ADVANCEMENTS AND CONTINUAL CHALLENGES IN THE PAROLE, SUPERVISED RELEASE AND REVOCATION OF D.C. CODE OFFENDERS

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ADVANCEMENTS AND CONTINUAL CHALLENGES IN THE PAROLE, SUPERVISED RELEASE AND REVOCATION OF D.C. CODE OFFENDERS

TUESDAY, MARCH 11, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Norton, Cummings, Kucinich, and Marchant.

Staff present: Tania Shand, staff director; William Miles, professional staff member; Lori J. Hayman, counsel; LaKeshia N. Myers, clerk; Howie Denis, minority senior professional staff member; Patrick Lyden, minority parliamentarian and member services coordinator; and Benjamin Chance, minority clerk.

Mr. DAVIS OF ILLINOIS. The subcommittee will come to order.

Welcome Ranking Member Marchant, members of the subcommittee, and hearing witnesses, and all of those in attendance. Welcome to the Federal Workforce, Postal Service, and the District of Columbia Subcommittee hearing on Advancements and Continued Challenges in the Parole, Supervised Release and Revocation of D.C. Code offenders. The hearing will examine how the National Capital Revitalization and Self-Government Improvement Act of 1997 is being implemented with respect to the District's parole, supervised release, and revocation systems. We will seek to determine whether the changes made have been positive and whether additional changes are warranted.

Hearing no objection, the Chair, ranking member, and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record.

I say to all of you good afternoon, welcome to today's hearing to examine the advancements and challenges in the parole, supervised release, and revocation of D.C. Code offenders post-enactment of the National Capital Revitalization and Self-Government Improvement Act of 1997, often referred to as the Revitalization Act.

As many of us here today are aware, policymakers are working to find solutions and the means for improving the transition of ex-

offenders back into society, thereby enhancing public safety. It is an issue that had long been ignored, but in recent years has received increased public and congressional attention.

In fact, just recently the Pew Center on the States issued a report on the Nation's alarmingly high incarceration rates and found that more than 1 in 100 adult Americans are in jail or prison, which is an all-time high. The report also discovered that 1 in 9 Black men aged 20 to 34 is behind bars, and for Black women aged 35 to 39, the figure is 1 in 100, compared with 1 in 355 for White women in the same age group. Clearly, we have a great deal of work ahead of us in this policy area.

Ensuring the success for transition from confinement to community has long been a chief policy concern of mine, which is why I have been pushing so hard for consideration and passage of my bill, H.R. 1593, the Second Chance Act. This piece of legislation would promote ex-offender reentry reforms by employing a comprehensive Government-led approach to eliminating barriers to reintegration for those coming out of prison and increasing access to critical transitional services for ex-offenders.

The goal behind the Second Chance Act is to close the revolving door of ex-offenders going in and out of incarceration by providing additional funding opportunities that would assist with mentoring and housing. It is my hope that the Second Chance Act will become law soon so that we can begin to deliver to communities and cities, such as the District of Columbia, the additional resources they need to support the successful reentry of ex-offenders.

Since adoption of the Revitalization Act and the massive restructuring of D.C.'s criminal justice system, a host of new policies, procedures, programs, and partnerships have been developed for the purpose of improving public safety in the District of Columbia. The Revitalization Act sought to reduce recidivism among D.C. Code offenders and to enhance the city's strategies for increasing public safety. Ten years after enactment of the Revitalization Act, the District now serves as an example for countless other localities grappling with implementing effective felon reentry systems and practices.

The ex-offenders in the District of Columbia, like ex-offenders throughout the Nation, face tremendous barriers, such as poor physical and mental health, homelessness, lack of education or employment opportunities, drug and alcohol dependency, and in their transition from prison to society, these conditions often result in ex-offenders being rearrested or having their parole or supervised release revoked, the very outcome that we are fighting to prevent.

It is estimated that every year nearly 2,500 ex-offenders return to the District after completing their sentences. This is an average of five ex-offenders per day. Further, it is believed that as many as 60,000 D.C. residents are felons. Although these statistics may be somewhat disheartening, what is encouraging are the persons, organizations, and government agencies that work around the clock to assist the ex-offender population with their reentry into society.

It is my hope that today's hearing will provide us an opportunity to discuss the current challenges and solutions to offender reentry in the District. Today's hearing will also examine the progress Rivers Correctional Institution has made in implementing pre-release

programs and two pending legislative measures pertaining to the D.C. courts and the administration of judicial proceedings.

I would like to thank my colleague, Congresswoman Eleanor Holmes Norton, for her tireless work in this policy area.

I ask unanimous consent that the statements of the Council for Court Excellence, Phillippa Fornasea of the D.C. Prisoner Project, and the statement of Tene Dolphin, chief of staff to Mayor Adrian Fenty, be entered into the record.

I thank you all and look forward to hearing testimony from today's witnesses.

[The prepared statement of Hon. Danny K. Davis follows:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS
AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

HEARING ON

"Advancements and Continual Challenges in the Parole, Supervised Release and Revocation of DC Code Offenders."

March 11, 2008

Good afternoon, welcome to today's hearing to examine the advancements and challenges in the parole, supervised release and revocation of D.C. code offenders post enactment of the National Capital Revitalization and Self-Government Improvement Act of 1997, often referred to as 'the Revitalization Act'. As many of us here today are aware, policymakers are working to find solutions and the means for improving the transition of ex-offenders back into society, thereby enhancing public safety. It is an issue that had long been ignored, but in recent years has received increased public and congressional attention. In fact, just recently the Pew Center on the States issued a report on the nation's alarmingly high incarceration rates and found that more than one in 100 adult Americans are in jail or prison, which is an all time high. The report also discovered that one in nine black men age 20 to 34 is behind bars and black women age 35 to 39, the figure is one in 100, compared with one in 355 white women in the same age group. Clearly, we have a great deal of work ahead of us in this policy area.

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I ask unanimous consent that the statements of the Council for Court Excellence, David Fornaci, of the D.C. Prisoner's Project, and the statement of Tene Dolphin, Chief of Staff to Mayor Adrian Fenty be entered into the record. Thank you and I look forward to hearing the testimony of today's witnesses.

Mr. DAVIS OF ILLINOIS. Now I would like to yield to the ranking member of this subcommittee, the Honorable Mr. Marchant.

Mr. MARCHANT. Thank you, Chairman Davis. Thank you for holding this hearing today on the status of the offender supervision program in the District of Columbia.

Ten years ago, as part of the National Capital Revitalization and Self-Government Improvement Act, the Federal Government assumed control over the District of Columbia's court and criminal justice systems. Too often, Congress enacts legislation but then never takes the time to assess where the legislation actually had a beneficial impact on the issue it was enacted to resolve; therefore, I applaud the chairman for taking the time to look at the progress made over the past decade to determine whether additional adjustments are necessary.

It is important for this subcommittee to exercise its oversight of how the D.C. parole, supervised release, and revocation functions are working.

All of our panelists today are in some way on the front lines of our efforts to supervise offenders and reintegrate them back into our society. I look forward to hearing from each of the panelists and what they believe are some of the biggest challenges facing the District's criminal justice system. This information will hopefully help us ensure our offender supervisory programs, that they are as effective as possible, both here in the Nation's Capital as well as in the Nation, at large.

Thank you.

[The prepared statement of Hon. Kenny Marchant follows:]

Statement of Ranking Member Kenny Marchant
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Hearing on "Advancements and Continual Challenges in the Parole, Supervised Release and Revocation of DC Code Offenders
Tuesday, March 11, 2008

Thank you, Chairman Davis, for holding this hearing today on the status of the offender supervision programs in the District of Columbia.

Ten years ago, as part of the National Capital Revitalization and Self-Government Improvement Act of 1997, the federal government assumed control over the District of Columbia's courts and criminal justice systems.

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Thank you and I look forward to the testimony.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Ranking Member.

Representative Norton, do you have any comments?

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

I want to thank Chairman Danny Davis for his willingness to do continuing oversight of the transfer of an entire State prison system to the Federal Government's Bureau of Prisons for the first time in U.S. history. Federal jurisdiction of D.C. prison inmates, reentry services, and parole fit nicely with the Chair's own pathbreaking leadership on inmate reentry issues.

Chairman Davis' persistent and pioneering work as lead sponsor of the bipartisan Second Chance Act, which I was pleased to cosponsor, led to House passage in November.

I had requested a continuing set of hearings that are particularly necessary now because the BOP, the Court Services and Offender Supervision Agency, and the U.S. Parole Commission have been operating for a decade under the National Capital Revitalization and Self-Government Improvement Act of 1997 without the necessary and expected oversight from the committee of jurisdiction. A great deal is at stake, beginning with what ex-offenders do with the rest of their often young lives, but much more, as well.

Big city crime is often fed by ex-offenders who come to prison from the most desperate and deprived layers of society and, ironically, may get their first chance in life behind prison bars or through a reentry program. Beyond the victims of crime, other victims quickly multiply, to include especially the children and families of ex-offenders.

Thus far, subcommittee staff, my staff, and I have visited Rivers Correctional Institution in Winston, NC, and the BOP Facility for Men at Cumberland, MD. This spring we will visit a facility housing D.C. female inmates and will seek the first hearing on D.C. women in BOP facilities.

Perhaps the most difficult issue resulting from the transfer of local jurisdiction to Federal authorities is the present location of 7,000 D.C. prisoners incredibly at 75 different facilities in 33 States, contrary to the intent of the Revitalization Act, which sought to afford close proximity of District prisoners to the District in keeping with undisputed penology.

Prisoners who have not laid eyes on their relatives or children, their minister, or caring friends return to civil society burdened and handicapped, not only by absence but by distance, confounding successful reentry.

I will shortly be presenting some ideas for corrective action to BOP officials and will seek to work with them toward a solution.

The first hearing on D.C. inmates since transfer to Federal authorities occurred in October, resulting from our initial investigation, showed that D.C. prisoners did not always have access to services equal to those offered other inmates at BOP facilities. We appreciate the rapid response to the October hearing by BOP Director Harley Lapin and the important changes that have resulted. We welcome Rivers' Warden, George Snyder, who will testify today regarding the status of the issues addressed at that hearing, particularly the creation of a state-of-the-art drug rehabilitation pro-

gram coming to Rivers patterned on the well-regarded program available at BOP facilities, and new job-related training programs.

However, with the goals of the first hearing for D.C. prisoners behind bars in sight, the major purpose of today's hearing is to review Federal policy and responsibility upon release for ex-offenders. We seek answers to a number of troubling questions. For example, do D.C. prisoners serve longer sentences for comparable crimes than prisoners elsewhere in the United States? If so, why? And are such sentences justified?

Are there specific standards for sending a parolee back to prison by revoking parole, such as the nature of the offense, current employment, payment of child support, and the like?

What is the purpose of denying credit for so-called street time or time spent after release without infractions?

What is the effect of parole revocation for minor infractions on employment of the ex-offender?

Does the U.S. Parole Commission operate on a zero-tolerance policy, even for minor infractions? And, if so, under what statutory authority?

Have the parole revocation policies of the Parole Commission had the appropriate deterrent effect, or is this policy counter-productive?

Were the policies now in use intended by the Revitalization Act of 1997?

Are such policies in keeping with the considerable investment Federal taxpayers make in CSOSA to facilitate reentry, or in inmates, themselves, who participate in the best job training and drug rehabilitation services offered by any prison system in the world, with the goal of preventing recidivism?

In short, are these policies in the best interest of the District of Columbia residents, of inmates, of their families? Who do they serve?

We look forward to the testimony of U.S. Parole Commissioner Isaac Fulwood, Jr., former Metropolitan Police Department Chief, for the considerable insights and experiences he brings to the issues before us today. We welcome Tyrone Brown, an ex-offender who got his GED while incarcerated, remained crime free, but was returned to prison while on parole for minor infractions, and, as a result, lost his street time.

I ask unanimous consent also to receive the testimony of Anthony Cunningham, a barber who had the benefit of a new alternative system of sanctions instead of being re-incarcerated. Paul Quander, director of Court Services and Offender Supervision Agency; Avis Buchanan, director, Public Defender Services for the District of Columbia; and James Austin, an expert on D.C. prison and parole issues, who will present findings from a report addressing the matters at issue.

We also are pleased to receive testimony from Chief Judge Rufus King concerning a bill to increase the number of Superior Court judges, as well as Betty Ballester, esq., regarding an increase in the hourly rates of lawyers who are appointed by the Superior Court to represent indigent defendants.

I very much appreciate the graciousness of the Chair in moving forward with yet another hearing on these issues.

Mr. DAVIS OF ILLINOIS. Thank you, Delegate Norton.

Without objection, Mr. Cunningham would be permitted to testify and have his testimony entered into the record.

Mr. Cummings, do you have a statement?

Mr. CUMMINGS. Mr. Chairman, I will submit my statement in writing. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Cummings.

We would like to ask if our first panel would be seated: Mr. Tyrone Brown and Mr. Anthony Cunningham.

Mr. Tyrone Brown is a 23-year-old D.C. Code offender who recently returned to the community after having his parole revoked. While incarcerated, Mr. Brown was able to earn his GED, as well as obtain a professional plumbing certificate. Tyrone is currently employed and is a resident of the Hope Village Residential Reentry Center.

Welcome, Mr. Brown. Thank you very much.

Mr. Anthony Cunningham is a licensed barber in the District of Columbia and a D.C. Code offender. Mr. Cunningham would have had his parole revoked and lost credit for his street time over a minor infraction; instead, he participated in an alternative system involving reprimands, sanctions, that kept him from being returned to prison.

Gentlemen, let me thank both of you.

It is the policy of this committee that all witnesses be sworn in, so if you would join me in standing and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

Gentlemen, your entire statement is already included in the record. We ask that you take 5 minutes and summarize what you have to say.

The green light that is there is an indicator of the time. The green light indicates that you have 5 minutes. When it gets down to yellow that indicates that you have a minute left, and we ask you to summarizes and sum up. And then, of course, the red light means the same as a red light, I guess, out on the street, that you are supposed to stop.

So thank you very much. We are delighted that you are here. We will begin with Mr. Brown.

STATEMENTS OF TYRONE BROWN, PREVIOUSLY INCARCERATED, HOPE VILLAGE RESIDENTIAL REENTRY CENTER; AND ANTHONY CUNNINGHAM, PREVIOUSLY INCARCERATED

STATEMENT OF TYRONE BROWN

Mr. BROWN. I think I made parole 2003, and from 2003 to now I was sent back for violation, minor violations. My street time was took. Every time I violated, I was working and had my own place. They took that. You know, they just snatched all that from me. I feel as though it is like a triple jeopardy, you know, because while they have taken our street time, it is like we will never get off parole. It just constantly go up. I feel as though that ain't right for us. Rivers, they got a lot of programs at Rivers, but it ain't going to do enough for nobody that is like me that is already got a GED,

and some of their programs, it is more like you got to fit a criteria to get it, like they got an HVAC class up there. I think it was 18 to 24 you got it. That is the only way you could get in. I'm 30, 31, 32, so that was, like, a bummer right there.

As far as revocation hearings, when you go in in front of them, you are saying that you got a job, you got a place that you don't want to lose this. All right, I caught a dirty urine, but is there another way of, you know, trying to correct the solution. I don't think no one giving us jail time is going to change nothing, you know. I mean, I got an addiction. It is a disease. Jail time shouldn't be the solution of it. We should find another way of going, because people got family, jobs.

I understand I violated, but it is got to be a better way. I think so.

That is basically it, what I have to say.

Mr. DAVIS OF ILLINOIS. Thank you very much. We will have some questions after Mr. Cunningham finishes.

Mr. Cunningham, you may begin.

STATEMENT OF ANTHONY CUNNINGHAM

Mr. CUNNINGHAM. How you doing? I remember my first time I had been incarcerated. That was back in 1985. Back then they had a lot of programs where you were able to go to to get all the benefit that you really wanted. That is how I got my first barber license. During the previous time, come out, I was doing good after doing my 2-year sentence.

I went straight from 1987 all the way to 2001. I committed another crime and was back incarcerated. And the last time I remembered that, you know, where I continue on to do the things I used to do. So after doing a 3-year sentence to 2001 I came home, got back on the right path, and doing the things that I really needed to do at that particular time.

The program, when I went back out and did something I had no business doing, and I was getting back, getting high, instead of sending me back to prison they sent me to a program, and I was an outpatient, and I had to go there.

The program was a really good program and it helped me and made me realize some of the things I really wanted to do. If you are really into that program, you really have to want it and not be, you know, a person that thinks that you can do what you really wanted to do.

I'm kind of nervous, so excuse me.

Mr. DAVIS OF ILLINOIS. That is all right. We all were.

Mr. CUNNINGHAM. The program is a regular program. They also have an after-program where you go into an outpatient program if they feel that you are not ready. The program really helps you out, it really gives you the good benefit to get back on the right track. That is what happened to me. I was just on the edge of losing my job, being back incarcerated, and not able to do the things I needed to do for my kid, so that was the most important thing to me. After the death of my grandmother and my grandfather, it was a shock to me, so I had to do something way different from the things I used to do back in the past.

Mr. DAVIS OF ILLINOIS. All right. Thank you both. Thank you very much.

Let me ask you, Mr. Brown, what were you incarcerated for?

Mr. BROWN. I was incarcerated for aggravated assault, 1997.

Mr. DAVIS OF ILLINOIS. And how long were you incarcerated?

Mr. BROWN. Five years.

Mr. DAVIS OF ILLINOIS. And what was done to help you while you were in prison?

Mr. BROWN. Of course, through the 5-years I had anger management programs, several of them, and, like I said, they had GED programs, and I got my GED while I was there.

Mr. DAVIS OF ILLINOIS. How far did you go in regular high school?

Mr. BROWN. Seventh grade.

Mr. DAVIS OF ILLINOIS. So you dropped out at seventh grade?

Mr. BROWN. I passed to the eighth. Never went.

Mr. DAVIS OF ILLINOIS. You passed to the eighth and never went. What caused, if you remember, you to drop out at that point?

Mr. BROWN. I was running the streets.

Mr. DAVIS OF ILLINOIS. What, at 13, 14?

Mr. BROWN. Yes, 13, 14, running the streets. I was in and out of foster care. Yes, just hanging around, just hanging out in the streets.

Mr. DAVIS OF ILLINOIS. Yes. Did the anger management help you? Would you say that the anger management assistance that you got while incarcerated helped you?

Mr. BROWN. Yes. It taught me how to settle differences without violence. There are better ways than violence. So it helped me a lot. Then they had a "cage of rage," so I went through a few.

Mr. DAVIS OF ILLINOIS. I am delighted to hear that. Would you recommend that as a way of helping individuals, especially those individuals who may have gotten into altercations and——

Mr. BROWN. Yes.

Mr. DAVIS OF ILLINOIS [continuing]. That is why they ended up incarcerated?

Mr. BROWN. Yes.

Mr. DAVIS OF ILLINOIS. Was there any other infractions that you committed, or was it just that?

Mr. BROWN. That was my only charge. That is why I am on parole, as far as when I was paroled 2003, I never caught another charge.

Mr. DAVIS OF ILLINOIS. How long did it take you to get your GED?

Mr. BROWN. It took me—when I was in Memphis, TN, it took me, like 6 months to get my GED.

Mr. DAVIS OF ILLINOIS. And so you dropped out of high school—well, you never went to high school?

Mr. BROWN. I never went.

Mr. DAVIS OF ILLINOIS. But you dropped out in eighth grade.

Mr. BROWN. Yes.

Mr. DAVIS OF ILLINOIS. And you were able to get a GED in a few months?

Mr. BROWN. Yes. I always was smart, but I just made the wrong choices.

Mr. DAVIS OF ILLINOIS. That is quite smart to be able to actually do a GED, not having done any high school, and just kind of being out on the streets and that kind of thing. I used to teach GED.

Mr. BROWN. Yes.

Mr. DAVIS OF ILLINOIS. So I know a little bit about it. Yes, and now you have a license to——

Mr. BROWN. Diploma.

Mr. DAVIS OF ILLINOIS. Your diploma?

Mr. BROWN. Yes.

Mr. DAVIS OF ILLINOIS. That is fantastic. So actually you have been helped by some of these programs, right?

Mr. BROWN. Yes. Yes.

Mr. DAVIS OF ILLINOIS. All right. So you would say that the programs have actually helped you?

Mr. BROWN. Yes. Only if you want to be helped.

Mr. DAVIS OF ILLINOIS. All right.

Mr. Cunningham, let me ask you, How many children do you have?

Mr. CUNNINGHAM. I have two kids.

Mr. DAVIS OF ILLINOIS. You have two kids?

Mr. CUNNINGHAM. Yes.

Mr. DAVIS OF ILLINOIS. Married?

Mr. CUNNINGHAM. No.

Mr. DAVIS OF ILLINOIS. No. But you still have a relationship and have a relationship with your children?

Mr. CUNNINGHAM. Yes.

Mr. DAVIS OF ILLINOIS. I heard you indicate that you wanted to be able to assist your children.

Mr. CUNNINGHAM. Right.

Mr. DAVIS OF ILLINOIS. And help them. How would you say that the programs helped you while you were incarcerated?

Mr. CUNNINGHAM. I can say the program really helped me because—that was a trade that I really liked to do—to cut hair. It helped me a lot. It helped me to learn that to get along with other people and communicate, and it does a very good job. It was something I really liked to do.

Mr. DAVIS OF ILLINOIS. Did you have any trouble getting your barber's license?

Mr. CUNNINGHAM. No, sir.

Mr. DAVIS OF ILLINOIS. It is interesting that in my State until just recently it was against the law for a person to get licensed even after they had gone through a training program while in prison. It was still against the law.

Mr. BROWN. I still went to school when I got out. I actually had to do the hours in Bladensburg, and then I got my license and transferred it over to D.C.

Mr. DAVIS OF ILLINOIS. Well, let me just congratulate both of you.

I will stop at this point and ask Mr. Marchant if he has questions.

Mr. MARCHANT. Thank you both for coming today and speaking to us.

Is there anything that you would like to bring to the committee's attention as a suggestion that could have improved your training,

anything in the system that you found was over-burdensome to you, and difficulties that you had in your rehabilitation? Mr. Brown.

Mr. BROWN. Well, I mean, when I was in the only burden was the means of money, like a lot of people don't have family that could send them money. They pay you hourly, like $0.12 an hour, and I am just—I feel as though when I was at Rivers you can take up correspondence classes, but if you don't have the means, the money to get it, and they don't have that much—you know, $0.12 an hour is like you are barely paying for your soap. That is my only burden there, that they don't have the means of paying people to take care of themselves. Whereas I might not have anybody sending me money or look after me, I got to look after myself. That, alone, brings conflict in the institution.

That is all I got to say.

Mr. MARCHANT. OK. Mr. Cunningham.

Mr. CUNNINGHAM. I agree with what he's saying. They do need more programs that can keep each individual inmate on the right track, because as long as there is no program for them to do something to rehabilitate them, when they get on the outside into society, 9 out of 10, a lot of them wind up back doing the same thing they normally used to do. So a lot of programs. When I was in we had a lot of programs going on. Now it is just like a lot of programs have been taken.

For them to rehabilitate themselves, able to get the job, the benefit for themselves, to be able to be on the right track, if they can get that, I believe possibly that something can work out better for each and every one of them.

Mr. MARCHANT. Thank you very much.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.

Ms. Norton.

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

I want to thank Mr. Brown and Mr. Cunningham for coming forward, for your candor, for your courage. Perhaps there are people who could come to testify about you. Your first-hand testimony is extremely valuable to us, particularly given what I understand are quite different circumstances you each faced once there was a parole violation.

Now, the nature of your parole violation, Mr. Brown, was that a dirty urine?

Mr. BROWN. Yes, and not going to see my parole officer.

Ms. NORTON. All right. And that was for marijuana?

