baseline	Establish Goal
c) Days until childcare placement are made after receipt of complete application.	New initiative	3 days	3 days
2. Reduce TANF caseload per Social Service Representative (SSR)	350 cases per SSR	275 cases per SSR	200 cases per SSR
3. Work participation rate of TANF clients	30%	35%	40%
4. Rehab. Services Admin. (RSA) customers gainfully employed (90 days or more)	650 cust.[1]	715 cust. (+10%)	760 cust. (+6%)
5. Percentage of refugees gainfully employed (90 days or more)	75%	75%	75%
6. Increase the percent of delinquent borrowers who start repayment of previous student loans	29%	29%	35%[2]
7. Mental Retardation and Developmental Disabilities Administration Services – Change individual habilitation planning process to one that is person centered	New initiative	35 customers (pilot)	Est. 900 customers (60%)
8. Juvenile Justice Services			
a) Compliance with court-ordered population at Oak Hill (MAX average daily pop.=188)	100% 188	100% 188	New facility to alleviate population pressure
b) Compliance with the agreed upon Jerry M. Consent Decree requirements	Initiative not in existence	Requirements under development	70%
9. Family Services			
a) Percentage of teen parents who do not become pregnant while active with the Teen Parent Assessment Project	Target: 20% Actual: 100%	50%	50%
b) Percentage of teen parents in the TPAP reconnected to community-based programs	Target: 30% Actual: 70%	40%[3]	50%

Notes:

[1] U.S. Dept. of Education reporting requirement for RSA job placements is the number of customers employed compared to prior fiscal year.

[2] Office of Postsecondary Education and Research Assistance (OPERA) is developing an RFP to contract student loan collection beginning in FY 2000. FY 1999 goal remains same as FY 1998 actual, and FY 2000 goal is contingent on awarding a contract.

[3] While reported FY 1998 percentage was 70%, DHS has revised their tracking system for FY 1999 and believes an outcome better than last year's reported outcome is likely.

Department of Health

The mission of the Department of the Department of Health (DOH) is to assure a safe and healthy environment for District of Columbia residents and visitors by working with all partners in strategic alliances to: design public health systems based on community involvement and customer needs; conduct ongoing monitoring of health status to include investigation of potential threats and intervention when needed; provide leadership in public health policy development; assure access to high quality health services; to foster and promote health education and disease prevention; and maximize the effectiveness of all resources.

PERFORMANCE MEASURES	CY 1998 Target	CY 1999 Target	CY 2000 Target
1. Increase percentage of women entering prenatal care in the first trimester	58%	60%	62%
2. Percent AFDC/TANF population enrolled in HMOs	90%	100%	100%
OUTPUT MEASURES	**Current Baseline**	**FY 1999 Target**	**FY 2000 Target**
1. Registered births (DC residents and non-residents)	14,599	15,000	15,000
2. Number HIV/AIDS patients served	6,187	6,626	7,000
3. Total number of inspections of food establishment vendors	8,500	12,000	16,000
4. Number of water quality samples collected and analyzed	3,099	3,100	3,100
5. Number of cases, contacts in reported communicable disease investigations	3,500	3,600	3,600
6. Number of children and adults vaccinated in special walk-in immunization clinics	3,500	3,600	3,600
DESIRED OUTCOMES MEASURES[1] (Intermediate Outcomes)	**CY 1998 Target**	**CY 1999 Target**	**CY 2000 Target**
1. Reduce the percent of low-weight births	13.3%	13.0%	13.0%
2. Reduce the infant mortality rate[2]	13.0	12.8	12.6
3. Percentage of HIV/AIDS population served	39%	42%	TO BE PROVIDED
	FY 1998 Actual	**FY 1999 Target**	**FY 2000 Target**
4. Reduce the number of reported food-borne illnesses outbreaks by 50% by the end of FY 2000	DATA	TO BE	PROVIDED
5. Maintain the assessment of the quality of DC water bodies[3]	31	31	31
6. Maintain low incidence of vaccine preventable diseases of children[4]	0-5	0-5	0-5

Notes:

[1] Desired Outcome Measures are suggested modifications to DoH output measures. Upon permanent appointment of a DoH director, DoH will establish outcome measures and targets.
[2] Infant mortality rates are per 1,000 live births.
[3] The Environmental Health Administration (EHA) is charged with conducting assessments of the water quality of 31 streams, rivers, creeks and other bodies of water in the DC watershed. In addition they manage third-party facilities agreements for long-term clean up efforts such as the May 1999 multi-jurisdictional agreement to clean up the Anacostia River.
[4] Vaccines of long-standing use (e.g., diphtheria, polio, mumps, measles, rubella, and pertussis).

