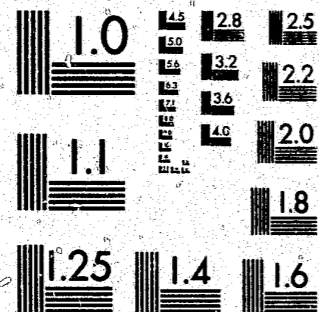


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National Institute of Justice  
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7/30/84

**PRISON OVERCROWDING  
AND  
ALTERNATIVE SENTENCING**

**OVERSIGHT HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
JUDICIARY AND EDUCATION**

OF THE

**COMMITTEE ON  
THE DISTRICT OF COLUMBIA  
HOUSE OF REPRESENTATIVES**

**NINETY-EIGHTH CONGRESS**

**FIRST SESSION**

ON

**OVERCROWDING IN DISTRICT OF COLUMBIA CORRECTIONAL  
INSTITUTIONS AND ALTERNATIVE SENTENCING PROPOSALS**

**JULY 12, 1983**

**Serial No. 98-5**



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## **PRISON OVERCROWDING AND ALTERNATIVE SENTENCING**

**TUESDAY, JULY 12, 1983**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON JUDICIARY AND EDUCATION,  
COMMITTEE ON THE DISTRICT OF COLUMBIA,  
*Washington, D.C.***

The subcommittee met, pursuant to call, at 9:05 a.m. in room 1310, Longworth House Office Building, Hon. Mervyn M. Dymally (chairman of the subcommittee) presiding.

Present: Representatives Dymally, Bliley, and Delegate Fauntroy.

Also present: Johnny Barnes and Donald M. Temple, staff counsels; Ronald P. Hamm, Karen Ramos-Bates, and Caye Cavender Hicks, minority staff assistants.

Mr. DYMALLY. Good morning.

The Subcommittee on Judiciary and Education of the District of Columbia Committee is hereby called to order. I would like very much to welcome the public and the witnesses to today's hearing and to thank you for your interest.

I especially want to thank the witnesses for taking time out of their busy schedules to testify before this subcommittee.

As a part of our oversight responsibility, the Subcommittee on Judiciary and Education is meeting today to address the problems of overcrowding throughout District of Columbia correctional institutions, particularly Lorton and the D.C. jail, and to discuss alternative sentencing proposals.

Like many jails and detention facilities throughout the country, the D.C. jail is horrendously overcrowded. It is presently housing more than 1,000 inmates over its 1,356-person capacity. The staff and inmate pressure and stress associated with overcrowding is phenomenal and if the problem is not addressed quickly, the implications could be tragic.

In the D.C. jail, inmates are housed two in a cell and also outside the cells in recreation and dayrooms. There are presently 340 inmates housed in bunks in these makeshift housing units. For security reasons, such accommodations have become an unmanageable nightmare.

Demands on limited facility and staff resources are exorbitant. Inmates are increasingly hostile toward each other and correction officers. Educational and recreation opportunities are virtually nonexistent. Idleness is commonplace.

Overall, personal and institutional security has become questionable, creating the haunting possibility of a local Attica or New Mexico-like prison outbreak. Inmates and top ranking correctional administrators admit that such an outbreak can occur at any time.

As of March 1982, prisons in 31 States, including the District of Columbia, were under court orders or consent decrees to reduce overcrowding. The major legal issue in most of these cases was whether the specific conditions constituted cruel and unusual punishment and violated the eighth amendment.

In response to judicial requirements, Federal, State, and local governments are consistently seeking to devise practical legislative remedies to prison overcrowding. Public debate has centered on the detriment of crime in the community versus the benefit of increased arrests, pretrial detentions, and the imposition of longer sentences.

In this public debate, the safety and well-being of our communities has prevailed, and it should. However, persistent prison overcrowding and the fiscal and social implications of these problems are forcing the public to reexamine whether absolute and longer detentions are the answer to crime and community safety. In this regard, many believe that viable alternatives to incarceration exist. The Mayor has even questioned whether everyone in prison belongs there.

It was once said that the degree of civilization in a society could be judged by entering its prisons. If this observation is correct, then the state of life in our prisons and jails across the Nation call into question the character of civilization in our society.

Unfortunately, we are addressing this issue very close to the 11th hour, hopefully not with the bell soon to toll a repeat of Attica.

I believe there is still time, but serious attention must be given to the overcrowding problem.

With these concerns in mind, I look forward to our witnesses' testimony and, before I call them, let me call on the member from the District of Columbia.

First we will have Mr. Palmer, and then we will have Mr. Harris, then Mr. Carter, Mr. Bronstein, Mr. Forbes, and Mr. Brown.

Now we call upon the Hon. Walter Fauntroy.

Mr. FAUNTROY. Thank you, Mr. Chairman.

I want to thank you for convening these hearings on a subject which is of grave concern, I know, to the citizens of the District of Columbia but certainly to the entire Nation as you pointed out in your opening remarks. I assure you that we have a panel of expert witnesses to address the subject. I look forward with you to their testimony.

Thank you.

Mr. DYMALLY. Thank you very much.

Mr. Palmer, please.

STATEMENT OF JAMES F. PALMER, DIRECTOR, DEPARTMENT OF  
CORRECTIONS

Mr. PALMER. Good morning, Mr. Chairman.

Mr. DYMALLY. Do you have a prepared statement?

Mr. PALMER. Yes, I do.

Mr. DYMALLY. Fine, then your statement will be entered in the record without objection.

Mr. PALMER. I am indeed honored, Mr. Chairman, and I consider it a distinct privilege after 53 years as being a native Washingtonian to be before this subcommittee and before a person whom I had the opportunity to attend the Crittenden Elementary School with, Congressman Fauntroy.

Mr. FAUNTROY. Mr. Chairman, I want to make a statement of appreciation for Mr. Palmer's remarks—although I had been saying to my colleagues that I may look 53, but I am thinking young. But certainly Mr. Palmer, who is a native Washingtonian, who has had a very distinguished career, not only as a young person in the schools of the District of Columbia, but as one who came up through the ranks in law enforcement as a distinguished marshal for the United States, and now as our director of the Department of Corrections.

I cannot tell you how glad I am to sit on this side of the table to welcome his testimony.

Mr. DYMALLY. Mr. Palmer.

Mr. PALMER. Mr. Chairman, in order that we might not delay the committee, I will submit my prepared statement for the record as it is and proceed with the questions if you would allow us to.

Mr. DYMALLY. All right, sir.

[The prepared statement of Mr. Palmer follows:]

PREPARED STATEMENT OF JAMES F. PALMER, DIRECTOR, DISTRICT OF COLUMBIA  
DEPARTMENT OF CORRECTIONS

Chairman Dymally, Mr. Fauntroy, and members of the subcommittee, good morning. I am highly appreciative for this opportunity to comment on the problem of overcrowding in the facilities operated by the District of Columbia Department of Corrections. The Department's institutional resources are divided into three service areas: Detention, Correctional, and Community. I will briefly describe each service area and present information relating to administrative and judicial actions which have had an impact on the population configuration.

The Detention Facility is the institution of admittance and discharge for all persons who are arrested and committed to the Department of Corrections. The Facility opened in March 1976. Its original design provided a single-cell capacity for 1,355 prisoners. This capacity figure permits an optimum security status and provides ample space for a meaningful variety of prisoner services. For the past five months, however, the population has averaged approximately 2,300. This status is now pending before the United States District Court in the case of *Campbell, et al. v. McGruder, et al.*, Civil Action No. 1462-71. This class action civil litigation was initiated by prisoners in 1971, who were then housed in the formerly named District of Columbia Asylum and Jail. That jail was an archaic physical plant that proved to be inconsistent with the reasonable needs of prisoners and the community's sense of fair and humane treatment. Consequently, at the direction of the Honorable Marion Barry the Old Jail was razed and is now a matter of historical information. Most of the issues raised in the *Campbell* suit have been resolved, with the exception of the crowded conditions and a technical matter involving the administration of prison discipline.

The Honorable Judge William B. Bryant, United States District Court, on December 16, 1982, responded to the escalating prison population by ordering that the District of Columbia submit a plan to relieve the crowded condition. The comprehensive plan submitted by the District of Columbia in February 1983 will provide for approximately 850 new spaces in the form of expanded and renovated facilities on the Lorton Reservation. These spaces will ease the crowding at the Detention Facility, which now houses approximately 700 felon and misdemeanor prisoners who are

eligible for sentencing facility placement. A copy of the "Plan" has been provided for the Committee's review.

I am concerned at this point that the Plan, while being a substantial commitment to provide constitutional penal conditions in this jurisdiction, falls below projected incarceration trends. If present trends continue, the Department estimates an obligation to house 5,960 prisoners by 1987 and 6,060 by 1990. The latter figure would involve a space shortfall of approximately 800.

Notwithstanding the projected increases, the District of Columbia is taking decisive action to address the problem. The District's response, as established by the Mayor, is to decrease the high growth rates in incarcerated population in part creating new programs and expanding existing programs directed at placement of appropriate individuals in alternative non-custodial settings. This policy is set forth in the Mayor's 1983 State of the District Address, wherein it is noted:

"Population projections for the District's Department of Corrections suggest continued growth in the incarcerated population for the next several years. Ways of coping with jail overcrowding include expanding alternatives to incarceration and increasing prison capacity. Cost estimates for increasing prison capacity to handle the current and projected range as high as \$500 million. Therefore, alternatives to incarceration for non-violent offenders must be expanded, including an emphasis on crime prevention and community-based rehabilitation programs."

In keeping with the Mayor's policy, the Community Services area of the Department has stepped up its operations. This organization is responsible for all prisoners housed in Department operated or contract halfway houses. There are currently 272 total prisoner spaces in all eight halfway houses. The spaces are 95 percent occupied at all times. The Department does plan to expand the capacities in due course.

I would mention at this point the current status of Correctional Services. This service area consists of six institutions located on a 3,000 acre Federal land tract in Lorton, Virginia. The institutions have a total current housing capacity of approximately 2,951. This figure represents judicial ceilings imposed on three of the institutions and administrative determinations in the remaining three. The three institutions with court mandated ceilings are at full capacity. Two of the remaining administrative approved institutions are above capacity. The remaining institution is the Minimum Security Facility where rigid professional classification practice regulates prisoner placement. I am prepared to offer testimony respecting each facility if called upon by this Committee.

The problem of crowded facilities has been intensely examined by the Mayor's Commission on Crime and Justice which is charged with the duty of developing and implementing specific measures to address all aspects of the criminal justice system. The Commission was created in January 1982 by the Mayor, who chairs and attends all Commission meetings. Its approximately 100 members include the United States Attorney for the District of Columbia, the Chief Judge of the Superior Court of the District of Columbia, the heads of all major criminal justice agencies and many citizens interested in criminal justice planning.

The latest report of the Commission sets forth numerous proposals and programs which address not only the effort to decrease the rate of crime, and hence the number of potential incarcerated, but also to reduce the number of individuals who are incarcerated as a result of involvement with the criminal justice system. A copy of the Commission's report is attached hereto.

The Department considers prison space a prohibitively high cost commodity and continues to urge that it be utilized for individuals who pose a clear danger to the community. The District of Columbia commits approximately \$15,000 per year to the support and custody of each confined prisoner. This demand on the public treasury should be reduced. The Department of Corrections is taking a vanguard position to advocate alternatives to incarceration as a means of alleviating the present crowded conditions. Its policies also demand that all facilities be safe and secure.

Permit me to extend an invitation to the members of this Committee to tour our several facilities. I would consider such a visit a privilege and personally make the appropriate arrangements.

Mr. PALMER. Yes, sir.

Mr. DYMALLY. Do you have any opening comments to make, a review of your statement perhaps?

Mr. PALMER. I would just let the statement go as it is, sir.

Mr. DYMALLY. Do any of the other gentlemen with you have a statement they wish to make?

Mr. PALMER. No, sir.

Mr. DYMALLY. We will start with Mr. Fauntroy.

Mr. FAUNTROY. Mr. Palmer, there are presently over 2,400 inmates in the D.C. jail and I would like to know what specific types of demands this puts on the institution, the staff, the services, and the budget?

Mr. PALMER. It is stressing the—the type of stress placed by the overcrowding is tremendous, Mr. Fauntroy. It taxes the capabilities of the entire Department of Corrections to the extent that we are running quite a costly factor in overtime.

The personnel is being overworked, worked a long number of hours in order that we might maintain safe and secure facilities. The facilities, as you know, are built to house 1,355 residents ideally. At the D.C. Department of Corrections detention facilities, space is at a premium there for we can only store so much food there to feed the residents and, therefore, we have a problem of bringing food in and out. We have recreation area problems, we have staff shortage problems and, in general, we have all the problems associated with overcrowding when you have an institution running approximately 1,000 persons in excess of what it was built to hold.

Mr. FAUNTROY. What is the classification breakdown of inmates at the D.C. jail?

Mr. PALMER. We have persons who are pretrial detainees, we have sentenced prisoners, we have some there on hold for the U.S. marshal, we have prisoners there awaiting transfer to Federal institutions, we have prisoners there that are there for parole violations, and we have some police cases there, also.

Mr. FAUNTROY. In your opinion, how would you explain the cause of the overcrowding at the D.C. jail?

Mr. PALMER. Mr. Congressman, it seems to be that the trend has changed where the public now demands and the judges of the District of Columbia incarcerate more people than anyplace in the entire United States of America. I feel that society at this point has reached the point where they want to rid the streets of a number of people who are suspected or convicted of crimes against the government as well as the citizens.

Therefore, the institutions, such as the D.C. detention facility, feel the crush of it. The Metropolitan Police Department, I commend them for doing a fine and excellent job in policing our city and bringing before the courts all of the persons who are accused of committing crimes. I certainly can appreciate the judges and their judicial decisions that these persons need to be removed from society pending trial for the safety of the community, and it is a situation, Mr. Fauntroy, where because of the shifts or changes in opinions, I find myself as the recipient of a number of persons for a large number of crimes, robbery being one of the most outstanding ones.

So, therefore, it seems to me today, presently, that the great demand is to have more people institutionalized.

Mr. FAUNTROY. We get the claim that 70 to 75 percent of the criminal offenders have used drugs at one point or another. Is the drug problem in the District a major cause of the increase in crime?

Mr. PALMER. It is reported that the drug problem is one of the more major problems in the District and we have quite a drug problem in the District of Columbia.

Mr. FAUNTROY. Are there any assurances that inmates or detainees with demonstrated drug addiction or problems will receive proper medication and rehabilitation attention?

Mr. PALMER. We put forth the maximum efforts under the conditions we have to operate in, Congressman, to see to their needs. We have the facilities and we have the use of a lock ward and we can go to D.C. General Hospital for treatment within the lock ward where the lock ward is located within the hospital itself.

Mr. FAUNTROY. A number of inmates at D.C. jail, I understand, have psychiatric problems. Why are they housed at D.C. jail? Shouldn't there be a proper role for mental institutions to play?

Mr. PALMER. Mr. Congressman, we receive the persons from the court. Of course when we make our observations we go back to the corporation counsel and we make a recommendation through the court that they be housed elsewhere when we notice some strange activity or changes in their personality.

The place where probably they could be housed would be at some mental institution, but they are committed to us by the courts and we don't have psychiatric facilities within the detention facilities as such.

Mr. FAUNTROY. How do you accommodate persons who obviously have psychiatric problems?

Mr. PALMER. We go back to court through the corporation counsel and have them removed to an institution where they can be treated.

Mr. FAUNTROY. But you have to take that step?

Mr. PALMER. We have to go through the judicial process.

Mr. FAUNTROY. My last question would be, Mr. Chairman, What is the expected completion date of the court-ordered plan to relieve overcrowding at the D.C. jail and detention facilities?

Mr. PALMER. At the present time, Friday, Mr. Congressman, I ordered transfer of approximately 160 to 180 inmates to the Lorton facility to bring it up to its capacity for all the vacancies and the beds we had. However, you are well aware that the arrest procedures within the District of Columbia has somehow brought us back up to 2,346 inmates.

The long-range plan is that on October 1, I will receive RCA, which we will call Occoquan 2, and once I receive this institution—the roads and the towers and fences—the towers will not be in place, but the fence will be around the perimeter of the entire complex and on the 1st of October we plan to take persons and go in and renovate the institution for November 1 so we can house anywhere from 100 to 300 persons there while we are waiting to complete the renovation of the particular institution, and therefore we will be able to house approximately 500 there.

On the grounds at the Lorton complex, there is a training academy in which we plan to utilize the training academy to allow us to accommodate 400 more bed spaces. Therefore, we will have a total of 900 bed spaces and, with the 900 beds, we plan to relieve the overcrowding of the District of Columbia jail.

Now, the fencing for it has been—the contract is out on that with the General Services of the District of Columbia government that is scheduled to be completed with the access roads by November 1. However, we are to get the institution on October 1.

Mr. FAUNTROY. Mr. Chairman, thank you.

Mr. DYMALLY. Thank you very much.

Mr. Palmer, I suspect you have no discretion in the release of any inmates. That is a matter for the courts?

Mr. PALMER. That is correct, sir.

Mr. DYMALLY. So, when they are brought to you, your responsibility is to house the inmates the best you can.

Mr. PALMER. Of course, I have no choice as a member of the Mayor's Cabinet and head of the Department of Corrections, I am limited as to what I can do. I cannot refuse to take them, not legally.

Mr. DYMALLY. The D.C. jail is capable of compliance with time and space restrictions imposed by the district court in *Campbell v. McGruder*?

Mr. PALMER. Yes, we have a plan putting together to comply with Judge Bryant's order and we should shortly be in compliance with the order. We have started complying with the order. I sit before this committee knowing full well that I could be held in contempt of court; so, therefore, I have proceeded expeditiously to come full cycle and comply with the orders of Judge Bryant.

Mr. DYMALLY. Can you tell us what movements are taking place within the city to provide alternative facilities?

Mr. PALMER. Well, I have had a meeting with the Mayor, the city administrator; I have had meetings with members of the City Council, and I have a commitment from the city that I will receive the institution on October 1. I have a commitment for the allocation of funds, so I feel that at this point the moneys that we have in corrections, I have committed for fencing and so forth.

I feel we will be able to, on October 1, to get the institution and we should be able to open it on November 1 to house persons there.

Mr. DYMALLY. Will that take place in the District or at Lorton?

Mr. PALMER. This will take place at Lorton.

Now, you know, I have a situation pending there. I went before the citizens of the Commonwealth of Virginia in Fairfax County and I quite openly and honestly explained to them that, as the director of the Department of Corrections, it was my intention to expand the facilities there. They know about it, I have had a number of discussions about it. We have been audited about it. I intend—unless I am stopped—to proceed as I have said that I would proceed and open that institution on November 1.