Mr. BROWN. Yes.

Ms. NORTON. All right.

Mr. Cunningham, what was the nature of your parole violation?

Mr. CUNNINGHAM. My parole violation was based on for me to go into an outpatient program.

Ms. NORTON. No, was your parole violation——

Mr. CUNNINGHAM. Was for a dirty urine.

Ms. NORTON. Was for a dirty urine?

Mr. CUNNINGHAM. Yes.

Ms. NORTON. All right.

Now, Mr. Chairman, we have before us two young men.

How old are you, Mr. Brown?

Mr. BROWN. I'm 32.

Ms. NORTON. Mr. Cunningham.

Mr. CUNNINGHAM. Forty.

Ms. NORTON. Both within the same relative age group. One gets sent back to prison, probably before the alternative program Mr. Cunningham was able to take advantage of was used.

Mr. Brown, when you were sent back, when your parole was revoked and you were sent back to prison, how long were you re-incarcerated? How long did you serve that time?

Mr. BROWN. Twelve months.

Ms. NORTON. How far gone was your parole before that, the parole, the amount of time you were under the supervision of the authorities? How much more time would you have had on parole?

Mr. BROWN. 2013.

Ms. NORTON. So you got no credit for the time you had already spent on the street?

Mr. BROWN. No. They took that and put it on the back. See, my original charge was 5 to 15, but every time I violate parole they put it on the back number, and that just makes the back number get bigger and bigger instead of getting smaller and smaller.

Ms. NORTON. Let me then contrast this with what happened to Mr. Cunningham.

At the time that you also had a dirty urine, was it also for marijuana?

Mr. CUNNINGHAM. Yes, ma'am.

Ms. NORTON. What was the procedure you went through that resulted in your being sanctioned to go to a drug rehabilitation program? How did that work?

Mr. CUNNINGHAM. The program actually worked, you know. They actually questioned, asked you what is your drug of choice. They asked you what would you benefit out of the program? What did you really want out of life? It is a lot of things they ask you.

Ms. NORTON. Before deciding whether or not you would have alternative sanctions, sanctions other than going back to prison?

Mr. CUNNINGHAM. Yes.

Ms. NORTON. And you satisfied the Parole Commission that the sanctions were the better alternative for you?

Mr. CUNNINGHAM. Yes, ma'am.

Ms. NORTON. What was the year of your violation?

Mr. CUNNINGHAM. The violation, first time after for years of being clean, being on parole. I had 1 year left.

Ms. NORTON. I mean before you got sanctioned, this sanction, this alternative sanction. What was the year that they used this alternative sanction and sent you to a drug rehabilitation program?

Mr. CUNNINGHAM. Basically I had to complete the sanction and stay away from the area that I used to be in.

Ms. NORTON. What year was that, Mr. Cunningham?

Mr. CUNNINGHAM. That was in 2007.

Ms. NORTON. Now, Mr. Brown, what was the year you were sent back to prison?

Mr. BROWN. It was 2004. I violated parole three times.

Ms. NORTON. For different infractions?

Mr. BROWN. Yes.

Ms. NORTON. Did any of these infractions involve weapons?

Mr. BROWN. No. No new charge. When I violated it was just all marijuana charges.

Ms. NORTON. None of these involved a crime?

Mr. BROWN. Dirty urine. No, it was just dirty urine. When I seen the revocation hearing, I asked them, you know, can I have an inpatient drug program. All three times they denied it and said——

Ms. NORTON. Have either of you had access to any kind of drug rehabilitation while you had been incarcerated?

Mr. CUNNINGHAM. No, ma'am. Not while I was incarcerated.

Ms. NORTON. How about you, Mr. Brown?

Mr. BROWN. The 40-hour.

Ms. NORTON. The 40-hour, which is the alternative to the 500-hour program——

Mr. BROWN. Exactly.

Ms. NORTON [continuing]. That we are trying to get at Rivers.

Mr. BROWN. Yes.

Ms. NORTON. So you had had no state-of-the-art drug rehabilitation program?

Ms. BALLESTER. No.

Ms. NORTON. Both of you are typical of non-violent offenders in the District of Columbia who are there very often for crimes related to drug offenses, obviously without some kind of program to help get rid of the dependency before you are out, the kind of dependency that you still had.

Mr. Brown went to the seventh grade but quickly got his GED once he was in prison. That is what I mean by some people get their first chance behind bars.

Mr. BROWN. Yes.

Ms. NORTON. Or at least realize what they can do behind bars.

Mr. Cunningham, how about you?

Mr. CUNNINGHAM. I completed school.

Ms. NORTON. Where did you go to school?

Mr. CUNNINGHAM. McKinley Tech.

Ms. NORTON. You went to McKinley. You have children, Mr. Cunningham?

Mr. CUNNINGHAM. Yes, ma'am.

Ms. NORTON. How about you, Mr. Brown?

Mr. BROWN. Excuse me?

Ms. NORTON. Do you have children?

Mr. BROWN. No, ma'am.

Ms. NORTON. Mr. Cunningham, do you support your children?

Mr. CUNNINGHAM. Yes.

Ms. NORTON. I am going to say, Mr. Brown, you have managed to get jobs. Now, Mr. Cunningham has trained to be a barber, so he has a skill that he can carry around. I was impressed by the fact that you have managed to get jobs when, in fact, my office has a job fair every year, and one of the problems we find with ex-offenders who come is they have difficulty getting jobs. Did you have a job at the time that this dirty urine showed up?

Mr. BROWN. Excuse me?

Ms. NORTON. Were you employed at the time that you were re-incarcerated for having dirty urine?

Mr. BROWN. Yes.

Ms. NORTON. Didn't anybody ask you at the time, whoever it was who sanctioned you to go back to prison, did they ask you if you had a job?

Mr. BROWN. Yes.

Ms. NORTON. When you said you had a job, what was their response?

Mr. BROWN. Their response was when I asked them can I be put in a drug program—I got a job, I got an apartment, if I get locked up I'm going to lose all of it, and can we find a better solution—they was just saying, they told me that they think marijuana is not a habit-forming drug.

Ms. NORTON. They think marijuana is not a habit-forming drug?

Mr. BROWN. Yes.

Ms. NORTON. But they were going to send you to prison? We don't send people to prison for marijuana usually in this country.

Mr. BROWN. Well, that is what they told me. I cannot get a drug treatment for marijuana.

Ms. NORTON. I see. I see what you are saying. It is not habit-forming. I do see the circular nature of this reasoning.

Mr. BROWN. Exactly.

Ms. NORTON. It is not habit-forming, so you don't need drug treatment, so you go to the slammer instead. OK.

Mr. BROWN. Yes.

Ms. NORTON. I understand from the interviews that have been done of you that you worked in Burger King?

Mr. BROWN. Yes.

Ms. NORTON. You worked Giant. You worked——

Mr. BROWN. I work Giant right now.

Ms. NORTON. How were you able to get these positions? What happened? First, let me go back. When you lost your position because you were re-incarcerated, were you able to get that job when you came back out?

Mr. BROWN. No.

Ms. NORTON. How about your apartment that you said you had?

Mr. BROWN. No, I couldn't get that back. I lost that.

Ms. NORTON. So you lost your apartment?

Mr. BROWN. Yes.

Ms. NORTON. And you lost your job?

Mr. BROWN. Yes.

Ms. NORTON. So you had to get out and start looking for these jobs all over again. How did you manage to do that?

Mr. BROWN. Well, I just did my footwork and just went to all different spots and applied.

Ms. NORTON. Say that again.

Mr. BROWN. I said I did my footwork and just went to every spot that they was hiring and applied online and kept calling, you know, kept on calling them, kept calling them. Then 1 day they said, come on down.

Ms. NORTON. Mr. Brown, you indicated that you were raised on foster care; is that the case?

Mr. BROWN. Yes.

Ms. NORTON. So you were not raised by your own mother and father?

Mr. BROWN. My father was deceased when I was an infant. My mom, she was on drugs, you know, and she was bouncing house to house. So yes, I was pretty much raised in foster care.

Ms. NORTON. Who raised you, Mr. Cunningham?

Mr. CUNNINGHAM. My grandmother and my grandfather.

Ms. NORTON. You were fortunate.

Mr. CUNNINGHAM. Yes.

Ms. NORTON. Where did you learn barbering? Was that at McKinley?

Mr. CUNNINGHAM. Excuse me?

Ms. NORTON. Did you learn barbering at McKinley? How did you get into barbering as a profession?

Mr. CUNNINGHAM. Yes.

Ms. NORTON. How did you get that training? What led you to that training?

Mr. CUNNINGHAM. I started out when I was in Youth Center One.

Ms. NORTON. Where?

Mr. CUNNINGHAM. At Youth Center One.

Ms. NORTON. I'm sorry?

Mr. CUNNINGHAM. The Youth Center. There used to be a correctional facility.

Ms. NORTON. Youth Center. A Youth Center here in the District of Columbia?

Mr. CUNNINGHAM. No, it was in Virginia, where all the people used to go down to Lorton there.

Ms. NORTON. I see. You learned barbering there?

Mr. CUNNINGHAM. I learned down there, and when I came home in 1987 I went to Bladensburg Barber School, and then I did my hours there and completed it, and after I got my license.

Ms. NORTON. Mr. Cunningham, was yours marijuana as well?

Mr. CUNNINGHAM. Yes, ma'am.

Ms. NORTON. Well, marijuana is not habit-forming, so how did you get access—or at least that is what they told Mr. Brown—how did you get access to a drug rehabilitation program?

Mr. CUNNINGHAM. I can just say I could just maybe look at it like I haven't got in trouble in 4 years since I was on parole, never had a dirty urine. So, that was my first dirty urine, and just like once you complete the phase at a time you being in there they take you off the urine. So just like 1 day, I just wound up smoking some weed, and then they called me in to take a spot test. So I had a dirty urine. So I was still working, still doing the things that I need to do. I never gave my parole officer no reason to send me back or to maybe give me a second chance, so that is how I wound up getting into the drug program.

Ms. NORTON. Well, I have news for the Parole Commission: marijuana, according to potheads I have known, is or can be habit-forming. But at least with respect to you, somehow you had your sanction at a time when there was an alternative. Mr. Brown did not.

We brought you both here because we are trying to improve the system, to do whatever we can to improve—to see whether it is rooted in law, whether it is rooted in any kind of sane policy, whether anyone takes into account if you have a job, which is very difficult for an ex-offender to get in the first place, if you have a

family—if you will, a kind of cost/benefit analysis. Dirty urine for the kind of substance that is routinely used out here by people who are never incarcerated, or loss of a job and perhaps support that others are dependent upon.

Mr. BROWN. Yes.

Ms. NORTON. But the only way to know it is to have people like yourselves come forward and tell us what it has been like.

Mr. Chairman, I very much appreciate the opportunity to hear and question these witnesses. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Let me just ask one additional question.

Was marijuana the only substance that was ever found in either one of your urines?

Mr. CUNNINGHAM. Just marijuana.

Mr. DAVIS OF ILLINOIS. Pardon? Marijuana was the only one?

Mr. BROWN. Yes, and alcohol.

Mr. DAVIS OF ILLINOIS. Just alcohol and marijuana?

Mr. BROWN. Yes.

Mr. CUNNINGHAM. Yes.

Mr. DAVIS OF ILLINOIS. Gentlemen, thank you very much. We really appreciate your coming and sharing your experiences with us.

If you had anything else to write down and wanted to, or if you think of something you would like to have us know, just write it down and get it to us and we would be delighted to have it.

Gentlemen, thank you. Thank you very much.

Mr. BROWN. Thank you.

Mr. CUNNINGHAM. Thank you.

Mr. DAVIS OF ILLINOIS. I will just go ahead and introduce our second panel.

Mr. Paul Quander, director of Court Services and Offender Supervision Agency. As director of the Federal agency responsible for ex-offender supervision, Mr. Quander is the first director of the Court Services and Offender Supervision Agency. It is called CSOSA. He has served in this capacity since 2002. CSOSA is responsible for supervising adults on probation, parole, and supervised release in the District of Columbia.

Mr. Quander, thank you so much. Welcome.

Chief Isaac Fulwood is the commissioner of the U.S. Parole Commission. Commissioner Isaac Fulwood served on the U.S. Parole Commission since being confirmed by the U.S. Senate on November 20, 2004. Chief Fulwood has distinguished himself as an outstanding law enforcement practitioner in the law enforcement community. He served 29 years as a member of the Metropolitan Police Department and became the District's 25th chief of police for the Metropolitan Police Department in 1981.

Commissioner Fulwood, thank you so much, and welcome.

Ms. Avis E. Buchanan is the director of Public Defender Service for the District of Columbia. Avis Buchanan has served as the director of the District's Public Defender Service [PDS], for the past 3 years. She holds a juris doctorate and has worked as a staff attorney for the Equal Employment Opportunity Project of the Washington Lawyers Committee for Civil Rights and Urban Affairs.

Dr. James Austin is president of the JFA Institute, which is a nonprofit research agency that works in concert with Federal, State, and local government agencies and philanthropic foundations to evaluate criminal justice practices and design research-based policy solutions. Dr. Austin has over 25 years of experience in correctional planning and research, and is the former director of the Institute on Crime, Justice, and Corrections at George Washington University in Washington, DC. Dr. Austin authored the study on the evaluation and revalidation of the U.S. Parole Guidelines risk instrument, which is used to rate the suitability of parole for D.C.-sentenced prisoners.

Thank you all so very much. We are delighted that you are here.

It is the tradition of this committee that all witnesses are sworn in, so please stand and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

We thank you all for coming. You know that the light means that we have 5 minutes of testimony. Your full testimony is in the record. If we get down to the yellow light, we are really at 1 minute and we would like for you to begin to wrap up. The red lights means that you are completed and we would like for you to stop so that we can get to the next witness and get to the questions.

Thank you all for joining us. Mr. Quander, we will begin with you.

STATEMENTS OF PAUL QUANDER, DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY; CHIEF ISAAC FULWOOD, COMMISSIONER OF THE U.S. PAROLE COMMISSION; AVIS E. BUCHANAN, DIRECTOR, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA; AND JAMES AUSTIN, PH.D., PRESIDENT, THE JFA INSTITUTE

STATEMENT OF PAUL QUANDER

Mr. QUANDER. Thank you, Chairman Davis, and good afternoon, Chairman Davis and Congresswoman Norton.

When the Revitalization Act created the Court Services and Offender Supervision Agency in 1997, the District of Columbia's parole system was under investigation by the city's Inspector General. In 1995, a parolee murdered a young woman named Bettina Pruckmayr. Her case continues to underscore the reality that public safety is at the heart of community supervision.

Citizens expect that we will closely monitor the offenders who reside among them, and it is our highest duty to remain deserving of that trust.

In his report, D.C. Inspector General E. Barrett Prettyman identified the conditions that contributed to inadequate parole supervision: an average caseload of 179 offenders per officer in 1994 and 1995, inconsistent application of drug testing and contact standards, and inadequate procedures to notify the releasing authority—then it was the D.C. Board of Parole—of violations or arrests.

In its first year, CSOSA focused on addressing these conditions. The Agency received substantial resources to lower supervision caseloads. The general supervision caseload is now below the na-

tionally recommended maximum of 50 offenders per officer, and specialized caseloads are significantly lower.

We also put in place stringent contact standards and drug testing requirements. The average number of offenders tested each month for drug abuse has risen from 2,300 in 1999 to over 8,500 in fiscal year 2007. Since fiscal year 2003, the percentage of the supervised population who test positive at least once during the fiscal year has decreased by 10 percent to its current level of 46 percent.

CSOSA also recognized the need to maintain an active, visible community presence to improve public confidence in collaboration with our law enforcement partners. To that end, we have established six field offices, locating the majority of our officers in neighborhoods where offenders live and work. We conduct over 8,000 joint field visits or accountability tours with the Metropolitan Police Department every year.

The message that police and community supervision officers communicate and collaborate to enforce accountability is reinforced daily on the streets of Washington. This message is further reinforced through extensive data sharing by way of both CSOSA's case management system and the Criminal Justice Coordinating Council's justice system.

CSOSA works closely with the U.S. Parole Commission to ensure that parole and supervised releasees' conditions are as effective as possible. We create special conditions in coordination with the U.S. Parole Commission so that offenders participate in programs that will further their treatment and their re-entry into the District of Columbia.

Such conditions have been particularly important in implementing our newest resource, the Re-entry and Sanction Center. This is a 28-day residential program that provides intensive assessment and treatment readiness programming to high-risk offenders at the critical point of transition into the community.

CSOSA recognized early that the District's public treatment capacity could not provide the level of services needed for this population. To supplement that capacity, we asked and requested of this body and received resources to develop additional contract treatment capacity. Last year, we made over 2,400 treatment placements for substance abuse treatment.

The public has the right to expect that community supervision will detect and interrupt offender's non-compliant behavior before it escalates to a new crime. To that end, CSOSA consistently monitors the risk level of offenders through initial and periodic assessments. We will address noncompliance through a system of sanctions that are imposed quickly and uniformly. CSOSA's sanction matrix defines the appropriate response to each level of infraction based on the offender's supervision level and the nature of the violation. Sanctions options include written reprimands, attendance at daily sanctions groups, increased reporting, increased drug testing, community service, halfway back, and the Re-entry and Sanctions Center.

In fiscal year 2007, we sanctioned over 96 percent of the violations reported each month. We are always seeking to expand the range of sanctions available to community supervision officers.

Since fiscal year 2004, we have placed more than 2,000 high-risk offenders on GPS monitoring.

In 2006, we worked with the U.S. Parole Commission to implement reprimand sanctions hearings. Since the program began, 84 hearings have been held, and our early data indicate that these hearings improve compliance. Our daily reporting and violence reduction program also targets noncompliance among high-risk offenders with histories of violence.

Though sanctions are a critical component of community supervision, they cannot always restore compliance. If noncompliance escalates to the point of being a public safety risk, a request for revocation must be the next step.

In fiscal year 2006, CSOs, or community supervision officers, filed over 3,400 alleged violation reports with the U.S. Parole Commission. Three-quarters of these cases were supervised at the maximum or intensive supervision level at the time of the AVR, which is the highest levels of supervision. Of the AVRs, 46 percent involved a new arrest, and 54 percent were for non-compliant technical violations such as substance abuse, failure to report for their office visits or drug testing, noncompliance with program requirements, or other violations of written requirements issued by the releasing authority.

The average alleged violation report documented six violations. Three-quarters of all violations were drug related. Ultimately, less than a third of the alleged violation reports resulted in the U.S. Parole Commission issuing a warrant.

Community supervision will not constitute more than a brief hiatus between episodes of incarceration unless mechanisms are in place to address the factors that drive crime and noncompliance. In addition to substance abuse, these factors include unstable housing, unemployment, lack of education, and mental health issues.

Offenders who cannot earn a living wage, find a place to live, improve their skills, or get treatment for their illnesses are more likely to fall out of compliance. we work diligently with our public and nonprofit and faith-based partners to ensure that offenders have access to as many resources as possible. Notwithstanding these efforts, more opportunities are needed, particularly in the areas of transitional housing, vocational training, and job placement.

I thank you for the opportunity to appear before you today and will be happy to answer any and all questions that you may have. Thank you.

[The prepared statement of Mr. Quander follows:]

STATEMENT

OF

PAUL A. QUANDER, JR.
DIRECTOR,
COURT SERVICES AND OFFENDER SUPERVISION AGENCY
FOR THE DISTRICT OF COLUMBIA

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITEE ON THE POSTAL SERVICE, FEDERAL WORKFORCE,
AND THE DISTRICT OF COLUMBIA

MARCH 11, 2008

Chairman Davis and Members of the Subcommittee:

When the Revitalization Act created the Court Services and Offender Supervision Agency (CSOSA) in 1997, the District of Columbia's parole system was under investigation by the D.C. Inspector General following a parolee's robbery and murder of a young woman just two years before. The Bettina Pruckmayr case remains a potent cautionary tale about the consequences of inadequate parole supervision. It continues to underscore the reality that public safety is at the heart of community supervision. The citizens we serve expect us to monitor vigilantly the offenders who reside among them, and it is our highest duty to remain deserving of their trust.

From its inception, CSOSA has been committed to improving public safety through effective community supervision. The citizens of the District of Columbia deserve nothing less. At the same time, we are equally committed to addressing the conditions that fuel recidivism—addiction, unemployment, lack of education, unstable housing, broken relationships. The men

and women who return to the District from prison also deserve nothing less. Community supervision provides a window of opportunity in which lives, families, and careers can be permanently rebuilt, but only when both sides of the equation—accountability and opportunity—are given equal weight and adequate resources.

In his report following Ms. Pruckmayr's death, D.C. Inspector General E. Barrett Prettyman identified the conditions that contributed to inadequate supervision. The report cites an average caseload of 179 offenders per officer in 1994 and 1995, inconsistent application of drug testing and contact standards, and inadequate procedures to notify the releasing authority (then the D.C. Parole Board) of violations or arrests.

In its first years, CSOSA received substantial resources to lower supervision caseloads. The general supervision caseload is now below the national recommended maximum of 50 offenders per officer, and specialized caseloads are significantly lower. We also put in place stringent contact standards and drug testing requirements. Despite a history of violence and drug use, the parolee who murdered Ms. Pruckmayr did not see his parole officer for months at a time. That situation has changed: a similar case today would be subject to at least twice-monthly contact, and half of those contacts would be at the offender's home or workplace. Drug testing has also increased significantly. The average number of offenders tested each month has risen from 2,300 in FY 1999 to over 8,500 in FY 2007. On average, offenders are now tested 3.6 times per month, and our Community Supervision Officers, or CSOs, are notified immediately by e-mail of positive test results. Since FY 2003, the percentage of the supervised population who test positive at least once during the fiscal year has decreased 10 percent, to its current level of 46 percent.

CSOSA also recognized the need to maintain an active, visible community presence to improve public confidence and collaboration with our law enforcement partners. To that end, we have established six field offices, locating the majority of our officers in the neighborhoods where offenders live and work. We also conduct joint field visits, or accountability tours, with the Metropolitan Police Department (MPD) at offenders' homes or work sites; over 8,000 such visits were conducted in FY 2007. In addition to regular visits, targeted accountability tours are conducted in neighborhoods following a homicide. The message that police and community supervision officers communicate and collaborate to enforce accountability is constantly reinforced on the streets of Washington. These partnerships have also resulted in unprecedented information sharing among the District's criminal justice agencies. Through both CSOSA's automated case management system, SMART, and the Criminal Justice Coordinating Council's JUSTIS initiative, integrated information from multiple sources is more easily and widely available than ever before.

CSOSA works closely with the U.S. Parole Commission (USPC) to structure special conditions that require the offender to participate in needed programs or treatment. This collaboration has been particularly important in implementing our newest resource, the Reentry and Sanctions Center. This 28-day residential program provides intensive assessment and treatment readiness programming to offenders at the point of reentry. The program is targeted specifically at the highest-risk, highest-need population—long-term substance abusers with extensive criminal histories. This program provides an invaluable opportunity to observe, assess, and plan for the supervision of high-risk offenders before they return to the community.

The relationship between drug use and crime is well-documented.[1] Long-term success in reducing recidivism among drug-abusing offenders, who constitute the majority of individuals under supervision, depends upon two key factors: identifying and treating drug use and other social problems among the offender population; and establishing swift and certain consequences for violations of release conditions. CSOSA recognized early that the District's public treatment capacity could not provide the level of services necessary for this population. To supplement that capacity, we requested and received resources to develop a system of contract treatment. Last year, we made over 2,400 treatment placements. In considering the impact of our treatment resources, it must be remembered that each offender generally requires more than one placement, such as residential treatment followed by outpatient support, and that about 70 percent of the 15,000 offenders on supervision have documented histories of addiction.