Department of Recreation and Parks

The mission of the Department of Recreation and Parks is to provide quality leisure services to residents and visitors of the District of Columbia in safe, well-maintained parks and facilities; to be environmentally responsible; to deliver programs that are stimulating, enriching, and culturally sensitive; to strategically manage financial and human resources; to provide adaptive programs and facilities for challenged customers; and to attain our goals and objectives through a dedicated team supported by volunteers and public/private partnerships.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Park Property Clean-up initiative: East Capitol, Georgia Avenue and New York Avenue "Gateways"	23 sites cleaned to date	23 properties (100%)	Maintain 100% clean properties
2. Customer Satisfaction			
a) Percent of citizens rating DRP *programs* as satisfactory or better	56%	70%	80%
b) Percent of citizens rating DRP *facilities* as satisfactory or better	52%	70%	80%
3. Response time to reports of facilities maintenance needs.			
a) Routine	7 days	5 days	5 days
b) Emergency	1 day	1 day	1 day
4. Introduction of new facilities (% operational):			
a) Benning Park Teen Center	95%	100%	100%
b) Payne Elementary Aftercare Center	85%	100%	100%
c) Rec Centers and Ballfields with DHCD	25%	60%	100%
d) The ARC	10%	100%[1]	TBD[2]
e) SE Tennis & Learning Center[3]	35%	50%[4]	100%
f) Computer Centers with DOES (open 4/30)	85%	100%	100%
5. City Pools Opening on-time (35 pools by 6/21)	75%	100%	100%
6. Achievement of Consumer Product Safety Standards for DC Playgrounds (90 total)	70%	100%	100%
7. Increase Program Enrollment by 15% per year (minimum share of population of youth 2-18)	42,000 (45.6%)[5]	48,300 (50%)	58,445 (60%)
8. Number of community and corporate sponsorship (average per month)	77	90	100
9. Percent of operating costs offset by external revenues (user fees)	1%	1%	1.5%
10. Percent of revenue generated by external sources [6]	2%	2%	2.5%

Notes:

[1] DRP is a partner in the project and is coordinating the lease development with the Office of the Corporation Counsel.
[2] Project construction in FY 2000 dependent on funding.
[3] The SE Tennis and Learning Center is being developed by Recreation Wish Committee of Washington, DRP is coordinating the land lease and operational functions.
[4] Groundbreaking for SE Tennis and Learning Center, September 1999.
[5] FY 1998 population of youth 2-18 was 92,000. No projections for youth population in FY 1999 or FY 2000.
[6] Calculated as gifts, donations, and dollar value of volunteer services.

Department of Public Works

The mission of the Department of Public Works (DPW) is to help improve the quality of life in the District of Columbia and enhance the District's ability to compete for residents, business, tourism and trade. This is accomplished by managing and maintaining public space and transportation infrastructure to ensure that neighborhoods and commercial areas are clean, safe and attractive, and that people, goods and information move safely and efficiently along public rights of way.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
1. Trash Collection			
a) Percent on-time trash collection	77.8%	89%	89%
b) Percentage of alley routes cleaned on schedule.	85%	90%	90%
c) Citizens rating trash service as good or excellent[1]	44%	70%	70%
2. Percent tree trimming and tree removal requests completed within 3 weeks of requests[2]	50%	50%	50%
3. Cleanliness of City			
a) Percent streets rated 4 or 5 on SWMA Environmental Ratings Scale[3]	New measure	New measure	80%
b) Percent alleys rated 4 or 5 on SWMA Environmental Ratings Scale	NEW	NEW	80%
c) Citizen approval of cleanliness of city	Not surveyed	60%	80%
4. Rodent Control[4]			
a) Citations issued	NEW	NEW	Target TBD[5]
b) Voluntary compliance after citation (%)	Data not yet maintained in this manner		
c) Citizen approval of rodent control	Not surveyed	Target TBD	Target TBD
5. Sanitation Code Enforcement			
a) Citations issued	5,721	6,000	6,000
b) Voluntary compliance after citation (%)	Data not yet maintained in this manner		
6. Road Conditions			
a) Percent federal and local roads rated good or excellent on Pavement Condition Index	65%	71%	72%
b) Citizens rating condition of city streets good or excellent	8%	70%	70%
7. Percent pothole requests filled within 48 hours	Not measured	95%	95%
8. Snow Removal			
a) Percent major roads cleared within 12 hours of a 4-8" Snow Storm[6]	NEW	NEW	80%
b) Percent residential streets cleared within 24-36 hours of a 4-8" Snow Storm	NEW	NEW	80%
c) Citizen approval of snow removal efforts	25%	70%	80%
9. Percent of fleet exceeding District's replacement criteria at end of fiscal year[7]	83%	80%	70%

Notes:

[1] Citizen approval on measures 1c, 6b and 8c indicates a rating of good or excellent on 1997 DCFRA Survey of District Residents

[2] DPW has eliminated 10,000 of the 17,500 tree trimming and removal request backlog that existed as of 9/30/98. However, due to the remaining backlog and the resources devoted to tree trimming, the response time and reliability will not change during FY 1999 or FY 2000.

[3] Solid Waste Management Administration (SWMA) has a five point environmental rating scale that addresses the cleanliness of streets and alleys. Grades 4 and 5 do not require more than manual crews for clean up. Grades 1-3 require varying levels of equipment.