Mr. DYMALLY. What has been the response of both the county leadership and the people of that county to your proposal?

Mr. PALMER. Well, there have been quite a bit of discussions as to what will or will not be done. While I sit before this committee, I don't know of anything at the present time that they have put forth to stop my intentions of expanding that facility on October 1.

Mr. DYMALLY. Do you have any land or building space in the District, per se, to expand facilities for temporary housing?

Mr. PALMER. The Department of Corrections has a number of half-way houses and we have the detention facility in the District

of Columbia, and, of course, we share Grimke Elementary School with the fire department. Mr. Chairman, there are no facilities under my jurisdiction that I am able to expand but at the Lorton facility.

Mr. DYMALLY. So the District expansion is out of the question; you have to focus on Lorton exclusively?

Mr. PALMER. Yes, because that is where I have approximately 300 acres. I am very proud of the fact that I was taught by my grandfather, Mr. Chairman, that I will take what I have and do the best that I can first before I will come and ask for what maybe I do not need.

Mr. DYMALLY. I think you have been quoted as saying that the Department plans to expand its half-way houses "in due course."

Could you elaborate on that, "in due course?"

Mr. PALMER. My intention, Mr. Chairman, is to relieve overcrowding and there are a number of persons who can be filtered back into the community through the half-way house procedure. I think it is a worthwhile program. Therefore, if I can expand on the half-way houses, I can bring more persons out of the institutions and, therefore, in a gradual way probably rehabilitate them and get them back into the community so that they might produce for the citizens of the District of Columbia and not be so much of a burden.

Mr. Chairman, it is a very costly process to keep a person in prison. I feel, in the best interests of the taxpayers and as an administrator, if I can bring them back, rehabilitate them faster for society, it will probably prove a plus in our budget process.

Mr. DYMALLY. Now, that would be for those sentenced but those who are awaiting trial, how do you deal with that problem? Are you going to use Lorton for that, I suspect?

Mr. PALMER. The pretrial detainees, if I am able to get, for example, if I had the space to take the sentenced prisoners out of the detention facility, the detention facility would be what it was intended to be, one of the most ideal places for pretrial detainees in the country. The problem is, there is really not a problem with the pretrial detainees at this time. It is the persons who have been convicted of crimes that I have no place to house.

Also, I might add, there are a number of institutions under my supervision where the court has seen fit to say I will not be allowed to place any more persons in those institutions and, therefore, while that is their decision, it is one I abide by.

I am limited as far as I can expand there.

Mr. DYMALLY. Do you have adequate financial resources to implement a training program at Lorton after you complete your new expansion?

Mr. PALMER. At the present time I don't, sir. I hope to get funds to do that. I would like to.

Mr. DYMALLY. What about staff morale, is the overcrowding situation causing any stress among staff?

Mr. PALMER. Of course it is, Mr. Chairman. We have instituted under my leadership probably one of the most comprehensive recruiting programs. When I came into the Department of Corrections, in January 1983, I found a situation that I did not feel was desirable. I, therefore, met with the head of the personnel office,

Mr. Jose Gutierrez, and I worked out an agreement between the Department of Corrections and Personnel so we would comply with all the standards for recruiting.

We have gone into the community and we have recruited, in my opinion, a much better class of correctional officers to bring into the institution with more intensified training. In order to further alleviate some problems, I have put into effect and endorsed the program of zoning where we were going to put into the detention facility an arrangement where there will be two majors, one will be on duty from 6 a.m. until 2, and one will be on from 2 to 10. The correctional force will have a complement of 590 officers.

Under this particular configuration, we plan to have the pretrial detainees in one section and, of course, the persons who are incarcerated there for sentencing, have them in another section. The section where we have the double ceiling and so forth, I plan to put four correctional officers.

Also, as you are aware—I am certain that Congressman Fauntroy is aware—whenever you have a large institution with a large number of people, and being a law enforcement official, I believe you must have discipline. People must understand their roles and their abilities to perform under stressful conditions.

Therefore, under this plan we will have captains performing work that should be delegated to captains making decisions on those shifts and placing the personnel. The lieutenants will take the responsibility for the operations of the shifts and so forth, and the majors will have the overall supervision and the personnel that are assigned will know what they should do and will get proper instructions from their supervisors so that we might avoid any type of situation that you have suggested in your opening remarks and we can contain it in a very small area in the event that a flareup occurs.

That is the type of tight supervision we are putting into play. In order to accommodate us in that area, I have opened up the largest promotional opportunity that will exist in the Department of Corrections. I intend to fill all supervisory spots that we have by the end of August. They have been advertised, we have a number of applicants, we will have a panel that will honestly and truly select the best qualified persons, and in August we plan to implement this program and to put it into effect in the detention facility.

If it proves successful, we will move it to the central facility that is the next largest institution.

Mr. DYMALLY. Are you adequately staffed at the present time?

Mr. PALMER. No, I am not. I am recruiting.

I have—originally when I started I had 122 vacancies at the detention facility, I had a total of 82 at the correctional facilities, and we have started recruiting to bring them up. It is hopeful, by the end of August I will have reached my vacancy level and I will have filled all of them.

Mr. DYMALLY. One final question. Is this matter being treated by D.C. Department of Corrections and the City Council with some urgency?

Mr. PALMER. I would say, Mr. Chairman, at this time it is treated with the maximum amount of urgency. The Mayor of this city has met with me personally on a number of occasions. I met no later



than yesterday with the chairman of the Judiciary Committee for the District of Columbia; I met with the city administrator; I am meeting with the city administrator again tomorrow; and the Mayor has a meeting scheduled where he is going to talk to some city officials shortly within this week.

Also, we are preparing to move to present to the court our plans for relieving overcrowding by the 3d of August. We have to go back and report and I am scheduled to testify on August 9.

Mr. DYMALLY. Thank you very much, Mr. Palmer.

I wish you would wait just a moment, however. Mr. Bliley has asked that we enter his statement into the record. I thought it might be helpful to have a minority view. If you would just bear with me for a moment I will read the statement of Mr. Bliley.

"I will not take much time for my opening statement today because I wish to hear from the witnesses who are here to tell us about this problem. I will say that I share the concerns of many people that the current situation in the District of Columbia jail is unjustifiable. Indeed Judge Bryant has stated that he may find the city and the Mayor in contempt of court for not meeting the conditions that he imposed on the District last year.

"Although it is sometimes deemed necessary to seek to blame someone for a problem instead of solving it, I don't believe we are here for this kind of action today. We all agree there is a problem—now we must find some reasonable and practical way to solve it in the shortest time possible.

"I applaud the District on the new mandatory sentencing law. I note with satisfaction that the recidivism rate has dropped since the Parole Board stiffened its procedures. Tougher bond requirements and improved efforts by the Police Department have resulted in more space being needed for holding people awaiting trial. These factors all contribute to the problem but they are factors that I would not like to see changed. We must seek a solution that will lead to adequate room for these offenders while still protecting the rights of our citizens who are trying to avoid or prevent crime."

[The prepared statement of Mr. Bliley follows:]

PREPARED STATEMENT FOR OVERSIGHT HEARINGS ON THE D.C. JAIL

I will not take much time for my opening statement today because I wish to hear from the witnesses who are here to tell us about this problem.

I will say that I share the concerns of many people that the current situation at the District of Columbia jail is unjustifiable. Indeed Judge Bryant has stated that he may find the city and the Mayor in contempt of court for not meeting the conditions that he imposed on the District last year. Although it is sometimes deemed necessary to seek to blame someone for a problem instead of solving it, I do not believe that we are here for this kind of action today. We all agree that there is a problem—now we must find some reasonable and practical way to solve it in the shortest time possible.

I applaud the District on their new mandatory sentencing law. I also note with satisfaction that the recidivism rate has dropped since the Parole Board has stiffened its procedures. Tougher bond requirements and improved efforts by the police department have resulted in more space being needed for holding people awaiting trial. These factors all contribute to the problem—but they are factors that I would not like to see changed. We must seek a solution that will lead to adequate room for these offenders while still protecting the rights of our citizens who are trying to avoid or prevent crime.

Mr. DYMALLY. Mr. Fauntroy.

Mr. FAUNTROY. Mr. Chairman, I would just like to ask a couple questions.

Mr. Palmer, to what extent is the claim that we have an 80-percent recidivism rate now at Lorton and other facilities?

Mr. PALMER. We have quite a problem in that area, Mr. Congressman. I couldn't say what the percent is, I would say it is in the high percentile.

There are a number of people who, for whatever reason, do not seem to adjust to society on the outside and the crime rate seems to accelerate. It is a painful situation when you see so many young people who leave an institution and within a short period of time they are back in trouble.

As a person charged with handling them, I think that probably we should look to ourselves to see if we cannot go to the root of the problem and to see if we might not start trying to save some of them so that we can cut down on some of the large amounts of funds that is devoted to arresting them and keeping them housed in institutions.

Mr. DYMALLY. Would the gentleman yield?

Most of those repeat offenders, are they drug-related crimes?

Mr. PALMER. Yes, sir, I would say that they are. It is a difficult situation. I cannot sit before you and suggest to you or Congressman Fauntroy that we as citizens of the District of Columbia have solved all the problems but outside of being head of the Department of Corrections, as a citizen, I feel the people of the District of Columbia must understand this problem and maybe we are the ones who will have to try to ultimately do something about it to bring some of these people back into treatment facilities so that we can cut down on the large number of persons who have drug addiction.

Mr. FAUNTROY. Mr. Palmer, did I hear you indicate that you are going to convert a facility originally used for training of inmates to housing inmates at Lorton?

Mr. PALMER. No. It is a facility used to train correctional officers. I plan—I have asked permission from the city administrator and the Mayor to allow the correctional officers to be trained in the Police Training Academy and I have suggested that the name be changed to "The Safety Academy". We are all in the safety cluster, fire, police, and correction.

Mr. FAUNTROY. Finally, you stated, Mr. Palmer, that prisons should be reserved for individuals who pose a clear danger to the community. I wonder what types of individuals are these in your view and what types of offender would not pose a clear danger?

Mr. PALMER. Well, I would think people, Mr. Congressman, who are convicted of crimes, drug crimes, should be—and property offenders—I think they should be housed in prison institutions.

There are a number of persons who have situations where they have family disputes, they are passionate crimes, they are things that flare up and they, too, are institutionalized. I feel that—this is strictly my own personal view—that a person who goes out and he becomes involved with the law and it is his first time, he might do something in his home like they have a simple assault and so forth, and he comes into court the first time he is into it, and the ques-

tion is whether or not he belongs in an institution such as a jail or not.

We have persons who come there to us on the weekends. I have no problems with that except one, Mr. Congressman. If a person is going to be placed in jail on the weekends, he certainly doesn't get in trouble Monday through Friday and I feel that maybe if he were sent there from 6 o'clock in the morning until 12 o'clock at night and he went home and slept in his bed I wouldn't have the overcrowding because beds are a real problem in institutions.

So the persons I feel who the court—I am not trying to second-guess any of the judges—that they feel should be there on the weekends, I would just simply ask that under these conditions that maybe they let them sleep somewhere else like they do during the normal days just putting them there from 6 in the morning until 12 o'clock at night.

Mr. FAUNTROY. Thank you.

Mr. DYMALLY. We thank you very much for coming, Mr. Palmer.

Mr. PALMER. Thank you.

Mr. DYMALLY. Mr. Harris.

STATEMENT OF STANLEY S. HARRIS, U.S. ATTORNEY, DISTRICT OF COLUMBIA

Mr. HARRIS. Thank you, Mr. Chairman.

I am Stanley S. Harris, the U.S. attorney for the District of Columbia. With me on my left is Joseph E. Digenova, the principal assistant U.S. attorney, and on my right, is Edward D. Ross, Jr., the director of superior court operations for our office.

We appreciate your offering us the opportunity to submit a statement, Mr. Chairman. We concluded that we would not prepare a statement for submission to you since in our view the basic problems which are faced as a result of the overcrowding are problems which must be addressed by the executive and the legislative branches of the government rather than by our office, although, of course, we do attempt and do effect diversion in those cases in which we feel diversion is an appropriate way to proceed.

I might make one brief initial comment before we make ourselves available for questions which you may have.

Mr. Chairman, in your statement, you stated "In the public debate the safety and well-being of our communities has prevailed and it should."

I fully endorse that. In Mr. Carter's statement, Mr. Carter, being director of the Public Defender Service, in his statement he listed a number of factors which in his view cause the current overcrowding. It is rather significant that he did not include in that list of factors the critical factor, which is that we have an awful lot of crime in this community. We have crime being committed by repeat offenders, we have a large amount of violent crime, we have violent crime connected with the surge of narcotics which is tearing apart the inner cities throughout the country.

It is what we have—what we have is a system which does not have the capacity to take care of the number of criminals who are brought to justice, duly convicted and properly sentenced by judges.

Mr. DYMALLY. Thank you, Mr. Harris.

I would ask the Congressman from the District to proceed with the questions.

Mr. FAUNTROY. Thank you, we appreciate your testimony, Mr. Harris.

You have stated, of course, that we do have a problem of overcrowding and I wonder, what role do you see the U.S. attorney's office playing in alleviating that problem?

Mr. HARRIS. Our role really must be quite limited in that, Mr. Fauntroy. Any type of conduct by human beings can be reinforced or it can be deterred.

If criminal conduct is rewarded by indulgence, by merely a slap on the wrist, and people commit successive crimes and are not punished for those crimes, then we reinforce criminal conduct. Now, we do respond to the overcrowding to the greatest extent we feel we can and that is in those cases where we have first offenders with minor offenses where we feel those people can be gotten out of the criminal justice system with some reasonable expectation that they will learn their lesson and not come back as repeat offenders, we divert those offenders.

The people incarcerated now—there should be no doubt about this—essentially the people incarcerated in this community are repeat offenders, most of whom are violate repeat offenders.

Mr. FAUNTROY. On that subject, Mr. Harris, I worked with a community group in my own neighborhood where we have fashioned a comprehensive assault on drug trafficking. Two weeks ago an offender who has a record of being a pusher, upon his last arrest seized an officer's gun and attempted to shoot him. Only an accident with respect to the weapon itself prevented him from shooting him.

In addition, this offender has threatened the lives of two citizens who live in the neighborhood and who have been outraged at the blatant nature of his sales at that corner. I might tell you what corner and you might know the name of the person, but it is 6th and Q.

But that person, after having attempted to shoot an officer and threatened two citizens' lives, is still out on the streets. How does that fact track with your feeling that people with records ought to be incarcerated?

Mr. HARRIS. I have no knowledge of that particular situation and would not be able to comment on that with any degree of accuracy. However, the Council—we feel quite wisely so—as you know did enact legislation which permits us to have holds on people who commit an offense of violence while they are on release for having committed a crime of violence.

The person about whom you are talking sounds as though it should be someone who should not be on the street.

Mr. FAUNTROY. I will be in touch with you this afternoon specifically on that case because it is of great concern among us.

Mr. HARRIS. I would welcome you doing so, sir.

Mr. FAUNTROY. What do you feel about the Sentencing Improvement Act? Are you aware of the alternatives under it?

Mr. HARRIS. I have not had a chance to analyze that with any high degree of specificity. Certainly sentencing alternatives should be considered. As you know, sir, I did serve as a judge in the Dis-

trict of Columbia court system for 11 years prior to becoming U.S. attorney and if I were to characterize the—from a very broad overall perception—I would say that we have a lenient sentencing jurisdiction here. Judges, everybody in this system, are aware that we have overcrowding problems, and probation is tried invariably with first offenders.

It almost invariably is tried with second offenders so that all sorts of sentencing alternatives are not only considered but effectuated here in the District of Columbia.

Mr. FAUNTROY. Has your office prosecuted more D.C. cases in 1982 than in previous years?

Mr. HARRIS. Congressman, I was in Chicago until late last night on an economic crime conference and have not had a chance to be brought up on those figures. I would like to defer to Mr. Ross, the director of superior court operations for that.

Mr. Ross. Good morning, Congressman.

In 1982 the number of arrests by the District of Columbia Police Department and referrals to U.S. attorney's office was greater than in previous years. Indeed that is consistent with the experience in the last 4 or 5 years. The fact is that in connection with felony cases, and it is strongly our perception, that as we talk about repeat offenders and talk about likely candidates for incarceration, it is a felony offender and the active misdemeanor offender who are those who ultimately end up being sentenced by the court to imprisonment.

The felony crime referral is substantially up. The fact is that is resulting in an increase in the number of felony indictments. In 1978, for example, the U.S. attorney's office returned approximately 2,480 criminal indictments. Last year, we returned in the neighborhood of 3,320 criminal indictments. The situation is, we had a substantial number in 1981, about 3,100 but last year's jump, in 1982, was another 100, and based on early figures for this year, there appears to be a continuing trend of a slight increase.

But the more disturbing aspects of this from our standpoint is that particular kinds of offenses, those that we think are most serious from the community standpoint, there has been a dramatic increase since 1978. The fact is that in 1978 the U.S. attorney's office returned approximately 334 indictments charging offenders with the crime of armed robbery. In 1981 that figure jumped by 70 percent to 561.

In 1978, for example, the U.S. attorney's office returned 124 indictments in superior court charging individuals with felony drug offenses; in 1982 the number of such charges was 780. That was partially a product in the change of law, the Uniform Controlled Substances Act which permits the focus on offenders on the basis of actual conduct, that is in terms of distribution of narcotics or possession with intent to distribute and a substantial increase in the law enforcement effort by the Metropolitan Police Department.

Even unarmed robberies have been on the rise in the last 2 or 3 years. In 1981, for example, our figures show that we returned a little over 300 indictments, in 1982 it was 330, and this year if our trends hold we will be pushing close to 400.

The fact is that as I say not only are arrest referrals up but the severity of the crime referred for prosecution is more substantial in our view in recent years.

Mr. FAUNTROY. Mr. Harris, how does your office determine its prosecutorial priorities and do you consult with the District government authorities on that?

Mr. HARRIS. Well, like any other governmental institution we have limited resources. We have to make decisions as to what types of crimes warrant prosecution, what types of crimes warrant being brought into the judicial system, which involves judicial resources as well as prosecutorial resources.

We are constantly reevaluating our resources, the court's resources and the severity of the crimes in an effort to determine which cases we shall prosecute.

Mr. FAUNTROY. How does overcrowding affect your decisions?