The public also has the right to expect that community supervision will be an active, rather than a passive, process—that supervision officers will attempt to detect, control and modify offenders' non-compliant behavior before it escalates to crime. To that end, CSOSA regularly assesses and reassess cases to determine whether risk levels have changed. We also recognized the necessity to impose sanctions quickly and uniformly, without the delay of referring the case to the releasing authority. CSOSA's Sanctions Matrix defines the appropriate response to each type of infraction based on the offender's supervision level and the nature of the

[1] See, for example, the following treatment outcome studies:

- Office of Applied Studies. *Services Research Outcome Study (SROS)*. DHHS Publication No. (SMA) 98-3177. Rockville, MD: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, 1998.
- Hubbard, R.L.; Marsden, M.E.; Rachal, J.V.; Harwood, H.J.; Cavanuagh, E.R.; and Ginzburg, H.M. *Drug Abuse Treatment – A National Study of Effectiveness*. Chapel Hill, NC: University of North Carolina Press, 1989.
- Gerstein, D.R.; Datta, A.R.; Ingels, J.S.; Johnson, R.A.; Rasinski, K.A.; Schildhaus, S.; Talley, K.; Jordan, K.; Phillips, D.B.; Anderson, D.W.; Condelli, W.G. ; and Collins, J.S. *The National Treatment Evaluation Study. Final Report.* Rockville, MD: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, 1997.

violation. This system allows us to extend multiple opportunities to work with the offender, providing his or her risk level remains manageable.

In FY 2007, we sanctioned over 96 percent of the violations reported each month. The sanctioning options available to our officers include written reprimands, attendance at daily sanctions groups, increased reporting, increased drug testing, community service, Halfway Back, and the Reentry and Sanctions Center. We have placed over 2,000 high-risk offenders on GPS monitoring since FY 2004, and last year we implemented Reprimand Sanctions Hearings before the USPC. In 16 months, 84 hearings have been held, and our early data indicate that these hearings improve compliance. We have also implemented Day Reporting and Violence Reduction programs to target non-compliance among high-risk offenders with violent histories, particularly those that are unemployed.

Sanctions are a critical component of community supervision because they can influence behavior and restore compliance. In some circumstances, however, the offender's continued behavior poses such a risk to public safety that revocation is the only appropriate course of action. These circumstances usually involve new criminal activity, failure to report, non-compliance with treatment, and other serious infractions for which sanctions are not appropriate. If we do not request revocation when we believe the offender poses an unacceptable risk and we cannot provide closer supervision, we are not fulfilling our public safety mission.

In FY 2006, CSOs filed over 3,400 Alleged Violation Reports (AVRs) to the USPC. Of these, 46 percent involved a new arrest, and 54 percent were for "technical" violations, which encompass substance abuse, failure to report for an office visit or drug test, and non-compliance with program requirements. The average AVR documented six violations; three-quarters of the violations were drug-related. Three-quarters of these cases were supervised at the highest levels

(maximum or intensive) at the time of the AVR. Less than a third of the AVRs actually resulted in the USPC issuing a warrant.[2]

If community supervision is to achieve more than a brief interval between costly episodes of incarceration, mechanisms must be in place to address the factors that drive crime and non-compliance in the first place. I have already alluded to the pervasive problem of substance abuse. The supervised population faces many other problems as well, including:

- **Unstable housing.** As of FY 2006, almost 9 percent of the supervised population reported living in a shelter at some point during supervision. Several hundred offenders are homeless at any given time, and many more face unstable or inappropriate housing situations. CSOSA and the USPC have developed a mechanism to provide emergency placement in a Residential Reentry Center for offenders who have nowhere to go upon release. We request several hundred such placements each year.
- **Unemployment and poor work skills.** About 50 percent of the supervised population is unemployed at any given time, and most offenders have poor work histories and lack marketable skills.
- **Lack of education.** About 43 percent of parolees and over 50 percent of offenders on supervised release lack a GED or high school diploma.
- **Mental health issues.** Mental health cases are the fastest-growing in the agency. CSOSA has five dedicated mental health teams supervising over 1,500 active cases, evenly divided between probation and post-release supervision.

[2] In FY 2006 parole and supervised release cases, 31 percent of AVRs resulted in revocation. In probation cases during that year, 25 percent of AVRs resulted in revocation by D.C. Superior Court.

These issues impact the success of community supervision. Offenders who cannot earn a living wage, find a place to live, improve their skills, or get treatment for their illnesses are more likely to fall out of compliance. They are also more likely to use drugs and commit drug-related crimes.

CSOSA works diligently with our community partners to ensure that offenders have access to as many resources as possible in these critical areas. We contract for transitional housing with one of our faith-based partners, the East of the River Clergy-Police-Community Partnership. Each quarter, we bring District-based service providers to inmates nearing release from Rivers Correctional Institution through our Community Resource Day videoconferences. We are also working with the University of the District of Columbia (UDC) on a pilot program that begins the process of job training at Rivers and continues it at UDC after release. We are attempting to work with the D.C. Workforce Investment Council to link vocational programs at Rivers and other BOP facilities with meaningful post-release training and employment opportunities. We have referred hundreds of our clients to the District's Project Empowerment Program for employment assistance. We work closely with the District's health and mental health agencies to ensure that our clients have access to the full array of available services. Notwithstanding these efforts, more transitional housing and job opportunities are needed.

Offenders on supervision do not constitute a separate class of D.C. residents. Last October, the D.C. Fiscal Policy Institute released a report documenting the ways in which the city's economic revitalization has bypassed its poorest citizens.[3] The report stated that unemployment among African-Americans with no post-secondary education is at its highest level in nearly 30 years. This demographic includes, but is not limited to, many offenders under

[3] Ed Lazare, "D.C.'s Two Economies: Many Residents Are Falling Behind Despite the City's Revitalization" (Washington, DC: Fiscal Policy Institute, 2007).

supervision. The Brookings Institution estimates that there are between 51,000 and 61,000 low-income Washingtonians between 16 and 64 who lack college degrees.[4] Whether they have criminal records or are on community supervision, they all need the same help to find their way out of poverty, and they all have children and families who will benefit from improved economic stability.

CSOSA has invested resources in developing four learning labs staffed with educational and vocational specialists, whose job is to link offenders with community-based education and training. In FY 2007, our CSOs made over 6,700 referrals to the learning labs.

Every offender entering CSOSA's supervision receives a comprehensive needs assessment, which results in a Prescriptive Supervision Plan that identifies specific interventions to meet those needs. The CSO and the offender then review and work the plan together. Our CSOs are trained in motivational interviewing techniques, which they use to engage the offender in the process of change and sustain it throughout supervision. Ultimately, however, the CSO cannot impose compliance and require change; he or she can only use every tool available to encourage it. It is the offender who chooses where his or her community supervision experience will lead, and it is our responsibility to protect the public from some of those choices.

Since the Revitalization Act passed, CSOSA has transformed the District's community supervision system from a local crisis into a national model. We are able to enforce accountability, detect problems, work with the police, and protect the public in ways that we only imagined ten years ago. I am proud to have led this Agency for the past five years, during which our supervision model has matured from an idea to a reality. We have begun the next phase of our evolution, which is to measure our results. Last year, we implemented a new performance

[4] Alice M. Rivlin, "Testimony before the Committee on Housing and Urban Affairs," D.C. City Council Roundtable on Eliminating Poverty Among District Residents, January 16, 2007.

management system that tracks case activity to link core case management practices with the resulting outcome. We are finishing up a three-year recidivism study to enable our results to be compared to national recidivism rates, and we have begun an extensive evaluation of our treatment system.

Today's hearing was convened in part to answer the question, "Are the residents of the District of Columbia better off because the Revitalization Act was passed?" The answer is unequivocally, "Yes." The conditions that the D.C. Inspector General deplored ten years ago no longer exist. In their place, we practice community supervision at the highest level. We are now in a position to evaluate the results of what we have built, and I am confident that we will see positive outcomes emerge.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Quander.
We will now proceed to Chief Fulwood.

STATEMENT OF CHIEF ISAAC FULWOOD

Mr. FULWOOD. Good afternoon, Mr. Chairman. And to my Congresswoman Norton, thank you for the opportunity to participate in this timely discussion 10 years after the anniversary of the National Capital Revitalization and Self-Government Act.

As you know, when the act was implemented it had two purposes in mind: to revitalize the economy of the District of Columbia and to improve the prospects for home rule. The major changes for the District of Columbia were the closing of the Lorton Complex, the transferring to the Federal Bureau of Prisons the responsibility for all D.C. felons sentenced to confinement, the creation of the Court Service and Offender Supervision Agency, transferring funding of the D.C. court system, rewriting laws for D.C. which eliminated parole and required a fixed term of confinement, and abolishing of the D.C. Parole Board and transferring authority to the U.S. Parole Commission.

The question is: Did the Revitalization Act help the city? In some respects it is a mixed blessing. Today the city is in better shape financially, with economic growth, and a safe place; however, for the people who find themselves incarcerated in the Board of Prisons, their lives are compounded by being a long way from family and ability to maintain contact with loved ones. Equally, the level of programming within the Bureau prisons to prepare the offender to successfully return to society is oftentimes inadequate.

The challenge that the criminal justice system faced with an urban population of offenders due to the issue of drug abuse, crimes of violence, and pressuring the community to address all the maintenance problems taxes the limits of its resources.

In addition, this is a population that is disproportionately minority. This raises the issue of best approaches to supervision. What are the best practices for rehabilitation and building social support systems and strengthening family connections?

The D.C. offenders is a group that is up close impacting our lives every day, and reducing recidivism rate is important to the city as it focuses on continuing to make the city a safer place.

To address these issues, there is a need to improve programming in the institution: GED, skill training such as UNICORE, drug abuse training, family management. Most studies in recent times that speak on how to lower the recidivism rate speak on the need to improve programming in the institution so that the offender population is better equipped to handle the pressures related to social control.

The responsibility of the U.S. Parole Commission is to work with their criminal justice partners in managing that public's safety, setting sanctions of relief, and estimating risks. We have jurisdiction over the following type of cases: all Federal offenders who commit an offense before November 1, 1987; all D.C. Code offenders; the Uniform Code of Military Justice offenders who are confined in the Board of Prisons institution; and transfer treaty cases, U.S. citizens convicted in foreign countries who would like to serve their

time here; and State probationers and parolees in the Federal witness protection program.

Briefly, the goal of supervision is public safety, taking steps and actions to prevent offenders from intimidating the community; reducing recidivism, keeping the person in the community through coordination with our various partners; and socialization, assisting the offender with transitioning back to the community, and understanding his or her responsibility for appropriate behavior.

The issue of setting sanctions for the U.S. Parole Commission is identifying risk factors, or those issues that put the community at risk. Second, the use of technology, GPS, polygraphs, in high levels of supervision. Critical to the success of completing supervision is building support in the community and connecting to families.

So to the issue of re-entry, the problem that many offenders face when they come back to the community, no transitional housing. The impact is even greater now because of the changing demographics in the city of Washington, DC. It is very difficult to get housing. Communities have become very expensive.

Drug treatment, job training, and socialization, connection to family, mental health issues, developing partnerships to assist in re-7entry—the challenge that is faced by an urban population is managing the offenders who suffer from drug abuse, unemployment, and poor social skills. CSOSA and the U.S. Parole Commission have developed an approach, a pilot called reprimand sanctions. Reprimand sanction is built on the concept of the District drug courts. Instead of judges, offenders stand before a Parole Commission. Briefly, let me discuss this program.

The mission of reprimand sanction hearings serve as a graduated sanction, short of revocation, that permits the Commission to address non-compliant behavior. The goal is to increase safety in the community and for the offender to advantage him or herself of program supports which will reduce the rate of recidivism. Additionally, it will restore a sense of respect to the offender.

So the issue is approval, accountability, reduced recidivism, reconnect offender to supervision, identify support programs for offenders, and develop working partnerships with CSOSA, with the Public Defender Service, and the U.S. Parole Commission.

In summary, let me first commend the Public Defender Service and CSOSA for their work toward improving the quality of life for offenders, which in the end makes us all a safer community. Today there are still barriers to re-entry: a lack of community resources, limited housing, substance abuse, dual diagnosis programs, financial support, coordination, and the need for high levels of supervision for some offenders.

The act has produced a greater coordination of service for offenders in the D.C. community. This would include public, private, and faith-based organizations. There has also been a more concerted effort to better identify the risk and need each offender poses so that the strategy can be developed to address those issues.

Finally, the act has created a more thoughtful, coordinated effort among the various partners in the criminal justice system within the District of Columbia.

Thank you for this opportunity. I would be more than happy to answer any questions that you have.

[The prepared statement of Mr. Fulwood follows:]

Testimony of Commissioner Isaac Fulwood Jr.

Good Morning Honorable Danny K. Davis, Chairman, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. Thank you for the opportunity to participate in this timely discussion on the ten year anniversary of the National Capital Revitalization and Self-Government Act of 1997. As you are aware, the stated goals were to revitalize the economy of the District of Columbia, and to improve prospects for home rule. The major changes for the District of Columbia were:

- Closing of the Lorton Correctional Complex
- Transferring to the Federal Bureau of Prisons the responsibility for all D.C. Felons sentenced to confinement
- Creation of Court Services and Offenders Supervision Agency
- Transferred funding of D.C. Court Systems
- Re-writing laws for D.C. which eliminate parole and required a fix term of confinement.
- Abolish the D.C. Parole Board and transfer authority to the U.S.P.C.

The question is – Did the Revitalization Act help the City? In some respect it is a mixed blessing. Today the city is in better shape financially, with economical growth and a safer place. However, for the people who find themselves incarcerated in the Bureau of Prisons, their lives are compounded by being a long way from family and their inability to maintain contact with loved ones. Equally, the level of programs within the B.O.P. to prepare the offender to successfully return to society is often times inadequate.

The challenge that the Criminal Justice System faces with an urban population of offenders due to the issues of drug abuse, crimes of violence and pressure in communities to address order maintenance problems, taxes the limits of resources. In addition, this is a population that is disproportionate minority. This raises the issue of best approach to supervision. What are the best practice for rehabilitation and building social support system and strengthen family connections? The D.C. Offender is a group that is up close,

impacting our lives everyday. Reducing the recidivism rate is important in the City's focus on crime.

To address these issues, there is a need to improve programming in the institutions, G.E.D. skills training (UNICORE), drug abuse training and family management. Most studies in recent times that speak on how to lower the recidivism rate speak on the need to improve programming in the institution so that the offender population is better equipped to handle the pressures related to social control.

The responsibility of United States Parole Commission is to work with our Criminal Justice Partners in managing the Public Safety, setting conditions of release and estimate risk. We have jurisdiction over the following types of cases:

- All Federal Offenders who committed an offense before November 1, 1987
- All D.C. Code Offenders
- Uniform Code of Military Justice Offenders who are confined in a Bureau of Prisons Institution
- Transfer Treaty Cases (U.S. citizens convicted in foreign countries, who have elected to serve their sentence in this country)
- State Probationers and Parolees in the Federal Witness Protection Program

Briefly the goal of supervision is:

- Public Safety - taking steps and actions to prevent offenders from intimidating the community
- Reduce Recidivism – keeping the person in the community through coordination with our various partners.
- Socialization/Rehabilitation – assisting the offender with transition back to the community, and understanding his/her responsibility for appropriate behavior.

The issue of setting sanctions

- Identify Risk Factors
- Use of Technology
- High level of Supervision of Offender

Critical to the successful completing supervision, is building support in the community and reconnecting to family.

Reentry

- Transitional Housing – impact on changing demographics
- Drug Treatment
- Job Training
- Socialization – Rehabilitation

Connection to Family

- Mental Health Issue
- Developing Partnerships to assist in reentry.

The challenge that is faced by an urban population is the issue of managing offenders who suffer from drug abuse, unemployment and poor social skills. CSOSA and USPC have developed an approach titled Reprimand Sanction Hearings, built on the Drug Court concept. Instead of a Judge, offenders stand before a Parole Commissioner. Briefly, let me discuss this program:

Reprimand Sanction Hearings

- The mission of the Reprimand Sanction Hearings, serves as a graduated sanction, short of revocation, that permits the Commission to address non-compliant behaviors. The goal is to increase safety in the community and for the offender to advantage him or herself of the programs support, which will reduce recidivism. Additionally, it will restore a sense of respect.

  -Improve accountability

  -Reduce Recidivism

-Reconnect offender to supervision
-Identify support programs for offender
-Develop partnerships with CSOSA, PDS and USPC.

In summary, let me first commend P.D.S. and CSOSA for work toward improving the quality of life for offenders, which in the end makes us a safer community. Today there are still barriers to reentry; lack of community resources (limited housing, substance abuse/dual diagnoses program), financial support, coordination (communication issue) and high level of supervision.

The act has produced a greater coordination of services for the offender in the D.C. community. This would include public, private and faith based organizations. There has also been a more concerted effort to better identify the risk and need each offender poses, so that strategies can be developed to address those issues. And, finally, the act has created a more thoughtful coordination effort among the various partners who serve the Criminal Justice interest within the District of Columbia.

Mr. DAVIS OF ILLINOIS. Thank you very much, Chief Fulwood.
Now we will go to Attorney Buchanan.

STATEMENT OF AVIS E. BUCHANAN

Ms. BUCHANAN. Good afternoon, Mr. Chairman and Congresswoman Norton. I am Avis Buchanan, director of the D.C. Public Defender Service. Thank you for this invitation to testify before the subcommittee today on parole, supervised release, and revocation of D.C. Code offenders.

PDS is a federally funded, independent, local public defender office. PDS has represented over 90 percent of the thousands of D.C. Code offenders facing parole or supervised release revocation by the U.S. Parole Commission. Since the Revitalization Act of 1997 abolished the D.C. Board of Parole and transferred authority over D.C. parolees and supervisees to the Commission, PDS has seen an increase in the number of supervision revocations, a profound increase in the number of revocations based on minor violations, an increase in the length of time offenders are serving for violations, and an increasing lack of transparency in the revocation process.

In 2006, at least 2,000 revocation hearings were held for D.C. parolees, out of a total parole and supervised release population of approximately 5,400. Most hearings resulted in parole being revoked and a prison sentence of at least 1 year being imposed.

The D.C. Code offender faces several challenges in the revocation process. In the District, the majority of persons the Commission finds have violated their parole and sends back to prison are returned for technical violations only, such as failure to maintain employment. In fiscal year 2007, 20 percent of D.C. Code offenders on parole or supervised release had their parole or supervised release revoked because of technical violations only. Compared with the Commission, judges are much more amenable to alternatives to incarceration and more likely to accept the recommendation of the supervision officer to continue the person under supervision with additional conditions, as the Commission does not.

We therefore propose that authority for revocation decisions be transferred from the Commission to the Superior Court judges who imposed the original sentence. The Commission's decades-old salient factor scoring system used to determine a parolee's likelihood of recidivism and the penalty to be imposed, one, skews toward reincarceration and then toward lengthy prison sentences; two, as found by a recently published report commissioned by the District's Criminal Justice Coordinating Council, in cooperation with the Commission, entitled Evaluation and Revalidation of the U.S. Parole Commission Guidelines Risk Instrument does not account for factors and behaviors that have shown to affect and/or predict recidivism; and, three, as the system was designed for use in initial parole grant matters, it fails to adjust for some of the obvious differences between inmates seeking parole and parolees facing revocation.

While the Commission accepted the report's recommendations that the Commission review its salient factors score system, allow for much shorter periods of incarceration, and consider not re-incarcerating low-risk parolees for low-severity violations, the Commission failed to act quickly to convert to the new system.

Another issue is the Commission's habit of incarcerating people pending parole revocation hearings. If probable cause is established for an alleged violation, the Commission can detain the parolee pending his final revocation hearing approximately 2 months later. The Commission almost never exercises its discretion to release a person with continued supervision by CSOSA pending the final revocation hearing. Thus, any employed parolee will almost definitely lose his job, even if the violation allegations are unfounded. Of course, failure to maintain employment is a technical violation that can and does lead to re-incarceration.

After the revocation hearing, the examiner announces the recommendation. The Commissioner makes the final decision without explaining any reasons for reversing the hearing examiner. The Commissioners almost never listen to the audio recordings made of the hearings, and do not indicate which Commissioner made the final decision.

The basis for any appeal to the Commission's National Appeals Board is the examiner's one-page summary of the hearing, which may not adequately reflect the proceedings and which is not automatically provided to the parolee, who must sometimes litigate the appeal without the summary.

The National Appeals Board consists of three of the five Commissioners. Board decisions are issued anonymously. Not only is there no way of knowing whether, as the rules require, the author of the appellate decision is different from the Commissioner who made the final decision, the Commission bars an objection to the Board decision that the deciding Commissioner was a voting member on the appeal. Not surprisingly, the Board never reversed their own decisions in fiscal years 2004 and 2005, and did so in only 2 percent of appeal cases in fiscal year 2006.

While there is much to criticize about the structure and work of the Commission, some of its work is effective and appreciated, such as reducing resolution time and the use of the reprimand sanctions hearings. We refer to those areas in our written testimony.

I appreciate the opportunity to present this testimony to the subcommittee, and I would be pleased to work with the Members in their ongoing consideration of these issues.

Thank you.

[The prepared statement of Ms. Buchanan follows:]

THE
PUBLIC
DEFENDER
SERVICE
for the District of Columbia

CHAMPIONS OF LIBERTY

Testimony of

Avis E. Buchanan
Director

Public Defender Service for the District of Columbia

before the

United States House of Representatives

Committee on Oversight and Government Reform
Before the Subcommittee on Federal Workforce, Postal Service and the District of Columbia

for the

Hearing on Advancements and Continual Challenges in the Parole, Supervised Release, and Revocation of D.C. Code Offenders

March 11, 2008

Statement by Avis E. Buchanan
Director
Public Defender Service for the District of Columbia

I am Avis E. Buchanan, Director of the Public Defender Service for the District of Columbia. Thank you for the invitation to testify before the Subcommittee today on "Advancements and Continual Challenges in the Parole, Supervised Release, and Revocation of D.C. Code Offenders."

The Public Defender Service

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. PDS was created by a federal statute[1] enacted to comply with a constitutional mandate to provide defense counsel to indigent individuals.[2] The mission of PDS is to provide and promote quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system and thereby protect society's interest in the fair administration of justice.

A major portion of the work of the organization is devoted to ensuring that no person is ever wrongfully convicted of a crime. PDS also provides legal representation to people facing involuntary civil commitment in the mental health system, as well as to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS attorneys represent indigent clients in the majority of the most serious adult felony cases filed in the Superior Court every year and all D.C. defendants requiring "stand in" Drug Court representation

[1] Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code § 2-1601, *et seq.*, 2001 ed.
[2] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

at sanctions hearings. Also, PDS provides technical assistance to the local criminal justice system, training for panel and *pro bono* attorneys, and additional legal services to indigent clients in accordance with PDS's enabling statute. Most relevant to this hearing, PDS represents nearly all of the thousands of D.C. Code offenders facing parole or supervised release revocation by the United States Parole Commission (the Commission) and assists offenders returning to their communities after serving periods of incarceration.

Changes in the District's Criminal Justice System Due to the Passage of the Revitalization Act

This is the result of changes implemented pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act), which separated from the District of Columbia government certain local criminal justice and judicial institutions that, in the judgment of Congress, would function better if made independent of the Mayor, other officials of the District of Columbia government, and the District of Columbia budget process. The Act resulted in, among other changes, the closure of the locally run prison facilities at Lorton and the transfer of jurisdiction over D.C. prisoners to U.S. Bureau of Prisons (BOP). D.C. prisoners now serve their sentences at BOP facilities throughout the country. The Act also ended the practice of imposing indeterminate sentences (sentences with a range of years and a period of parole) and mandated the use of determinate sentences followed by a period of supervised release. Most important to our discussion today, the Act abolished the D.C. Board of Parole and transferred the authority over D.C. parolees and supervisees to the Commission. Since this last change, PDS has seen an increase in the number of supervision revocations, with a particularly profound increase in the number of

revocations based on minor violations; an increase in the length of time offenders are serving for violation behavior; and an increasing lack of transparency in the revocation process.