[4] Rodent control and eradication is a multi-agency initiative including, but not limited to the Department of Public Works, the Department of Consumer and Regulatory Affairs and the Department of Health. For instance, DPW is responsible for maintaining public spaces, DCRA cites homeowners and landlords for evidence of residential rat infestations, and the Department of Health cites business that sell or prepare food. All three agencies will have measures related to the Rat Summit Initiatives as those measures are developed.

[5] Data collection on rodent control under the Mayor' Rat Summit Initiative is in its early stages. Trend data will be available by 8/31.

[6] Regionally agreed to standard defined by Council of Governments.

[7] District Criteria for vehicle replacement is five years for heavy equipment and eight years for sedans and light vehicles(GAAP depreciation schedule). DPW estimates the entire fleet could be replaced within two years at a cost of $10.9 million. With current funding ($1.5-2.0 million/year) , DPW projects a full fleet replacement in 3-5 years.

Department of Motor Vehicles

The mission of the Department of Motor Vehicles is to help improve the District's economic competitiveness and the quality of life by fostering the safe operation of motor vehicles on the District's streets in accordance with applicable laws and regulations.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Service Quality Guarantee (Basic Services)			
a) Avg service time for vehicle registration	33 minutes	15 minutes	15 minutes
b) Avg service time for drivers license issuance	17 minutes	15 minutes	15 minutes
c) Avg. service time for drivers license renewal	17 minutes	15 minutes	15 minutes
d) Avg. service time for residential parking permit	33 minutes	15 minutes	15 minutes
2. Percentage of customers rating licensing and registration times good or excellent	70%	80%	90%
3. Service Quality Guarantee (Adjudication)			
a) Avg. service time for parking ticket hearing (walk-in)	127 minutes	60 minutes	60 minutes
b) Avg. service time for parking ticket adjudication (mail-in)	6-9 months	30 days	30 days
4. Avg. service time for automobile inspection	47/hour 15 minutes per vehicle	47/hour 15 minutes per vehicle	47/hour[1] 15 minutes per vehicle
5. Percentage of customers rating inspection service good or excellent	90%	98%	98.2%
6. Service Quality Guarantee (Phone Inquiries)[2]			
a) Avg. service time for response to call	New measure	New measure	TBD
b) Avg. length of call to resolve question?	New measure	New measure	TBD
7. Overall Customer Satisfaction with DMV services	Not tracking	Not tracking	90%

Notes:

[1] Even with the introduction of four additional service lanes, DMV is not projecting changes in service times or vehicles per hour due to the need to fine-tune new equipment and computers, the need to train old and new personnel on the new equipment and current staffing shortages.

[2] DMV is not currently tracking the average response time to calls or the average length of calls. The new Customer Services Communication Center (CSCC), due to open May 30, 1999, should provide the ability to collect such data

D.C. Office of Personnel

The mission of the District of Columbia Office of Personnel (DCOP) is to provide comprehensive human resource management programs and services to attract, develop and retain a highly qualified workforce and to facilitate organizational effectiveness.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Recruitment Processing Time	45 days	45 days	30 days
2. Police and Firefighters Retirement Board Applications Processed	830	830	860
3. Employee Benefits Enrollment	5,110	5,100	6,500
4. Regulations Promulgated	30	30	20
5. Workforce and Customer Service Development Participants	4,800	5,000	10,000
6. Employment Candidates Serviced	22,000	22,000	23,000
7. Health and Wellness Claims	492	500	525
8. Unemployment Claims Processed	3,720	4,000	4,500

NOTE: With the exception of Measure 1, the D.C. Office of Personnel's performance measures are stated in terms of outputs. The newly appointed director of the DCOP will develop outcome and customer service measures before the end of FY 1999.

Office of Contracting and Procurement

The mission of the Office of Contracting and Procurement is to transform procurement into an enabling organization which surprises and delights agencies, commissions, and non-profit providers with the costs, quality, and speed of delivery of goods.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Reduction of contract approval and processing time	5 months	3 months	2.5 months
2. Percentage of program personnel trained in Performance-Based Statements of Work	NA	25%	50%
3. Percentage ($ value) of eligible small purchases made through blanket order contracting mechanisms	NA	50%	75%
4. Value of savings resulting from renegotiated price proposals and re-competed contract options	$500,000	$4 million	$12 million
5. Value of savings resulting from blanket order consolidation of generically common goods and services.	NA	$4 million	$20 million
6. Percentage of unplanned or at-risk actions.	50%	35%	20%
7. Percentage of purchase requisitions bypassing Procurement as direct releases to suppliers	NA	20%	50%
8. Percentage of agencies/commissions enabled to spend 95% or more of programmed contract dollars.	NA	90%	100%
9. Percentage growth in community and neighborhood Small Business sourcing expenditures – All Wards and Wards 6, 7 and 8	NA	All: 10% Wards 6,7,8: 20%	All: 20% Wards 6,7,8: 50%