Mr. HARRIS. It affects it to a minimal degree. We do, as I indicated earlier, divert from the system all of those people who we feel may be diverted with a likelihood that they will not pose a danger to the community and that we can get them out of the system, give them an opportunity to keep a clear record, and the earlier—if one can be rehabilitated at an early stage that appears to be about the only time we have any meaningful opportunity to keep someone from entering into a pattern of criminal conduct.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Mr. DYMALLY. Mr. Harris, you were a defense attorney, a judge, now prosecuting attorney. Do you think we need to find other ways for the whole question of drug abuse in terms of incarceration?

Mr. HARRIS. We are certainly not having a great deal of success with the way we are approaching it. The drug problem is a dreadful one. I certainly wish I knew the answers. Increased resources are being put into the fight against narcotics. As you know, the military is now into the fight in an effort to result in another degree of interdiction of narcotics to keep them from coming into the country.

Narcotics traffic forces have been created in an effort to break up major drug distribution rings throughout the country. An incredible amount of resources are being thrown at the drug problem but it so far is not successful.

Mr. DYMALLY. The question of overcrowding is not the responsibility of your office. However, has your office communicated at all with the city about overcrowding or have they communicated with you on the other hand?

Mr. HARRIS. Yes, we have regular contact. I meet with the Mayor periodically. We meet with Mr. Palmer, the head of the Department of Corrections, with Judith Rogers, corporation counsel. We always maintain a continuing dialog in trying to address these problems.

Mr. DYMALLY. It seems to me in the District of Columbia the majority of cases primarily deal with drugs, is that correct?

Mr. HARRIS. That is correct, sir.

Mr. DYMALLY. I have no other questions. The Congressman did a good job of questioning you.

Thank you very much for coming this morning.

Mr. HARRIS. Thank you very much for having us.

Mr. DYMALLY, Mr. Francis Carter.

STATEMENT OF FRANCIS CARTER, DIRECTOR, PUBLIC DEFENDER SERVICE

Mr. CARTER. Thank you, Mr. Chairman.

I have a brief statement for the record.

Mr. Chairman, members of the committee, thank you for seeking the views of the Public Defender Service for the District of Columbia on prison overcrowding and alternative sentencing. This topic is surely one of importance for our local criminal justice system and for our community as a whole.

There can be, I believe, very little disagreement that the District of Columbia is currently experiencing extreme problems with overcrowding at its central detention facility, commonly known as D.C. jail. The complex was originally designed and built in the mid-1970's to house 960 persons. You have indicated in your opening statement that there are a thousand over the limit as well as the limitations placed by the U.S. district court.

From an administrative point of view, the current inmate population must cause substantial difficulties. A cellblock designed for 80 persons now houses 160. Meals take twice as long to serve. Medical facilities within the jail have to be strained as inmates seek necessary services. The few rehabilitative programs available take twice as long to gain entry. The decrease in space per inmate creates an atmosphere susceptible to violence. But more importantly the correctional officer staff used to supervise the inmate population has not kept pace.

Under such conditions the personal safety of any inmate has to be compromised. This can only lead the local government to be exposed to liability from personal injury suits. From the perspective of attorneys who represent people charged with crimes, a serious concern must be voiced for the daily existence of our clients when they are ordered to await their trial dates at D.C. jail through a lack of bail, that is by preventive detention or by a high money bond.

The tentacles of the overcrowding problem extend to several areas. For some time now the family of an inmate has been permitted to visit their incarcerated relative on only 2 specific days of the week, restricted by alphabetical listings. For example, if an inmate's last name begins with "B" his family can visit him or her only on Mondays and Thursdays. Under the current overcrowded conditions, it is not uncommon for relatives to wait in line for a prolonged period at the jail entrance while they are processed, only to find a second, and equally long, waiting period to be endured once they arrive at the appropriate floor of the jail because the visiting areas for family and friends are all full.

The same problems are encountered by attorneys. Each floor of the jail has a small number of glass cubicles an attorney may use for consultation with his or her client. If one is available the lawyer may still wait 15 to 45 minutes for the client to arrive because of the limited number of correctional officers assigned to a floor who have to escort inmates to and from the cellblock for both legal and social visits.

Further, the jail population is counted four times a day. No inmate can move from his or her location during the count, which can take anywhere from 1 to 4 hours depending on accuracy of the first efforts. I need not explain what happens to an attorney who arrives for a client visit as a population count begins or is underway. He or she waits.

To circumvent this problem, attorneys, especially attorneys from the Public Defender Service, visit most of their clients in the late evening hours on weekdays or weekends. But the jail population is such that a good number of attorneys are using this option and now the delays experienced during normal visiting hours also occur in the evenings.

Generally an inmate has very limited access to a telephone to call his or her attorney and even when this is possible a telephone call does not permit extensive attorney-client consultation. In sum, the overcrowding situation has a significant impact upon an attorney's efforts to keep his or her client abreast of the progress of the case.

The problem, in my view, will get worse before it improves. In July 1982 the Council of the District of Columbia passed several amendments to the bail laws. One of the changes gave judges the option to hold people without bail when they are believed to be dangerous and are charged with first degree murder. In practice this provision is used to detain without bond almost every person so charged.

Another amendment gave the prosecutor the ability by motion to the presiding judge to extend by an additional month the 60-day preventive detention period for persons charged with and previously convicted of crimes of violence. The former concern for a speedy resolution of charges against people believed to be dangerous has been replaced by elongating the pretrial period of incarceration.

I would also surmise that the recently effective mandatory minimum sentence initiative will also increase our incarcerated population as more inmates demand trials and thereby slow case processing times.

Thus, the current difficulties are the result of a number of factors: increased activity by law enforcement; the aforementioned modifications to our local bail laws; a strong concern about violent crime voiced by some segments of the community; and construction, planning, and budget resources inadequate to meet the overcrowding situation. However, it does appear to me that the city may not have sufficiently reacted to the problem.

At present our criminal justice system has very few alternatives to prosecution. There are no provisions through which nonviolent property offenses can be regularly jettisoned from the normal case process. Some mechanism should be developed to divert these cases so that the finite resources of the court can concentrate on those persons who are thought to be dangerous based on a prior pattern of violent crimes.

The answer is not to streamline the process by restricting jury trials for these offenses because the court, prosecutors, and defense attorneys must still expend their energies under that concept. A parallel administrative process should be considered to automatically handle property charges through which the accused could

forgo the normal case process in exchange for returning to our city—by means of restitution, fines, or community service—a specified amount of money to victims or our Government or hours of their time to nonprofit organizations.

If this concept was explored and seriously implemented a number of things could be achieved: The victim could be made whole through restitution which is the key in a property crime; if the accused is unemployed, the community could benefit from hours of service to a specified organization; the court system will have not expended its limited resources on these crimes; and prosecutors can focus their attention on more serious, violent, and complex cases.

The Council of the District of Columbia took a related step when it enacted D.C. Law 4-202, the District of Columbia Sentencing Improvements Act of 1982. This law which took effect in March 1983 gives a judge the option of ordering an accused person to do a number of hours of community service or to pay restitution to the victim. But this option is available only after a plea of guilty or a jury verdict of guilty.

If cases of nonviolent property crimes, regardless of the dollar amount involved, could be diverted early in the process, thereby giving the court the options of restitution and/or community service without the necessity of determining guilt, the savings would be greater.

I am not suggesting that our problems with overcrowding will be totally eradicated by an extensive diversion program. In fact, this should clearly be one component of a more comprehensive plan of action in this regard. Difficult problems require intelligent but not so easy answers. However, I am confident the District of Columbia can and will with the necessary assistance respond to the current situation.

Mr. Chairman, I would be happy to attempt to answer any questions your committee may have.

[The prepared statement of Francis D. Carter follows:]

PREPARED STATEMENT OF FRANCIS D. CARTER, DIRECTOR, PUBLIC DEFENDER SERVICE  
FOR THE DISTRICT OF COLUMBIA

Mr. Chairman, Members of the Committee, thank you for seeking the views of the Public Defender Service for the District of Columbia on "Prison Overcrowding and Alternative Sentencing." This topic is surely one of importance for our local criminal justice system and for our community as a whole.

There can be, I believe, very little disagreement that the District of Columbia is currently experiencing extreme problems with overcrowding at its Central Detention Facility, commonly known as D.C. Jail. The complex was originally designed and built in the mid-1970's to house 960 persons. Within a relatively short period of time the city realized this space was insufficient and a new wing housing four additional cellblocks was constructed. This increased the prisoner capacity to 1,156. However, this new section made no provision for increased facilities for attorney legal visits, family social visits nor the basic daily functions needed to carry out the requirements of feeding and caring for an inmate population. As one might guess, problems began to appear as the number of incarcerated people continued to escalate. In March, 1981 the average daily count of the population at D.C. Jail was 1,419. In March, 1982 the same average daily count was 1,769. In 1983, our local government asked for and received permission from a federal judge to put two people in a cell at D.C. Jail designed for a single person. Additionally, the Corrections Department opened a portion of Occoquan (a part of the Lorton Complex) to house people charged with misdemeanors (crimes with penalties of one year or less).

As a result, there are approximately 2350 men and women under the control of the jail authorities as of this month plus some 445 men housed at the Occoquan facility.

From an administrative point of view, the current inmate population must cause substantial difficulties. A cellblock designed for 80 persons now houses 160. Meals take twice as long to serve. Medical facilities within the jail have to be strained as inmates seek necessary services. The few rehabilitative programs available take twice as long to gain entry. The decrease in space per inmate creates an atmosphere susceptible to violence. But more importantly the correctional officer staff used to supervise the inmate population has not kept pace. Under such conditions the personal safety of any inmate has to be compromised. This can only lead the local government to be exposed to liability from personal injury suits. From the perspective of attorneys who represent people charged with crimes, a serious concern must be voiced for the daily existence of our clients when they are ordered to await their trial dates at D.C. Jail through a lack of bail, that is by preventive detention or by a high money bond.

The tentacles of the overcrowding problem extend to several areas. For some time now the family of an inmate has been permitted to visit their incarcerated relative on only two specific days, restricted by alphabetical listings. For example, if an inmate's last name begins with "B" his family can visit him or her only on Mondays and Thursdays. Under the current overcrowded conditions, it is not uncommon for relatives to wait in line for a prolonged period at the jail entrance while they are processed, only to find a second, and equally long, waiting period to be endured once they arrive at the appropriate floor of the jail because the visiting areas for family and friends are all full.

The same problems are encountered by attorneys. Each floor of the jail has a small number of glass cubicles an attorney may use for consultation with his or her client. If one is available the lawyer may still wait 15 to 45 minutes for the client to arrive because of the limited number of correctional officers assigned to a floor who have to escort inmates to and from the cellblock for both legal and social visits. Further, the jail population is counted four times a day. No inmate can move from his or her then location during the count, which can take anywhere from one to four hours depending on accuracy of the first efforts. I need not explain what happens to an attorney who arrives for a client visit as a population count begins or is underway. He or she waits. To circumvent this problem, attorneys, especially attorneys from the Public Defender Service, visit most of their clients in the late evening hours on weekdays or weekends. But the jail population is such that a good number of attorneys are using this option and now the delays experienced during normal visiting hours also occur in the evenings. Generally an inmate has very limited access to a telephone to call his or her attorney and even when this is possible a telephone call does not permit extensive attorney-client consultation. In sum, the overcrowding situation has a significant impact upon an attorney's efforts to keep his or her client abreast of the progress of the case.

The problem, in my view, will get worse before it improves. In July, 1982 the Council of the District of Columbia passed several amendments to the bail laws. One of the changes gave judges the option to hold people without bail when they are believed to be dangerous and are charged with First Degree Murder. In practice this provision is used to detain without bond almost every person so charged. Another amendment gave the prosecutor the ability by motion to the presiding judge to extend by an additional month the sixty-day preventive detention period for persons charged with and previously convicted of crimes of violence. The former concern for a speedy resolution of charges against people believed to be dangerous has been replaced by elongating the pretrial period of incarceration. I would also surmise that the recently effective mandatory minimum sentence initiative will also increase our incarcerated population as more inmates demand trials and thereby slow case processing times.

Thus, the current difficulties are the result of a number of factors: increased activity by law enforcement; the aforementioned modifications to our local bail laws; a strong concern about violent crime voiced by some segments of the community; and construction, planning and budget resources inadequate to meet the overcrowding situation. However, it does appear to me that the city may not have sufficiently reacted to the problem. At present our criminal justice system has very few alternatives to prosecution. There are no provisions through which nonviolent property offenses can be regularly jettisoned from the normal case process. Some mechanism should be developed to divert these cases so that the finite resources of the court can concentrate on those persons who are thought to be dangerous based on a prior pattern of violent crimes. The answer is not to streamline the process by restricting jury trials for these offenses because the court, prosecutors and defense attorneys

must still expend their energies under that concept. A parallel administrative process should be considered to automatically handle property charges through which the accused could forego the normal case process in exchange for returning to our city—by means of restitution, fines or community service—a specified amount of money to victims or our government or hours of their time to nonprofit organizations. If this concept was explored and seriously implemented a number of things could be achieved: the victim could be made whole through restitution which is the key in a property crime; if the accused is unemployed, the community could benefit from hours of service to a specified organization; the court system will have not expended its limited resources on these crimes; and prosecutors can focus their attention on more serious, violent and complex cases.

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Mr. Chairman, I would be happy to attempt to answer any questions your Committee may have.

Mr. DYMALLY. Thank you very much, Mr. Carter.

What do you see as the reasons for increasing detention and incarceration in the District?

Mr. CARTER. As I stated in my statement there are several factors converging here.

No. 1, as Mr. Harris said, the U.S. attorney, there has been increased activity on the part of law enforced in arresting persons. This is partially in response to some community sentiment.

The other thing is that the bail laws have changed and, therefore, judges believe that they should incarcerate more persons where under the former scheme the presumption was to go through a hierarchy of options having incarceration the last step in that consideration.

Mr. DYMALLY. In your statement you commented that "The correctional officers staff used to supervise the inmate population has not kept pace."

To your knowledge how has this affected inmate and correctional officer security?

Mr. CARTER. I think the most poignant example, Mr. Chairman, occurred during the July 4th weekend. A gentleman represented by one of the attorneys of the Public Defender Service came into court charged with a violent crime, admittedly. I believe he was detained on a large money bond on Friday, July 1. Jail authorities were notified through our attorney as well as an interview with the jail psychiatrist that this person had mental problems and suicidal ideations.

The gentleman was placed in the infirmary and presumably placed under concentrated watch by correctional authorities.

Now, it stands to reason that if there are more persons that an individual correctional officer must care for and that staff-to-inmate ratio has not kept pace with the increasing inmate popula-

tion, that means less time the correctional officers can give to an individual inmate.

Unfortunately, while those matters are under investigation in a civil area by another attorney, I believe that staff-inmate ratio may have played a part in the subsequent opportunity for this gentleman to commit suicide—to attempt to commit suicide. The gentleman is in intensive care now and from indications I am aware of over the July 4th holiday is currently not likely to survive.

Mr. DYMALLY. Has your office received any complaints about abuse of inmates?

Mr. CARTER. Generally the morale and leadership of the correctional staff at the D.C. jail is higher than in some communities. I think the leadership provided to those correctional officers and the manner in which those correctional officers conduct themselves is basically a high standard. I am not particularly aware of any substantial number of complaints of physical abuse to any inmates from correctional authorities at this time.

Mr. DYMALLY. Many of these inmates have problems related to drug and alcoholic abuse. Do you have any suggestions about how we ought to go about resolving that problem rather than just housing them?

Mr. CARTER. Part of the problem occurred, Mr. Chairman, during some of the budget constrictions that occurred I believe approximately 2 fiscal years ago. Some of the very hard choices had to be made by the city and as a result the number of locations financed publicly for our citizens with alcohol problems or narcotics problems decreased substantially.

As a consequence, if a person, accused person, that is, comes before the judge and the judge considers the hierarchy of choices about release, that this person should be released into the community, however, he or she has an alcoholic abuse or narcotics abuse problem, the judge as part of the bond and under the law currently implemented in the District of Columbia could insist as a condition of their release that they enter one of these programs.

The problem because of the lack of space and lack of facilities currently in the city, that person can wait anywhere from 4 to 6 weeks to get into any publicly financed program. Further, there are to my knowledge very few if any locations in which an accused person could actually say, I would like to go to a narcotics treatment facility and stay 24 hours a day. I would like to have some psychological counseling, I would like to have some medical abuse so I can withdraw from addiction either in preparation for criminal prosecution or just if he was on the streets and not involved with the criminal justice system and wanted that assistance.

It is just not there, Mr. Chairman.

Mr. DYMALLY. Mr. Fauntroy.

Mr. FAUNTROY. Thank you.

Mr. Carter, we do not now have a local speedy trial act for the District of Columbia, is that correct?

Mr. CARTER. That is correct, Mr. Congressman.

Mr. FAUNTROY. Would such an act aid in resolving the overcrowding problem in the District?

Mr. CARTER. There have been several discussions of that fact and in fact the Mayor's crime commission, I believe, has a recommen-

dation out now that a study commence relatively soon between the executive and legislature to determine the feasibility of actually implementing or phasing in a potential speedy trial act for the city courts.

I might add that originally when the Federal Speedy Trial Act was passed I believe then chief judge, Judge Greene indicated because of the crush of the caseload and lack of resources in a judicial sense, in the superior court that he asked and received from the U.S. Congress an exclusion of our local court system from the Federal act.

Mr. FAUNTROY. You have mentioned your concerns about the administration of the jail. Do you foresee any major security problem there?

Mr. CARTER. Clearly if correctional standards from either the American Correctional Association or even standards promulgated by the city itself, has a ratio of staff, more particularly guard-to-inmate at a certain level and because of overcrowding the staff level has not kept pace, that clearly means that the staff cannot be as vigilant, they cannot be in the number of locations they probably should be on certain occasions.

That leads to the opportunity for potential violence and when you compound that with putting two persons in a cell originally designed for one, that adds more fuel to the potential combustible situation.

Mr. FAUNTROY. You mentioned that attorneys have real problems getting to their clients in the D.C. jail and that inmates have limited telephone access.

Has your office any recommendations on how to deal with that problem? Have you made those recommendations to the Department of Corrections?

Mr. CARTER. Our recommendations clearly are just to get rid of the overcrowding. The physical structure of the building can only support so much visiting. When there are more inmates than were proposed for the physical structure then everything is strained across the board. We have tried and Mr. Holland, who is one of the administrators of the D.C. jail, is very receptive to our views, but he is quite frank, if he does not have the personnel to escort inmates from their cell to the visiting areas then attorneys must wait.

Mr. FAUNTROY. Is it fair to say that you believe that a substantial number of those incarcerated in our D.C. jail should not be there?