At the time of the enactment of the Revitalization Act, PDS made a commitment to represent every individual facing revocation who desired to have representation before the Commission, and we have kept this promise. We have had the unique experience of representing the last individual before the D.C. Board of Parole on its last day in business and representing the first D.C. offender to have his case heard by the Commission after the "changing of the guard." Since then, PDS has represented over 90% of D.C. Code offenders facing revocation of parole or supervised release before the Commission. Most of those facing revocation hearings are unsuccessful in challenging the proceedings: in 2006, at least 2,000 revocation hearings were held for D.C. parolees by the Commission, out of a total parole (and supervised release) supervision population of approximately 5,400 people. In a substantial number of cases, these hearings resulted in parole being revoked and a prison sentence of at least one year being imposed.

My comments today will focus on several challenges in the revocation process for D.C. Code offenders: the Commission treats minor technical violations too harshly; the Commission's salient factor score system has significant flaws; the Commission over-uses pre-hearing detention; and the revocation process lacks transparency and fairness.

The Commission Treats Minor Technical Violations Too Harshly

A person on parole or supervised release risks having his conditional freedom taken away either for committing a new crime while on supervision or for failing to comply

with a condition of his supervision, known as a "technical violation." Technical violations can consist of behavior such as missed appointments, drug use, failure to attend drug treatment, and failure to maintain employment. In the District, the majority of persons the Commission finds have violated their parole and sends back to prison are returned for technical violations only, not for new crimes or for a combination of new crimes and technical violations. Of the 1,744 revocation hearings the Commission held in Fiscal Year 2005, 52% were for allegations of technical violations only; in Fiscal Year 2006, 58% of the 2,149 hearings were for technical violations only, and in Fiscal Year 2007, 53% of the 1,900 revocation hearings were for technical violations only. In comparison, 24% of the Fiscal Year 2005 hearings and 19% of hearings in both Fiscal Years 2006 and 2007 were for allegations of new crimes only.[3] These statistics, though the best available to PDS, significantly undercount the number of persons whose parole was revoked in those years, as the statistics show the number of contested revocation hearings and do not count the number of persons who did not contest their revocations and accepted "expedited plea offers"[4] instead. Roughly 20% of PDS revocation cases result in guilty pleas.

According to statistics maintained by the Court Services and Offender Supervision Agency (CSOSA), 5,851 persons in the District of Columbia justice system were on parole or supervised release in Fiscal Year 2007. Thus, 17% – or 1,008 – of all the people on parole or supervised release in the District in Fiscal Year 2007 had revocation hearings based only on technical violations. At least 90% of PDS's revocation hearings

[3] These percentages are based on statistics provided by the U.S. Parole Commission.
[4] Expedited plea offers allow a case to be resolved faster; just as a defendant who accepts a plea agreement in a criminal trial receives some consideration for having resolved the case short of a full-scale hearing by admitting guilt to something less than the full charge or charges, a parolee receives the same.

result in a decision to return the individual to prison. So roughly 907 persons – or 15% of all of the persons on parole or supervised release in the District in Fiscal Year 2007 – lost their freedom for technical violations after hearings. Add to that number the roughly 252 persons[5] who pled guilty and who were returned to prison for technical violations only, and a shocking 20% of D.C. Code offenders on parole or supervised release in a year have their parole or supervised release revoked because of technical violations only.

Many PDS clients are arrested on parole revocation warrants during visits to their supervision officers, meaning that they are not completely noncompliant with the terms of their parole, and may yet be amenable to supervision with increased supports and assistance.

To give an example of this kind of parolee – PDS recently represented a client who had been in the community without incident since 2002. His supervision officer alleged that the client had reverted to drug use and also, knowing what the results would be, had begun failing to report to the lab for drug testing. The client did continue reporting for meetings with his supervision officer. His supervision officer ordered him to stop using drugs and indicated that he could not get into treatment unless and until he was drug-free. The client attempted to get into a detoxification program to become drug-free and therefore eligible to enter a longer term treatment program, but no bed space was available. Unable to get assistance with detoxification and unable to get into treatment without having detoxified, he could not overcome his addiction and continued using

[5] This number is based on the assumption that persons plead at the same rate, regardless of whether they are charged with technical violations, new crime violations, or both. Two hundred fifty-two persons is 20% of the approximately 1,260 persons revoked during Fiscal Year 2007. The number 1,260 was arrived at based on figuring 1,008 revocation hearings is 80% of the total number of revocation cases. The U.S. Parole Commission reported that 1,008 revocation hearings were held in Fiscal Year 2007.

drugs. His final revocation hearing was conducted in February 2008, and he is now serving 12 months in prison for his drug use.[6]

The Public Defender Service previously assigned one of its program developers to the Parole Division. This program developer was to create treatment plans, including finding space in appropriate programs, for presentation to the Commission at the final revocation hearing for consideration as an alternative to revocation and re-incarceration. PDS no longer assigns a program developer to the Parole Division as PDS judged that it was a misuse of PDS's limited resources, given that the Commission rejected PDS's treatment proposals in almost every case. The reasons for rejecting the proposals varied a little but were generally that the client had already taken part in treatment (and failed), that the client had rejected treatment that CSOSA had offered, or that the Commission *assumed* that the client had rejected treatment that it *assumed* CSOSA had offered.

As PDS has observed, the Commission even rejects the repeated recommendations of its fellow law enforcement agency, the Court Services and Offender Supervision Agency (CSOSA), regarding the treatment of the D.C. parolees it has been supervising closely, sometimes for years. PDS has handled many cases in which the supervision officer has indicated a willingness to continue working with the parolee in the community and recommended that the Commission return the parolee to CSOSA's supervision with, for example, the condition that the parolee participate in drug treatment. Supervision officers may make such requests in their initial reports of alleged violations submitted to the Commission, in subsequent reports in which they request the withdrawal

[6] To make matters worse, the client forfeits, or receives no credit for, the five years that he was in the community without incident. This is because, as the courts have held in a series of decisions generally referred to as the *Noble* decision, D.C. parolees are, by statute, not entitled to receive credit for their time in the community during which they complied with the terms of their parole to offset any revocation time the paroling authority might impose on them.

of the arrest warrant, at the probable cause hearing conducted five days after the arrest, and even at the final revocation hearing. The Commission all too frequently rejects these recommendations.

In contrast, PDS has much more success in avoiding re-incarceration of clients on probation before judges. The process is similar. PDS clients on probation are supervised by CSOSA, are subject to many of the same terms and, in general, are offered the same amount of treatment. Compared with the Commission, judges are much more amenable to alternatives to incarceration; are more likely to inquire directly of the supervision officer what programs were offered and what programs, though available, were not offered (and why not); and certainly more likely to accept the recommendation of the supervision officer to continue the probationer under supervision with, for example, the condition that the probationer enroll in a drug treatment program.

The result of what might be referred to as the zero-tolerance policies of the Commission is a high number of D.C. residents being re-incarcerated for minor and technical violations.

The Commission's Salient Factor Score System Has Significant Flaws

The Commission uses a ranking and scoring system to determine a parolee's likelihood of committing new crimes if allowed to remain in the community and to determine the penalty to be imposed for parole violations. A major part of the problem is that the Commission's guidelines for determining possible penalties skew towards re-incarceration and then toward lengthy prison sentences. The Commission uses a two-step assessment tool to determine both the likelihood that a defendant will commit a new

crime and the severity of the punishment upon revocation. The first step is calculating what is known as the salient factor score; the second is matching the scores on a guidelines grid with the offense severity rating (Categories 1 to 8). The intersection on the grid provides the recommended range of prison time for the violation.

This decades-old salient factor score system has two main flaws: (1) it does not account for factors and behaviors that have been shown to affect and/or predict recidivism; and (2) as the system was designed for use in initial parole grant matters, it fails to adjust for some of the obvious differences between inmates seeking parole and parolees facing revocation.

A recently published report commissioned by the District's Criminal Justice Coordinating Council in cooperation with the Commission studied factors that influenced recidivism. The researchers found that the salient factor score does not take into account factors and behaviors relevant to predicting the likelihood of recidivism. The report, "Evaluation and Re-Validation of the U.S. Parole Guidelines Risk Instrument," concluded that the Commission's risk assessment tool included items that have either a weak or non-existent correlation with recidivism and failed to include items, such as gender, history of substance abuse, and program participation, that have been shown to have a strong positive correlation with recidivism. The report recommended that the Commission review its parole revocation grid, allow for much shorter periods of incarceration, and consider not re-incarcerating low risk parolees for low severity violations.[7] While the Commission subsequently voted to adopt the recommendations of the report and voted to develop a new guideline instrument to assess risk for the D.C.

[7] See Evaluation and Re-Validation of the U.S. Parole Guidelines Risk Instrument, submitted by James Austin and Roger Ocker, The JFA Institute, page 2, recommendation number 6.

population in order to separate the low risk from the high risk offenders, it has, disappointingly, failed to act quickly to convert to the new system.

The second problem is that the salient factor score/offense severity grid was designed for another purpose: to determine initial parole grants for federal prisoners. The purpose and the consequent design make it impossible for D.C. parolees to get a "perfect" score and, thus, earn a recommendation for the lowest possible revocation sentence.

The salient factor score ranges from zero, which is supposed to indicate that the person poses a high risk of recidivism, to ten, which is supposed to indicate that the person poses a low risk of recidivism. According to the Commission's guidelines, a person who earns a perfect score of ten, in the "very good" range,[8] and is charged only with technical violations faces a sentence range of from zero to four months.

The salient factors are divided into six "items," listed as A through F. Items A, B, and E work inherently to the disadvantage of D.C. Code parolees. Item A gives points based on the person's prior record. If the person has no prior record, he receives three points; one prior adult conviction (or juvenile adjudication) results two points; two or three prior convictions result in one point; four or more prior convictions receive zero points. The focus for a prison inmate seeking an initial parole grant is whether, other than the offense for which the person is serving a sentence, the person has a prior record. In contrast, for the parolee at a revocation hearing, the "offense" the Commission is

[8] Using the component parts of the rating system, a perfect offender could actually receive as many as eleven points, but the guidelines grid is calibrated to have ten as the best score. The guidelines actually have ranges of salient factor scores: a score of 10 – 8 is "very good;" 7 – 6 is "good;" 5-4 is "fair;" and 3 – 0 is "poor." The re incarceration length recommendations (expressed in months) correspond to the salient factor ranges, not to separate factor scores.

considering at the revocation hearing (the new crime or the technical violation) is the current offense and all other "offenses" or convictions are the "prior record" for this item. No parolee can receive the full three points because he, by definition, has a prior conviction; he will *always* necessarily have the conviction for which he is on parole.[9]

Item B assesses points for prior incarceration of more than 30 days. Again, the focus for a prison inmate seeking an initial parole grant is whether the person had served a sentence of more than 30 days other than the one for which he is currently requesting parole. The D.C. parolee always has a prior commitment because the Commission views the offense for which the parolee is on parole[10] as part of the prior record to be scored and that commitment will almost always have been a prior commitment of more than 30 days. The only District parolees still under the supervision of the Commission are those who were convicted of felonies. Though technically possible, it would be an extremely rare case for an offender to be on parole after serving less than 30 days of imprisonment on a felony conviction.[11] Thus, practically speaking, every one of the parolees whose parole the Commission seeks to revoke receives, at most, only one point for Item B, rather than the maximum two points possible if a person were to have no prior commitment of more than 30 days.

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[9] There is one possible exception to this rule provided by the "Ancient Prior Record Rule." See Title 28 C.F.R. Part 2, Section 2.20 A.8. If a person's prior conviction is at least 10 years old and the person was successfully in the community for at least 10 years after serving the sentence for that offense, then that prior conviction will not count under Item A. It would be a rare case that a person would have a parole term of greater than 10 years, would have been successful for 10 years in the community and would now face revocation. It is technically possible but it significantly more likely that every D.C. parolee will have at least the conviction associated with his current parole counted as a prior conviction under Item A.

[10] A person cannot be placed on parole without having been "committed" to prison, so all parolees have at least that one commitment.

[11] If a judge were inclined to give such a short sentence, it is more likely that the judge would have "split" the sentence, imposing some prison time to be followed by probation, which the judge supervises, not the Commission.

Item E is similarly unattainable for D.C. Code offenders. It gives points based on whether the person was on probation, parole, confinement, or escape status at the time of the current offense. The focus for an inmate requesting an initial parole grant is on what status the person held at the time he committed the offense that led to the sentence for which he now seeks initial parole. For a parolee, however, the "current offense" is the alleged parole violation and, again, the answer is always that the parole violation occurred at the time the person was on parole. Thus, the parolee always gets zero points added for Item E, instead of the one point possible for a person who was not on parole at the time of his "current offense."[12] Therefore, even if a D.C. parolee is otherwise "perfect," he can earn eight points, at most, under the system, rather than the 11 points that appear to be possible. Unfortunately, the Commission makes no allowances for the fact that D.C. parolees can never achieve a perfect salient factor score.[13]

As noted above, the Commission's guidelines recommend a prison range of zero to four months for the person who is the perfect D.C. parolee (with a salient factor score of eight, the lowest score in the "very good" range) and is convicted only of technical violations (a category 1 offense severity rating). A slightly less perfect D.C. parolee who has a salient factor score of seven and only technical violations faces a range of zero to eight months of incarceration. This range is as misleading as the 11 point score that is

[12] The parolee can control the scoring only for Item D, which gives a point if the person has been in the community successfully for at least three years prior to the current offense (the alleged parole violation). This point will be unachievable by a large number of persons on supervised release, however. In D.C.'s sentencing system, the maximum term of supervised release possible for a large number of felonies is three years. Once parolees have been successful in the community for three years, they are discharged from supervised release. Items C and F give points based on the age of the person at the time of the current offense. Age has been shown to have a strong relationship to recidivism, therefore PDS does not object to the use of age as a factor. We would note however that Item F gives one point if the person was 41 years of age or more at the time of the current offense, and many parolees are younger than 41.

[13] Interestingly, the Commission's guidelines seem to acknowledge that perfection is not possible for initial grant scoring. There are 11 possible points to be earned, but the best score on the guidelines is ten – as if the Commission realized that asking for perfection is asking for too much. Yet, the Commission asks this much of the D.C. parolee – the only way to get in the "very good" range is to achieve perfection.

possible only in theory. The standard plea form[14] developed by the Commission includes language that the parolee agrees that, if the lower end of his applicable guideline range is zero months, his parole date/term of re-incarceration will require him to serve at least two months, but not more than five months. Thus, the best term of imprisonment a D.C. Code parolee with even the highest salient factor score of eight can get by pleading and accepting responsibility for his violations is two months re-incarceration. If that individual declines the plea and unsuccessfully challenges the allegations at a final revocation hearing, he cannot hope to receive a better sentence than two months. The hearing will not change the salient factor score, and the parolee cannot improve on a category 1 offense severity as that severity is already the least serious violation. The only way the parolee "beats the plea" is by winning the hearing and disproving the allegations against him. If the parolee loses, he will necessarily receive a sentence at least as harsh as the plea offer, otherwise there would be no incentive for anyone ever to plead. In most cases, the parolee will receive a sentence that is harsher than the plea offer. So while the grid gives the impression that the perfect D.C. parolee (salient factor score of eight, category I offense) can receive no incarceration, this is not the reality. In fact, very few D.C. parolees have a salient factor score of eight; the vast majority of our clients (who are practically 95% of all parolees facing revocation) have salient factor scores between zero and three. For this more typical D.C. parolee, the guidelines recommend a range of twelve to sixteen months for a category 1 technical violation.

While the Commission has the discretion to make sentencing decisions outside the recommended range, it very rarely does. The Commission's Annual Report for fiscal

[14] The form, developed by the Commission, is titled Advanced Consent to Expedited Revocation Decision; on it, the parolee indicates his willingness to plead to the terms in the form; the Commission may withdraw the offer or decline to make a plea offer.

year 2006 states that 92.9% of the revocation decisions for D.C. parolees were within the recommended guideline range and another 4.1% of the decisions were above the recommended guideline range.[15] Although the form gives the impression that the Commission can find that a parolee has violated parole but still, in accordance with the guidelines, decide not to re-incarcerate the parolee for any amount of time, the salient factor score system makes clear that such a guideline recommendation is impossible for a D.C. parolee to receive. The salient factor score and guidelines should be recalibrated so that they are relevant and fair for D.C. offenders. Given that between 75 - 90% of the Commission's workload[16] consists of D.C. offenders, it makes sense to require that the Commission devote time and resources to adopt factors that are relevant and not prejudicial to the vast and increasing majority of the persons over whom it has authority.

In addition to recalibrating the risk assessment tool, the Commission should redesign it so that it includes true recidivism factors, allows for shorter periods of re-incarceration for minor violations, and allows for the possibility of reinstating a low risk parolee on parole for low severity violations.

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[15] Annual Report of the United States Parole Commission, October 1, 2005 – September 30, 2006, Table 9, page 9.

[16] The Commission reports its workload in multiple ways. By consideration type (appeal, hearing or record review), D.C. offenders were 73% of the workload in Fiscal Year 2004, 77% in Fiscal Year 2005 and 79% in Fiscal Year 2006. Looking at the total number of hearings conducted by the Commission, D.C. Code offenders were 77% of the Commission's total workload in Fiscal Year 2004 and 80% in both Fiscal Year 2005 and Fiscal Year 2006. Looking at just revocation and probable cause hearings (and not, for example, at initial parole grant hearings or re-hearings), D.C. parolees were 89% of the Commission's revocation workload in Fiscal Year 2004 and Fiscal Year 2005 and 91% in Fiscal Year 2006. Because parole in the federal system was abolished in 1987, the number of federal parolees is diminishing. The number of D.C. parolees is currently larger since parole was not abolished in the District until August 2000. Unlike the federal system where offenders on supervised release are supervised by the judges, D.C. offenders on supervised release are supervised by the Commission. Eventually, there will be no federal parolees but D.C. offenders will continue to be placed on supervised release. Thus, if Congress continues to reauthorize the Commission and to give it authority over DC offenders, the percentage of the Commission's D.C. offender workload will gradually approach 100%.

The Commission Overuses Pre-hearing Detention.

If CSOSA reports to the Commission that a parolee has violated the terms of his parole, the Commission usually issues a warrant for the arrest of the parolee. Once arrested, he is entitled to a hearing to determine if there is probable cause to believe that there was a violation. This probable cause standard is the same one applied at a similar stage of a criminal case; it is the lowest evidentiary standard and is not difficult to meet. After probable cause is established, the Commission has the authority to detain the parolee pending his final revocation hearing. The Commission almost never exercises its discretion to release a person to the community, with continued supervision by CSOSA and instead detains almost 100% of D.C. parolees facing final revocation. Currently, roughly 400 to 500 parolees are held at the overcrowded D.C. Jail – many who were arrested when they reported for their regular appointment with their supervision officer, most on allegations of technical violations – awaiting their final revocation hearings. Final revocation hearings are held approximately two months after the probable cause hearing. Thus, any parolee who had a job at the time of his arrest and detention will almost definitely lose that job during the two months of his detention, even if the violation allegations are shown to be unfounded. Persons with felony records have a difficult enough time finding employment without burdening them with the need to find another job with the additional disruptions to their employment history that they will have to explain to future employers. Of course, failure to maintain employment is a technical violation that can – and does – lead to twelve to sixteen months re-incarceration.

The Revocation Decision Process Lacks Transparency and Fairness

At the conclusion of a revocation hearing, the examiner announces his or her recommendation. This recommendation is not final, however; one of the five Commissioners makes the final decision and can reverse the recommendation of the hearing examiner. The notice of final decision only briefly states the basis of the Commissioner's decision, but does not explain the Commissioner's reasons for reversing the hearing examiner whose recommendation was very often based on credibility judgments about the witnesses who testified at the hearing. There is no requirement that the Commissioners listen to the audio recordings made of the hearings when making their final decisions and, in fact, they have acknowledged that they listen to the recordings in only about 1% of the cases. The notices of final decision do not indicate which Commissioner made the final decision nor, in cases where a senior hearing examiner has reviewed the recommendation of the original hearing examiner and made a recommendation to the Commissioner, do they indicate the identity of the senior hearing examiner. This information is available only through a FOIA request.

Since 2004, D.C. parolees have been able to file an administrative appeal with the National Appeals Board at the Parole Commission. The basis for the appeal is a one-page summary of the hearing written by the hearing examiner, not a transcript of the hearing. This means that the quality of the appeal depends on the quality of the one-page summary, that the hearing examiner accurately and fully conveys the points made by the defense attorney. This summary is not provided to the defense attorney and is available only through a FOIA request. Not yet having received this summary in response to a FOIA request is not considered a basis for continuing or extending the appellate process

so our lawyers must sometimes litigate the appeal without the summary on which the appeal must be based.

The National Appeals Board is not a separate and independent reviewing body; it consists of three of the five Commissioners.[17] Decisions of the Board are issued on behalf of the entire Board, without indicating authorship of the appellate decision. Not only is there no way of knowing whether – as the rules require – the author of the appellate decision is the different than the Commissioner who made the final decision being challenged on appeal, the Commission's regulations explicitly state that it is not an allowable objection to a decision of the Board that the Commissioner who issued the decision that is the subject of the appeal took part as a voting member on the appeal.[18] It is hard to believe that any Commissioner ever votes to reverse his own final decision on appeal. Given this structure, and the protection of anonymity, it is not surprising that members of the Board never reversed one of their colleagues' decisions in Fiscal Years 2004 or 2005 and did so in only 2% of appealed cases in Fiscal Year 2006.[19] The decision of the National Appeals Board is final and not subject to further appeal; the only remaining recourse for a parolee is to file a habeas corpus petition in federal court. In addition to habeas litigation being complicated, it is a long process, long enough that most parolees would have served their re-incarceration terms before the habeas process was completed.

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[17] The Commission has been operating with only four members since the resignation of Commissioner Spagnoli in 2007.

[18] See 28 C.F.R. § 2.26 (b)(2).

[19] Annual Report of the U.S. Parole Commission, October 1, 2005 – September 30, 2006, Table 11, page 11, which shows the number of administrative appeals and the action of the National Appeals Board on those appeals. While the National Appeals Board did not reverse any lower decision in Fiscal Year 2005, it "modified" 7% of those decisions. In Fiscal Year 2006, it modified only 4% of the decisions and reversed 2% of them.

Improvements in the Commission's Functioning

While there is much to criticize about the structure and work of the Commission, I do want to acknowledge where its work is effective and appreciated. Overall, the Commission has reduced considerably the amount of time it takes to process cases after persons are arrested on parole violator warrants. Commendably, the Commission also participates in reprimand sanction hearings. These hearings, conducted weekly in the community, are in lieu of the issuance of arrest warrants.[20] At the conclusion of the reprimand sanction hearing, at which the parolee admits or defends himself against the same sorts of technical charges that sometimes result in revocation hearings, the Commissioner, supervision officer, and parolee sign an agreement which reinstates parole but with increased conditions ("sanctions"), such as wearing a GPS monitor for 30 days. This process saves parolees and their families from gross disruption to their lives caused by detention pending the final revocation hearing and long periods of re-incarceration hundreds of miles from the District for minor and technical violations. It also saves the cost of a formal hearing (which often requires the attendance of police officer witnesses whose time could be better spent elsewhere), the cost of detention and re-incarceration, and the cost of reentry assistance when the parolee is re-paroled.

I appreciate the opportunity to present this testimony to the Subcommittee and I would be pleased to work with the members in their ongoing consideration of these issues.