Office of the Chief Technology Officer

The mission of the Office of the Chief Technology Officer (OCTO) is to articulate the manner in which the government leverages its investment in information technology to attain the government's goal of being an efficient and effective service provider.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of 386 systems certified compliant through District Y2K certification process	1st Qtr—7% 2nd Qtr—12% 3rd Qtr—74% 4th Qtr—100%	95%	100%
2. Percent of ISDN telephones installed	71%	100%	100%
3. Percent of District agencies connected to the Wide Area Network	40%	95%	100%
4. Hardware and Software Standards			
a) Percent of current District government hardware, software and operating systems that meet OCTO standard.[1]	Meets "No upgrade required" criteria	75%	95%
b) Percent of newly purchased or leased District government hardware, software and operating systems that meet OCTO standard.[2]	50%	70%	80%
5. Percent of Data Centers Outsourced	0%	25%	87%
6. Percent of new employee and relocated employee telephone numbers correctly included in directory	0%	99%	99%
7. Customer Satisfaction: Approval of OCTO support services	Not surveyed	80%	85%
8. Savings through large-scale buying agreements	New initiative	New initiative	$10 million
9. Wireless Services: Integration of 460 & 800 MHz radio devices	0%	New initiative	100%
10. 311 Service—a) customer service line and b) non-emergency line to police	New initiative	a) 4/99 b) 8/99	
a) Average Delay		Target	< 2 minutes
b) Calls Abandoned as Percent of Total Received		Target	<10%
c) Customer satisfaction with 311 service		80%-via customer satisfaction survey	90%-via customer satisfaction survey

Notes:

[1] OCTO Standard based on "Professionals' Guide to Information Technology Architecture Standards". Current systems adequate for average staff functions. By end of FY99, 25 percent of systems will be beyond aging criteria or bypassed by technology advances.

[2] Recommended base system for new purchases and leases is 500 MHz Pentium III or their equivalent. Recommended software is MS Windows98 for all newly purchased or leased systems and MS Office or MS Office Pro, depending on staff function.

Office of Property Management

The mission of the Office of Property Management (OPM) is to maximize the value of the District's real property assets, and to create a wholesome environment for the District's customers, workforce and all other facility users.

PERFORMANCE MEASURE	Current Baseline[1]	FY 1999 Target	FY 2000 Target
1. Benchmark facility management and repair service delivery costs to industry standards.	$7.99 per sq. ft.[2]	$7.99 per sq. ft.	$6.99 per sq. ft.
2. Benchmark utility service costs to industry standards.	$3.04 per sq. ft.	$3.04 per sq. ft.	$2.86 per sq. ft.
3. Benchmark cleaning service costs to industry standards.	$0.39 per sq. ft.	$0.39 per sq. ft.	$1.44 per sq. ft.
4. Improve the cleanliness of owned facilities—assess number of cleaning deficiencies in District facilities.	New Initiative	Establish baseline	Reduce by 10%.
5. Implement annual customer service satisfaction survey and point of delivery survey.	Implement Survey	Implement Survey	70% satisfaction rating.
6. Provide customer service training for employees.	100% of employees trained	100% of employees trained	100% of employees trained
7. Implement a preventive maintenance (PM) program for facilities.[3]	32% of facilities have PM program.	32% (10/31)	97% (30/31)
8. Establish performance standards for security contractors.	New Initiative	Establish baseline of security incidents	Increase number of facilities operating incident free by 20%.
9. Improve management and implementation of capital construction program.	300 days to complete average project	300 days to complete average project	240 days to complete average project.
10. Lease Management: Revenues accruing to District from properties OPM leased to third parties		$1.473 million	$1.923 million

Notes:

[1] Office of Property Management baseline is FY 1999. OPM is conducting a facilities inventory and condition assessment that will establish baselines for the current fiscal year.

[2] OPM has identified the District cost per square foot for maintenance, utilities and cleaning services. Their FY 2000 goal is to move to industry standards for local commercial properties and Federal government facilities. Maintenance and utilities will yield savings. Cleaning services are to be upgraded to meet benchmark facilities, because while District facilities are the low cost leader for cleaning in the region, the quality is unacceptable.

[3] Savings from preventive maintenance program captured in Measure #1.

III. Continuing Measures—1999 Performance Accountability Plan

The agencies in this section report performance against measures initially developed for the 1999 Performance Accountability Plan. Over the next several months, all agencies will develop more outcome and customer-oriented measures.

Governmental Direction and Support
- Office of the District of Columbia Auditor
- Office of Finance and Resource Management
- Contract Appeals Board
- Board of Election and Ethics
- Office of Campaign Finance
- Public Employee Relations Board
- Office of Employee Appeals
- Office of the Inspector General
- Office of the Chief Financial Officer

Economic Development and Regulation
- Department of Local Business Development Administration
- Office of Zoning
- Office of Labor Relations and Collective Bargaining
- Board of Appeals and Review
- Office of Banking and Financial Institutions
- Public Service Commission
- Office of the Public Advocate
- Office of Cable Television and Telecommunications

Public Safety and Justice
- District of Columbia National Guard

Public Education Systems
- District of Columbia Public Charter Schools*
- University of the District of Columbia*
- Commission on the Arts and Humanities