Mr. CARTER. I believe that we can reconsider or review our situation. There are several different circumstances in which people can view whether inmates should be or accused persons should be incarcerated pretrial. I think the city as a whole has to consider that you have a finite amount of resources for the criminal justice system. There are only so many prosecutors, judges and defense attorneys.

Cases should proceed at an accelerated pace through the system. If that is the case, then you need to make some very hard decisions about which cases should be prosecuted or perhaps which cases can be sidetracked into another administrative process as I refer to in my opening statement.

I think you have to make some very hard choices when you have  $x$  number of beds in a jail, on how many people you can put into a jail. If Mr. Palmer is under judicial order to only have so many persons at Lorton then those persons are sentenced back up into the jail facility.

I just believe that there has been no comprehensive review of the criminal justice system with an understanding that each aspect, law enforcement, the judiciary, and corrections, impact on each other and just focusing on corrections will not solve the problem.

Mr. FAUNTROY. You mentioned that it won't solve the problem with what you call extensive diversion programs. What do you consider diversion programs?

Mr. CARTER. I believe there are some nonviolent property offenses that at the very beginning stages can be taken out of the court system and the accused person could be given the option of going into an administrative process either with or without a determination of guilt or with or without a concession of guilt and say that in exchange for not taking your case through the criminal justice system you promise to give on a scale predetermined, your charge carriers  $x$  number of hours of community service and you give back to your community so that instead of the system expending money or prosecutors, defense attorneys, judges and court personnel as well as social services workers by later placing them on probation, that the case is sidetracked from the beginning and the system is saved somewhat the expenses of handling those types of cases.

Mr. FAUNTROY. I guess my final question, Mr. Chairman, relates to the response Mr. Palmer gave to the question of why we have overcrowding. There is a sentiment in the community that too much emphasis is given the rights of criminals and I wanted to ask, how would you respond to that feeling in the community?

Mr. CARTER. The first thing to understand is that the rights do not belong only to those persons charged with crimes. They belong to everybody. When you talk about lack of emphasis on the rights of persons accused of crimes then understand that that will mean a lack of emphasis of the rights of everybody including those persons calling for that.

They should initially understand that when they talk about that.

Second, we are a country of laws and not of men and the laws were implemented and are on the books for very good reasons. I think the rights safeguarding an accused person should be maintained and honored by the system.

The third thing is I think that just some very intelligent responses by the criminal justice system can respond to the concerns. If there is a problem with narcotics do we put in a major show of arresting users? That is like shooting fish in a barrel, Mr. Congressman. The police and even you indicated, you know where drugs are sold in our city so it is a very easy option for the police to cordon off those locations and pick up every user.

It is cyclical. That person comes into court, the court determines that person has a narcotics abuse problem, order him into a treatment facility and they must wait 4 or 6 weeks to get into the facility to solve the problem, but they will go back to the source, which is where the police are waiting for them.

Mr. FAUNTROY. Is a larger jail an answer?

Mr. CARTER. I don't believe so. I think some very intelligent sources, as I suggest, with respect to rehabilitation. I am not advocating—I do believe there may be some persons who should be incarcerated. That is why we have the laws in that regard. But I think just having other options available to the judiciary through the Sentencing Improvements Act and other options through diversion may be appropriate in relieving our overcrowding problem.

There is only but so much money this city can spend on a jail. There are just other services that the city must be concerned with and must provide to the citizenry.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Mr. DYMALLY. In your opinion, Mr. Carter, what would be the overall impact of the mandatory sentencing law in the crowded conditions situation?

Mr. CARTER. The actual impact, Mr. Chairman, is yet to be determined. There are several philosophies about mandatory minimums, whether it moves discretion from the judiciary at the time of sentencing to the prosecution at the time of charging or whether it will actually incarcerate the persons intended.

I believe there was a study of the New York law, and you may recall that under former Governor Rockefeller there was a very strict narcotics law put into effect. It was so strict that unfortunately they had to go back and amend it because it just completely clogged the court system.

My understanding is that there was also a review of the mandatory minimum situation on the west coast, I believe your State in particular, California, I believe, and it showed there that under the previous systems those persons who commit crimes with guns or who do it in a repetitive fashion go to jail anyway. The courts are going to give them time.

If it is a repeat situation the courts will give them substantial time. So, therefore, it did not really affect in a greater way those class or that aspect of offenders for whom it was intended.

Mr. DYMALLY. What safe and secure, less expensive alternatives to incarceration would you suggest?

Mr. CARTER. Part of it, Mr. Chairman, would impinge knowledge somewhat on Mr. Palmer's statement. He indicated their department was going to go in a larger way toward developing halfway houses.

In recent years it has meant that work release opportunities were available only to persons at the end of their sentence. That option should be available to persons pretrial.

If the court has some worry but not a substantial worry about an accused person who may be employed, it does not make sense to incarcerate that person and then force the city to pay for his family, through public assistance or whatever, if that person can maintain the job during the daytime hours and return to a secure facility at night.

I think a greater emphasis on narcotics treatment in the pretrial stage could possibly lead to some accused persons remaining out on bond and in the community pretrial. I think those are just two of the several options that should possibly be explored.

Mr. DYMALLY. Thank you very much, Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. DYMALLY. Mr. Bronstein.

STATEMENT OF ALVIN BRONSTEIN, EXECUTIVE DIRECTOR,  
NATIONAL PRISON PROJECT

Mr. BRONSTEIN. Thank you, Mr. Chairman.

Mr. DYMALLY. You have a prepared statement, you are free to summarize it and we will enter it into the record.

Mr. BRONSTEIN. Thank you, Mr. Chairman, for inviting me to testify. I am appearing in my capacity as executive director of the National Prison Project of the American Civil Liberties Union Foundation—the largest such group in the country—and since 1972 we have been involved primarily in litigation and negotiations attempting to deal with the problem of overincarceration in this country and the conditions of confinement in our country's jails and prisons.

At this time we are working in about 22 States.

Personally, I have been consulted by various correction officials and legislative committees throughout the country, as well as the Congress, and I feel also that I have some personal insight on the problems of the criminal justice family of the District. In December 1980, I was asked by the German Marshal Fund of the United States to coordinate and then lead a group of D.C. criminal justice officials on a study tour of Sweden and the United Kingdom.

That group included a representative—then U.S. attorney; chairman of the parole board; the then police chief; president of the City Council; the head of the Mayor's Office of Criminal Justice Plans and Analysis; and a representative of the superior court. The group has continued to meet on a monthly basis, with various successors in office, such as Mr. Harris who is now participating as the current U.S. attorney.

One interesting observation I might have about that group is that the Chief of Police has been conspicuous by his absence—that is the present chief. Chief Jefferson participated in the study and in the group. Chief Turner, I have not seen in the last year-and-a-half. One can only assume he is very busy planning the kinds of silliness that went on this past weekend.

Before we talk specifically about the District, since this is an oversight hearing, I would like to share a few thoughts about the national picture, because the District is not unique in its rather dramatic and horrendous problem of overcrowding.

The prison population throughout the country is booming. According to the most recent reports of the Bureau of Justice Statistics, there were 412,000 State and Federal prisoners incarcerated as of December 31, 1982, a 11.6 percent increase in 1982. When added to the record 12.5 percent in 1981, it capped a remarkable 10 years' surge.

When the prisons get overcrowded it causes backups in the jails. I didn't hear all of the earlier testimony but I wonder whether it was pointed out that the present D.C. jail population includes about 1,400 sentenced prisoners. Most of the prisoners are not detainees but sentenced prisoners.



The District of Columbia during this period experienced a 19.3 percent increase—almost twice the national average—and continues to lead the Nation with an incarceration rate of 531 per 100,000 population.

Of course the most horrendous and overcrowded institution is the District of Columbia jail. That facility is now more than 1,000 people over design capacity.

Congressman Fauntroy asked Mr. Carter about the possible consequences of this situation—is it dangerous? I think we all know what the possible consequences of the current situation can be. A recent report by the Correctional Association of New York indicates that conditions at Attica are the same now as they were just before the uprising in 1971.

The attorney general of New Mexico writing about the tragic riot of 1980 at their penitentiary said, throughout its history the penitentiary of New Mexico has suffered from neglect.

The New Mexico prison has always waited at the end of the line for public money, and elected officials have turned their attention to the ugly problems of the penitentiary only when the institution has erupted in violence and destruction.

These are not isolated incidents although they are the two most dramatic ones. Beginning in 1981, in Michigan there have been dozens of riots and disturbances and hostage incidents resulting in injuries, deaths and destruction. Just last week there was a disturbance at the D.C. jail or Lorton—I am not sure which—resulting in the stabbing of a correctional officer.

I do know that officers and prisoners at Lorton and the jail live in constant fear of violence and assault.

In response to the situation as you look throughout the country, it is disheartening. With few exceptions there is no rational correctional policy, no rational criminal justice policy in the country. Most jurisdictions and State governments react to what is going on with responsive policies. City governments react without having some long-term planning done.

Most of the States and most of the Federal system, are planning expenditure of funds for prison construction without looking at a wide range of demographic factors—unemployment rates, changes in sentencing schemes, economic factors, and impact of judicial intervention. We know that likelihood is facing the District now.

Judge Bryant in the U.S. district court will be considering, in the next few weeks, what action if any he will take about the overcrowding at the D.C. jail.

Above all, I think—this is where the problem lies with many politicians—the public is being pandered to and fed enormous portions of rhetoric instead of insights into reality. Therein lies all of our responsibility—public officials, press, and people like myself. The public is being told constantly, as they were this weekend, that more imprisonment will impact crime rates; that longer and mandatory sentences will somehow satisfy the call for law and order; and that sending more people to prison will deter others from committing crimes; and their streets will be safe.

Most of that is pure myth.

Last weekend's roadblocks and arrest of 400-some persons will have no impact on crime rates in this country. I would guess that

the armed robbers and big drug dealers were laughing to themselves, if not out loud, while that was going on because they were free to do their business while the police locked up people for possession of marihuana, disorderly conduct, parole violations, and traffic violations. That kind of scheme it seems to me just feeds the public's feeling that the police are out there doing something when in fact they are not.

Even the newspaper reports indicate that there was a lot of disagreement about whether that process should go on, although some of the comments quoted are interesting.

Mr. Harris said correction problems can affect our decisions. We don't generate our cases; they come to us.

Judge Moultrie said we cannot control the police. If a crime is committed it is their job to bring them in. Our job is to dispense justice and if that means overcrowding the jail, then overcrowd the jail. That is the City Council and the jail's problem.

Police Chief Tapscott said, we have to clean the streets. We cannot back off. Various members of the Council were opposed to this. Nondangerous offenders were locked up. A real lack of coordination comes through that. Later press reports indicated that Judge Moultrie and the U.S. attorney's office were less than happy about that process. But the police felt they had to go on. The Mayor wanted them to go on. But that kind of thing is clearly only going to add to the overcrowding problem in the police and prosecutor's office, public defender's office, courts and ultimately the jail and Lorton without having statistically significant impact on the serious crime problem in this community.

I think it is time we began to tell the public about that.

It is indisputable that our jails and prisons are dangerously overcrowded, but the new construction is not the solution. The reason for the rapidly rising prison populations is because of the new rash of sentencing laws passed by legislatures throughout the country, as well as in the District, reflecting the increasingly punitive attitudes on what is already the harshest sentencing country in the world.

I excluded Iran, for example, where there is no concept of due process or justice whatsoever. They are harsher than we are—you get arrested at 3 o'clock, tried at 4, and executed at 5. We are not about to do that in this country.

While new prison construction might temporarily ease the situation, it will have no long-term effect on either the crime problem or the problem of overcrowding. As I say, we are locking up twice as many people per capita as Canada, 4 times as many as West Germany, 10 times as many as the Scandinavian countries and we send them away for longer periods of time. Yet every study that has been produced, most recently by the Federal Government's National Institute of Justice, finds there is little evidence that crime rates are directly related to imprisonment use.

We need to dispel another myth by looking at who fills the prisons and causes the overcrowding. Contrary to public perception our prisons are not filled primarily with dangerous people. Throughout the country, in the last 10 years quoted in the National Institute of Justice report, the prisoners doubled, the percentage of nonviolent

prisoners went up and the percentage of violent prisoners in custody has gone down.

Increases are the result of such nonviolent offenses as disorderly conduct, being drunk, traffic violations, possession of marihuana, parole violators—contributing nothing to the crime rate and yet jamming up the system. I think the answer is that we have to begin to reverse the trend toward overuse of incarceration in this country.

The potential penalty of long-term imprisonment does not deter crime. It is the certainty of punishment and probability of getting caught that is the most important factor in assessing that certainty. Yet the apprehension rate for serious street crimes is so low that most offenders do not expect to get caught and imprisoned.

We also know that incarceration and the whole system is used discriminatorily against blacks and other minorities and poor people. Blacks in this country are currently imprisoned at 10 times the rate of whites with no correlation to crime rates.

Incarceration is our most expensive form of punishment. It places an enormous burden on the taxpayers. The single prison cell costs \$30,000 to \$80,000 to construct and costs from \$10,000 to \$25,000 to keep a person in prison for 1 year. The District is among the highest cost jurisdictions in the country. So we are up at that high rate.

We believe that incarceration for most offenders should be the sanction of last resort. A judge should be required to impose the least severe measure necessary to protect society. There are alternatives which have been highly successful, although their use has been far too limited.

In the State of Alabama, as a result of the lawsuit we brought, there was required to be established work release centers throughout the State.

They now accommodate 20 percent of the sentenced State prisoners, 1,000 out of 5,000, in work release centers. In the first 8 months of last year, those prisoners earned \$2 million; they paid the department of corrections for housing and transportation \$540,000; they paid their dependents \$111,000; they paid Federal and State taxes of \$241,000. If that same 1,000 prisoners had been imprisoned for the year it would have cost the State of Alabama \$10 million, or 1,000 times \$10,000, which is their cost.

New York City's community service sentencing project in Brooklyn and the Bronx handled 400 offenders a year who were sentenced to perform 70 unpaid hours for the benefit of the community. We are doing that under Judge Murphy in superior court. And we should do more. The program in Quincy, Mass., finds jobs for defendants who are sentenced to make victim restitution for theft, personal injury or property damages. The program produces \$200,000 in restitution each year with no cost to the taxpayer. Seventy-five percent of the participants in that program successfully completed the program, the 25 percent who don't complete it serve their jail sentence.

Work release, community service, victim restitution, efficient vocational training and education, supervised probation, all of those cost less and appear to work better than warehousing people in jails and prisons.

I have also attached to my statement—and I won't go over it—an excerpt from a recent decision in New York dealing with the problems of that city's jail at Riker's Island where the judge proposes various alternatives to incarceration, bail reform and other things. I commend that to your attention.

There are very few corporate criminals, white collar criminals, and corrupt public officials in our jails and prisons. They are filled instead with alcoholics, drug addicts, prostitutes, street criminals, essentially social problems and will be addressed only when we seriously do something about problems of race, unemployment, inadequate housing, and medical care in our country.

We have to stop trying to do with your jails and prisons what they cannot do and what we are unwilling and incapable of doing in the proper forum. We have to stop, I think, stop caging so many people in this city and country if we wish to hold ourselves out as a civilized society.

I would be glad to answer any questions, Mr. Chairman, and members of the committee.

[The prepared statement of Alvin J. Bronstein follows:]

PREPARED STATEMENT OF ALVIN J. BRONSTEIN, EXECUTIVE DIRECTOR, THE NATIONAL PRISON PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION

I am pleased to appear before the Subcommittee, at the invitation of the Chairman, to comment on prison overcrowding and alternative sentencing in the District of Columbia. I am appearing in my capacity as Executive Director of the National Prison Project of the American Civil Liberties Union Foundation.

The National Prison Project since 1972 has sought to strengthen and protect the civil and constitutional rights of adult and juvenile prisoners, to improve conditions in the nation's prisons and jails, and to develop rational, less costly and more humane alternatives to traditional incarceration. We have also engaged in efforts to devise model prison procedures and regulations.

In furtherance of the activities described above, the Project's staff attorneys and other staff members are engaged in the representation of prisoners incarcerated in penal institutions throughout the country. The Project has been and is presently involved in many important cases concerning the rights of prisoners. In addition, the Project's staff has been consulted by correctional officials and legislative committees in various states. I personally have been a consultant to the National Institute of Corrections of the Department of Justice, various state Departments of Corrections, and to the American Bar Association's Joint Committee on the Legal Status of Prisoners as well as others.

Before we talk specifically about the District of Columbia, I would like to bring the national picture to your attention and

particularly the most dramatic and dangerous situation that exists in the country's correctional facilities today. That is the booming prison population in our federal, state and local jails and prisons and the horrendous overcrowding that has resulted at a time when there are fewer and fewer resources available. According to the most recent report of the Bureau of Justice Statistics, U.S. Department of Justice, there were 412,303 state and federal prisoners incarcerated as of December 31, 1982. There was an 11.6 percent increase in prisoners during 1982, and when added to a record 12.5 percent increase during 1981, it caps a remarkable ten year surge. According to a Bureau of Justice Statistics Bulletin,\* "Should this rate of growth continue for the next two years, the U.S. prison population will exceed one-half million before the end of 1984." State prison population and overcrowding, of course, directly impact local jails which are often forced to house sentenced state prisoners in already overcrowded facilities.

The District of Columbia experienced a 19.3 percent increase in 1982, almost twice the national average, and continued to lead the nation with an incarceration rate of 531 per 100,000 of population, more than three times the national average. The result, of course, is that the District's correctional facilities are horrendously overcrowded, particularly at the District of Columbia Jail. There, for the past six months, the population

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\* October/November 1982 NCJ-84875

has been approximately 1,000 persons over the design capacity and increasing all the time.

We know all too well what the possible consequences of the current situation can be. A recent report by the Correctional Association of New York indicates that conditions at the Attica Correctional Facility were the same now as they were just before the uprising in 1971. And, the Attorney General of New Mexico, writing about the tragic riot of 1980 at the Penitentiary in Santa Fe, has said:

Throughout its history, the Penitentiary of New Mexico has suffered from neglect. The New Mexico prison has always waited at the end of the line for public money, and elected officials have turned their attention to the ugly problems of the penitentiary only when the institution has erupted in violence and destruction. Lack of space, inadequate programs and understaffing have all been part of the prisons' tradition.

Report of the Attorney General on the February 2 and 3, 1980 Riot at the Penitentiary of New Mexico, issued June 1980.

These are not isolated incidents. Beginning in the summer of 1981 in Michigan, there have been dozens of riots, disturbances and hostage incidents in prisons and jails across the country resulting in injuries, death and destruction. Just last week a disturbance at the D.C. Jail resulted in the stabbing of a correctional officer, and officers and prisoners at Lorton are reported to be in constant fear of violence.