[20] It is probably no coincidence that these hearings are conducted by Commission Isaac Fulwood, the only Commissioner with direct ties to the District.

Ms. NORTON [presiding]. Thank you very much, Ms. Buchanan. The chairman has had to leave for a few minutes.

Dr. Austin.

STATEMENT OF JAMES AUSTIN

Mr. AUSTIN. Thank you, Congresswoman Norton. I am going to give my testimony on actually the report that Ms. Buchanan just referenced, which was the evaluation of the U.S. Parole Commission's salient factors score.

About a year ago I was asked by the Parole Commission to re-evaluate the extent to which the factors and the risk instrument that they were using to determine release of prisoners who had been sentenced under the old, indeterminate sentencing law was accurate in terms of assessing the true risk of the prisoners, and then also look at the revocation process and the guidelines that governed that.

So what was completed was an analysis of D.C. inmates who had been sentenced under the old, indeterminate sentencing laws. As you recall, under the old law, which was before the Revitalization Act, that is the way it was. You would receive a minimum and a maximum sentence. As the two gentlemen mentioned to us in the previous panel, one of them had a 5 to 15 year sentence. He would have to do those 5 years, and then it is up to the Parole Commission to decide when he would be released. Under the old D.C. Parole Board, the presumption was you would be released at the minimum. Once that authority transferred to the U.S. Parole Commission, a different philosophy was adopted, which is there is no presumption of being released at the minimum. You have to go through this risk process and determine whether or not you can be released at what point of your sentence.

So I am going to summarize some of the major findings that I think are very important in terms of understanding the risks these people pose and the reasons why they are recidivating and some options that are now on the table that we hope will fix the situation in the next, I would say, 6 to 8 months.

If you look at the prisoners released in 2002, there are two things that are very striking about them. One is that their sentences, compared to other inmates throughout the country, including Illinois, they have much longer sentences and they serve a much longer time incarcerated before they are released. To be very specific, the national average of time served across the country now is about 30 months; D.C. inmates, under the old law, are serving over 44 months. It is about over a year longer on average.

This difference in the time served for the D.C. inmates is not explained by the type of crime they are committing. They are serving exactly the same types of crimes as other States. In fact, if you look at the length of stay by each crime type—violent crime, drug crimes, property crimes—you will see that D.C. inmates consistently serve a longer period of time than in other States. That is because of the presumption that you do not get out at your minimum release date for the old sentence laws. You have to serve more time before you can get out.

If you look at the recidivism rates, which is interesting, I think, you will find that about two-thirds of these prisoners got re-ar-

rested at least one time within a 3-year period after being released, 52 percent were re-convicted, and 37 percent were returned to custody. These rates are exactly identical to other States, so there is no difference really in the risk that they are posing.

The other thing that is interesting, which is very similar to other States, if you look at the number of arrests that were lodged against them before they went to prison and then after they get released, you will see a dramatic drop in the number of arrests. A 60-some percent drop in the number of arrests are occurring. So, although they are getting arrested, they are getting arrested on a much less frequent basis and for very less-serious crimes. Of the crimes that they are being returned to prison for, 83 percent are either property crimes, drug crimes, or parole and probation technical violations. Very few are coming back for a violent crime.

So they are not getting worse, they are getting better, so to speak, and part of the reason they are getting better is what we call the maturation effect. They are burning out, slowing down. It is a national statistic that is repeated over and over again. People that are committing most of the crime in the District of Columbia are not people that are being released from prison. They represent a very small percent of the crime problem. The crime problem is the young generation coming up. That is the group we should be focusing on.

So there is a number of people coming out of prison that pose little risk to public safety. Their problems tend to be in the area of the violation and also property and drug use.

Another important finding that we found is that the length of time that they serve is completely unrelated to recidivism rates, which means if you do 12 months, 18 months, 24 months, 44 months, you get exactly the same bang for that buck from time served. What that tells you, the issue for us in the future is what is the appropriate amount of time to serve. It becomes extremely important in the District because you are serving such a long period of time unnecessarily. You are not getting anything for that additional 14 months that people are having to serve before they get out.

The salient factors score, as she alluded to, was imported from the Board of Prisons. It had been tested on a very different population. It is not the D.C. population, doesn't look like the D.C. inmates, and therefore, quite understandably, it is not a good predictor of recidivism. So the instrument that the Commission is now using is not predictive, even though it is being used for such a purpose, so it needs to be fixed, and rather quickly so we can get an instrument that does work.

Now, in our analysis we came up with a new prototype system which includes things that we know work from other jurisdictions, but, more importantly, takes into account what we call dynamic factors, which are the things that prisoners can change on. So completing and participating in programs that we know reduce recidivism rates, they would get credit for that on the risk instrument. Being better prepared to be released in the community, we found in our research on the D.C. inmates, lowered the recidivism rate. So there are some things that can be incorporated in the risk instrument that would do a far better job of reducing recidivism.

One other thing I just want to mention on the study which we also found which is consistent with the previous speaker's testimony is that the period of time that they are serving on a violation is quite long, much longer than what you see in other jurisdictions. It has gotten to the point now that theoretically the time that you can serve on a technical violation can exceed your sentence. It can exceed your sentence for a technical violation. So I think the first speaker on the first panel was talking about he can't get off of parole. He can't. It is being added and added, and he will stay on parole for a long, long time until he becomes extremely free of any violations, which is very hard to do.

So, based on these findings, what we suggested is let's change the guidelines, let's get a new risk instrument, let's get it designed, and let's get going with a new system that is going to work for the District. As of this point, we have now formed a partnership with the Board of Prisons, the Parole Commission, the U.S. Department of Justice, the Public Defenders Office, the U.S. Attorney, and CSOSA to come up with this new instrument, this new process. We are in the midst now of collecting the data. We hope to have the analysis done in the next 3 to 4 months, and we should be able to have a new system ready to go some time this summer or in the fall.

That is where we are headed. It is going to be a positive change. It is going to produce much better results, I think lower recidivism rates. It should reduce the amount of time that people are serving now, both on their current sentences, but also on the violations.

I thank you for your time, and I would be glad to answer any questions you might have about this study.

[The prepared statement of Mr. Austin follows:]

Summary of Dr. James Austin, The JFA Institute
Testimony before the House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service and the District of Columbia

My testimony today is based on a study I recently completed for the US Parole Commission. The Commission wanted to know if the criteria it is using to parole prisoners sentenced prior to 2000 under the old DC sentencing code or to revoke parole for all released prisoners was valid. Formally referred to as the parole guidelines, these criteria are significant as they can serve to significantly lengthen a prisoner's period of imprisonment by many years.

The study also looked at the extent to which DC prisoners who are housed in the BOP system were receiving programs and what impact those programs were having on recidivism rates. The detailed results of the study and the full report have been forwarded to the Committee.

The major findings of the study were as follows:

1. DC prisoners released in 2002 who had been sentenced under the DC code prior to August 2002 as compared to other state prisoners had much longer sentences and served longer prison terms.

2. About two thirds (67%) of the prisoners released in 2002 were re-arrested at least one time, 52% were re-convicted and 37% were returned to the custody of the BOP within three years of being released from prison. These rates are comparable to other states.

3. The average number of arrests (1.9) during this three year post-release period is much lower than the rate of arrests three years for the same prisoners prior to their incarcerated (5.9). In effect the rate of arrests dropped by over 60% (from 5.9 to 1.9 arrests per prisoner).

4. The types of crimes being committed by the released DC prisoners are similar to other states in that the vast majorities are non-violent in nature.

5. Consistent with other studies, the amount of time imprisoned (length of stay) is not associated with rates of recidivism.

6. Most of the factors being used by the Commission to assess risk are not good predictors of recidivism.

7. An alternative risk instrument that relies on the conduct of the prisoner and programs he or she has completed while in the BOP does a better job of assessing the prisoner risk level.

8. The Commission is also using factors (crime severity and prior record) that are not related to recidivism that are being used to significantly extend the period of imprisonment.

9. For parole violators the amount of time served for a technical violation can exceed the original sentence.

10. This practice is placing too much emphasis on the SFS as criteria for revocations – especially given the lack of prediction in the instrument as shown earlier.

Based on these findings the following recommendations have been made to the Commission and the BOP.

1. Change the guidelines and implement a new risk instrument that takes into account the prisoners conduct while incarcerated (dynamic factors).

2. Discontinue the use of factors being used to enhance presumptive release dates and replace them with a simple offense/risk level matrix.

3. Alter the current practice of extending parole eligibility dates based solely on offense severity and history of violence; especially given the long period of incarceration for DC prisoners and the lack of a relationship between length of time served and recidivism.

4. Review its parole revocation grid and allow for much shorter periods of incarceration with the assumption that low risk parolees shall not be re-incarcerated for low severity violations.

5. There should be a concerted effort to reduce the length of imprisonment and parole supervision based on good conduct and completion of programs while incarcerated within the BOP. Such efforts would include allowing release at an earlier stage of the sentence, awarding of good-time credits for prisoners who complete rehabilitative programs and allowing for the period of the parole supervision to be reduced based on good conduct.

6. Given that dynamic factors related to prisoner completion of rehabilitative programs are associated to lower recidivism rates, a study should be conducted by the Commission and the Bureau of Prisons to determine if DC sentenced prisoners are receiving the same level of services as other BOP prisoners.

I have briefed the Commission, the BOP and the US Department of Justice on this study and its policy implications. Based on that meeting the Commission has agreed to initiate a project that will result in a revised risk instrument and new guidelines for 1) the release of DC prisoners sentenced under the "old" indeterminate sentencing

guidelines, 2) the imposition of conditions of parole supervision (both old and new law sentenced prisoners and 3) the revocation of community/parole supervision.

The project will also involve the Bureau of Prisons, the DC Sentencing Commission, the DC Criminal Justice Coordinating Council, the US Attorney, and the Community Supervision of Offenders Agency (CSOSA).

It is expected that these new guidelines will increase the rate of parole for "old" sentenced prisoners and reduce the number of prisoners being revoked and returned to prison – especially the length of the imprisonment for a revocation. I expect these new guidelines to be completed by this summer.

Mr. DAVIS OF ILLINOIS [presiding]. Well, thank you very much. Thank you, Delegate Norton.

Let me ask you, Mr. Quander, what would you consider to be the greatest difficulty that your agency faces trying to coordinate as many of the services as you can that exist for the ex-offender population?

Mr. QUANDER. Our greatest difficulty is that there are so many needs that offenders coming back to the community have. As many of the witnesses have testified today, it centers around areas of treatment, housing, education, employability. So when you try to coordinate, it is not just coordinating with one group, but there are various entities that are out there. That is why our strategy has been to try to coordinate not only with government offices but also the faith-based entities and organizations that are there that can provide that assistance. It is a multi-layered approach that we have to take in order to provide the necessary services. It is not just one thing that will be impactful. It is all—and they are all intertwined. So it is just the breadth of the problem that requires a lot of coordination, a lot of dedication, and that is probably the largest problem that we face.

Mr. DAVIS OF ILLINOIS. Knowing that it is, in fact, very difficult to pinpoint and to find all of these services, say, in one location or one place, in your experiences, is there one overriding need that must be met if many of these individuals are to experience success?

Mr. QUANDER. That, again, is difficult, because if you, for example, take substance abuse—and we provide substance abuse treatment, and it actually takes—if a person doesn't have a place to live, then it is only a short matter of time before he may revert back. If a person doesn't have a means to sustain his employment, then that individual may seek other illegal means to sustain his ability to live and to provide. So it is that complicated process that we are working on, and we have made a lot of improvement. But it takes a lot of coordination.

We do need additional resources in the area of substance abuse to cover all of the individuals who need that intervention, but as far as housing, employment, education, those are things that we have to work just as hard on to make sure that there is a sustained improvement as far as service delivery to the population. That I believe will give us the best result in the long run.

Mr. DAVIS OF ILLINOIS. How helpful or accommodating are you finding that families and other people who are not necessarily part of a program are being in assisting individuals? For example, we have a system where, if a person says, "I have a place to live," you may be able to get out on parole or you may be able to get out earlier, but, of course, the individuals will have some place they will say they can go. But, of course, they have already been told by whomever's address that they are using that they really can't stay here—"I am going to let you put my address down, but you can't really stay here." So what are you finding in terms of the willingness of families to provide individuals with this most basic thing of a place to live?

Mr. QUANDER. It comes as no surprise that, when a crime is committed, not only is that individual involved in the criminal justice system, but his or her family is involved in it. And, oftentimes fam-

ilies have been standing beside their loved ones for years, so it varies. Many families are tired, but they are willing, in many instances, to continue working with their loved ones if they know that they have someone that is going to help them, if there is going to be a community supervision officer, if there is going to be a mentor from a church, if there is going to be someone else to help them in that process so that they don't have to take the burden on themselves. That has been part of our philosophy.

That is why we have reached out to the faith-based organizations early on, because we knew that they were in the business of helping individuals and had already been doing a lot of this. So we wanted to partner with them so that when that individual comes home, it is not just a family member that is there, but there is a mentor.

One of the other things that we thought was important was to not wait for that process to begin, until that individual actually hits the streets of the District of Columbia. We used video equipment so that we can start matching offenders with mentors and their family members while they are still incarcerated at the Rivers facility, and the warden at Rivers was very cooperative and supportive of our efforts. So we started to build that bridge even before the individual left that institution and returned to the District.

I think when a family member sees that there is support, that the individual can make it, that the individual wants to make it, and that there is support there, I think that helps the family to embrace that individual and to keep that individual front and center in support of his efforts or her efforts to regain the spirit of community.

Mr. DAVIS OF ILLINOIS. Chief Fulwood, let me ask you, what external conditions are helpful when it is time for your Commission to make a decision relative to parole? Are there external conditions that will help facilitate your decision in terms of determining that this is more likely to be a successful release?

Mr. FULWOOD. The first thing is programming in the institution, itself, where they provide for drug treatment. When we had a teleconference with the Rivers people, what we found was that they didn't have really drug treatment programs. They now will have them in June.

If the person is a chronic substance abuser, they need drug treatment so that when they come out, they can go into further programs that are dual diagnosis in nature, that will help deal with mental illness problems in addition to drugs. If they are bipolar, as an example, you have to deal with that as well as the drug treatment.

The opportunity to reconnect to family, I think, is at the core of all of it. If you look at the Urban League's most recent report, they talk about 50 percent of the households in Black neighborhoods are headed by women. There are no men, so there are no role models. And so if we can reconnect people to families, they have a much better chance.

There are people I know who are successful in this town, who are successful because they had a family. They fell, they were using drugs, but they had a family to pick them up. So we need the re-

connection to family, and we need solid neighborhoods and communities to help support.

The idea of the faith-based communities being participants is a very good thing, because we get mentors out of it. When we look at things like that, that makes a difference. So when we do reprimand sanction hearings, the questions that I ask are: where is your family? Do you have children? Do you have a mentor? Have you been involved in a drug treatment program? And I try to look at stable housing, stable employment opportunities. We haven't sent anybody back to jail who had a job or stable housing, because we believe that is an important part of trying to make better decisions about how you handle people.

If you will permit me to say one thing, when Jim Austin talked about D.C. population serving longer prison time, they were getting sentenced for longer prison times, he should have noted, it is by the court, not by CSOSA or the U.S. Parole Commission. This is the court sentencing, and the courts have now backed away from the sentences. The times are down on substance abuse cases, because we realize that these are very difficult issues to deal with, very hard for us to deal with it because there are not enough treatment spots. CSOSA would do a much better job if they had more treatment slots in good programs. Every program is not a good program.

Mr. DAVIS OF ILLINOIS. It is my understanding that the authority of the Parole Commission is set to expire soon. Do you have any thoughts about reconstituting it or how it should be reconstituted or should it be reconstituted?

Mr. FULWOOD. The thoughts of one Commissioner, not speaking for the Commission or the Justice Department—I think it ought to be reconstituted. It is due to go out of business in November. I think we ought not to be operating under a system where we are uncertain as to whether the Parole Commission is going to exist so that we can move forward with things that we need to move forward with. We authorized the study of the Parole Commission, because we weren't satisfied with the way things were going. With the salient factor score, we thought it was not appropriate for the Federal system that we had developed to hold this D.C. population; that we needed to do something entirely different. So, we authorized the study. We now had the first meeting where we are looking at risk factors and other kinds of issues.

None of this is, to me, rocket science about human behavior. Any of us who understands and who has relatives who have fallen prey to this understand and appreciate that it is very difficult to sort out what are the risk factors.

When we sit here—just to be blunt, when we sit here, and we start talking about nonviolent offenders, that sounds very, very nice. But, if you live in a poor neighborhood, you live in Potomac Gardens, and people are selling drugs out in front of your house, and your 3-year-old daughter has to go outside, you don't want to hear that. You want to call the police. We ought to be honest about it and be blunt about it, because these poor neighborhoods are the neighborhoods who suffer disproportionately. So we have to figure out how to build crime-resistant neighborhoods so that we are not locking people up and sending them back to jail for it.

I mean, when you send somebody back to jail for 12 months for dirty urine, it is not one dirty urine, so we ought to be frank about that, too. It is not one dirty urine. CSOSA has had a series of graduated sanctions before it gets to where they ask the Parole Commission to issue a warrant for this person's arrest.

Mr. DAVIS OF ILLINOIS. Director Buchanan, your agency represents individuals before the Parole Commission who are up for revocation. Do your experiences suggest that there are some changes in procedures or changes in requirements or criteria that might be used as they make decisions?

Ms. BUCHANAN. Yes, sir. We agree with Chief Fulwood and with Dr. Austin that the salient factors score that the Commission uses is out of date and essentially inept for this population; that there needs to be a tighter correlation between known risk factor predictors or validated factors and predictors and the grid and the sanctions available for parole and supervised release revocation. That is one area—to update the grid, to update the factors, to institute those changes, and to provide training to the Commissioners in their application.

Also, we have a slightly different opinion than Chief Fulwood. We would prefer to see the parole revocation and supervised release revocation matters go back to the original judges who are familiar with the folk whom they sentenced and are familiar with the backgrounds, and we believe it would be more appropriate for them to resolve these issues than for the Commission to do so. The Commission has a Federal mandate, Federal character, and has very few ties to the District of Columbia outside of Chief Fulwood.

Those are just two of the main issues. We also believe that the Commission should be more flexible in deciding the person's release status upon the initial probable cause hearing. There are other factors besides drug use and the graduated sanctions. There is the reintegration into the community. There is the person's employment status to consider, and these detentions are very disruptive to the parolee's progress in reintegration into the community, which ultimately is going to have to happen.

Mr. DAVIS OF ILLINOIS. Thank you.

Dr. Austin, let me just ask you one question before I go to Ms. Norton. It is my opinion that part of the problem with all of this is that there are so many citizens who just haven't come to grips with their own feelings about crime, punishment, what to do with it, what to do about it. Many of the programs and program activities that people talk about, individuals believe in them. But they take what I call the "NIMBY attitude" about them, and that is Not In My Back Yard. "It is all right to have a halfway house, but put it in Baltimore or take it over to Virginia or somewhere. Don't put it in the neighborhood where I live."

How do we convince the general public, not just law enforcement personnel, not just professionals, not just judges and juries? How do we convince the general public that what we are often talking about actually makes sense and is in their best interest, as well as in the best interest of saving money, doing whatever else we say that it will do?

Mr. AUSTIN. I would urge that we give them a better, accurate portrayal what the source of the crime problem is. I live in the Dis-

trict. I have lived in the District now for about 15 years up on Capitol Hill. Since I have been here, I have been the victim of a car theft and three break-ins into my house. Prior to that, I lived in Chicago and got stuck up a couple times delivering milk on the south side of Chicago. So I know what being a victim is.

Over that 35-year period it is the same person. It is a young male, probably about age 16 to 21. That is your target group. If you have a society or community where young males have nothing to do, they don't have any meaningful employment or opportunities, they are going to find something to do and they are going to come after you.

So the public needs to understand that people coming out of the prison system is the least of their worries. If you look at any prison system where we do these population forecasts, about half of the prisoners that are going to be in the Board of Prisons 5, 8 years from now are now teenagers. And they are living amongst us, so that is the public safety issue.

You can find communities that are very safe. You can find cities—the District of Columbia, by the way, is extremely safe in probably 80 percent of it. There is 20 percent that is very dangerous. It doesn't take a rocket scientist to find out what is safe about those communities.

So the public needs to understand, and it is through, I hope, people like yourself, Chairman Davis, who can articulate to them that the criminal justice system is not the way to make places safer. It is other things about our society that makes us safer.

The reason that we are not criminals is because we got educated, we were raised properly, and we had good parents. We have something to lose if we get involved in criminal activity.

That is the trick: flipping that whole thought process that the way to make places safer is to have a big criminal justice system. That is not the way. That is just simply mopping up after the damage has been done.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

I would like to understand this longer sentences issue. I am looking at Ms. Buchanan's testimony first, because you indicate—and I am looking on page three—that when they abolished the D.C. Board of Parole—that is the Parole Board—these distinctions may be important to trying to understand what is happening here. Parole, we don't have parole, isn't that right, in the Federal system?

Ms. BUCHANAN. There is no parole any more in the Federal system. That is correct.

Ms. NORTON. In fact, there is no probation either, except the kind of supervised release that these D.C. residents and the ones before a certain date in the Federal system?

Mr. AUSTIN. Just a clarification. There is no discretionary release to parole or parole-type supervision. Everyone still coming out of prison goes to a parole-type supervision category. What has changed is truth in sentencing. You get a sentence and you do a certain percent of that sentence. There is no release decision by the Parole Commission except for the old cases, which are getting smaller and smaller.

Ms. NORTON. So the presumption you are talking about is the presumption that you will serve a certain amount of time?

Mr. AUSTIN. Right.

Ms. BUCHANAN. Yes.

Ms. NORTON. What I don't understand is, Ms. Buchanan says, since the abolition of the D.C. Parole Board, since this last change, PDS has seen an increase in the number of supervision revocations, with a particularly profound increase in the number of revocations based on minor violations. Well, when it was D.C. Parole Board, rather than the U.S. Parole Commission——

Ms. BUCHANAN. Correct.

Ms. NORTON [continuing]. Was there less supervision? I mean, you don't indicate why this change would have resulted in more revocations based on minor violations.

Ms. BUCHANAN. Part of it has to do with the salient factor score system. The D.C. Parole Board did not use that instrument in order to make parole decisions or parole revocation decisions, so——

Ms. NORTON. So what did they use?

Ms. BUCHANAN. They used their own discretion. It has been so long, I'm actually not sure exactly what they used.

Ms. NORTON. It just sounds like the sentencing guidelines. Somebody is trying to get some kind of objective system.

Ms. BUCHANAN. Well, the sentencing guidelines did not substantially increase the sentences that——

Ms. NORTON. No, I'm talking about the old Federal sentencing guidelines.

Ms. BUCHANAN. OK.

Ms. NORTON. The ones that are so controversial by the numbers and so forth. Longer sentences—are you including the parole time? Are you talking about sentences that have been authorized by the D.C. Council, Dr. Austin? I'm not sure I understand.

Mr. AUSTIN. No.

Ms. NORTON [continuing]. Where do the longer sentences come from?

Mr. AUSTIN. The study that I did was a study of people that had been sentenced under the old D.C. sentencing law, which was indeterminate. So you got a minimum sentence, and you got a very long maximum sentence.

The new sentencing structure, actually, as Mr. Fulwood has noted, is making some very positive changes. They have lowered significantly now the sentence length.

So we don't know. I don't have a good read right now on how much time the prisoners are serving under the new sentencing law.

Ms. NORTON. Now, the old sentencing laws were longer for what reason?

Mr. AUSTIN. Well, they gave a range, so, just like the gentleman said, he had a 5 to 10-year sentence, so he could have done anywhere from 5 to 10 years. So you don't have a fixed sentence, which you get now.

Ms. NORTON. So a fixed sentence is better?