Human Support Services
- Office of Human Rights

* The District of Columbia Public Charter Schools and the University of the District of Columbia do not report to Mayor Williams. However, education is one of the residents' highest priorities. The Office of the Mayor will work with both institutions to develop and publish performance measures in the first update to the *District of Columbia Management Report.*

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Public Works
- D.C. Taxicab Commission

Receiverships
- Child and Family Services Agency
- Commission on Mental Health Services

Enterprise Funds
- Water and Sewer Authority
- D.C. Sports and Entertainment Commission
- Public Benefit Commission
- District of Columbia Retirement Board

GOVERNMENTAL DIRECTION AND SUPPORT

Office of the District of Columbia Auditor

The mission of the District of Columbia Auditor is to annually conduct thorough audits of the accounts and operations of the District of Columbia Government with the goal of promoting economy, efficiency and accountability.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Dollar value of savings, revenue enhancements, and management improvements identified from audits	$21 million	$15 million	$15 million
2. Number of compliance, performance, financial, special analysis, and statutory audits completed	13 (audits)	17 (audits)	17 (audits)
3. Number of ANC audits completed	4 (audits)	8 (audits)	8 (audits)
4. Number of ANC quarterly financial reports on which 100 percent verification and audit conducted	116	144	144

Office of Finance and Resource Management

The mission of the Office of Finance and Resource Management is to create a customer service oriented organization that surpasses all client expectations with timely, efficient, and accurate financial and budgetary services.

PERFORMANCE MEASURES	Current Baseline[1]	FY 1999 Target	FY 2000 Target
1. Timely response to vendor inquiries within 24 hours of receipt of inquiry		95%	99%
2. Timely processing of all certified invoices within 48 hours		90%	99%
3. Vendors paid within 30 days of receipts of invoices		90%	95%
4. Process personnel actions (52's) for client agencies – OCP, OPM & OFRM within 72 hours of receipt		98%	98%
5. Process requisitions & P/O's within 72 hours of receipt		95%	98%
6. Process intra-district MOU's within 7 working days		92%	95%
7. Timely submission of time and attendance sheets to OPR		98%	99%

[1] The Office of Finance and Resource Management is an agency newly created in FY 1999, and no current baseline is available.

Contract Appeals Board

The mission of the Contract Appeals Board is to provide an impartial, expeditious, inexpensive and knowledgeable forum for redressing and resolving contractual disputes between the District and the contracting communities. The Board is a quasi-judicial body authorized to hear 1) all claims brought by contractors against the District government arising out of or related to a contract; 2) all protests against contract solicitations and awards by actual prospective bidders; 3) all appeals of suspensions or debarments of contractors; and 4) all appeals from the denial of interest payment claims under the Quick Payment Act.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of protests resolved in 60 business days	80%	75%	75%*
2. Percent of docketed appeals resolved	25%	25%	20%*

*FY 2000 Target is set lower because the agency thinks the FY 1999 Target is too ambitious.

Board of Elections and Ethics

The mission of the Board of Election & Ethics is to enfranchise eligible residents, qualify candidates, process ballot measures, conduct elections, provide legal counsel, and assure the integrity of the electoral process through the administration and enforcement of the election laws of the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. New voters added to voter roles	315,881 (current registration)	10,000 new registrants	15,000 new registrants
2. Election workers recruited and trained	1,415 (current workforce)	300 recruited 1,500 trained	500 recruited 1,700 trained
3. Percentage of polling precincts certified for accessibility	87% (122 of 140)	94% (132 of 140)	100% (140 of 140)

Office of Campaign Finance

The mission of the Office of Campaign Finance is to ensure public trust in the integrity of the election process and government service by regulating the financial disclosure process and conduct of political campaigns and candidates, lobbyists, public officials, and public committees, pursuant to the D.C. Campaign Finance Reform and Conflict of Interest Act, the D.C. Merit Personnel Act, and the Federal Ethics Reform Act.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of voluntary candidate compliance with the reporting requirements	85%	85%	85%

Public Employee Relations Board

The District of Columbia Public Employee Relations Board (PERB) is an impartial quasi-judicial independent agency empowered with the exclusive jurisdiction to resolve labor-management disputes between agencies of the District Government and labor organizations representing employees of the various District agencies. The PERB is an important quasi-judicial agency empowered with exclusive jurisdiction to resolve labor-management disputes.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of cases decided within 120 days of submission to the Board	100%	100%	100%
2. Percent of decisions transmitted to the DC register for publication within 60 days of issuance	100%	100%	100%
3. Percent of cases appealed to courts in which PERB prevailed	100%	75%	80%
4. Percent of compensation Impasse Resolution cases that meet statutory time targets. For example: • Mediation: within 30 days. • Arbitration: within 45 days after the panel has been established	100%	75%	100%

Office of Employee Appeals

The mission of the Office of Employee Appeals (OEA) is to render legally sufficient, impartial decisions in a timely manner, regarding appeals in which District employees have challenged decisions regarding adverse actions, reductions-in-force, performance evaluations, and classification of positions, which result in employee's removal.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. # of initial decisions	150	250	320
2. # opinions and orders issued	28	60	60
3. # of appeals mediated[2]			TBD

[2] The program is temporarily suspended since October 1, 1998 and the new rule of mediation will not be adopted until September 1999.