The annual report published recently by the National Prison Project, which surveys the status of major pending court actions on a state-by-state basis, shows the low level of civilization of our society when it comes to our nation's prisons. According to

the report, thirty states, the District of Columbia, Puerto Rico, and the Virgin Islands are operating under court orders because of violations of the constitutional rights of prisoners. Each of these orders has been issued in connection with total conditions of confinement and/or overcrowding which resulted in prisoners being subjected to cruel and unusual punishment in violation of the Eighth Amendment to the Constitution. In addition, legal challenges to major prisons are presently pending in 9 other states and there are challenges pending in 8 states in which there are already court orders dealing with 1 or more institution.

The response to this sad situation is disheartening. With very few exceptions, there is no rational correctional policy in this country. In its Preliminary Report to Congress on Prison Population and Policy Choices, (September 1977), ABT Associates, Inc., in a study commissioned by LEAA, found:

"Currently in most jurisdictions State government is, at best, only able to react to the situation [of prison overcrowding] with responsive policies. There appears to be very little indication of comprehensive proactive policy-making with regard to prison population."

Thus, the federal prison system and most of the states are planning massive expenditures of funds for prison construction based upon present and immediately past prison counts, without examining a wide range of other matters: demographic factors; unemployment rates; contemplated changes in sentencing schemes; economic factors; the impact of judicial intervention; and the current national movement in standard setting. Planning then is

being done in a manner that is policy-blind rather than being policy-informed.

Above all, the public is being pandered to, lied to, and fed enormous portions of rhetoric instead of some insight into reality. And herein lies your responsibility. Without serious challenge by politicians who know or should know better, the public is being told:

- that more imprisonment will somehow impact crime rates;
- that longer and mandatory sentences will somehow satisfy the call for "law and order";
- that sending more people to prison will somehow deter others from committing crimes;
- that their streets will be safe if offenders are sent to prison;
- that given enough resources, our prisons can "rehabilitate" offenders.

We know that all of most of the above is pure myth and, yet, most politicians actively contribute to, or acquiesce by their silence in, this rhetoric.

In spite of the lack of real planning and policy making, hundreds of millions of dollars are being poured into prison construction at a time when dollars for human needs are so scarce. Between July 1979 and July 1980, twenty-three new prisons were opened by state correctional systems at a cost of over \$100 million. Today, more than two-thirds of the states have proposed to build or have under construction at least one

major correctional facility. The Department of Justice's budget request to the Congress for Fiscal 1984 includes a Buildings and Facilities request of \$97,142,000 for the Bureau of Prisons, up \$90,475,000 from 1983. And, of course, it will cost billions of dollars to amortize the debt financing and operation of these new prisons.

It is indisputable that American prisons are dangerously overcrowded, but new construction is not the solution. The reason for the rapidly growing prison population is not the "crime wave", but rather the rash of new, stiff sentencing laws that have been recently passed by state legislatures, reflecting increasingly punitive attitudes in what is already one of the harshest sentencing countries in the world. In the past, trial judges retained wide discretion in imposing sentences. Now, all but twelve states have replaced discretionary sentencing with minimum prison sentences for many crimes. In Indiana, for example, burglars and rapists are serving 100% more time than in the past and armed robbers 30% more. Indiana's prison population now exceeds its capacity by 30% and its correctional facilities are powder kegs. In New York City between 1971 and 1980, the percentage of defendants sentenced to more than three years rose from 26% to 85%. Similar results will obtain under the District's new mandatory sentencing scheme. Critics of the new sentencing laws rightly say they were passed in a climate of public hysteria without careful examination of their impact on the criminal justice system or public debate.

While new prison construction might temporarily ease the situation, it will have no long term effect on either the crime problem or the problem of prison overcrowding. We already lock up twice as many people per capita as Canada, and four times as many as West Germany. In fact, only two industrialized countries lock up more people than we do: the Soviet Union and South Africa. Yet, in a report sponsored by the federal government, the National Institute of Justice found "little evidence that crime rates are directly related to imprisonment use."\* In that same study the National Institute of Justice also found that historically, state prison populations increase dramatically in years following prison construction, regardless of any other factors such as crime rates or rates of conviction.

We also need to dispel another myth by looking at who is filling our prisons and causing this massive overcrowding. Contrary to the public perception, our prisons are not filled with dangerous people. According to the National Institute of Justice study, while the numbers of prisoners doubled in the past 10 years, the percentage of non-violent prisoners in custody has increased and the percentage of violent prisoners has gone down.

What then are some of the possible solutions and alternatives to a continuing escalation of prison population? We must begin by reversing the current trend towards longer and harsher sentencing schemes.

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\* American Prisons and Jails, National Institute of Justice, October 1980.

Justice E. Leo Milonas, Deputy Chief Administrative Judge of the New York City courts, has written: "It cannot be asserted too strongly that the problem of crime -- which is as disturbing to judges as it is to everyone else -- cannot be solved by an approach that relies primarily on punishment by incarceration." And yet that is our approach, despite overwhelming evidence that it should be used sparingly. Incarceration is a destructive and dehumanizing experience which further alienates the inmate from society and breeds more crime. As Norman Carlson, head of the Federal Bureau of Prisons, has stated, "Jails are tanks, warehouses. Anyone not a criminal when he goes in will be one when he comes out." And most prisoners do come out. Unless we are prepared to put people away for thirty or forty years for all crimes, which even the most zealous law and order advocates are not calling for, we are going to continue to see a stream of damaged, embittered and criminalized human beings emerging from our prisons.

The potential penalty of long-term incarceration does not by itself deter crime. Most studies show that it is the certainty of punishment that deters crime, and the probability of getting caught is the most important factor in assessing that certainty. Yet the apprehension rate for serious street crimes is so low that most offenders simply do not expect to be caught and imprisoned. After all, when the speed limit is not enforced, drivers speed. The fact that there is a stiff penalty on the books for speeding has little effect on people's behavior if they know that when they speed, they are not likely to get caught.

It's the same way with crime. In that respect, the heaviness of the potential penalty does not deter very much, if the probability of getting caught in the first place is low. To quote from the National Institute of Corrections, an arm of the Department of Justice, "The current use of incarceration as a penal sanction shows no logical relationship to crime rates."\*

Incarceration serves no rehabilitative purpose and does not reduce the recidivism rate of convicted offenders. In fact with the young, incarceration actually increases recidivism. A highly praised study of Philadelphia youth, which traced the lives of 10,000 boys born in 1945, revealed the following sobering fact: the more punitive the treatment (institutionalization, fine or probation), the more likely the youngster is to commit more serious crimes with greater rapidity than those treated less harshly.\*\* "We must conclude", wrote the authors of the study, "that the juvenile justice system, at its best, has no effect on the subsequent behavior of adolescent boys and, at its worst, has a deleterious effect on future behavior."

Incarceration is used discriminatorily against blacks and other minorities. Blacks are currently imprisoned at almost ten times the rate of whites, with no real correlation to crime rates.

\* Request for Proposals, National Institute of Corrections, Fiscal Year 1982, July 1981, p. 14.

\*\* Wolfgang, Figlio and Sellin, Delinquency in a Birth Cohort, Univ. of Chicago Press, 1972.

Incarceration is our most expensive form of punishment and places an enormous burden on the taxpayers of this country. A single prison cell costs from \$30,000 to \$80,000 to construct and it costs from \$10,000 to \$25,000 to keep a prisoner in prison for one year.

In spite of this indictment of incarceration as a primary form of punishment, it is being used more today than ever before. Politicians, anxious to satisfy their constituent's demands for a solution to crime, have enacted harsh, mandatory sentencing laws. In Indiana, for example, a two year prison sentence must be imposed for second time shoplifting! The number of offenders sentenced to prison was 80% higher in 1978 than in 1968 and the upward trend continues. According to Griffin Bell, President Carter's Attorney General and a former federal judge, "We've put too many people in prison and made it meaningless." Bell urges that more consideration be given to alternatives to incarceration and we agree.

The ACLU believes that incarceration should be the sanction of last resort. [A judge should be required to impose the least severe measure necessary to protect society. There are alternatives which have been highly successful, although their use has been far too limited.]

-- The State of Alabama has established several work release centers which now accommodate 20% of the state prisoners. During the first eight months of 1981, these inmates:

Earned.....\$1,940,780

Paid the Department of  
Corrections for housing.....\$ 498,308

Paid the Department of Corrections for transportation...\$	46,752
Paid their dependents.....\$	111,049
Paid in federal taxes.....\$	207,682
Paid in state taxes.....\$	34,783

If these 1,000 inmates had been in prison instead, they would have cost the taxpayers of Alabama \$10,000,000 for one year.

-- New York City's Community Service Sentencing Project in Brooklyn and the Bronx has handled more than 400 offenders who were each sentenced to perform seventy hours of unpaid service for the benefit of the community. They cleaned senior citizen centers, youth centers and parks, installed smoke alarms for the elderly, and performed other useful work. Some continued on as volunteers after completing their court-imposed obligations.

-- The "Earn-It Program" in Quincy, Massachusetts finds jobs for defendants who are sentenced to make victim restitution for theft, personal injury or property damage. The program produces \$200,000 in restitution each year. Seventy-five percent of the participants successfully complete the program; the remaining 25% serve jail sentences.

-- The House of Umoja in Philadelphia has contributed to stopping gang killings which once plagued the city's ghettos. Called a sanctuary by its founders, it offers youthful offenders who are committed to its care vocational training and jobs, education, and the support of an extended family type social structure.

Work release, community service, victim restitution, and effective vocational training and education are not just more humane alternatives to incarceration. They cost a lot less and they appear to work a lot better than warehousing people in jails and prisons.

Finally, I would urge this Committee and the District government to look carefully at the proposed remedies to overcrowding contained in a recent decision by a federal judge in New York in a case dealing with the massive problems of New York City's correctional facilities.\*

There are very few corporate criminals, white collar criminals and corrupt public officials in our jails and prisons. They are filled instead with alcoholics, drug addicts, prostitutes and street criminals. These are essentially social problems and will be addressed only when we seriously do something about problems of race, unemployment, inadequate housing and medical care in our country. We have to stop trying to do with our jails and prisons what they cannot do, and what we are unwilling or incapable of doing in the proper forum. We have to stop caging so many people in this city and in this country if we wish to hold ourselves out as a civilized society.

\* The remedial portion of the May 19, 1983 decision in Benjamin v. Malcolm is attached hereto as an Appendix.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAMES BENJAMIN, MIGUEL GALINDEZ,  
BRUCE HAYES, JOSE SALDANA and  
ROBERT ESCHERT, detainees of the  
New York City House of Detention  
for Men, individually and on be-  
half of all other persons similarly  
situated,

Plaintiffs,

-against-

75 Civ. 3073 (MEL)

BENJAMIN J. MALCOLM, Commissioner of  
Correction of the City of New York;  
ARTHUR RUBIN, Warden, New York City  
House of Detention for Men; GERARD  
BROWN, Deputy Warden, New York City  
House of Detention for Men; and  
ABRAHAM D. BEAME, Mayor of the City  
of New York, individually and in  
their official capacities,

Defendants.  
-----X

APPEARANCES:

THE LEGAL AID SOCIETY  
Prisoners' Rights Project  
15 Park Row - 19th Floor  
New York, New York 10038  
Attorneys for Plaintiffs

Of Counsel: WILLIAM E. HELLERSTEIN, ESQ.  
JONATHAN S. CHASAN, ESQ.  
THEODORE H. KATZ, ESQ.  
AMY ROTHSTEIN, ESQ.

FREDERICK A. O. SCHWARZ, JR., ESQ.  
Corporation Counsel  
100 Church Street  
New York, New York 10007

Of Counsel: LEONARD KOERNER, ESQ.  
PAUL REPHEN, ESQ.

We have devoted considerable study to the many alternatives to release suggested by various expert agencies, as outlined below in Section IV, and we conclude that the defendants can comply with the population caps without the necessity of releasing inmates into the community.<sup>17/</sup>

In summary, we conclude that the general legal standards for evaluating conditions of pretrial detention have not changed since the time that the population caps were decreed. The two factors which have received increased attention since that time, duration of stay and the ability of the state to comply without releasing inmates into the community, see LaReau v. Manson, supra, have both been considered on this application. Accordingly, the population caps established in 1980 and 1981 are still proper and necessary to afford inmates in HDM and AMKC constitutionally adequate conditions of confinement.

IV

REMEDIES FOR OVERCROWDING

Our conclusion that to allow the populations of HDM and AMKC to be increased would result in the institutions being unconstitutionally overcrowded is, as it is required to be, an objective finding based on the facts relating to the facilities themselves. It does not depend on a determination that alternatives exist either to the proposed population increases or to releasing inmates, and the law

does not require such a determination. However, LaReau suggests canvassing the alternatives, and whether the law requires it or not, it is surely appropriate for a court fashioning a decree in an institutional reform case to make such a determination.

That task has been facilitated by the existence of a wealth of material proposing alternatives to the increases of population requested by the defendants. We have analyzed this material with care and conclude that a variety of methods exist to deal with increased numbers of criminal defendants without jeopardizing public safety even if the population caps at HDM and AMKC are maintained.

At the request of Commissioner Ward, two recent studies have been conducted on alternative means for dealing with overcrowding in the city jails, one by the United States Department of Justice's National Institute of Corrections ("NIC") (Pls.' Ex. 21); the second by a newly-created Committee on Jail Overcrowding under the direction of Dr. Gerald W. Lynch, President of the John Jay College of Criminal Justice ("the Lynch Committee") (Pls.' Ex. 22). Both reports conclude that a number of cures for overcrowding exist, and that implementation of such alternatives would in fact result in cost savings to the city.

The Lynch Committee found that "there is a significant number of prisoners who could be released on bail, and others who could be appropriately punished or supervised without recourse to maximum security confinement, thus

freeing valuable resources in terms of space, personnel, etc." (Lynch Committee Report, Pls.' Ex. 22 at 2). The Committee listed eight proposed alternatives to incarceration, two of which the Committee believed could be implemented immediately: allowing the usage of ten percent cash as security for bails of \$2500 or less; and acceptance of personal checks or credit cards for posting of bail. Utilization of these alternatives, the Committee states, could free up over 1,000 beds a day in Department of Correction facilities at minimal cost.<sup>18/</sup> Other suggestions by the Lynch Committee include: expanding the use of intensive probation, community service and victim restitution as alternatives to incarceration for selected defendants; expanding pretrial services in order to hasten the bail process for detainees who are in any event going to be released within a short period; and expediting case processing so as to decrease pretrial detainees' lengths of stay. According to the Committee, the significance of the last possibility "cannot be understated. ... If length of stay in 1983 was back to 26 days [the average length of stay in 1977], 2456 daily beds would be freed up [throughout the city jail system]." Id. at 24.

It is worth noting that, in the opinion of the Committee, the proposed alternatives would reduce public expenditure; for example, the Committee estimates that if pretrial services were expanded by 15 employees at a cost

ed 105% of capacity, as it probably does now, to accelerate the release of those who had served six to nine months or more by one or two months, several hundred beds --perhaps more than the number at issue in this case --would be made available to the City without cost.

The New York City Board of Correction has endorsed the conclusions of the Lynch Committee, and, in addition, made specific recommendations which, it asserts, "should be implemented immediately," including: expedited sentencing of the 500 or so inmates who are awaiting sentence; immediate emergency expansion of the work release program; and meaningful implementation of bail reviews. (Letter to the Court, dated March 11, 1983, Defs.' Ex. C at 8, 9).<sup>21/</sup>

Some of the proposals discussed above will of course take time to implement; others can be put into effect with minimal delay.<sup>22/</sup> It is worth noting that many of the proposals and the data on which they are based have been available for a long time. For example, in October, 1980, the Correctional Association of New York, after an extensive study of New York City's pretrial detention system, submitted a thorough report which included many of the same kinds of information and proposals made by the Lynch Committee and the NIC. (Report of the Visiting Committee of the Correctional Association of New York, dated October 1980 Pls.' Ex. 23). Of particular interest, the 1980 report states:

"Over 80 percent of detainees who post bail do so within seven days of their

initial confinement. The key is to develop procedures to identify such persons and locate potential sureties earlier in the process to facilitate the posting of bail prior to transportation to jail."

(Id. at iv). The report goes on to list many possible methods for facilitating speedy posting of bail (Id. at 8-9). The report also recommends expanding pretrial services, a suggestion of the Lynch Committee, and increasing the use of Desk Appearance Tickets, a suggestion of the NIC.

Many of the proposed alternatives cannot be implemented by the Department of Correction without the full cooperation of the other actors within the criminal justice system. We fully credit the finding of the NIC that:

"The component of New York City's criminal justice system most under fire because the City's jails are crowded -- namely, the Department of Corrections -- is the component least able to impact the crowding problem. \* \* \* The DOC is essentially the housekeeper for a problem of others' making. There is virtually no chance that the City's overcrowding problem can be brought under any significant degree of control unless and until officials of [the other] components of criminal justice ... accept some share of responsibility for the problem's existence and for its resolution."

(NIC Consultants' Report, Pls.' Ex. 21 at 7, 11-12).

It follows that if the Department cannot do the job without the assistance of officials of the other components of the criminal justice system, it is entitled to that assistance.<sup>23/</sup>

The standard which guides us all is the Constitution -- from which flows the right to non-punitive conditions of custody for non-convicted prisoners. In this connection the words of the United States Supreme Court in Kolender v. Lawson, 51 U.S.L.W. 4532, 4534 (U.S. May 2, 1983) decided only weeks ago, are illuminating:

"Appellants stress the need for strengthened law enforcement tools to combat the epidemic of crime that plagues our Nation. The concern of our citizens with curbing criminal activity is certainly a matter requiring the attention of all branches of government. As weighty as this concern is, however, it cannot justify [action] that would otherwise fail to meet constitutional standards ..."

\* \* \* \* \*

For the reasons stated above, defendants' motion is denied.

It is so ordered.

Dated: New York, New York  
May 19, 1983

MORRIS E. LASKER

U.S.D.J.