Mr. AUSTIN. It depends. It depends how you set it. Now, for example, in your State in Illinois, Illinois has determinate sentencing. Illinois is famous for having some of the shortest prison terms

in the country right now. On average, prisoners serve about 12 to 14 months in the State of Illinois. You go to the State of Michigan, just north, they serve an average of 4 years under determinate sentencing. So it is how you set it. It is all math game.

The issue is proportionality of the time served to the crime that the person has committed. We know scientifically it doesn't make any difference how much time you serve on recidivism rates.

Ms. NORTON. Well, you say the sentencing done today is more in line with what might be expected——

Mr. AUSTIN. Yes.

Ms. NORTON [continuing]. As opposed to those who are serving sentences under the old system. What proportion would you imagine those would be? And is there anything that can be done about them?

Mr. AUSTIN. Well, probably—and Mr. Fulwood would know—I would say over the next 2 to 3 years just about all of them will have been reviewed by the Board for release.

Ms. NORTON. Say that again.

Mr. AUSTIN. Over the next 2 or 3 years, just about all of the old sentenced people will have had an opportunity——

Ms. NORTON. So that is passing?

Mr. AUSTIN. That is passing through.

Ms. NORTON. OK. Now, Chief Fulwood said that, as a matter of fact, graduated sanctions are used before they ever get to parole revocation, but why then are so many of them technical? In fact, the greater number, 54 percent or something, are technical violations. What does that mean?

Mr. QUANDER. What that means is that the releasing authority, the U.S. Parole Commission, will say——

Ms. NORTON. The what?

Mr. QUANDER. The releasing authority, the Parole Commission, will release an individual under certain conditions. You have to maintain employment, no drug use. There are other conditions of release. Those are the conditions that an individual under supervision must follow. So when an individual is testing positive for any substance other than alcohol—unless the Parole Commission specifies no alcohol—if a person is testing positive, then that is a violation of his or her condition of release.

As Commissioner Fulwood indicated, we do not recommend revocation for one violation or two or three. Actually, what happens is——

Ms. NORTON. You heard the testimony of one of the witnesses before you that he was told that marijuana was not a habit-forming substance.

Mr. QUANDER. That is not the way that we approach this problem. We look at drug use as something that needs to be addressed. And if you are using marijuana then there is a problem, and we want to correct that.

The reason that there may be this indication of a greater use of technical violations is that we have to respond——

Ms. NORTON. The technical violation means you have not committed any crime, but it is a condition of parole. You didn't go out and commit an offense, you didn't break the law, but you did not live up to all of the conditions that Parole put on you, and therefore

you are going back to prison, just like those who have, in fact, committed a crime.

Mr. QUANDER. Except to the extent that drug use is a new crime and, in addition——

Ms. NORTON. Drug use. It is certainly true, Mr. Quander, that you are sentencing people to jail for drug use, and that is what I thought we didn't do in this country.

Mr. QUANDER. What I am suggesting is not that we are sending them directly to jail for drug use. What we are doing is we are notifying the U.S. Parole Commission when a condition that they set has been violated. When we ask for a warrant or for a person to be revoked, we are asking because we have exhausted everything that we can do but that individual is non-compliant. He is non-compliant to the sense that there is a risk to public safety, because if you came out of here to these conditions and we do not have confidence that you are not doing some other things, so that is why we have these graduated sanctions.

Ms. NORTON. So if you are smoking marijuana and you keep coming up with dirty urines, then we think you might be doing something else really dirty, really criminal? I mean, I don't understand the relationship.

Mr. QUANDER. What we have to do is, since this——

Ms. NORTON. I can see your frustration, but this is putting somebody in prison.

Mr. QUANDER. Not necessarily. The gentleman that spoke earlier, oftentimes it is not that singular event. It is not the marijuana. It is something else.

The other thing that it supports is——

Ms. NORTON. He was very truthful. He was very truthful. He said it was several marijuana, several dirty urines, and failure to show up to his parole officer. Back in the slammer.

Mr. QUANDER. That and other——

Ms. NORTON. Had a job, managed to get it on his own. Back to jail.

Mr. QUANDER. And I can share with you the specifics of his case and any other case, but the issue is——

Ms. NORTON. He told us he had a lot, he said 10 or 15 times for marijuana. Of course he was told it is not habit forming. He said he had almost 15 times of dirty urine—not habit forming, and he had failed to show up to his parole officer.

Mr. QUANDER. And that is one of the other issues. When you are not reporting to your parole officer when you are scheduled, when you are not adhering to any curfew that you are supposed to have, when we are going by and checking to see if, in fact, you are working when you are supposed to be there, and you are not——

Ms. NORTON. No, he was added to it. This man had a job. He was added to it. You are not working. You know, you can add enough things, Mr. Quander. I am trying to figure out at what point a condition for parole should be the equivalent of a crime, and that is what it is when you are put back to jail.

Dr. Austin.

Mr. AUSTIN. It would be useful to look at other jurisdictions. In the State of Washington by statute you cannot go to prison for a technical violation.

Ms. NORTON. So what do they do?

Mr. AUSTIN. They do anything and everything they can except send them back to prison, and they have been doing this for 20 years. Their crime rate is lower than most of the States in the northwest.

One other thing I just wanted to add, which is very important, is that it starts with risk assessment. There is a group of people being released from the Federal prison system, D.C. inmates, who are low risk and are never going to come back again. One of the tactics we are supposed to be doing is to leave them alone, get them off of supervision as fast as possible. If you are doing drug testing on them, monitoring them—the research is very clear on this—you make them worse.

Ms. NORTON. Let me get this straight so I can understand. The argument the other way would go, well, you know, the longer they are under supervision the more "likely" they are to toe the line that you are after. That is not the case?

Mr. AUSTIN. No.

Ms. NORTON. Because they are not, in fact, committing crimes; they are violating parole.

Mr. AUSTIN. Most States are moving toward shorter periods of time on parole supervision. If there is a violation, if you are low risk and you do these kinds of things, you cannot go to prison. You can have sanctions imposed. You can have things moved around. But by law and by policy, you are not allowed to go back to prison because it is not proportional. The punishment is not proportional to the behavior. That is the issue.

Ms. BUCHANAN. If I could address a couple of things, Congresswoman Norton. You asked about serving the longer sentences. Under the determinate system, a person could get a sentence in the range of, say, 5 to 15 years. There was a one-third. The maximum was three times the minimum sentence. So the presumption before the D.C. Parole Board was that you are eligible for parole at the completion of the bottom number, the one-third. Most people got——

Ms. NORTON. I'm sorry. I can't hear you.

Ms. BUCHANAN. Under indeterminate sentencing you could get a sentence that was a range. The bottom range was one-third of the top number, so a sentence for, say, robbery could be 5 to 15. After you completed the 5-years, first 5 years of your sentence, you became eligible for consideration for parole. The D.C. Parole Board, using its own separate system of factors, would make release decisions.

So part of the reason why we are seeing longer sentences under the determinate structure is that it is the U.S. Parole Commission who is making these decisions, and the salient factor score uses a different set of factors than——

Ms. NORTON. It sounds like they are imposing a Federal system on a State prison system.

Ms. BUCHANAN. They are, and one of the factors that we have not talked about explicitly here——

Ms. NORTON. On the other hand, if I could just stop you for a second.

Ms. BUCHANAN. Yes?

Ms. NORTON. As I look for ways to perhaps improve the system, getting into the morass about determinate versus indeterminate is just that—it seems to me, that we have been through that. We kept them from putting the Federal sentencing guidelines on the District.

Ms. BUCHANAN. Essentially, my point is the D.C. Parole Board considered you earlier for parole.

Ms. NORTON. The whole notion of discretion——

Ms. BUCHANAN. Yes.

Ms. NORTON. It is interesting how the whole notion of getting rid of discretion developed, because more privileged people were likely to benefit from this system. It has had the opposite effect from what everybody wanted it to have, and so now we have a system that is so much on a grid that we see atrocious results.

I realize that I am working off of special sentencing guidelines, but I wonder if D.C.'s sentencing guidelines have any of this built into them, as well.

Ms. BUCHANAN. Have what built into them?

Ms. NORTON. D.C. has its own set of sentencing guidelines.

Ms. BUCHANAN. Yes.

Ms. NORTON. We were able to keep from taking the Federal sentencing guidelines. Is any of this attributable to D.C.'s sentencing guidelines?

Ms. BUCHANAN. No, I don't believe so. The Commission that created the guidelines was very careful about trying to determine what the existing practices were and not getting too far afield from them.

The other point I wanted to make is, I think everyone on this panel would agree that one big issue for parole revocation and supervised release revocation, especially for these technical violations that involve drug use, is the resources available in the community for drug treatment. There is a huge challenge there.

Ms. NORTON. We are not going to be able to do anything about some of these things.

Ms. BUCHANAN. Right, but——

Ms. NORTON. We can't get drug treatment for people who want it, have never committed a crime. The problem I have here as a Member of Congress is, I can't change the whole system. I have to find a way to deal with an unfairness without somebody saying, "Hey, up-end the whole system, drug treatment on demand, and everything will be hunky-dory." I also don't believe that, because a lot of the drug treatment doesn't even work.

Mr. FULWOOD. Just a point of clarity. The court determines when a person is going on supervised release. They set the date. Is that not correct?

Ms. BUCHANAN. I believe so.

Mr. FULWOOD. Yes. I mean, it is not the Parole Commission that sets the supervised release date.

Ms. NORTON. You mean the initial?

Mr. FULWOOD. Yes.

Mr. QUANDER. Ms. Norton, when a court imposes a sentence, that court gives a sentence. For example, 10 years for aggravated assault. Under the sentencing scheme, that individual has to serve 85 percent of that, so that individual knows. Everyone knows that

he will be eligible for supervised release in 8½ years. That is when that individual is going to be released. That is under the sentencing scheme that is in place now.

Ms. NORTON. But, of course, that is not the case is it, Dr. Austin, because you lose your street time, so you can have perpetual parole, because every time you—well, you lose your street time only if you go back to jail?

Mr. QUANDER. The difference in this—and we are getting into the morass of it—the difference in the new sentencing structure is that person has that 10-year sentence, and if he is serving 8½ years, all that remains is that additional period of time, that year and a half.

Under the old system that Ms. Buchanan was talking about, when that individual was sentenced to 5 to 15 years, if that individual was released after 5 years then he still had 10 years to go. So even if he got to year 14 and then there is a new law violation and his parole is revoked at year 14, he would lose all of that time from the point when he was released. So he would lose from year 6 all the way up to year 14 as far as his street time. That, I believe, is different under the new sentencing scheme, but there are still individuals who are on parole now that face that dilemma. I believe it is the Noble case or the Noble decision that indicates——

Mr. FULWOOD. The Noble decision.

Mr. QUANDER [continuing]. that street time is forfeited.

Mr. FULWOOD. And that was due to the D.C. Board, when they were in existence, did not interpret the law that way, the statute, itself. When the U.S. Parole Commission got the D.C. population, they interpreted the statute differently. A case went to court, and the court said the U.S. Parole Commission is correct in getting rid of the street time.

Now, we are, at the present time, getting ready to meet with—I think it is the Washington Lawyers on Civil Rights about that issue, because that is clearly a place that we need to look into.

My general feeling, just my personal feeling, is that we should not automatically revoke people's time; that we ought to look at cases individually.

Ms. NORTON. What purpose does it serve to revoke people's street time?

Mr. FULWOOD. Put them back. They have to start over.

Ms. NORTON. What would be the rationale that they would offer, those who came up with that system?

Mr. AUSTIN. There is no scientific basis in terms of public safety.

I just want to add one other thing, which may sound controversial, but there are drug users and there are drug abusers, and you have to distinguish this. There are probably 25 million Americans that are using drugs illegally every day and they are not involved in criminal activity. So we have to make this distinction between people that use drugs recreationally and those that are abusing drugs, and that is linked to their criminal behavior.

Just because you test dirty doesn't mean you are at risk to go out and commit a crime. This should be clear to all of us, because we are all grown adults. We know this, but we don't act like this. We have a standard policy for everyone, even though it is very different behavior.

Ms. NORTON. This is so-called zero tolerance.

Mr. AUSTIN. Well, mandatory drug testing is what is causing a lot of the revocations. If you start testing everyone, you are going to bring in a lot of fish.

Ms. NORTON. But Mr. Quander says, and we are certain, that you have to do a lot of bad marijuana urines in order—I don't know how 15 marijuana urines makes you any more susceptible to crime than 3. I mean, the fact is, you like weed. I don't understand the relationship between marijuana users and crime. That is the correlation I am looking for.

Mr. AUSTIN. And a parolee that starts smoking dope knows they are going to test positive in the next 30 days, so they don't go in because they know they are going to test dirty, and now you have two violations—not showing up, and when they do show up they do the test, they fall off the wagon. That is our snowball.

Ms. NORTON. Mr. Quander, I think it was in Ms. Buchanan's testimony that she said somebody goes in who hadn't been going in and gets arrested. He had not been reporting. He reports and he gets arrested.

I don't mean to suggest that this is done arbitrarily. I guess that is my question, though. For example, you may have heard Mr. Brown. Mr. Brown, I think, was there before you, and had quite the alternative sanction system you have. This man had a job. He was a plumber. He had marijuana. He didn't show up a few times. He told the Parole Commission, I'm going to lose my job, and obviously he did.

Would such a person today be sanctioned all the way back to prison?

Mr. QUANDER. Before we write to the Parole Commission, we employ the sanctions, even before it leaves our office. We don't revoke anyone at all. What we do is we supervise individuals, we monitor them, we try to provide support, and we try to provide sanctions and guidance so that we can correct non-compliant behavior.

If it appears that the individual, despite our best efforts and despite the documented attempts——

Ms. NORTON. Mr. Quander, I understand the general rule. I just gave you a hypothetical. Would that man today, Mr. Brown, have, in fact, been sent back to prison? I understand he was in 2004. In 2007, would this man with 15-something marijuana—I'm going to tell you exactly what my hypothetical is. Re-arrested in 2004 for a dirty urine test, marijuana, about 15 samples in about a 3-month period, and a no-show for his meeting with his parole officer, re-arrested after a warrant was issued. I am asking you, in 2007, would this man have been re-arrested? He had a job.

Mr. QUANDER. We don't re-arrest anyone.

Ms. NORTON. I'm just saying, would this man be arrested? Whether you would have—you understand my question?

Mr. QUANDER. I think I do. Let me try to explain it this way: all the times when we are writing——

Ms. NORTON. I'm not going to be able to get through my questions. I understand the general principle. That is why I put a specific. If all you knew was what I just put to you, would this man be arrested in 2007? Would it be your judgment that he should be arrested in 2007?

Mr. QUANDER. It would be our recommendation to the Parole Commission that some action be taken. It could be a warrant. It could be a letter of reprimand. It could be any number of things that we would recommend to the Parole Commission.

Ms. NORTON. OK. I hope I take that as a no, because I told you in my hypothetical the man went back to prison, and he had a job. He was working at that point at Kaiser Permanente—no, I'm sorry. He had a number of different jobs. He had a job.

I'm going to move on. I am just trying to establish what it takes, what degree of technical violation it takes, to give up on a person and to consider—look, we don't have anything else to do. We have tried everything we can do.

I wonder if it is related to what you report, Mr. Quander, in your testimony about the average caseload. You are recommended to have 50—you report on page 279—per officer?

Mr. QUANDER. Yes. Ten years ago the average was approximately 179 per officer. The national standard was, in general supervision, 50 offenders to one supervision officer. We are a little bit below that now.

Ms. NORTON. So you don't have 50?

Mr. QUANDER. No, for general supervision we are below that now, so we are better than the national average.

Ms. NORTON. I understand that these things do depend upon the circumstances involved. You are not suggesting, Ms. Buchanan, that these matters go to court every time that there is going to be a revocation?

Ms. BUCHANAN. To court? Well, going to court is the last step once the person is unsuccessful at the U.S. Parole Commission level, but our experience is that most of their violations that come to our caseload are technical violations. For example, yesterday——

Ms. NORTON. No. My question is: I thought you were suggesting that, instead of going to the Commission, that the court that originally decided the matter——

Ms. BUCHANAN. Yes. I'm sorry.

Ms. NORTON [continuing]. Should decide whether parole should be revoked.

Ms. BUCHANAN. Yes.

Ms. NORTON. Is that what you——

Ms. BUCHANAN. Yes, that is correct.

Ms. NORTON. Oh, my God. Wouldn't that be essentially throwing out the administrative process, which is always set up in order to keep the courts from being overloaded?

Ms. BUCHANAN. Well, the option is to re-establish the D.C. Parole Board, but the idea of going through court is to set it up like a probation, probation monitoring, where the judge who imposed the sentence is most familiar with the facts and circumstances leading up to whatever brings the person before the——

Ms. NORTON. I am pressing this because I am looking for a solution that I could, in fact, sell here.

You say, Dr. Austin, about a new system that you are working on?

Mr. AUSTIN. Yes?

Ms. NORTON. Now, any new system you are working on would have to be approved by the Justice Department; isn't that so?

Mr. AUSTIN. I don't know. It would have to be approved by the Parole Commission, I know.

Ms. NORTON. I thought you meant you were working with the Parole Commission.

Mr. AUSTIN. Yes.

Ms. NORTON. Chief Fulwood, could you institute a new system on your own?

Mr. FULWOOD. I believe we can. That is why we have authorized——

Ms. NORTON. Would it then have to be approved by the current Justice Department?

Mr. FULWOOD. I don't think so. I mean, we are an independent body within the Justice Department that has Presidential appointee commissioners. We have authorized the study. We are now moving to try to implement a new salient factors score. The administrative process, to me, is a better process. I don't think it ought to go back to judges. I don't think judges are any different.

Mr. AUSTIN. I want to echo, Congresswoman Norton, that the current parole Commissioners are moving aggressively in the right direction, and I think we need to give them some time to see how quickly they can implement a proper system. That would be my recommendation.

Ms. NORTON. Well, they certainly are moving. If you think that it can and will be done administratively, that is certainly better than putting it through. I would hate to think that it could be done and then could be unraveled based on what administration was in power. So I am looking for your advice and counsel on that.

Ms. BUCHANAN. We would certainly be happy to see the salient factor score system changed, and my recommendation for the courts taking over is a parallel to the supervised release system. Those matters go back before the original judge, as well.

The supervised release would be a huge change that we believe should have the kind of impact that we are talking about having.

Mr. AUSTIN. And the fact that it goes back to judges, and judges are struggling with this, too. I mean, we shouldn't sit here like it is something nice when they go back to judges. It doesn't. Judges are struggling with this whole thing about how to handle substance abuse cases, how to handle people who come back repeatedly.

I have talked to judges who say, this guy has been back here five times. What am I going to do? You know, they are struggling with it. That is why, as I said earlier, this is a very difficult thing to do.

I agree with her that there are not enough treatment beds, that people continue to come back. There are not enough treatment facilities to address this problem. I suggest to you that it is going to get worse as the demographics in the city continue to change, because there is no place for them to go, unless you are going to keep putting them in the southeast—and not Capitol Hill southeast, over on the other side of the river where Buchanan lives, and I live, and Paul Quander lives. Most judges don't live in this city.

Mr. QUANDER. Can I make one point? Under the Federal system, the supervised releasees go back to the sentencing judge.

Ms. NORTON. Right.

Mr. QUANDER. In the local court, once that individual is released on supervised release, the supervision of that individual falls to the U.S. Parole Commission. So, the supervised releasees in the District of Columbia are supervised by the U.S. Parole Commission as opposed to the Superior Court judges.

Ms. NORTON. All right. Just let me finally just establish what we have established here.

Are almost all of the inmates we are talking about here non-violent offenders?

Mr. QUANDER. No. It varies. We have the full range. In my testimony, I indicated that most of the individuals who we have filed requests for action are at the maximum or intensive level of supervision. It ranges from your violent offender to your non-violent offender who has shown a propensity to not follow the rules and is posing a danger to the community. So it is the full range of offenders.

Ms. NORTON. In your judgment, are changes by the D.C. Council needed to assure that some of the improvements you have indicated take place?

Mr. FULWOOD. On the Noble decision there is a bill going to be introduced to the Council. I am sorry that I have lost the guy's name.

Ms. NORTON. That is all right. If you think that is going to happen, I would like staff to——

Mr. FULWOOD. Phil Formasce. Phil, who is introducing the bill in the Council to change the Noble decision.

Ms. BUCHANAN. The Public Defender Service is working on that issue, as well, with Mr. Formasce on the Washington——

Ms. NORTON. Sorry?

Ms. BUCHANAN. The Public Defender Service is also working with Mr. Formasce on that issue.

Ms. NORTON. So you do think a change in D.C. law is necessary?

Ms. BUCHANAN. Yes, on the Noble decision. Exactly. Yes.

Ms. NORTON. Dr. Austin, you say that if you try to say you ought to, in fact, abolish a policy that has been in place, you have to be able to say why it was put in place and why it failed. We deny street time. Is that just an anomaly, or was there a reason? Is there a reasoning chronology for it?

Mr. AUSTIN. No. There is no scientific basis.

Ms. NORTON. Where does it come from?

Mr. AUSTIN. I don't know, but there is no scientific basis.

Ms. NORTON. Are we the only place? These prisoners——

Mr. AUSTIN. No. Other States used to do that, but almost—I could rattle off 10 to 12 States now that are getting rid of that policy because you are just wasting huge amounts of taxpayer dollars trying to overly punish people. It is just unnecessary; doesn't make anyone safer; just costs a lot of money.

Ms. BUCHANAN. I think it is punitive, purely punitive. That is the motivation for doing it.

Ms. NORTON. It is what?

Ms. BUCHANAN. It is purely punitive, and the District has deliberately set out to change the law in order to counteract that. It was a Court of Appeals decision that relied on a tangential argument

to say that we had to keep the current system in place, and that is why we are working with Mr. Formasce to change the law.

Ms. NORTON. Is this the U.S. Court of Appeals or the D.C. Court of Appeals?

Ms. BUCHANAN. The D.C. Court of Appeals ruled that the D.C. Council did not effectively change the law, and that is why we are trying to go back and make that specific change with that specific intent.

Ms. NORTON. I am curious about why there would be this increase in drug violations after at least some of these inmates have access to the Board of Prisons' 500-hour program, which is generally highly regarded. We know that at Rivers they didn't have it. I suppose they didn't really have it even at BOP, because we just got the law changed; is that right?

Mr. QUANDER. I'm not sure what the current status of the law is.

Ms. NORTON. Well, we are going to have testimony that they have new regulations.

Mr. QUANDER. OK.

Ms. NORTON. I am just trying to establish that one of the reasons that we may have this escalation—there may be many reasons. There are more drugs in society and the like—is that, since D.C. residents have been under the supervision of the Board of Prisons, they have not been eligible, until very recently, for the state-of-the-art drug program. So, they go in dirty; they come out dirty. Now we are paying for it by sending them back in.

I appreciate your indulgence, Mr. Chairman. I am trying to find my way through the possibility of changes here that would be lasting and quick, and I have been trying by this line of questions to understand what in the world happens here. I appreciate very much your indulgence in allowing me to question these witnesses.

Mr. DAVIS OF ILLINOIS. Thank you very much. I only have one additional question.

Dr. Austin, do you have any idea as to why the D.C. sentences are longer than in other jurisdictions?

Mr. AUSTIN. Again, just to clarify, the old sentencing structure is what we have been talking about. The new sentencing structure is probably more in line with other States. We need to get you and the Congresswoman a calculation. We do a comparison to show how they stack up, that we could do pretty easily. The Sentencing Commission has good staff, and they can provide information on that.