Office of the Inspector General

The mission of the Office of the Inspector General (OIG) is to conduct audits and investigations of programs and operations of the District government in order to promote economy, efficiency, and effectiveness and to detect and deter waste, fraud, abuse and mismanagement throughout the District government.

PERFORMANCE MEASURES	FY 1998 Actual	FY 1999 Target	FY 2000 Target
10. OIG's fiscal and management reports of District programs and operations	23	25	28
11. External Audits (contractors)	61	65	67
12. Ongoing Audits	13	15	19
13. Investigations Open	321	340	370
14. Investigations Closed	186	215	265
15. Inquiries received on OIG hotline	146	164	220
16. Savings due to audits (millions)	$12.4	$30	$35

Office of the Chief Financial Officer

The mission of the Office of the Chief Financial Officer (OCFO) is to bring fiscal stability, accountability and integrity to the District through comprehensive financial management in order to support public services and restore stakeholder confidence in the Government of the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. $ value of budget surplus or (deficit)	$445 million	$170 million	$47,000
2. Percent of income tax refunds processed within 15 days or less	90%	90%	95%
3. Percent of taxpayer inquiries responded to within 30 days of receipt	90%	90%	95%
4. Percent of grant funds returned to federal government[3]	[4]	[4]	[4]
5. New competitive grants awarded to district (dollars)	$5.2 million	$12 million 130% increase	$20 million 65% increase
6. Bond rating of at least investment grade	BB+/Baa1/ BBB	BBB-/ Baa3/BBB-	Maintain or improve
7. Rating of city financial system by independent auditor.	100% "Clean"	100% "Clean"	100% "Clean"

[3] Measure inserted in several agencies individual measures; OGMD provides oversight and support to agencies to avoid continuation of this trend.

[4] The CFO and the Office of Grants Management and Development are implementing a comprehensive initiative to prevent lapsed grants ("CFO Initiative to Eliminate Lapsed Grants"). The baseline information will be available by approximately June 30, 1999. FY 98 Lapsed Grants were estimated to be $3.3 million – this estimate did not reflect an analysis of all federal grants to the District (i.e., Highway Funds and many entitlement grants).

ECONOMIC DEVELOPMENT AND REGULATION

Department of Local Business Development Administration

The mission of the Department of Local Business Development Administration is to foster economic growth and development of local, small and disadvantaged businesses through supportive legislation, business development programs, and public and private sector compliance.

PERFORMANCE MEASURES	Current Baseline[5]	FY 1999 Target	FY 2000 Target
1. Dollar value expended with LSDBE businesses through Memoranda of Understandings with Industrial Revenue Bond (IRB) beneficiaries	$42 Million 10%	$50 Million 19%	$75 Million 78.6%
2. Dollar value expended with LSDBE businesses through Memoranda of Understandings reached with major private/public development projects	$43 Million 100%	$75 Million 74.4%	$100 Million 132%
3. Number of local businesses certified under the LSDBE Act	122 100%	500 22.3%	700 71.2%
4. Number of Memoranda of Understandings signed creating new partnerships	20 100%	46 130.5%	50 150%
5. Number of outreach and education efforts to enhance citizens' understanding of the LSDBE program and its benefits			
• Total presentations at community meetings, forums, and seminars	55 100%	115 109%	125 127.3%
• Outreach forums			10
• Community meetings, business forums and Mayor's Night-In seminars			90
• Agency compliance training seminars			25

Office of Zoning

The mission of the Office of Zoning is to provide administrative, professional, and technical assistance to the Zoning Commission and the Board of Zoning Adjustment in the maintenance and regulation of the zoning process in the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percentage of "Zone Consistency" cases heard by the Zoning Commission	35%	80%	80%
2. Percentage of Routine Demographic Data Requests responded to within 2 hours	On target	90%	90%
3. Level of Zoning Commission satisfaction with Report Quality	Satisfactory or above	Satisfactory or Above	Satisfactory or above

[5] Through February 1999

Office of Labor Relations and Collective Bargaining

The mission of the Office of Labor Relations and Collective Bargaining (OLRCB) is to prudently negotiate and effectively administer labor agreements, advocate in the best interest of the District of Columbia, consistent with applicable laws, established policy and management reform initiatives, and to contribute to a highly functioning District of Columbia. Additionally, OLRCB has four (4) service areas comprised of twelve (12) full-time equivalent positions and a budget of $751,000 for FY 1999.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Number of labor contracts renewed or newly negotiated	16	13	*See below
2. Percent of Contracts Negotiated using Labor Management Committees	20%	100%	30%

*Note: All (100%) of the collective bargaining agreements are subject to renegotiation in FY 2000.