17. However, while LaReau teaches that the trial court should consider whether realistic alternatives to release are available, we do not understand it to have overruled cases in this Circuit which provide that, under appropriate circumstances, release may be ordered. See Detainees of Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392, 399 (2d Cir. 1975) ("this Court is hardly in the position to order the City to raise the necessary funds to build additional facilities. We can, however, order the release of persons held under conditions which deprive them of rights guaranteed by the Constitution unless the conditions are corrected within a reasonable time."); Rhem v. Malcolm, 507 F.2d 333, 341 n.20 (2d Cir. 1974) ("This Court ... cannot require the voters to make available the resources needed by public officials to meet constitutional standards, but it can and must require the release of persons held under conditions which violate their constitutional rights, at least where the correction of such conditions is not brought about within a reasonable time") (emphasis added) (quoting Hamilton v. Love, 328 F.Supp. 1182, 1194 (E.D. Ark. 1971)).
18. The Committee concluded that no additional costs would be associated with the first alternative, and that the only cost of the second would be the charge incurred to hire a service similar to those used by merchants to verify checks.
19. We discuss this matter in terms of protecting the public because that is the issue as it has been framed in various public discussions of the question. However, as a matter of law, the purpose of bail under the New York statute appears to be restricted to assuring the defendant's appearance at trial. N.Y. Crim. Proc. Law § 510.30(2)(a) (McKinney 1971 & Supp. 1982).

20. The NIC also suggested the possible availability of financial support to the city for the purpose of establishing a city-wide coordinating group to develop a formal plan for management of the city's jail population. Id. at 25, 21.
21. Another possibility which exists for the city would be to build further temporary facilities, as it has already done since 1980. However, while such a solution, if it became necessary, would solve some of the problems at HDM and AMKC noted above, the creation of such new facilities would tax central services of the existing institutions to the same extent as if the use of added cells at HDM or larger dormitory populations at AMKC were authorized.
- In this connection, we further note that the Department of Correction expects to reopen the Manhattan House of Detention for Men ("the Tombs") in July of this year (Tr. 508-09).
22. A few of the proposals appear to be capable of fairly rapid implementation. For example, Commissioner Ward testified that he has already begun implementation of the Lynch Committee proposal of accepting checks and money orders for bail (Tr. 424). In addition, the Commissioner has caused letters to be sent to all state court judges reminding them of the availability of partially secured bail (Tr. 425).
23. In discussing various alternatives at the hearing, Commissioner Ward stated to the Court: "if you release him [a pretrial detainee], someone will hold you responsible for releasing him; if I release him someone will hold me responsible. You have lifetime tenure and I don't." (Tr. 506). However refreshing Commissioner Ward's candor, lifetime appointments do not authorize federal judges to issue orders in excess of their jurisdiction, and elected and appointed officials are not barred from pursuing creative recommendations made by responsible public bodies.

Mr. DYMALLY. Thank you very much.

Mr. Fauntroy.

Mr. FAUNTROY. Mr. Bronstein, I want to thank you for a very thorough treatment of our oversight hearings subject both on overcrowding and alternative sentencing.

I get the impression you feel that there are people in our jails who should not be there. If so, I wonder if you would describe the type of person who should not be in our jails.

Mr. BRONSTEIN. Well, I think to give you examples, a person who was picked up Saturday night or Sunday in the roadblocks for possession of three joints of marijuana; a person who is an 18-year-old unemployed youth who steals three records or three T-shirts from a shop; a person who gives a bad check for \$130.

Now, a lot of those people are never put through the entire system and wind up with a sentence and go off to Lorton. I am sure Mr. Harris would have better figures than I. But a lot of them are arrested, spend sometime in the lockups, spend sometime in the jail awaiting or trying to make bail, and some of them—they all clog up the system. It is people like that.

Burglars, even second offense burglars who don't use a weapon, don't hurt anyone, break in while the house is unattended, steal a TV or stereo, those people ought to be dealt with in some other system.

We are not going to deter burglars by locking up one kid because the other nine never believe they are going to get caught. Those kinds of people can be dealt with in a different way.

Mr. FAUNTROY. I wonder if you would care to outline some of the different ways. You mentioned work release, community service, victim restitution and the like. What would you have in mind for the kinds of cases you have cited.

Mr. BRONSTEIN. For those cases I would do a combination of probation; requiring them to report to a probation officer so we can keep track of them; requiring them to work 1 day of a weekend or 2 days of a weekend for the next 6 months in the Martin Luther King Library which is short of staff; or to work at some of the shelters for the elderly; or to work ferrying elderly people who need to go to the hospital back and forth; require them, also, if they get a job to pay restitution to the victim so that the victim is made whole.

Our present system victimizes the victim. When they get ripped off and when the person is sent to Lorton they don't get their goods back. They are victimized the second time by having to spend three or four times going to court.

So a combination of things would work for those people. If they are drug related, I would require them to be in a drug abuse program. If they are alcohol related as many of them are, I would require them to be in an alcohol program.

Some of my colleagues on the American Civil Liberties Union take issue with me. I don't think we have much due process in the system now. I don't think we get fair trials. I don't think we get effective assistance of counsel. I don't think we get presumption of innocence. I am willing to give those up. I am willing to say, give up your trial, your right to trial by jury, it just doesn't work, require these people to get into these other programs and do these

other things, give up some of these rights which are mythical anyway and I am not saying that to disparage either the U.S. attorneys or the courts.

The system is just too congested, too crowded to do that. We cannot keep up with the kind of system that our Constitution thoroughly outlines. We have a hodgepodge of a system. We do the best we can. I think we have to get people out of that system instead of putting more people into it.

Mr. FAUNTROY. What would be your view of the Speedy Trial Act for the District of Columbia in facilitating both process and alleviating overcrowding and perhaps setting the stage for some of the alternate sentencing procedures you suggest?

Mr. BRONSTEIN. If we had a Speedy Trial Act with nothing else we would have chaos. We don't have the prosecutors, we don't have the defenders, and we don't have the judges to process these people nor do we have the space to put them.

I believe the last figures I heard from Judge Murphy were that there was a year-and-a-half backup of misdemeanor cases awaiting trial, and 8 or 9 months backup on felony cases awaiting trial. The mandatory sentencing scheme which just went into effect is going to increase the numbers of people who want trials rather than to cop pleas. We don't have resources to deal with those people.

So the Speedy Trial Act by itself would accomplish very little.

Mr. FAUNTROY. You cited a number of instructive examples of alternative sentencing procedures like work release and the like. What kind of jobs do persons on work release perform in these other States, you mentioned Alabama and New York and Massachusetts.

Mr. BRONSTEIN. In Alabama a lot of it is—there are two kinds of work release, one is where you work for the State and another is where you work for private employers. In times of unemployment it is difficult to find a lot of private employment. State jobs include road maintenance, they include maintaining State parks, they include working on State equipment, State garages doing repairs, the private employment jobs vary as jobs vary throughout the country.

There are a wide variety of them. A lot of them, unfortunately, are fairly ministerial and don't lead to long career development but that is a bigger social problem.

We have a big problem of unemployment in this country, we have a big problem of inadequate housing and inadequate medical care, we have racial problems and all kinds of things.

I am not suggesting that they are the cause of all criminality but they certainly will never address crime successfully until we address those issues.

Mr. FAUNTROY. I am encouraged by the examples you gave, work release programs, for example. But I am equally concerned about the high rate of unemployment here in the city, and how realistic it might be to hope that we will be able to implement these programs?

Mr. BRONSTEIN. The program I describe in my statement in Quincy, Mass. which, the last time I looked, had about 18 percent unemployment. That is because of the lack of work in the shipyards which is their major industry. Yet Judge Kramer up there has been able to go to merchants and businesses in downtown

Quincy and say you have an investment in our criminal justice system. I want you to give me two jobs, one job, whatever, I want so many months of jobs from your people, specifically designed to see if we cannot turn some of these people around; specifically designed to see if we can keep them out of the criminal justice system which we know only makes people worse.

It has worked. I think some of the same things can be done here. I think the same employers ought to be looking for jobs for unemployed youth who don't get into trouble because there are lots of them out there. There are lots of unemployed youth out there who are not ripping off people.

Obviously we have to look after them as well.

Mr. FAUNTROY. In describing persons who should not be incarcerated you mentioned a number of categories. I wonder if you would have any concern that a nonincarceration policy might encourage some criminal activities?

Mr. BRONSTEIN. There is no evidence that it does. I am not sure it will deter criminal activity but I don't think it will encourage criminal activity. The perception that most people have is that crime pays, they will not get caught. Most crime in this city and in the country particularly urban crime, is never reported in the first instance. Of reported crime we have a very low apprehension rate. If we can do what they do in Tokyo—there 96 percent of all reported crime results in arrest. They can deter crime. But we cannot. Our apprehension rate is very, very low.

So people don't perceive they will get caught. They don't stop and think about whether they will get 5 years or go to a work release program.

Let me mention one other thing with respect to your last question, Congressman Fauntroy, on where do we find jobs.

The Labor Department in the Carter administration, early days of the Carter administration, funded a pilot project in the State of Washington which provided unemployment benefits for the first 6 months for a randomly selected group of felons coming out of the State prison.

Half of the group, the control group, were given unemployment insurance, \$180 a week was the figure I think, for 6 months, the other group was not given it.

The control group did 80 percent better in terms of recidivism than the group that didn't have that money.

The cost involved was substantially less than keeping those people locked up in prison. The cost to the community in the numbers of crimes these people did not commit, how much it would cost to process them, was overwhelmingly less by doing it this way.

Even if we have to in some way—seems like a bizzare thing to say—to pay felons when they come out, if we cannot find jobs for them, it will pay in the long run. It will cost less to do it that way. I think we have to make jobs, find jobs, even if they relatively take up much time. If we keep them busy and give them some money, some ability to learn something, a lot of them will not go back to crime. Most recidivism takes place in the first 3 months, and if we can keep them going for 6 months as they did in Washington, things change.

Mr. FAUNTROY. Thank you very much.  
 Mr. DYMALLY. Thank you very much.  
 Mr. Bronstein, you have had success going to court on the question of crowded cells.

Mr. BRONSTEIN. Yes.  
 Mr. DYMALLY. Have you had any success in influencing those systems to use other alternative methods for rehabilitation and for release?

Mr. BRONSTEIN. Yes. The Alabama work release program that I mentioned before resulted directly from our litigation there. In the State of Rhode Island we have been able to, through the lawsuit, wind up with 30 percent of that State's population either in minimum security, which is essentially work release, or straight work release.

We have also been able to develop drug programs.  
 A lot of that, of course is beyond the capability of the court to order those things, those are things you have to start negotiating with after you get a finding that the system is unconstitutional. One hopes something like that will happen here in the District when Judge Bryant lowers the boom if he does.

Mr. DYMALLY. Thank you very much.  
 Mr. BRONSTEIN. Thank you.  
 Mr. DYMALLY. Mr. Forbes and Mr. Brown, if you would come forward.

#### STATEMENTS OF DEXTER FORBES AND RONALD BROWN, LORTON INMATES

Mr. DYMALLY. Identify yourself for the record, please. Do you have a prepared statement?

Mr. FORBES. Yes, I do.

Mr. DYMALLY. If it is lengthy you may want to abbreviate it by summarizing your points. If not, you may proceed with the entire statement but we will enter the entire statement into the record without objection.

Mr. FORBES. I was unable to get a copy of it.

Mr. DYMALLY. Leave the original with us and we will get a copy back to you.

#### STATEMENT OF DEXTER FORBES

Mr. FORBES. Mr. Chairman, I am Dexter Anton Forbes, I am chairperson of the NAACP Legal Research Committee. It is unquestionably with great pleasure that I extend my most generous gratitude to you, the Director of the District of Columbia Department of Corrections and, especially, Mr. Donald Temple for making it possible that my colleague and I might journey here today from the adult central facility of the District's prison located in Lorton, Va., to share some of our views and perspectives concerning overcrowding in prisons.

Let me first preface this testimony by providing the committee with a little background information about myself. I first entered the District's penal system at the early age of 15. I was committed to several different juvenile facilities. At the age of 18, I was detained at the District of Columbia's old jail in what was known

then as "cellblock No. 1" in December 1972. I was, subsequently, released on probation during the early part of 1973.

Then in November 1973, I was rearrested and detained at the D.C. jail for some 18 months. Finally, in July 1975 I was sentenced to an aggregate consecutive term of 18 to 54 years in connection with an assault with the intent to rob while armed. I arrived, shortly thereafter, at the maximum security facility of the Lorton prison complex in July 1975. I was transferred to the central facility of the Lorton prison complex in May 1976 and since that time I have been uninterruptedly confined at the central facility.

During my tenure of confinement, I have testified before two congressional committees regarding the proposed revision of the basic criminals laws for the District of Columbia which had not been overhauled since 1901. Moreover, I have written numerous articles, lectured at a series of workshops and seminars, drafted proposed amendments to various local District legislation, and participated in challenging an aura of prison inequities.

I am noted, more specifically, in various legislative and judicial circles for my legal perspicacity and understanding. Equally important, I have held, and continue to hold in many instances, positions as: the president of the Lorton legal research committee; honorary member and legal adviser for the lifers for prison reform; legal adviser for the offenders legal liberation movement organization; legal affairs director for the Lorton student government association; and legal adviser for both the NAACP and the office of resident concern, ORC.

Currently I am a senior enrolled at the University of the District of Columbia's Lorton prison college program. I am, furthermore, 6 semester hours away from acquiring an associate degree in legal studies. The most eminent credentials that I possess, however, are the 10 years which I have spent incarcerated in the District's penal system.

My "successful" evolution through this system, notwithstanding its colossal inequities, can only be pegged as incredulous at the very least. My injection into the horrendously overcrowded District of Columbia old jail in 1973 was surfeit with roaches, flies, mosquitoes, and other vermin. Since I had come from a family where cleanliness was imperative, roaches were virtually never seen and vermin were almost never heard of. Even during my youthful confinement in juvenile institutions I had not been exposed to roaches and vermin. In fact, roaches in all stages of development had been found at the District of Columbia old jail—a certain indicator of filthy conditions.

Of course, the dilapidated state of the edifice heightened the extremely unsanitary living conditions. In a civil action, *Campbell v. McGruder*, brought by prisoners in an attempt to remedy the sordid conditions at the District of Columbia old jail, testimony was elicited evincing that windows had been broken and unscrubbed, which created a serious problem with flies and mosquitoes. Old, urine-saturated, and filthy mattresses led to the spread of contagious disease and body lice.

Food service conditions were equally as unsanitary. Food was improperly stored in dirty storage carts that were often infested with insects. The mechanical dishwasher was not adequately maintained

and, therefore, did not even approach the minimum temperature required for proper sanitation. Moreover, food service personnel, many of whom were inmates, were often untrained and did not follow proper sanitation procedures. Inmates were not supplied with adequate or reasonable eating or drinking utensils. Generally, the food was unappetizing and unwholesome.

Presumably, the declaration of the District of Columbia old jail as an affront to the decency demands of the eighth amendment in *Campbell v. McGruder* was applauded by both inmates and corrections officials alike; and even more significantly, viewed by inmates as an Armageddon for the evils of unfit and inhumane conditions. Even the erection of the new \$20 million structure which replaced the District of Columbia old jail was viewed as a blessing by inmates. After all, the facility was, among other things, new, modern, and vermin free. Most importantly, each inmate was afforded adequate space in a one-man cell.

Then came an abrupt flow of inmates. The population proliferated to exorbitant numbers—far in excess of the recommended number of inmates that the facility was built to accommodate.

In 1981, in an apparent response to the vastly overcrowded new detention facility, NDF, a new facility was opened in Occoquan, Va., to house misdemeanor offenders. Almost immediately, this facility was filled to capacity, and more and more persons were being arrested and rearrested and poured into NDF. Needless to say, in a few short months what inmates had presumed to be a sort of millennium was rapidly becoming another horrible nightmare.

Indeed inmates confined at the NDF were not just being double celled—which the U.S. Supreme Court signaled its approval of in the recent case of *Rhodes v. Chapman*—they were being compelled to sleep on mattresses spread in hallways; in an area in the cell-block that was designed as a basketball court; in holding cells; and next to urinals.

One inmate who is confined at the central facility in Lorton, Va., returned from a medical trip and was so disturbed by the conditions that we vowed never to travel to the NDF for medical treatment ever again. Indisputably, the NDF is bursting at its seams and the spillover or, as Ronald Reagan would say, the trickle-down effect, if you will, is having a dramatically negative impact on every penal institution of the Department of Corrections.

For example on Friday, July 8, 1983, 63 inmates were bused directly from the NDF to the central facility. The inmates ranged from new inmates, first time they have ever been to Lorton, to parole violators and recommits with new sentences.

The Lorton central facility as of Tuesday, July 11, 1983—and I don't have all the extensive figures of the U.S. attorney or the Public Defender Service—housed 1,138 inmates. Currently these inmates are assigned to 1 of 24 dormitories and 1 office building which is substituting for a dormitory. No dormitory has a correctional officer stationed within the dormitory with the exception of the office building being utilized as a receiving unit.

All of the 63 inmates who were bused to the central facility were coalesced with the general population. Sequestration is phantomed, as these inmates are housed in a building that was recently renovated and structured to accommodate several offices and a barber-

shop. No hygienic facilities such as a shower, for example, was initially located in this building. Several inmates are housed in individual offices, incongruent for human habitation. The inmates housed in this unit freely mingle with the general population upon their arrival.

In view of a class action suit which was brought by 12 unknown inmates, the District government agreed to allocate over \$3 million to make structural changes at the central facility. These changes are currently underway, as several dormitories have been renovated. A new orientation unit sequestered from the general population is near completion. Many of the dormitories that have yet to be renovated are antiquated and dilapidated barns which house approximately 65 to 70 inmates. These dormitories, very similar to the District of Columbia old jail, are roach infested.

This gross infestation is largely attributed to the lack of maintenance and again poor housekeeping procedures. Then, the physical structure of the buildings themselves is pejorative. For example, floors in many shower rooms are so porous that it is impossible to keep them clean. Plumbing facilities are in an exceptional state of disrepair. Many toilets do not flush and frequently overflow. Some showers and water faucets cannot be turned off and, thus, continually drip or even pour water. At certain periods, there is no hot running water. Then there are the urinals that exude an overpowering odor which attract seemingly ubiquitous gnats and body lice.

Perhaps the most pervasive evil of overcrowding that exerts havoc on a penal institution is that the entire operation is confounded, rebuddled, and wholly obfuscated. For instance, inmates are simply dumped into this facility, and it may be weeks before he is seen by anyone. He has to virtually fumble his way through the dark to ascertain how to telephone his attorney, how to receive visits, how to make telephone calls, how to go about obtaining medical assistance if needed, and how to go about purchasing canteen items.

Virtually every new inmate is left to the mercy of other inmates. The overcrowding of the penal institution affects every single aspect of an inmate's life; that is, sanitary conditions, medical care, rehabilitative programs and the classification system.