The one thing that is different is your 85 percent requirement, which requires them to serve a certain amount, a portion of that time. In your State it is 50 percent. Other places it is 80 percent. In some places it is 75 percent. In some places it is 40 percent. I keep telling this over and over again: you can set that percentage at any level. It doesn't have any impact on the recidivism rate or public safety. It has a big impact on your budget. So you kind of pick your medicine, whatever you want to go with, but scientifically it doesn't have an impact on public safety. It has a big impact on the size of your prison population.

Mr. DAVIS OF ILLINOIS. All right. Thank you all so very much. We appreciate your testimony and your indulgence. You are excused.

Mr. QUANDER. Thank you.
Mr. FULWOOD. Thank you.
Ms. BUCHANAN. Thank you.
Mr. DAVIS OF ILLINOIS. Thank you.
Mr. AUSTIN. Thank you.

Mr. DAVIS OF ILLINOIS. Our next witness, of course, for panel three is Mr. George Snyder, who has served as the warden of Rivers Correctional Institution since 2003. As Warden, Mr. Snyder is responsible for the administration, operation, and correctional training of offenders at Rivers.

Warden Snyder, thank you so much for being with us. Please stand and raise your right hand. It is the tradition that all witnesses be sworn in.

[Witness sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witness answered in the affirmative.

Of course, you have done this so many times. If you would, just go ahead and proceed with your 5 minutes. Then we will get into some questions and answers.

STATEMENT OF GEORGE SNYDER, WARDEN, RIVERS CORRECTIONAL INSTITUTION

Mr. SNYDER. Thank you, Chairman Davis and Congresswoman Norton.

My name is George Snyder, warden of Rivers Correctional Institution located in Winton, NC. On behalf of the GEO Group, I thank you for the opportunity to testify regarding the various pre-release programs offered to inmates housed in our facility.

As a result of the National Revitalization Act of 1997, on March 7, 2000, the Federal Board of Prisons signed a contract with the GEO Group to design, build, finance, own, operate, and manage a low-security, adult, male facility in Winton, NC. We received our first D.C. inmates in March 2001.

Located on a 257-acre tract in rural Hertford County, the facility has a campus designed with four housing buildings, indoor and outdoor recreational areas, a central programs building, a prison industries building, and an administrative building. The design enables cost-effective utilization of security staff, supplemented by modern electronic surveillance, which, in turn, allows enhanced programming activities without significant budgetary implications.

Our average inmate population is 1,350, with approximately 65 percent of the inmates coming from the District of Columbia. Rivers Correctional Institution is 226 miles from Washington, DC.

Because of time constraints, I would like to briefly review some of the programs that we have at our facility which we feel the subcommittee has the most interest.

Our psychology department provides individual and group psychotherapy to those inmates who are court ordered to participate in treatment; who are referred to treatment by facility management, staff; or who volunteer to participate in the treatment.

Since Congresswoman Norton's visit to our facility, and since the last subcommittee hearing, RCI began preparation for implementation of its 9-month residential drug treatment program. The program will provide a continuum of treatment services to inmates

with a documented history of substance abuse programs and will be conducted within a highly structured regimen of a modified therapeutic community comprised of inmates with similar problems living and working together. In addition to programming incentives, eligible inmates may receive up to 1 year off of their sentence for successful completion of the program.

The following actions have been taken toward implementation of the program:

As Congresswoman Norton mentioned, the Board of Prisons has been very diligent recently, and they approved and budgeted for this substance abuse program. Since their approval and budgeting, we have advertised that we have vacancies for three drug abuse specialists and one drug abuse program coordinator, have been advertised in a variety of formats, through the radio, internet, and newspapers in Virginia and North Carolina. Offers have been made and accepted for two drug treatment specialists. Training has been conducted for facility staff regarding the drug abuse programming and inmate eligibility requirements.

Approximately 25 inmates from the general population have completed application for entrance into the program, and we have expanded the office space for the drug treatment staff and inmate housing unit area, and it is nearing completion.

Full implementation of the program is scheduled to begin May 1st.

When we discuss pre-release programs, we must address our unit management concept. Upon entry into the facility, inmates are assigned to a housing unit, and once in the unit assigned to a unit team. These unit teams manage the inmate's needs throughout his stay at the facility. In unit management, release preparation begins the very first day of incarceration and continues until the inmate is released or transferred. This release preparation may include one or more of the following vocational and educational programs that we have: we have English as a second language, adult basic education, general education development [GED], keyboarding, computer technology I and II, life skills and parenting, and a release preparation program.

I just want to spend a moment to talk about this program. This program provides life skills that prepare inmates to re-enter the community. The core curriculum is organized into six broad categories: health, nutrition, employment, personal finance/consumer skills, community resources, release requirements, and aspects of personal growth and development. This intensive course covers a variety of topics, each chosen to strengthen the individual's chances for successful re-entry into society and it mirrors what the Board of Prisons offers.

We also have a vocational woodworking technology program. One of our most successful programs has been the heating, ventilation, and air conditioning program.

Of course, we have the work force transition program, which we began this last year, and that has been in collaboration with the University of District of Columbia and CSOSA.

I would just like to take a moment to comment on CSOSA. They have been a wonderful partner in all of our collaborations in trying to come up with programs that truly work for the needs of the in-

mate. I would like to thank Mr. Quander and his staff. But this program work is a work readiness program that prepares the individual inmates to address work force needs and marketable skills.

Since the last hearing, we have begun preparation for a building construction technology program. This program, as with the drug program, is scheduled to begin of May 2008. The building trades program will be certified through the National Center for Construction, Education, and Research, using the nationally recognized Wheels of Learning instructional materials, and will be taught by certified instructors from our local community college, Roanoke-Chowan Community College. The program will accommodate 45 inmates per a 16-week semester. At the completion of this program, the inmates will be certified and will qualify for entry-level employment in the construction industry.

I would like to state that Mr. Brown stated that we had the HVAC program but there was an age restriction on that from age 18 to age 24. There is only one criteria for this new building construction program that we have, and that is that the inmate must have at least 6 months left on his sentence.

Mr. Chairman, that concludes my summation of a few of the programs that we offer at Rivers, and I look forward to answering any questions that you and Ms. Norton may have.

[The prepared statement of Mr. Snyder follows:]

Opening Statement of
George E. Snyder, Warden
Rivers Correctional Institution

Before

The House Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia

Regarding

Pre-Release Program Offerings at Rivers Correctional Institution

Chairman Davis and Distinguished Members of the Subcommittee:

My name is George Snyder, Warden of Rivers Correctional Institution, Winton, North Carolina. On behalf of The GEO Group, Inc., I thank you for the opportunity to testify today regarding the various pre-release programs offered to inmates housed in our facility.

Let me first provide you with an overview of our company and the history of how Rivers Correctional Institution came into existence.

The GEO Group, Inc. is a world leader in the delivery of correctional, detention, and residential treatment services to federal, state, and local governmental agencies around the globe. GEO offers a turnkey approach that includes design, construction, financing, and operations. GEO represents government clients in the United States, Australia, South Africa, Canada, and the United Kingdom. GEO's worldwide operations include 68 correctional and residential treatment facilities with a total design capacity of approximately 59,000 beds.

The National Capital Revitalization Act of 1997 mandated that the Federal Bureau of Prisons (BOP) house District of Columbia sentenced felons in private contract facilities. The BOP subsequently adopted a course of action that included soliciting bids for contract facilities, closing the existing Lorton, Virginia facility, and transferring inmates to contracted facilities.

On March 7, 2000, the BOP signed a contract with The GEO Group, Inc. to design, build, finance, own, operate and manage a low security, adult male facility in Winton, North Carolina. We received our first DC inmates in March of 2001. Located on a 257-acre tract in rural Hertford County, the facility is a campus design with four housing buildings, indoor and outdoor recreational areas, a central programs building, a prison industries building, and an administrative building. The design enables cost-effective utilization of security staff supplemented by modern electronic surveillance, which in turn allows enhanced programmatic activities without significant budgetary implications. Our average inmate population is 1350, with approximately 65 percent (667) of the inmates coming from the District of Columbia. Rivers Correctional Institution is 226 miles from Washington, D.C.

Psychology:

The Psychology Department provides individual and group psychotherapy to those inmates who are court-ordered to participate in treatment, who are referred for treatment by facility management staff, or who volunteer to participate in treatment.

In January of 2008, RCI began preparation for implementation of its nine-month residential drug treatment program. The program will provide a continuum of treatment services to inmates with a documented history of substance abuse problems, and will be conducted within a highly structured regimen of a modified therapeutic community comprised of inmates with similar problems living and working together. In addition to programming incentives, eligible inmates will receive up to one year off of their sentence for successful completion of the program. The following actions have been taken toward implementation of the program:

- Approval and budgeting by the Bureau of Prisons for the program.
- Vacancies for three Drug Treatment Specialists and one Drug Abuse Program Coordinator have been advertised in a variety of formats, i.e., radio, internet, and newspapers, in Virginia and North Carolina. Offers have been made and accepted for two Drug Treatment Specialists.
- Training has been conducted for facility staff regarding the drug abuse programming and inmate eligibility requirements.
- Approximately 25 inmates from the general population have completed application for entrance into the program.
- Expansion of office space for the drug treatment staff in the inmate housing unit is nearing completion.

Full implementation of the program is scheduled to begin May 1, 2008.

Unit Management

Upon entry into the facility, inmates are assigned to a housing unit and, once in the unit, assigned to a unit team. These unit teams manage the inmate's needs throughout his stay at the facility. In unit management, release preparation begins the first day of incarceration and continues until the inmate is released or transferred.

VOCATION/EDUCATION

ENGLISH AS A SECOND LANGUAGE (ESL)

This course is designed for non-English speaking and English speaking persons who are not fluent in the English Language, with a goal of enabling inmates to function at the equivalent of the eighth grade level.

ADULT BASIC EDUCATION (ABE)

This course is designed primarily for adults whose basic skills are below the ninth grade level.

PRE-GENERAL EDUCATION DEVELOPMENT (PRE-GED)

This course is designed to meet and increase the educational needs of inmates who comprehend on or at least a fifth grade level.

GENERAL EDUCATION DEVELOPMENT (GED)

This course is offered as a means for adults with educational skills at the high school level to earn the equivalent of a high school diploma by passing the GED examination.

KEYBOARDING

Keyboarding instruction is designed to teach basic keying skills/procedures, skill building and basic formatting.

COMPUTER TECHNOLOGY I AND II

These programs are designed to teach students how to create, edit and format documents.

LIFE SKILLS/PARENTING

Life Skills focuses on basic motivation-building skills and money management.

RELEASE PREPARATION PROGRAM (RPP)

This program provides life skills that prepare inmates to re-enter the community. The core curriculum is organized into six broad categories: health and nutrition, employment, personal finance/consumer skills, community resources, release requirements, and aspects of personal growth and development. The intensive 10-hour course covers a variety of topics, each chosen to strengthen the individual's chances for successful reentry.

VOCATIONAL WOODWORKING TECHNOLOGY

This course includes instruction in using hand tools, operating portable power tools and stationary power woodworking machines, and focusing on transferable skills.

HEAT, VENTILATION AND AIR CONDITIONING (HVAC)

- This course introduces the student to the basic refrigeration process used in mechanical refrigeration and air conditioning systems.

WORKFORCE TRANSITION

In collaboration with the University of the District of Columbia, this is a work readiness program that prepares the individual inmate to address workforce needs and marketable skills.

WHEELS FOR THE WORLD

The program is designed to help inmates build the necessary skills to master the basic concepts of wheelchair repair.

BUILDING CONSTRUCTION TECHNOLOGY

Scheduled to begin in May of 2008. The Building Trades Program will be certified through the National Center for Construction Education and Research (NCCER), using the nationally recognized "Wheels of Learning" instructional materials, and will be taught by certified instructors from Roanoke-Chowan Community College. The program will accommodate 45 inmates per a 16-week semester. At the completion of this program, inmates will be NCCER certified, and will qualify for entry-level employment in the construction industry.

Mr. Chairman, that concludes my summation of a few of the programs offered at Rivers Correctional Institution. I look forward to answering any questions the Subcommittee members may have.

Mr. DAVIS OF ILLINOIS. Thank you very much. Again, we appreciate your indulgence and your being here.

Let me ask, when did Rivers get its contract?

Mr. SNYDER. It was in 2000. The original contract was in March 2001.

Mr. DAVIS OF ILLINOIS. In 2001?

Mr. SNYDER. Yes, sir.

Mr. DAVIS OF ILLINOIS. Do you have any data relative to inmates who have been released and who may be re-incarcerated?

Mr. SNYDER. No, sir. We don't track that data.

Mr. DAVIS OF ILLINOIS. And so it would be pretty difficult to determine the effectiveness of some of the programs relative to recidivism reduction; that is, determining whether or not the individuals have gotten out and whether or not they have come back? Whether they have been re-incarcerated or still experiencing the same problems that they may have experienced before?

Mr. SNYDER. That would be difficult, yes, sir.

Mr. DAVIS OF ILLINOIS. I think that is something that we need to begin to look at in terms of individuals who are incarcerated so that we can tell or have a better handle on whether or not at least that component of what we are doing is being effective.

Given the population that comes from the District of Columbia, which areas of need do you think exist the most? I'm saying there are some individuals who come in who probably need anger management. There are some individuals who just barely can read and write who need general education development. There are some individuals who maybe can do that but they don't have any specific skill that they can make use of. Is there any area of greatest need that you have been able to determine?

Mr. SNYDER. I don't have any data to back this up, sir, but I would feel that job preparation. It is so very difficult for someone getting out of prison to succeed. Then, having a job certainly, I think, some data nationally would show that job preparation would be probably the greatest need that people would have.

Mr. DAVIS OF ILLINOIS. I would agree with you, because it seems to me that, no matter what else is going on in a person's life, if they can't find a job, if all of these work barriers continue to exist, then in all likelihood we can expect a good number of them to end up back, if not at Rivers, some place else. The same circumstances that got them there in the first place pretty much continue to exist in their lives, unless somehow or another, that has not been corrected.

The other question that I would have—I like the idea of the psychotherapy, the drug treatment. One of our witnesses testified about receiving $0.12 an hour for work.

Mr. SNYDER. Yes, sir.

Mr. DAVIS OF ILLINOIS. As a person who is inside and who comes in contact with the thinking of inmates and with staff, what is the reaction overall to that? Is that something that inmates moan and groan about? Is it something that they find distasteful? Is it something they complain about? Is it something that maybe helps to develop negative attitudes rather than positive attitudes when they ultimately get out?

Mr. SNYDER. Concerning attitudes and getting out, I am not sure about that, but I can comment on how they feel when they are in. We try to tier their pay. There are some jobs that pay lower than that, some pay higher than the $0.12. It may go up to $0.14. We try to mirror it after society. Those that have an education would get the higher pay, lower education. We try to encourage them, for example, to get the GED. To get the highest pay grade level, you have to have a GED or have an exemption to the GED for some reason. So we try to mirror it. That is a contention with inmates, the pay rates, but our pay rates mirror the Board of Prisons pay rates. We try to keep our operations very similar to the Board of Prisons, because we have inmates that transfer from Bureau facilities to our facilities, so we try to keep them very similar.

So there is a concern about the pay rate, but I have been doing this for 28 years now and it is always a concern. It is a similar concern that people have in society. They would like more money for their work.

Mr. DAVIS OF ILLINOIS. All right. Thank you very much.

Mr. SNYDER. Yes, sir.

Mr. DAVIS OF ILLINOIS. Delegate Norton.

Ms. NORTON. Mr. Chairman, this was very straightforward testimony. I have only a few questions, because this is in the nature of a status report, the kind of status report, I must tell you, that Members of Congress in committees like ours like to hear—progress.

I do want to say to you, Mr. Snyder, you will find me—and I believe the chairman and the entire subcommittee is likely to be as quick to commend as to criticize. As I said in my opening testimony, you deserve credit, given our last hearing, given our trip, and so does Mr. Lapin. I said, of course, at that hearing that you were not funded to do the equalization, as I called it, of services, and so that took Director Lapin's intervention, and he was quick to do so. So I want to just say for the record how much we appreciate the straightforward way you moved ahead.

Now, the program that you are building a facility, drug rehabilitation program, you can see how much that would mean to the District of Columbia when you hear that people get sent back to Rivers because chiefly of some kind of minor infraction, particularly drug abuse—we understand, perhaps, upwards of 70 percent of these offenders now. I don't know how many of them have had access, because it only started with the 500-hour program, so it would be very interesting for us to trace whether or not—now that we are going to have the 500-hour program available in BOP facilities and at Rivers—whether that has an effect upon these drug revocations.

The importance of the 500-hour program, I said, is that they reinforce one another, because they live together, and they have an incentive that if they complete the program satisfactorily, they could get as much as a year reduced from their sentence. Is that true?

Mr. SNYDER. That is correct. Yes, they can receive up to 1 year off.

Ms. NORTON. If you are looking for an incentive, it seems to me that is the paradigm for an incentive.

The chairman asked about whether or not there was any system for tracking essentially whether these programs work like the new programs reporting into effect. I do believe that the Board of Prisons has a strong reputation for, in fact, doing control studies or doing studies all the time. Since Rivers is just starting with these new programs, I must ask you whether you know if the Board of Prisons intends to track your programs to see if there is any difference, for example, as the chairman says, whether there is more recidivism when people have had access to programs and when they haven't? Do you know of any such plan?

Mr. SNYDER. I don't know that they are going to do it. I think they may have the mechanism in place already, and just apply it to these inmates, but I can certainly find that out and get back with you.

Ms. NORTON. I know the Board of Prisons has lower recidivism rates than most State prisons, and I think this is something that staff will want to track.

Mr. DAVIS OF ILLINOIS. Here we have tabula rosa almost here that is ready-made for somebody to track and see what makes a difference, and that is the only way you can know how to improve what to continue in the rest of it.

Now, May 1st is when?

Mr. SNYDER. That is the target date to begin both of the programs.

Ms. NORTON. All right. And you are on target so far?

Mr. SNYDER. Yes, ma'am.

Ms. NORTON. Now, you have testified that the drug program, drug rehabilitation program, is a 500-hour program that they have at other BOP facilities. Are all of the other programs that you have testified about also comparable to the BOP programs, building construction technology, for example?

Mr. SNYDER. Building construction technology, that program is designed by requirements that the Board of Prisons have given us in a statement of work. They said, we want this type of program that certifies and would be a certain length. So I assume that it meets their requirements of what they are looking for. Yes, ma'am.

Ms. NORTON. Mr. Chairman, I just want to note that—well, maybe I should ask about the HVAC program first. I was a little concerned about the HVAC program, not that this is not exactly the kind of skill that is likely to be used. But, there are all kinds of issues about being employed, particularly if you work in people's homes and so forth.

I note this construction industry training you are engaged in here now, not only does it seem to me this is—well, first let me just say for the record, if you talk to people in the construction trades, they will tell you that, although the rate of pay remains what it always was, a very high rate of pay, that people who might have gone into construction no longer do. They will go fool with some computer somewhere. Thus, we have found that it is easier to get people hired in the construction trades today. They will take ex-offenders in the construction trade. There is a job shortage there.

I must say, I am pleased to see such things as roofing, exterior siding, basic residential plumbing, drywall. And, of course, we had

some discussions with you, but I think what you have done is to look at where there is a market——

Mr. SNYDER. Yes, ma'am.

Ms. NORTON [continuing]. Where there is a need, and I believe you have hooked up with where the need is in this region now.

You heard Mr. Brown—perhaps you were here when he testified—that for HVAC there was an age limit and, although he is a young man, he couldn't get into the program. Is that because of the trade, itself, requires that for apprenticeship training and the like?

Mr. SNYDER. The HVAC requirement on the age of 18 to 24 was because it was a State Department of Education program that was a grant program. It was tied to that specific age.

Ms. NORTON. Is that program still going on?

Mr. SNYDER. It is still going on, and it is functioning well, actually. Many inmates are paying for it themselves now. You know, an inmate could enroll in it if they wanted to.

Mr. DAVIS OF ILLINOIS. I have an amendment in the Higher Education Act to try and take that age restriction off.

Ms. NORTON. Oh, thank you.

Mr. DAVIS OF ILLINOIS. I don't know whether or not and the extent to which it is going to be done, but we do have an amendment in Higher Education to try and make that happen.

Ms. NORTON. Mr. Chairman is on that committee, the Education Committee.

Mr. SNYDER. OK. Great.

Ms. NORTON. What about these other certified building programs? Is there any age limit on them?

Mr. SNYDER. There is no restrictions whatsoever, other than an inmate must have at least 6 months remaining on his sentence to qualify to enter the program.

Ms. NORTON. Because you need time to do it?

Mr. SNYDER. You need time, at least 6 months to finish part of the program. Yes, ma'am.

Ms. NORTON. Warden Snyder, I recall that many of those who were at Rivers were essentially parole revocations when I visited. Is that still the case?

Mr. SNYDER. There are still quite a few. Yes, ma'am.

Ms. NORTON. Rivers also seemed to be a place where people transitioned from other BOP facilities. Would you describe roughly the proportions?

Mr. SNYDER. This is just a guess, because I have no data to support this, but I would say 50 percent of them. It may be as high as 50 percent could be parole revocations. Maybe 40 percent maybe. I am not for sure. I don't have that data.

Ms. NORTON. You mentioned UDC. What is the involvement of UDC, please?

Mr. SNYDER. University of the District of Columbia?

Ms. NORTON. Didn't you mention the University?

Mr. SNYDER. Yes. The University of District of Columbia, they work on a work force transition program in conjunction with CSOSA, and it is a work readiness program. They come in and do a battery assessment on the inmate, and actually after they do the assessment on the inmate, after the inmate is released, he is

transitioned to the University of District of Columbia for the aftercare program with the District.

Ms. NORTON. So how many inmates have gone through that program and then gone on to the University of the District of Columbia?

Mr. SNYDER. We have our first cohort, I guess you could call it, that has been released and the District will be working with, and we will be starting another group where they will be coming in to our facility.

Ms. NORTON. So when they go to UDC, what are they doing there?

Mr. SNYDER. It is my understanding that the next step is job readiness, job training of some type.

Ms. NORTON. I see my CSOSA friends are here. I can't understand why there is not a long-distance college course or course of some kind between—I'm talking about by video—between our State university, the University of the District of Columbia, and Rivers. I just don't understand it. Would there be any reasons not to do that?

Mr. SNYDER. The majority of our inmates are there for less than a year, I guess, and——

Ms. NORTON. Yes. You go to school for 9 months.

Mr. SNYDER. And I agree with you on that, Congresswoman. But I guess finding a commonality of a course that all of them would take, if it is an academic course, something that——

Ms. NORTON. Well, remember UDC is not simply a place where people go to become doctors, lawyers, and Indian Chiefs; it is a combination junior college and full-fledged university.

Mr. SNYDER. Yes, ma'am.

Ms. NORTON. Again, this is something I think I am going to have to work on.

Mr. DAVIS OF ILLINOIS. Representative Norton, I am going to run and vote. Those others have been motions to adjourn; this is a motion on tabling the ruling of the Chair, and so I am going to go and vote on that.

Ms. NORTON [presiding]. One of the few ways in which the District of Columbia perhaps benefits from my not having the vote is that at least witnesses don't have to wait until I return from voting, unless it is the committee as a whole, and this is not, but this is a very important vote for the chairman to go to. He says I can proceed with the next witness when we are through, and I am almost through here.

I must tell you I can think of the kinds of UDC courses I have in mind. Assuming that there was a UDC course of some kind, whether it is in the present curriculum or not, would the facilities at Rivers be amenable to a video course offered from the District of Columbia to people who would take the course at Rivers in preparation perhaps for the next step when they get out?

Mr. SNYDER. Most assuredly. Anything that we can do to help, and we have, like I said, had good partnership with CSOSA. If we can come up with something else, we would certainly be open to it, yes.

Ms. NORTON. Well, let me just say, I get the idea from what CSOSA has done. I think CSOSA has begun in the right place.