Board of Appeals and Review

The mission of the Board of Appeals and Review (BAR) is to adjudicate appeals by citizens and medical facilities against decisions rendered by the District agencies. Some of the cases involve civil infractions, program reimbursements, and license revocations.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of appeals awaiting hearing at end of fiscal year	INA	0	0
2. Percent of appeal decisions pending at end of fiscal year	INA	10%	10%

Office of Banking and Financial Institutions

The mission of the Office of Banking and Financial Institutions (OBFI) is to regulate and promote a climate in which financial institutions will organize to do business in the District of Columbia, contribute to the economic development of the District through the increased availability of capital and credit, and expand advantageous financial services to the public in a nondiscriminatory manner.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of processed licenses within ten business days of receiving a complete application form: 1) Mortgage lenders or brokers (initial applications); 2) Check cashers (applications received in 1999)	1) 100% 2) 100%	1) 100% 2) 100%	1) 100% 2) 100%
2. Increase participation in outreach efforts that educate and promote awareness of financial services	8 events	6 events	10 events

Public Service Commission

The mission of the Public Service Commission is to serve the public interest by ensuring that natural gas, electricity, and telecommunication services are safe, reliable, and affordable for residential, business, and government customers in the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of time orders that will be issued within 15 days of receipt of all information from CLECs	INA[6]	100%	100%
2. Percent of utility company tariffs that will be processed within 120 days	INA[6]	90%	90%
3. Percent of formal consumer complains that are adjudicated within 90 days	INA[6]	100%	100%
4. Percent of pay telephone complains that are resolved within 4 weeks	INA[6]	75%	75%

Office of the Public Advocate

The mission of the Mayor's Office of the Public Advocate (OPA) is to serve as a critical link between the citizens and the service delivery mechanisms of the District of Columbia government.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of consumer complaints resolved satisfactorily	60%	60%	75%
2. Percent of attendees at routine community briefings/events rating presentations as informative	75%	60%	80%

Office of Cable Television and Telecommunications

The mission of the Office of Cable Television and Telecommunications (OCTT) is to regulate cable television services to District citizens, to provide citizen access to government hearings and programming that addresses community issues and to coordinate the city's telecommunications policy.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent of cable customer complaints resolved within 24 hours	70%	75%	80%
2. Percent of compliance issues addressed/resolved	80%	85%	95%
3. Percentage of community meetings, activities, forums, etc attended	70%	80%	85%

[6] Since the agency's schedule for implementing these accountability measures began in October 1998, most of the information has not been generated, and other programs are in the start-up phase. Measures relating to arbitration or requiring litigation are based on activities brought to the Commission for action. The number of cases can be unpredictable and sporadic because of the legal processes involved.

PUBLIC SAFETY AND JUSTICE

District of Columbia National Guard

The mission of the District of Columbia National Guard (DCNG) is to protect life, property, and interests of the District of Columbia during civil emergencies and serve as an integral component of the nation's military forces, when activated.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Increase the number of participants in the Challenge Program	40	60	75
2. Army Readiness:	1906	1981	1981
• Increase in Readiness Level for Deployment;	96.8%	100%	100%
• Authorized stretch,	85%	90%	100%
• Equipment on Hand,	90%	95%	100%
• Training (unit) Maintenance	95%	98%	100%
3. Air Readiness:	1339	1383	1383
• Increase in Readiness Level for Deployment;	96.8%	100%	100%
• Authorized stretch,	100%	100%	100%
• Equipment on Hand,	95%	100%	100%
• Training (unit) Maintenance	100%	100%	100%

PUBLIC EDUCATION SYSTEM

District of Columbia Public Charter Schools

The mission of a public charter school in the District of Columbia is to provide an alternative, free education for students who reside in the District of Columbia.

University of the District of Columbia

The mission of the University of the District of Columbia (UDC), an urban land-grant institution with an open admission policy, is to provide a quality affordable post-secondary education to the District of Columbia residents at the certificate, associate, baccalaureate, and graduate levels.

NOTE: As discussed above, measures for these institutions will be reported in the first update of the *District of Columbia Management Report.*

Commission on the Arts and Humanities

The mission of the Commission on the Arts and Humanities is to enrich the quality of life for the residents of the District of Columbia through the arts and humanities. The Commission fulfills its mission by initiating, developing and supporting actions on matters relating to the arts and by providing funds, services and information to artists, art organizations, educational institutions, community organizations, government agencies and the District at large.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percent increase in awards granted	310	480 (55%)	550 (77%)
2. Percent increase DC Public School students served through the Arts Education Program	21,000	23,000 (9.5%)	27,000 (17.4%)
3. Maintain top ranking among states among state art agencies in the United States	3	3	3 or better

HUMAN SUPPORT SERVICES

Office of Human Rights

The mission of the Office of Human Rights is to ensure an end to illegal discriminatory practices in employment, housing and commercial space, public accommodations, and educational institutions, through enforcement of the D.C. Human Rights Act of 1977, the D.C. Family and Medical Leave Act 1990, the Parental Leave Act of 1994, and other federal civil rights laws.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Increase in the number of cases closed as a result of mediation	36 closed 5%	85 15%	125 31%
2. Increase the ratio of cases closed to the pending inventory	123/687 cases	350/580 cases	375/400 cases
3. Closure Rate of pending cases	15%	60%	93%*