The passage of infectious and communicable disease is an insurmountable problem in these circumstances. To be sure, one of the most prominent concerns in the dense population is the spread of an infectious disease. There are no physical examinations administered at the central facility. The last wholesale physical examinations conducted here was in 1979. Since that time, no physical examinations have been provided. New inmates being integrated into the prison population could easily induce a disease to both staff and inmates alike.

There is a clear mandate from not only the demands of the eighth amendment, but also in the District, from Congress in its statutory legislative construction of the District of Columbia Code 442 of title 24, 1981 edition, which clearly promulgates that:

Said Department of Corrections under the general direction and supervision of the Mayor of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be



responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Council of the District of Columbia shall have power to promulgate rules and regulations for the government of such institutions and the Department of Corrections with the approval of the Mayor shall have power to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation.

Indeed, the judicial system has undergirded this mandate as individual prisons or entire prison systems in at least 24 States have been declared unconstitutional under the eighth amendment. Furthermore, as of 1980, the National Institute of Justice, American Prison and Jails reported that there were over 8,000 pending cases filed by inmates challenging prison conditions.

Mr. Justice Brennan who joined the majority opinion in the recent U.S. Supreme Court case of *Rhodes v. Chapman* recognized, "and certainly, no one could suppose that the courts have ordered creation of 'comfortable prison' on the model of country clubs." I would offer, on the contrary, that the soul-chilling inhumanity of conditions in American prisons has been thrust upon the judiciary's conscience. Consequently, they are now, like District of Columbia U.S. District Court Judge William Bryant, beginning to see the ugly and shocking outward manifestation of a deeper dysfunction, an attitude of cynicism, hopelessness, predatory selfishness, and callous indifference that appears to infect, to one degree or another, almost everyone who comes in contact with the prison.

The problems of administering prisons within constitutional standards are indeed complex and intractable, but at the core of those problems is a lack of resources allocated to prisons. Confinement of prisoners in unquestionably an expensive proposition; the average direct current expenditure at adult institutions in 1977, for example, was \$5,461 per inmate. Moreover, the average cost of constructing space for an additional prisoner is estimated at \$24,000 to \$50,000.

Often times, funding for prisons has been dramatically below that required to comply with basic constitutional standards. For instance, to bring the Louisiana prison system into compliance required a supplemental appropriation of \$18,431,622 for a single year's operating expenditures and of \$105,605,000 for capital outlays.

Over the last few years, correctional resources, never ample, have lagged behind prison populations. For example, at the NDF, an unprecedented surge in the number of inmates has undercut any realistic expectation of eliminating double and triple celling, despite construction of the new \$20 million facility. The number of inmates in Federal and State correctional facilities has risen 42 percent since 1975, and last year grew at its fastest rate in 3 years.

Public apathy and the political powerlessness of inmates has contributed to the pervasive neglect of the prisons. People in the District of Columbia know little or nothing about their penal system, despite sporadic and sensational exposes. Prison inmates are voteless, politically unpopular, and socially threatening.

Consequently, the suffering and anxiety of prisoners, even if known, generally moves the community in only the most severe and exceptional cases. As a result, even conscientious prison officials are caught in the middle so to speak as State legislatures

refuse to spend sufficient tax dollars to bring conditions in outdated prisons up to minimally acceptable standards.

Of course, part of the problem in some instances is the attitude of politicians and officials. Needless to say, the courts should not assume that State legislatures and prison officials are insensitive to the requirements of the Constitution; however, sad experience has shown that sometimes they can in fact be insensitive to such requirements.

One of the most interesting commentaries that I have read was that of William G. Nagel, a New Jersey corrections official for 11 years, and now a frequent expert witness in prison litigation, testified in 1977 that in every one of the 17 lawsuits in which he had participated, the Government officials worked in a systematic way to impede the fulfillment of constitutionality within our institutions. Furthermore, he stated that he had learned through experience that most States resist correcting their unconstitutional conditions or operations until pressed to do so by threat of a suit or by directive from the judiciary.

Under these circumstances, we must work cohesively to emerge as a critical force behind efforts to ameliorate inhumane conditions. Progress toward constitutional conditions of confinement in the Nation's prisons has been slow and uneven, despite the vast plethora of litigation that has been brought by prisoners.

Nevertheless it is clear that this litigation has been responsible not only for remedying some of the worst abuses by direct order, but also for forcing the legislative branch of Government to reevaluate correction policies and to appropriate funds for upgrading penal systems. A detailed study of four prison conditions cases which were conducted by the American Bar Association concluded—and perhaps this will answer the question of Mr. Fauntroy:

For the most part, the impact of the judicial intervention sparked by prisoner litigation, has clearly benefited institutions, the correctional systems, and the broader community. Dire consequences predicted by some correctional personnel did not accompany the judicial intervention in the cases studied. Inmates were granted greater rights and protections, but the litigation did not undermine staff authority and control. Institutional conditions improved, but facilities were not turned into "country clubs."

Admittedly, the facts stated herein do not make pleasant reading. The living areas of the prison are unfit for human habitation. The food is unsanitary often times and grossly inadequate. During the summer months, prisons are fraught with tension and violence often leading to injury and death. Of course, the health care is flagrantly inadequate.

Now, to echo the words of Judge Bryant, it is apparent, therefore, that the conditions in which inmates are housed in the Department of Corrections constitute cruel and unusual punishment in the sense currently contemplated in American society. These conditions simply are not to be tolerated in a civilized society, much less in our national capital. These are conditions which turn men into animals, conditions which degrade and dehumanize. In some senses, the punishment they inflict is more painful and enduring than the stocks or the rack, long since discarded as barbaric or primitive.

Imprisonment in conditions such as these absolutely guarantees that the inmates will never be able to return to civilized society, will never have any stake in playing by its rules. For imprisonment under such degrading conditions where a man may be stuffed into a tiny cell with another, surrounded by the nocturnal moans or screams of mentally disturbed but untreated fellow inmates, plagued by rats and roaches, sweltering by summer and shivering by winter, unable to maintain significant contact with his family in the outside world, sometimes going for long periods without real exercise or recreation, can only have one message for him: Society does not acknowledge your existence as a fellow human being.

And when that message is delivered in the D.C. jail or Lorton, whatever small chance may have existed that a person might act as though he were a member of civilized society is obliterated, along with his decency and humanity.

Again I want to thank you for being afforded this opportunity. I stand ready to answer any questions you may want to ask.

[The prepared statement of Dexter Anton Forbes follows:]

PREPARED STATEMENT OF DEXTER ANTON FORBES, NAACP LEGAL RESEARCH COMMITTEE

Mr. Congressman Dymally, my name is Dexter Anton Forbes, and I am the chairperson of the NAACP's Legal Research Committee. It is, unquestionably, with great pleasure that I extend my most generous gratitude to you, the director of the District of Columbia Department of Corrections and, especially, Mr. Donald Temple for making it possible that my colleague and I might journey here today from the adult Central facility of the District's prison located in Lorton, Virginia, to share some of our views and perspectives concerning overcrowding in prisons.

Let me first preface this testimony by providing the Committee with a little background information about myself. I first entered the District's penal system at the early age of 15. I was committed to several different juvenile facilities. At the age of 18, I was detained at the District of Columbia's (Old) Jail<sup>1</sup> in what was known then as "cellblock #1" in December of 1972. I was, subsequently, released on probation during the early part of 1973. Then, in November of 1973, I was rearrested and detained at the D.C. Jail for some 18-months. Finally, in July of 1975, I was sentenced to an aggregate consecutive term of 18-to-54-years in connection with an assault with the intent to rob while armed. I arrived, shortly thereafter, at the Maximum Security facility of the Lorton prison complex in July of 1975. I was transferred to the Central Facility of the Lorton prison complex in May of 1976, and since that time I have been uninterruptedly confined at the Central facility. During my tenure of confinement, I have testified before two Congressional Committees regarding the proposed revision of the basic criminal laws for the District of Columbia which had not been overhauled since 1901. Moreover, I have written numerous articles, lectured at a series of workshops and seminars, drafted proposed amendments to various local District legislation and participated in challenging an aura of prison inequities. I am noted, more specifically, in various legislative and judicial circles for my legal perspicacity and understanding. Equally important, I have held, and continue to hold in many instances, positions as: the President of the Lorton Legal Research Committee; honorary member and Legal Advisor for the Lifers for Prison Reform; Legal Advisor for the Offenders Legal Liberation Movement Organization; Legal Affairs Director for the Lorton Student Government Association; and Legal Advisor for both the NAACP and the Office of Resident Concern (ORC). Currently, I am a senior enrolled in the University of the District of Columbia's Lorton Prison College Program. I am, furthermore, six semesters hours away from acquiring an associate degree in legal studies. The most eminent credentials that I possess, how-

<sup>1</sup> The D.C. (Old) Jail was located at 200 19th Street, S.E., Washington, D.C., and was, too, the subject of myriad attacks by inmate law suits because of the "sordid" and "inhumane" living conditions that existed therein. Needless to say, the D.C. Jail being in blatant violation of the Eighth Amendment's proscription against "cruel and unusual punishment," was closed and, inevitably, demolished.

ever, are the 10-years which I have spent incarcerated in the District's penal system.

My "successful" evolution through this system, notwithstanding its colossal inequities, can only be pegged as "incredulous" at the very least. My injection into the "horrendously overcrowded" D.C. (Old) Jail in 1973 was surfeit with roaches, flies, mosquitoes and other vermin. Since I had come from a family where cleanliness was imperative, roaches were virtually never seen and vermin were almost never heard of. Even during my youthful confinement in juvenile institutions I had not been exposed to roaches and vermin.<sup>2</sup> In fact, roaches in all stages of development had been found at the D.C. (Old) Jail—a certain indicator of filthy conditions.

Of course, the dilapidated state of the edifice heightened the extremely unsanitary living conditions. In a civil action [Campbell v. McGruder] brought by prisoners in an attempt to remedy the "sordid" conditions at the D.C. (Old) Jail, testimony was elicited evincing that windows had been broken and unscreened, which created a serious problem with flies and mosquitoes. Old, urine-saturated and filthy mattresses led to the spread of contagious disease and body lice. Food service conditions were equally as unsanitary. Food was improperly stored in dirty storage carts that were often infested with insects. The mechanical dishwasher was not adequately maintained and, therefore, did not even approach the minimum temperature required for proper sanitation. Moreover, food service personnel, many of whom were inmates, were often untrained and did not follow proper sanitation procedures. Inmates were not supplied with adequate or reasonable eating or drinking utensils. Generally, the food was unappetizing and unwholesome.

Presumably, the declaration of the D.C. (Old) Jail as an affront to the decency demands of the Eighth Amendment in Campbell v. McGruder was applauded by both inmates and corrections officials, alike; and, even more significantly, viewed by inmates as an Armageddon for the evils of "unfit" and "inhumane" conditions. Even the erection of the new 20 million dollar structure which replaced the D.C. (old) Jail was viewed as a blessing by inmates. After all, the facility was, among other things, new, modern and vermin-free. Most importantly, each inmate was afforded adequate space in a one-man cell. Then, came an abrupt flow of inmates. The population proliferated to exorbitant numbers—far in excess of the recommended number of inmates that the facility was built to accommodate.

In 1981, in an apparent response to the vastly overcrowded New Detention Facility (NDF), a new facility was opened in Occoquan, Virginia, to house misdemeanor offenders. Almost immediately, this facility was filled to capacity, and more and more persons were being arrested and rearrested and poured into NDF. Needless to say, in a few short months, what inmates had presumed to be a sort of "millennium" was rapidly becoming another horrible nightmare. Indeed, inmates confined at the NDF were not just being "double-celled"—which the United States Supreme Court signaled its approval of in the recent case of Rhodes v. Chapman—they were being compelled to sleep on mattresses spread in hallways; in an area in the cellblock that was designed as a basketball court; in holding cells; and next to urinals. One inmate who is confined at the Central facility in Lorton, Virginia, returned from a medical trip<sup>3</sup> and, was so disturbed by the conditions, that he vowed never to travel to the NDF for medical treatment ever again. Indisputably, the NDF is bursting at its seams and the "spill-over" or as Ronald Reagan would say, the "trickle-down" effect, if you will, is having a dramatically negative impact on every penal institution of the Department of Corrections. For example, on Friday, July 8, 1983, 63 inmates were bused directly from the NDF to the Central facility. The inmates ranged from new inmates [first time they have ever been to Lorton] to parole violators and recommittees with new sentences.

The Lorton Central facility, as of Tuesday, July 11, 1983—and I don't have all the extensive figures of the U.S. Attorney or the Public Defender service—housed 1,138 inmates. Currently, these inmates are assigned to one of 24 dormitories and one office building which is substituting for a dormitory. No dormitory has a correctional officer stationed within the dormitory with the exception of the office building being utilized as a "receiving unit." All of the 63 inmates who were bused to the Central facility were coalesced with the general population. Sequestration is phantomized, as these inmates are housed in a building that was recently renovated and structured to accommodate several offices and a barbershop. No hygienic facilities

<sup>2</sup> The vast majority of my incarceration was spent at the Oak Hill Youth Center which was a new facility. The entire institution was thus impeccable. More importantly, constant maintenance and housekeeping procedures insured this.

<sup>3</sup> Inmates confined at Lorton are bused to the NDF to be escorted to D.C. General Hospital for medical treatment at various times, and then, returned to Lorton.

such as a shower, for example, was initially located in this building. Several inmates are housed in individual offices, incongruent for human habitation. The inmates housed in this unit freely mingle with the general population upon their arrival.

In view of a class action suit<sup>4</sup> which was brought by 12 unknown inmates, the District government agreed to allocate over three million dollars to make structural changes at the Central facility. These changes are currently underway, as several dormitories have been renovated. A new orientation unit, sequestered from the general population is near completion. Many of the dormitories that have yet to be renovated are antiquated and dilapidated barns which house approximately 65-to-70 inmates. These dormitories, very similar to the D.C. (Old) Jail, are roach infested. This gross infestation is largely attributed to the lack of maintenance and again poor housekeeping procedures. Then, the physical structure of the buildings themselves is pejorative. For example, floors in many shower rooms are so porous that it is impossible to keep them clean. Plumbing facilities are in an exceptional state of disrepair. Many toilets do not flush and frequently overflow. Some showers and water faucets cannot be turned off and, thus, continually drip or even pour water. At certain periods there is no hot running water. Then, there are the urinals that exude an overpowering odor which attract seemingly ubiquitous gnats and body lice.

Perhaps the most pervasive evil of overcrowding that exerts havoc on a penal institution is that the entire operation is confounded, befuddled and wholly obfuscated. For instance inmates are simply "dumped" into this facility, and it may be weeks before he is seen by anyone. He has to virtually fumble his way "through-the-dark" to ascertain how to telephone his attorney, how to receive visits, how to go about purchasing canteen items. Virtually, every new inmate is left to the mercy of other inmates. The overcrowding of a penal institution effects every single aspect of an inmate's life; that is, sanitary conditions, medical care, rehabilitative programs and the classification system.

The passage of infectious and communicable disease is an insurmountable problem in these circumstances. To be sure, one of the most prominent concerns in a dense population is the spread of an infectious disease. There are no physical examinations administered at the Central facility. The last wholesale physical examinations conducted here was in 1979. Since that time, no physical examinations have been provided. New inmates being intergrated into the prison population could easily induce a disease to both staff and inmates, alike.

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Indeed, the judicial system has undergirded this mandate as individual prisons or entire prison systems in at least 24 states have been declared unconstitutional under the Eighth Amendment. Furthermore, as of 1980, the National Institute of Justice, American Prison and Jails reported that there were over 8,000 pending cases filed by inmates challenging prison conditions. Mr. Justice Brennan who joined in the majority opinion in the recent U.S. Supreme Court case of *Rhodes v. Chapman*,<sup>5</sup> recognized, "and certainly, no one could suppose that the courts have ordered creation of 'comfortable prison' on the model of country clubs." Id. I would offer, on the contrary, that the "soul-chilling" inhumanity of conditions in American prisons has been thrust upon the judiciary's conscience. Consequently, there are now, like District of Columbia U.S. District Court Judge William Bryant, beginning to see the ugly and shocking outward manifestation of a deeper dysfunction, an attitude of cynicism, hopelessness, predatory selfishness, and callous indifference that appears to infest, to one degree or another, almost everyone who comes in contact with prison.

<sup>4</sup> *Twelve John Does, et al. v. The District of Columbia*, Civil Action No. — ( ).

<sup>5</sup> *Rhodes v. Chapman*, 452 U.S. 337 (1981).

The problems of administering prisons within constitutional standards are indeed complex and intractable, but at the core of those problems is a lack of resources allocated to prisons. Confinement of prisoners is unquestionably an expensive proposition; the average direct current expenditure at adult institutions in 1977, for example, was \$5,461 per inmate.<sup>6</sup> Moreover, the average cost of constructing space for an additional prisoner is estimated at \$24,000 to \$50,000.<sup>7</sup> Often times, funding for prisons has been dramatically below that required to comply with basic constitutional standards. For instance, to bring the Louisiana prison system into compliance required a supplemental appropriation of \$18,431,622 for a single year's operating expenditures and of \$105,605,000 for capital outlays.<sup>8</sup>

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Under these circumstances, we must work cohesively to emerge as a critical force behind efforts to ameliorate inhumane conditions. Progress toward constitutional conditions of confinement in the nation's prisons has been slow and uneven, despite the vast plethora of litigation that has been brought by prisoners. Nevertheless, it is clear that this litigation has been responsible, not only for remedying some of the worst abuses by direct order, but also for "forcing the legislative branch of government to reevaluate correction policies and to appropriate funds for upgrading penal systems. A detailed study of four prison conditions cases which were conducted by the American Bar Association concluded—and perhaps this will answer the question of Mr. Fauntroy—

"For the most part, the impact of the judicial intervention sparked by prisoner litigation, has clearly benefited institutions, the correctional systems, and the broader community. Dire consequences predicted by some correctional personnel did not accompany the judicial intervention in the cases studied. Inmates were granted greater rights and protections, but the litigation did not undermine staff authority and control. Institutional conditions improved, but facilities were not turned into 'country clubs.'"<sup>14</sup>

<sup>6</sup> National Institute of Justice, *American Prison and Jails* 115 (1980).

<sup>7</sup> Id., at 119.

<sup>8</sup> Id.

<sup>9</sup> Krajick, *The Boom Resumes*, 7 *Corrections Magazine* 16-17 (April, 1981).

<sup>10</sup> Morris, *The Snail's Pace of Prison Reform*, in *Proceedings of the 100th Annual Congress of Correction of the American Correctional Assn.* 36, 42 (1970).

<sup>11</sup> *Rights of the Institutionalized*, Hearings on S. 10 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 96th Cong. 1st Sess. 28 (1979).