Let's get people ready for a job. I must say I was impressed by the fact that these, your own people, Warden Snyder, told me that many of the D.C. inmates were articulate and intelligent and ready to move on, had indeed had some good amount of education. We just had one witness here who graduated from McKinley High School.

To the extent that we can even encourage people to begin college, even if you have only 1 year of college today you are way above where you would have been without any college at all.

Those were all the questions I have, and I very much appreciate your coming.

Mr. SNYDER. Thank you very much. I appreciate it.

Ms. NORTON. We go to the last panel. The last panel is Chief Judge Rufus King, Superior Court of the District of Columbia, and Betty Ballester, J.D., D.C. Superior Court Trial Lawyers Association.

Would you please stand and be sworn?

[Witnesses sworn.]

Ms. NORTON. The record will show that each witness answered in the affirmative.

Judge King.

STATEMENTS OF RUFUS G. KING III, CHIEF JUDGE, D.C. SUPERIOR COURT; AND BETTY BALLESTER, PRESIDENT, D.C. SUPERIOR COURT TRIAL LAWYERS ASSOCIATION

STATEMENT OF RUFUS G. KING III

Judge KING. Good afternoon, Congresswoman Norton, and for the members of the subcommittee, thank you so much for the opportunity to testify today on the need to restore the Superior Court of the District of Columbia bench to 61 associate judges and a chief judge.

I am Rufus G. King III, chief judge of the Superior Court.

I think it is S. 550 which has come over that would take the Superior Court to the number of judges that were authorized with the passage of the Family Court Act of 2001—that is, 61 judges, including its chief. This number is needed to ensure that all divisions of the court, not just the Family Court, have an adequate number of judges so that cases are handled fairly and expeditiously, that needed interventions can occur, and that our strategic performance standards are met.

According to the National Center for State Courts, the District of Columbia courts have among the highest caseloads per capita and per judge in the Nation. Since the Family Court Act became law in January 2002—and, of course, I know, Congresswoman Norton, you are well familiar with that, as you played a critical role in that legislation—the number of cases pending in the Superior Court has risen by 30 percent.

The court needs additional judges to properly manage this caseload, and there are several reasons. Recently, courts across the country have adopted a problem-solving approach to cases. In those courts, judges take on the task of not only resolving cases by trial or plea and a traditional sentence, but also establishing and supervising referrals of defendants to appropriate service providers. In-

deed, this move goes much to what you have been discussing all afternoon.

The goal is to address the issues underlying criminal behavior, such as drug dependency, homelessness, mental illness, and chronic unemployment, in order to reduce recidivism. Thus, in minor criminal cases, instead of a relatively efficient trial and closure by acquittal or sentence, the case results in an extended period of supervision while the defendant undertakes drug treatment and counseling or other appropriate services, during which the defendant may appear before the court a number of times.

At the Superior Court we use these tools in our D.C. and Traffic Community Court, which handles minor misdemeanors and traffic offenses; our East-of-the-River Community Court, which handles all misdemeanors except domestic violence assaults from wards 7 and 8 in the city; our Drug Court, which handles non-violent felony and misdemeanor drug offenses; our Juvenile Drug Court, which is the drug court for young offenders; our Family Treatment Court, which provides drug treatment for parents without breaking up the family; and our pilot Mental Health Court initiative, which handles cases where mental health issues are predominant.

These cases take more time to resolve, but the solutions reduce recidivism and thus ultimately will benefit both the court and the community, and hopefully in reduced recidivism rates.

Also, pursuant to its second 5-year strategic plan, the Superior Court is implementing performance standards for each of its caseloads. Performance standards establish timelines within which cases should be resolved, and thus provide a measure of how well we are doing and where we can improve. There are other measures, such as age of pending caseload and trial certainty, that go to the same goal.

We base our performance standards on what we have learned from courts across the country, and we seek to replicate those practices here. We have engaged in a rigorous strategic planning process designed to ensure that we are doing all we can to meet community needs, to be accountable to the public we serve, and enhance public trust and confidence in the judiciary. The additional judges called for in this bill would greatly enhance our ability to meet and in the future exceed those standards.

As to the cost of the additional judges and staff, we are not asking for additional funding. Appropriations for the implementation of the Family Court Act provided funding in our base budget for the court to add judicial officers to handle family cases, raising the number of judges on our bench to 62. As you may be aware, when judges left the Superior Court and the size of the bench fell back down to 59, the Family Court Act limited us to only replacing Family Court judges unless the total number of judges fell below 59.

The Family Court funding has enabled us to fully fund the Family Court, both judges, necessary staff, and several one-time programmatic costs. As an example, our drop-in centers for juvenile offenders, where I believe you may have been present at the opening.

As Federal agencies do, the D.C. courts strive to end the fiscal year with at least a 1 percent reserve designed to cover costs that become due after the close of the year, such as late invoices or util-

ity expenses or contractual services performed at the end of the year.

The court also experiences a vacancy rate among full-time employees, including sometimes judges, typical of the Federal agencies, which is around 3 percent. Given the reserve and our typical personnel vacancy rate, we will be able to meet the cost of the additional judges and their staffs without an increase in the personal services line of the Superior Court's appropriation.

The Superior Court intends to continue to manage its budget effectively and use the strong fiscal controls that have resulted in independent accountants giving us their unqualified financial audit rating with the highest possible rating for the past several years.

I have conveyed to staff on both sides of the Hill, authorizing and appropriating, that the cost for these additional judges will be met using existing Superior Court funding levels. There will be no additional funds requested for appropriation.

Congresswoman Norton, members of the committee, thank you for providing me with the opportunity to testify today and to talk about the Superior Court's caseload figures and the need for additional judges. I appreciate your support for our efforts and look forward to working with you to ensure that the District of Columbia continues to have one of the strongest trial courts in the country.

I would be pleased to answer any questions.

[The prepared statement of Judge King follows:]

TESTIMONY OF CHIEF JUDGE RUFUS G. KING III
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE
AND THE DISTRICT OF COLUMBIA

MARCH 11, 2008

Chairman Davis and members of the Subcommittee, thank you so much for the opportunity to testify today on the need to restore the Superior Court bench to 61 associate judges and a chief judge. I am Rufus G. King III, Chief Judge of the Superior Court, a position I have held since October 2000.

S. 550 would take the Superior Court to the number of judges that were authorized with the passage of the Family Court Act of 2001 – that is, 62 judges. This number is needed to ensure that all divisions of the Court, not just the Family Court, have an adequate number of judges so that cases are handled fairly and expeditiously, that needed interventions can occur and that our strategic performance standards can be met.

According to the National Center for State Courts, the District of Columbia Courts have one of the highest caseloads per capita and per judge in the nation. Additional judges will enhance the Court's ability to manage its caseload for some important reasons.

Recently courts across the country have adopted a "problem-solving" approach to cases. In those courts, judges take on the task of not only resolving the cases by trial or plea, but also establishing and supervising referrals of defendants to appropriate service providers. The goal is to address the issues underlying criminal behavior, such as drug dependency, homelessness, mental illness and chronic unemployment, in order to reduce recidivism. Thus in minor criminal cases, instead of a relatively efficient trial and closure by acquittal or sentence, the case results in an extended period of supervision while the defendant undertakes drug treatment, counseling or other appropriate services, during which the defendant may appear before the court a number of

times. At the Superior Court, we use these tools in our DC/Traffic Community Court (which handles minor misdemeanors and traffic offenses), East of the River Community Court (which handles all misdemeanors that occur east of the Anacostia River, except domestic violence assaults), Drug Court (which handles non-violent felony and misdemeanor drug offenses), Juvenile Drug Court (the drug court for young offenders), Family Treatment Court (which provides drug treatment for parents without breaking up the family), and our pilot Mental Health Court initiative (which handles cases where mental health issues are predominant). These cases take more time to resolve, but the solutions reduce recidivism and thus not only save court, attorney and law enforcement time later on, but help the community by reducing "quality of life" crimes.

As part of our strategic plan, the Superior Court is implementing performance standards for each of our caseloads. These standards establish timelines within which cases should be resolved, and thus provide a measure of how well we are doing and a level of accountability to the public. We base our performance standards on what we have learned from courts across the country, what the "best practices" are, and seek to replicate those practices here. We have engaged in a rigorous planning process to establish performance measures that ensure that we meet community needs and are accountable to the public we serve. The additional judges would be an important part of meeting these standards.

If S. 550 is enacted, and the authorized number of judges is raised to 62, the Superior Court will not ask for additional funding. Appropriations for the implementation of the Family Court Act provided funding in our base budget for the Court to include additional judicial

officers to handle family cases, raising the number of judges that could be on our bench to 62. As you may be aware, when judges left the Superior Court and the size of the bench fell back down to 59, the Family Court Act limited us to only replacing Family Court judges unless the overall bench fell below 59. The Family Court funding has enabled us to fully fund the Family Court – judges, necessary staff, and several one-time programmatic costs of initiatives such as our Drop-In Centers for juvenile offenders.

As other federal agencies do, the D.C. Courts strive to end the fiscal year with at least a 1% budgetary reserve, designed to cover costs that become due after the close of the year, such as late invoices or utility expenses or contractual services. Our experience has been that only a portion of this reserve is typically used. Also, the Superior Court, like federal agencies, carries personnel vacancies, due to the normal departures and retirements and delays in recruiting and hiring replacements. Given the reserve and our usual personnel vacancy rate, we will be able to meet the cost of the additional judges without an increase in the Superior Court's appropriation.

The Superior Court intends to continue to manage its budget effectively and use the strong fiscal controls that have resulted in independent accountants giving us 'unqualified' financial audits (the highest possible rating) for the past several years. I have conveyed to staff on both sides of the Hill, authorizing and appropriating, that the cost for these additional judges will be met using existing Superior Court funding levels.

Mr. Chairman, Members of the Subcommittee, thank you for providing me with the opportunity to testify today and to talk about the Superior Court's caseload figures and the need

for additional judges. I appreciate your support for our efforts and look forward to working with you to ensure that the District of Columbia *continues* to have the best trial court in the country. I would be pleased to answer any questions you might have.

Ms. NORTON. We will hear next from Ms. Ballester.

STATEMENT OF BETTY BALLESTER

Ms. BALLESTER. Thank you. Thank you, Congresswoman Norton, for allowing me to speak on behalf of the 2008 hourly rate increase for D.C. Criminal Justice Act and Council for Child Abuse and Neglect Program attorneys.

I am the president of the Superior Court Trial Lawyers Association, which represents more than 350 attorneys who practice criminal law and traffic law in the District of Columbia. Today I am also speaking on behalf of more than 350 members of the CCAN panel.

The attorneys who represent an indigent in the District of Columbia are dedicated to their work and proud to be part of the Superior Court of the District of Columbia. The court has supported us very strongly over the years, and we appreciate that. Each of us on both the CCAN and the CJA panels was chosen after an application process reviewed by a committee of judges and, in some cases, a committee of peers. We believe that the indigent in the District of Columbia are entitled to competent representation.

In March 2002, we received an increase in the hourly rate from $50 per hour to $65 per hour. We have received no increases in pay since that time. Inflation has continued since that time at a rate of 3 to 4 percent a year, and the cost of goods and services has continued to rise. The $65 an hour in 2002 would be between $76 and $78 an hour today, and that is a conservative estimate.

We are asking that the hourly rate be raised to $80 an hour and that the limit on cases be raised to $2,400 for misdemeanor cases and $4,600 for felony cases. The increase to $80 an hour would keep us on a par to what we received in 2002. We are also asking that this subcommittee make this increase effective as soon as possible. The money has already been appropriated.

None of the attorneys who practices within the CJA or CCAN system receive any benefits. Each attorney pays for all of his or her insurance costs, including health, disability, life, home, and malpractice. Each attorney pays for his or her office expenses, including rent and utilities. Each attorney pays for all of his or her supplies, including research services, computer services, and any office help. Each of these attorneys pays for his or her transportation expenses, including the continuing rising cost of gasoline. None of these attorneys has any paid vacation or sick leave. Many of these attorneys are striving to send children to college and striving to maintain the stability of homes.

The attorneys of the CJA and CCAN panels deserve a raise to $80 per hour. Oftentimes, they work more than 10 to 12 hours per day. They also work most weekends. They visit jails and out-of-State penitentiaries. They visit children who are placed in institutions or homes in other jurisdictions. They visit crime scenes, search for witnesses, and often find themselves in dangerous neighborhoods. They do this all to adequately and competently represent their clients, whether they be adults or children.

Thank you again for the opportunity to speak. I would be glad to answer any questions you may have.

[The prepared statement of Ms. Ballester follows:]

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5 March 2008

To: Danny K. Davis, Chairman
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

From: Betty M. Ballester, President
Superior Court Trial Lawyers Association

Thank you for an opportunity to speak on behalf of the FY 2008 hourly rate increase for D.C. Criminal Justice Act and Counsel for Child Abuse and Neglect program attorneys.

I am the President of the Superior Court Trial Lawyers Association, which represents more than 350 attorneys who practice criminal law in the District of Columbia. I am also speaking on behalf of more than 350 members of the CCAN panel. I have practiced law as a sole practitioner in the Superior Court for almost 25 years. I have represented indigent defendants in almost every type of case in the courthouse, from murders and sexual abuse cases to minor criminal charges and violations of the Compulsory School Attendance Act.

The attorneys who represent the indigent of the District of Columbia are dedicated to their work and proud to be part of the Superior Court of the District of Columbia. Each of us was chosen after an application process reviewed by a committee of judges and, in some cases, peers. We believe that the indigent in the District of Columbia are entitled to competent counsel when they appear in Court.

In March of 2002, we received an increase in the hourly rate from $50 per hour to $65 per hour. We have received no increases in pay since that time. Inflation has continued since that time at a rate of 3-4% per year and the cost of goods and services has continued to rise. $65 in 2002 would be $76-$78 today and that is a conservative estimate. We are asking that the hourly rate be raised to $80 per hour and that the limit on earnings be set at $166,400. The increase would keep us on a par to what we received in 2002. We are also asking that this subcommittee make this increase effective as soon as possible. The money has already been appropriated.

None of the attorneys who practices within the CJA or CCAN system receive any benefits. Each attorney pays for all of his or her insurance costs, including health, disability, life, home and malpractice. Each attorney pays for his or her office expenses,

including rent and utilities. Each attorney pays for all of his or her supplies, including research services, computer services, and any office help. Each of these attorneys pays for his or her transportation expenses, including the continuing rising cost of gasoline. None of these attorneys has any paid vacation or sick leave. Many of these attorneys are striving to send children to college and striving to maintain the stability of homes.

The attorneys of the CJA and CCAN panels deserve a raise to $80 per hour. Oftentimes, they work more than 10-12 hours per day. They also work most weekends. They visit jails and out-of-state penitentiaries. They visit children who are placed in institutions or homes in other jurisdictions. They visit crime scenes, search for witnesses, and often find themselves in dangerous neighborhoods. They do this all to adequately and to competently represent their clients, whether they be adults or children.

Thank you for the opportunity to speak on behalf of all of the attorneys who are members of the CCAN and CJA panels.

Mr. DAVIS OF ILLINOIS [presiding]. You can go right ahead, Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Could I ask you, Judge King, you say on page 2 of your testimony that the District of Columbia has one of the highest caseloads per capita and per judge in the Nation. I thought I heard you say something about a 30 percent increase. Did you say that?

Judge KING. Yes.

Ms. NORTON. When was that increase? Over what period of time?

Judge KING. Over a period of time from 2002 until 2007 was the period measured.

Ms. NORTON. What accounts for such an increase?

Judge KING. The things that we are talking about and the greater complexity of the cases.

Ms. NORTON. I can understand that, but you said an increasing caseload. I am very sympathetic to what you say about judges, in fact, doing more than meting out sentences or the rest, but, in fact, doing some supervision themselves. But, I thought you were talking about a 30 percent increase in cases.

Judge KING. Well, there is a distinction between pending cases, which is what I referred to—that is the number we have to deal with—and filings, which are actually down a little bit over that period.

Ms. NORTON. We are not talking about filings; we are talking about cases that stay on the docket because of the involvement of judges.

Judge KING. That is correct. And that number has gone up, for the reasons that I outlined.

Ms. NORTON. You must have 15 on the Family Court; is that right?

Judge KING. Pardon?

Ms. NORTON. You must have 15 on the Family Court; is that correct?

Judge KING. Yes. That is correct, and, indeed, the proof of that—the wisdom of that provision has been that our Family Court has really been able to provide much better service and more current service in those cases.

Ms. NORTON. That is the whole reason we were able to get the overall——

Judge KING. Exactly.

Ms. NORTON [continuing]. Change for the entire court.

Could I ask what is the status of this bill in the Senate and the status of funding in the Senate?

Judge KING. Well, the funding is done. There is no additional funding need for us. As I say, I asked our financing people to assure me that this wasn't something where I would have to come back next year and say, "Wait a minute, we now need the funding." That is not the case.

On the basis of the margin of error that we work on from year to year and on our vacancy rate, which is borne out by long experience, we will be able to meet this obligation without additional funding.

As to the status of the bill——

Ms. NORTON. You know, if that is the case, why aren't you able to meet it right now on the basis of the vacancy rate?

Judge KING. I'm sorry?

Ms. NORTON. If that is the case, why aren't you able simply to bring these? Because you can't go above 59?

Judge KING. We are not allowed to go. We are just asking to take out—actually the way the law is written now is it says 58 judges and a chief judge, and we are just asking you to change that number, 58, to 61, so that it would authorize us to do that. That is exactly right.

I learned that S. 550 has passed the Senate and has been sent to the House, so it should be——

Ms. NORTON. That is this bill?

Judge KING. Yes, that is this bill. That is correct.

Ms. NORTON. I understand CBO has looked at this, Congressional Budget Office, and I know you understand that if somehow the vacancy rate——

Judge KING. We are aware that the CBO has, I think, scored it at about $1 million, which is a figure we are well aware of. That is an accurate——

Ms. NORTON. But you say D.C. courts strive to end the fiscal year with at least 1 percent budgetary reserve designed to cover costs that become due after the close of the year. Our experience is only a portion of this reserve is typically used. How much of the reserve is typically used?

Judge KING. It varies. I can give you more detail. I know that——

Ms. NORTON. One thing you don't want to get into is over-obligation.

Judge KING. That is right. Absolutely. Of course we don't want to do that, and I am assured that we won't. We will find——

Ms. NORTON. I favor this bill, I must say, and you say it is based on long experience looking at vacancies. What do you mean? Since you have been at Superior Court? You have been at Superior Court for about 30 years or more?

Judge KING. Not quite that long, but yes, certainly since 1971, when I was admitted to the Bar and began practicing in the court. There have always been some vacancies among the judges, indeed.

Ms. NORTON. You do recognize that if there weren't this over here, we are on pay-go.

Judge KING. Yes.

Ms. NORTON. And therefore it depends entirely on your not over-obligating funds, on if you find yourself in a bind you taking it out of something else?

Judge KING. Yes.

Ms. NORTON. Because you are would be annualizing three more judges?

Judge KING. Yes, three.

Ms. NORTON. With all that implies in terms of their benefits, in terms of their salaries.

Judge KING. That is right. It is about $1 million, and we have assessed it on that basis. And I fully understand, of course, the House, especially because you are on pay-go, needs to know that

you are not going to hear from us again on this subject if this bill is passed.

Ms. NORTON. Well, I am certainly for this bill.

Ms. Ballester, I am for this bill, your bill, as well. I don't quite understand why it matters to Congress that each attorney pays his or her office expenses. That is what lawyers do, pay for their own supplies. Nobody who has somebody on retainer, which is essentially what you would be, pays for those supplies. None of these have any paid vacation or sick leave. What lawyer in private practice does unless the firm allows that? So you make a case, but I am not sure why anybody who is seeking business with the Government ought to point out that rent, utilities, and the rest of it.

Ms. BALLESTER. Well, I think what I am trying to say, Congresswoman, is that we are not employed by firms, and we do not——

Ms. NORTON. Well, some of you may be, mightn't you?

Ms. BALLESTER. No. All of us are self-employed. We may have partnerships, but I think they——

Ms. NORTON. Well, all lawyers have partnerships, usually.

Ms. BALLESTER. No.

Ms. NORTON. Most lawyers do not work for a corporation; they work for a partnership.

The reason I am clarifying this is, I would not want it to be on the record here that somehow we believe that expenses beyond what it takes to fairly fund attorneys for representing the indigent should be taken into account. And to the extent that the record looks like we are saying that transportation expenses and the rest of it—I recognize if you are in a firm, a partnership, maybe you bill that into overhead. This, of course, has never been the case with respect to lawyers who the Government gives cases on the basis of indigency.

You are talking about payment for services rendered, are you not?

Ms. BALLESTER. Payment for services rendered. Yes, indeed, and the chief judge has just indicated to me the Federal rate now for indigent attorneys in the District of Columbia has gone up to $100 per hour for services and actually up to $120 an hour in capital cases. We obviously don't have any capital cases in Superior Court; however, we do have the same type of cases in Superior Court as there are in Federal court.

We do believe that the $65 an hour is no longer a viable figure, and we just think that, with the money that has been appropriated, $80 an hour is a reasonable figure to ask.

Ms. NORTON. Well, I couldn't agree with you more, Ms. Ballester. When you consider what lawyers command for sitting in their offices these days, you are doing very serious work. I just wanted to make it clear so none of my friends on the other side think we are paying the transportation expenses or for your filings or vacation or sick leave.

Mr. Chairman, thank you very much. Those are my questions.

Mr. DAVIS OF ILLINOIS. Thank you very much. I certainly think there is a big difference between 80 and 800, so I certainly don't have a problem with that.

Let me just ask you one question, Ms. Ballester. As president of the Superior Court Trial Lawyers Association, what would you consider to be the greatest difficulty of working with the D.C. Court?

Ms. BALLESTER. Working in D.C.?

Mr. DAVIS OF ILLINOIS. Yes.

Ms. BALLESTER. I think probably what some of the people who testified earlier—the lack of programs for indigents in the District, especially effective drug treatment programs, because drug abuse is, by far, one of the biggest scourges in this city, and I think drives an awful lot of crime in the city.

Mr. DAVIS OF ILLINOIS. Judge King, do you project there to be an increase of need for judges in D.C, say over the next 5 to 10 years?

Judge KING. What we have experienced—and we actually had to look at this in terms of our building program. We are in the middle of a 10-year building program. Historically around the country, caseloads ebb and flow. It is a cyclical situation. We went way, way up in the late 1980's and early 1990's, then it leveled off. It is trending downward a little bit at the moment, back up again in some of the family cases. So over 5 or 10 years I would expect a cyclical pattern with a slight general trend upward. That seems to be our historical experience, and that is what I would project.

Mr. DAVIS OF ILLINOIS. I know that my good friend Tim Evans, Judge Evans, is the chief judge of the largest unified court system, I guess, in the country, which is the Cook County. I see Tim from time to time, and we may run into each other at church and whatever. He is always trying to figure out if they have enough judges.

Judge KING. I am sure. Please give him my cordial regards when you see him. I am well acquainted with him and have a good friendship with him, as well.

Mr. DAVIS OF ILLINOIS. Well, thank you very much. Tim and I served in the City Council together, and we both left the City Council about the same time, almost the same time, so I will make sure that I do that.

Judge KING. I have always enjoyed and had the highest esteem for him.

Mr. DAVIS OF ILLINOIS. Thank you. I favor both of these bills, quite frankly.

Judge KING. Thank you.

Mr. DAVIS OF ILLINOIS. I want to thank both of you again for your indulgence, for your patience, and for being our last witnesses for the day, so thank you so much.

This hearing is adjourned.

Judge KING. Thank you very much, Chairman Davis and Congresswoman Norton.

Ms. BALLESTER. Thank you.

[Whereupon, at 5:30 p.m. the subcommittee was adjourned.]

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