PUBLIC WORKS

D.C. Taxicab Commission

The mission of the DC Taxicab Commission is to ensure that the public is provided with safe and reliable taxicab and other transportation services through the regulation of the public vehicle-for-hire industry in the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Time (Calendar days) to process citizens complaints	90	60	45
2. Percent of taxi drivers completing refresher course to improve general knowledge of D.C. and Taxi regulations	22% (1690 of 7800, 6/98 to 9/98)	50% (3900 of 7800)	100% (7800 of 7800)
3. Average number of days required to process public vehicle for hire operator license renewals	5	1	1

RECEIVERSHIPS

Child and Family Services Agency

The mission of the Child and Family Services Agency (CFSA) is to protect and promote the health and well-being of the children of the District of Columbia through public and private partnerships focused on strengthening and preserving families with services that ensure cultural competence, accountability, and professional integrity.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Percentage of the Collaboratives offering neighborhood based services to children and families	87.5%	100% (8 wards)	100%
2. Percentage of children in child welfare system with permanency plans established	88%	92%	100%

Commission on Mental Health Services

The mission of the Commission on Mental Health Services (CMHS) is to provide comprehensive community-based mental health care to indigent residents of the District of Columbia.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target*
1. Percent reduction in Inpatient Beds	13%	15%	68%
2. Percent of Consumers with access to new psychotropic medications	38%	88%	56%
* These figures are in a state of flux, therefore working percentages, rather than actuals are provided.			

ENTERPRISE FUNDS

Water and Sewer Authority

The mission of the District of Columbia Water and Sewer Authority (WASA) is to provide retail water service to the District of Columbia and limited water service to portions of the surrounding metropolitan area. It is also responsible for providing retail wastewater collection and treatment service to portions of certain surrounding metropolitan areas (Montgomery and Prince George's Counties in Maryland and Fairfax and Loudoun Counties in Virginia), in an environmentally safe manner that protects our waterways.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Accuracy rate in meter reading	96%	96%	99%
2. Percent of customer calls answered in 2 minutes	90%	97%	97%
3. Average time to resolve customer correspondence	30 – 90 days	30 days	30 days
4. Percent of drinking water quality above EPA criteria	100%	100%	100%
5. Response time for water main breaks	2 hours	< 2 hours	90% < 1 hour
6. Percent of wastewater in compliance with EPA quality standard	100%	100%	100%

D.C. Sports and Entertainment Commission

The mission of the Washington D.C. Sports and Entertainment Commission (the Commission) is to manage the Robert F. Kennedy Memorial Stadium and the secondary use of the D.C. National Guard Armory to provide suitable facilities for athletic events, conventions, trade shows, concerts, etc. on a self-supporting basis.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. # of Stadium and Armory Events	80	85	85
2. Net income from Stadium and Armory Events	$10 million	$14 million	$434 million
3. Increase the Community Outreach Contribution	$100,000	$100,000	$150,000

Public Benefit Corporation

The mission of the District of Columbia Public Benefit Corporation (PBC) is to be a community-oriented leader in the delivery of comprehensive, high quality, cost effective and timely medical care, with a special community commitment to ensuring care for the District of Columbia's under-served and indigent.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Early Periodic Screening and Diagnostic Training	36%	50%	65%
2. Managed Care Enrollment	5,100	10,000	14,000
3. FTE per ADC	6.2	6.0	5.6
4. Average Length of Stay	6.2	6.0	5.8

District of Columbia Retirement Board

The mission of the District of Columbia Retirement Board (the Board) is to invest, control and manage the assets of the D.C. Teachers' Retirement System and the D.C. Police Officers and Fire Fighters' Retirement System.

PERFORMANCE MEASURES	Current Baseline	FY 1999 Target	FY 2000 Target
1. Increase in actual rate of return over actuarial projected rate of return (actual ROR-actuarial ROR)	7.25%	7.25%	7.25%
2. Maintain or increase the average Investment Rate of Return	10.5%	9.4%	9.0

IV. Measures Under Development (not included in this report)

The District has not developed measures for agencies listed below for a variety of reasons. Many of the agencies are new or are former agency divisions newly independent.

Early stage of strategic planning; measures forthcoming
- D.C. Office of Aging
- Office of the Chief Medical Examiner (within Department of Health)

No prior measures; new measures forthcoming
- Office of Policy and Evaluation
- Office of Economic Development
- Board of Real Property Assessments and Appeals
- DC Lottery and Charitable Games Board
- District of Columbia Housing Authority
- Superior Court of District of Columbia

No update of prior measures
- Washington Convention Center Authority

New Agency
- Court Services and Offenders Supervisory Agency (CSOSA)
  The CSOSA is a new federal agency that will assume many local public safety functions. As a federal agency, CSOSA has does not report to the Mayor. However, public safety is among the residents' highest priorities, therefore, the District will publish information on the performance of these agencies.

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