<sup>12</sup> *Civil Rights of Institutionalized Persons*, Hearing on S. 1393 before the Subcommittee on the Constitution, 95th Cong. 1st Sess. 772.

<sup>13</sup> Id.

<sup>14</sup> Id.

Admittedly, the facts stated herein do not make pleasant reading. The living areas of the prison are unfit for human habitation. The food is unsanitary often times and grossly inadequate. During the summer months, prisons are "fraught with tension and violence often leading to injury and death. Of course, the health care is flagrantly inadequate.

Now, to echo the words of Judge Bryant, it is apparent, therefore, that the conditions in which inmates are housed in the Department of Corrections constitute cruel and unusual punishment in the sense currently contemplated in American society. These conditions simply are not to be tolerated in a civilized society, much less in our national capital. These are conditions which turn men into animals, conditions which degrade and dehumanize. In some senses, the punishment they inflict is more painful and enduring than the stocks or the rack, long since discarded as barbaric or primitive. Imprisonment in conditions such as these absolutely guarantees that the inmates will never be able to return to civilized society, will never have any stake in playing by its rules. For imprisonment under such degrading conditions where a man may be stuffed into a tiny cell with another, surrounded by the nocturnal moans or screams of mentally disturbed but untreated fellow inmates, plagued by rats and roaches, sweltering by summer and shivering by winter, unable to maintain significant contact with his family in the outside world, sometimes going for long periods without real exercise or recreation, can only have one message for him: society does not acknowledge your existence as a fellow human being. And when that message is delivered in the D.C. Jail or Lorton, whatever small chance may have existed that a person might act as though he were a member of civilized society is obliterated, along with his decency and humanity.

Mr. DYMALLY. We will take Mr. Brown and come back to you. Before we do, just a couple human interest questions.

I understand you to say you are six units minus your bachelors?

Mr. FORBES. I have 131 credit hours. I am currently in the legal assistance program. We have only five degree areas in the Lorton program, sort of like a satellite campus of UDC sponsored by UDC.

So I guess I have about two more classes to take which would be offered in the fall.

Mr. DYMALLY. Did you formally graduate from high school or did you drop out?

Mr. FORBES. I dropped out.

Mr. DYMALLY. Mr. Brown.

#### STATEMENT OF RONALD BROWN, LORTON INMATE

Mr. BROWN. I would like to say good morning to the committee and especially give my appreciation to Mr. Don Temple for inviting us here to share our points of view with you.

I am Ronald G. Brown, president of NAACP Chapter 13, Lorton branch. I am a student of the UDC college program majoring in media technology. I am also the coordinator to the tutorial program.

Like Dexter, we came up in a neighborhood, that was more or less of such a state that we had to get out and try to find ourselves. In doing so my direction was somewhat different from his because I graduated from high school. I attended college and I don't have a habitual criminal record, but I have been involved with crime on a minute basis until now. I have an armed robbery charge and I am serving 10 to 30 years.

Again, I wanted to add to what Dexter has said. In reference to the overcrowding at the D.C. Detention Center, I feel as though it will be at the Lorton complex in the future because this situation has become somewhat blinded to the extent that the people being housed in the D.C. jail are there with no validity as far as knowing themselves. They are irresponsible. This is from lack of education,

guidance, and a suitable employment situation from which they would not have to venture into the avenue of being incarcerated.

In doing so they have got caught up in drugs, crime, and a lot of other devious things that caused this situation. What I am trying to say in essence is this will continue. It will continue because these people are ill prepared educationalwise and vocational trainingwise.

In doing so I would like to quote some statements.

The District of Columbia exceeds all other jurisdictions by imprisoning at a rate of 461 people per 100,000 and 95 percent of them are black, between the age of 22 to 35.

The unemployment rate overall is 9.4, and for blacks, it is 18.4 unemployment rate. I think this is a representation of not having something adequate to be responsible for or something to work to. This encourages one to more or less force himself into a community of crime, drugs, and so forth.

I feel the overcrowding will continue, and as Dexter has stated, people are being double celled, sleeping in the stairways, in the gymnasium, causing friction. It is hot. People are frustrated because of the harsh sentence structure that the District of Columbia has taken and preventive measures for crime and so forth, because of the new mandatory sentences. These changes have caused a great deal of frustration with the jail being overcrowded. People are trying to find ways to more or less come up with remedies which have yet to be developed.

As an individual stated before, the increase of the total State and Federal prison population ending 1982 was 11.6, the highest since 1925 when the Justice Department began to take statistics which show an increase in females and juveniles. In doing so, it not only has increased but in certain regional areas, like the West, the percentile is 16.9. In the Northeast it is 15.9; in the South, 10 percent; North Central 9.4.

I am sure the committee has asked these questions and we also have asked in trying to find remedies. I can only suggest certain things I firmly believe that might alleviate them and which I feel experts in this field may be trying to demonstrate. I feel again employment is very necessary. Drug therapy which has not been provided is necessary. They have drug programs but they are superficial because the substance of these programs offer nothing.

An individual may participate but for what. They are more of an image to satisfy the courts, to satisfy the probation department. The essence of the drug situation, epidemic here in the District of Columbia, is what is forcing the overcrowding situation, forcing individuals into this situation where there is no help provided once they come into the system.

As you know, the D.C. jail has a program, I think it is the maintenance welfare program. In essence it provides an addict with methadone for a week or two and after that, that is it.

Maybe it is longer.

Again there is no structure in place to alleviate this individual and place him maybe in a facility suitable for his drug addiction or to provide guidance in drug therapy.

Employment is the same problem. I don't think that it is essential that employment be provided for individuals, say, in a detain-

ing capacity. But I think it would enlighten them to give them more faith in themselves so they could obtain employment which would be suitable to the individuals. In D.C. jail and also at Lorton facilities, this is true. Again, people have no hope. They have given up. They are just being stored there, on top of one another, angry, frustrated, and at the same time feeling like no one cares for them, no one.

I think it is up to the D.C. government to investigate this thoroughly.

As far as the situation at Lorton, the problems are similar because unemployment has created a recidivism rate of I think 85 percent. When an individual is paroled from there, he has no basis to obtain employment. If it is, it is minimal. No skills. He wasn't prepared for such. Again, he has no drug therapy or sufficient program to provide this. So when he comes back into the community there is no followup and he falls into the entrapment again. Idleness, no job, drug involvement, and so on. And he comes back through the system again.

I wanted to add that I feel that it is now clear that the U.S. prison system for numerous reasons has failed and is now in need of a complete overhaul.

Mr. DYMALLY. Thank you very much.

Mr. Fauntroy.

Mr. FAUNTROY. I thank you, Mr. Chairman.

To both Mr. Forbes and Mr. Brown, I cannot thank you enough for the care with which you prepared for your testimony and for the expertise with which you have delivered it and for the clarity with which you have described the consequences of the overcrowding and the need for some sort of alternative sentencing system.

Are either of you familiar with the black leadership family plan for the unity, survival and progress of black people?

Mr. FORBES. Your plan?

Mr. FAUNTROY. Yes.

Mr. FORBES. I have read it intensively.

Mr. FAUNTROY. I want to commend you for the instructive example of inmate activity and commitment. That is one I certainly will send to Mr. Moakley in New York as a classic example of what dedicated persons like yourselves can do, even though incarcerated. You have done a magnificent job.

My first question, Mr. Brown and Mr. Forbes, is about the UDC satellite program. Is that available to inmates at Lorton?

Mr. FORBES. Well, the program is itself not really a satellite program. It is operating—it is like the District of Columbia City, State, it is between the two. It is what you call an independent study program like the NIH program, just out of the District of Columbia. They bus certain teachers there, they have collegewide courses and, as I stated, they have degree areas, five areas, media technology, accounting, urban studies, leisure studies, and just recently formed legal assistance program.

Mr. FAUNTROY. How does an inmate qualify for it?

Mr. FORBES. First of all you have to have a diploma. Then you take a placement exam, then you move into precollege which is for a semester. This acclimates the student for college life or instills

some collegiality into the student so he knows what it is like when he gets involved in the curriculum.

Mr. DYMALLY. How much does it cost?

Mr. FORBES. Well, because it is rather difficult to get the course coming on a consistent basis, degrees that usually take 2 years, the associate program, might take maybe 2½ years, sometimes maybe 3. A bachelors might be 5 years.

Mr. DYMALLY. All right.

Mr. FAUNTROY. Mr. Forbes, you have described in graphic terms not only the conditions at D.C. jail when you were there in 1972 but even in the new facility, and the obvious anguish that many inmates have to endure there. What is the answer? Do we build newer and larger jails? What about the alternatives in sentencing, and other things we have discussed?

Mr. FORBES. If I might, first of all it feels good to be unhandcuffed and I am not talking about physically, I mean unhandcuffed from the statement. I would like to speak extemporaneously, OK?

First of all, I think what we are looking for here is we are looking for the computer age, we are looking for Texas Instruments, for Apple Computers, we are looking to press a button and we get a hard-and-fast answer. First of all there is no panacea, if I can come up with that I could probably come up with a cure for herpes and I would probably be rich and I wouldn't be in jail either.

But what I think is, I think probably the best person that could possibly lead you to the promised land like Moses led the 76'ers would probably be someone incarcerated and has caught hold of education as I have.

That is not to say I am willing to take on that responsibility because I have some other pursuits.

When I talked to Mr. Temple and I asked him to come out, I am very familiar with you, I know Dennis Stanfield, I work with Sister Page, I have been incarcerated for 10 years, not 30 years yet, so I came in at a young age. Fortunately I didn't use drugs, didn't smoke, didn't drink, therefore I cannot fall back on maybe what Brother Brown or some other brothers did to say I got involved with drugs.

I lived in a house, I had a mother, a father, and I was a B student in school. The only reason I never completed was I went to a juvenile institution because I was born in the midst of an affluent society and I wanted to have a Cadillac, diamond rings, pretty jewelry, and wanted to have the things that all other people had.

Now what I am clumsily leading up to is that Sigmund Freud said we are in jail because we have deep-seated psychological problems. I kind of agree with what William Glasser said, he said that most people were in jail because they lacked responsibility and if you come to Lorton you will see your average person incarcerated there are between 20 and 30 and you know what they do in the bathrooms, they pull toilet paper off like that and blow their nose and throw it on the floor. They have big color TV in the center of the floor in the dayroom and I stumble to the bathroom 2 or 3 in the morning and the television is running, just leave it on all night. Cut the water on, never cut it off, cut the lights on, leave them on all day.

Eat in the dining room, leave the tray there. You know why, because they lack responsibility. A growing guy 19 or 20, never owned a car, never bought toothpaste, never had to pay for his rent, never had to buy watches, pay water bills, electric bills, consequently you have a whole environment out there where we have people and I type about 90 words a minute and correctional facilities won't tell you I typed the whole budget for the Correction Department.

Reverend Turner left as you know and they are trying to put a new chap in there. I typed his salary. You know what he had to do when you type a budget—you have to justify that salary. You fill out what they call a BUS-2. They fill it out and say we want 10 teachers at the academic level, but they have to justify it. So, how do you have 1,200 men at Lorton now, and we have administrative, Mr. Whitfield was here, close to \$50,000 salary. We have an assistant administrator with a \$32,000 or \$33,000 salary.

We started looking at Ronald Reagan put a lot of people out of jobs and they talked about, Mr. Palmer talked about, highly trained and highly skilled staff they are going to have and the new facilities to train these people, but we got little young ladies look like they just called them off the street and said you need a job, sister we are going to put you in Lorton so you get your \$16,000 or \$17,000 a year. We got a bunch of brothers down there, without me there could be no you.

So therefore, if they don't perpetuate it, it makes sense for them to perpetuate us to come back to prison, to keep us uneducated to them. I am not disliked, probably, but I am really resented at Lorton. I am resented. We have a secretary in the school, for example, she types 30 words a minute, I type 95, she makes \$15,000, I make \$850 a month.

So it is good business to perpetuate prisons. It is a sound economic principle for people in this day and time in strict facilities to perpetuate prisons.

Let me just put in one piece I do want to go on the record because the lady handed me the note. For a long time I have been—I am an individual follower of Martin Luther King, and I feel, I talked to Don about this, women have shouldered the responsibility for men. They may go to the back of the bus. Rose Parks refused to go to the back of the bus. We were running back to the back. I say that in terms of me shirking my responsibility.

My mother is a strong-backed woman—no husband, paid for the house, lives on Capitol Hill. I look at that and I say I had to get my life together not for the corrections officials, I got 131 credits and no degree because I didn't want to get the credit and get the knowledge later.

I watched so many guys matriculate through the college program and shared their academic regalia at the gate only to pick it up when they come back and taking that school again.

But what I had I got because I know if I get the knowledge now the credit will automatically come. So what I am saying to you is that one of the most overlooked people we have are the women, we don't even have a program for the women. If the women have the time I have now they would be shifted to Augusta, W. Va., forget

your babies, forget your family, forget your husband, we are going to ship you down to Augusta and crowd you in there like a dog.

I was writing a young lady named Betty Pitts, she had 7 to 21 years for stealing. She stole something, got released on bond, didn't return to court, got picked up in Woodward and Lothrop with a dress that cost \$115. They came back and give her 2 to 6 years, gave her 5 years, and gave her 3, 5 to 15 and ran it consecutive, and ran the 2 to 6 consecutive from the 5 to 15 and she has 7 to 21. She stayed there for 8 years in Augusta; 8 years.

Mr. FAUNTROY. Mr. Forbes, you are making an eloquent argument for some sort of alternative sentencing and you emphasize the need for responsibility. That responsibility should be developed among inmates and those convicted. What do you think of victim restitution as an alternative to sentencing?

Mr. FORBES. Well, I failed to mention I am a part-time politician, also, and Marion Barry stole the victimization program from Brother Joseph Joiner who I worked with on the lifers prison reform. I am an avid supporter of that. Let's face it, Congressman Fauntroy, I have a mother, too. What if my mother was beat, robbed, and raped while I was in Lorton? I have a saying when I was in the street robbing people, and doing a lot of stuff. I have a charge now that is not mine, but I did my incarceration for a charge that I didn't get caught for, but I didn't get caught for a lot, too. You understand?

What I am saying to you is that, you know, I think I can dish it out but I don't want to take it. When I was in the street I wanted to rob people, not they rob me. I wanted to beat others up, but I don't want nobody beating me up. And I don't want to walk into the house and see my mother beaten and robbed and raped.

In some way, you know, it is a common thing in prison if somebody breaks in your locker and steals from you, you kill them. That is the death penalty. They are the biggest proponents of the death penalty—prisoners. So I mean it is ironic, but it is true. You know, I am saying to you that we got a lot of people, everybody comes up and they are selling their package. I might even be selling mine. Mr. Harris, he was selling his. In fact, I met with Earl Silbert, former U.S. attorney. We are fantastic friends. He wrote a letter for me to get out of jail. I am going to work for Joel Fingers, now the assistant U.S. attorney from 1969 to 1971, because of my legal perspicacity. I represented myself in 1975 in court and beat my case after Leroy Nesbitt lost it.

So what I am saying is, I am not saying this to tout my ability, but I am saying I can look at my life as a living experience and see why I turned around. I can look at it now that I got a serious commitment, where I got a young brother who I have encouraged to go to school but who went there four or five times and just dropped out because he was associating with that peer pressure and other brothers saying "Don't go to school."

But he was creating a fertile environment for this brother not wanting to do anything. But I am telling him, you got 15 to life. Now he goes to school but you know, he say I don't want to get a GED, I want the highest grade ever to be made on the GED. I can appreciate what he is saying because I want to maintain that 3.5 grade point average that I have. So I am saying the answer to this

is not for me to push the button and give you a panacea, a computerized answer, or some statistical data as to how we can deal with this problem. This problem is us. We have to deal with it. They are putting us in jail—99.9 percent black. I don't want to make it a racial issue. I read your testimony with Representative Landgrebe from Indiana when you were talking about the Home Rule Act. You wanted the home rule charter and he talked about us black people and he didn't want to give that much authority to us black people.

You understand? But you know what? They don't publish it any more, I had the Metropolitan Police report, there was 3,491 white people arrested in the district. I wonder where they went because I didn't see them in Lorton. There are five white guys in Lorton. So we want to talk about disparity, too.

If we want to talk about justice, let's make that what it is, let's be fair. Let's talk about what Martin Luther King said—a threat to justice anywhere is a threat to justice everywhere.

We have been denied our constitutional rights and God-given rights for over 340 years. We talk about being fair now, but what happened to the imbalance? We are here now. I am not trying to beat the past. Progress is not criticizing the past, but moving toward the future. I am trying to deal with the future, and the future does not talk about me coming here, and I am stigmatized as a prisoner. I am here to help you. I have done 10 years of my life. I am ready to go with them now, so I don't have to come here and fleece somebody's eyes because I spent one-third of my life in the penitentiary.

Mr. DYMALLY. When do you anticipate being paroled?

Mr. FORBES. I see the parole board next month.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Mr. DYMALLY. Thank you.

There is a trend now across the country to "put them in jail." What is your philosophical response to that national trend?

Mr. FORBES. Well, first of all, you know John Ray introduced a bill and I don't want to editorialize, but he introduced a bill to accelerate people's times 30 days to alleviate overcrowding.

First of all that is ludicrous. I am in Lorton, the recidivist rate to me looks like 115 percent to me. As I told you, it seems to me the prison officials are perpetuating recidivism; OK? In the school program, you ask about the college program, it is 145 people enrolled out of 1,100 men. That is not many. In the basic education program, you probably got 98 or 99 guys. That is not many going to school getting no education.

So what that says to me is that the people who have served the longer amount of times are people like maybe a fellow in the neighborhood. Let me say there is a person there 12 to life, worked in the Government 35 years, retired, he was 53 years old when he got it. Young dude like me in the street was what Ronald Reagan calls quote unquote, "street punk," he was robbing, figure the police couldn't catch him so he do what, he got a gun and shot him. Paralyzed the guy.

You know what he got? Twelve to life. He has been in Lorton 7 years. Now, you know let's redefine values. What are we trying to do. Are we really trying to protect society? Some day this man goes

out in the street 60-some years old, he will never return to prison. He will probably never come back again.

You got long-term offenders. Reverend Fauntroy knows, he knows Reverend Stansfield, another guy that left the prison, did about 13 years in prison. He is out now.

Reverend Ringo convicted, got 32 years to life. Went back for retrial, was exonerated of the offense. He is in the street now doing wonderful. He is the floor manager at Temple Oldsmobile. He married a beautiful woman in the church, an avid Christian. These were people with long terms who proved themselves over a long period of time.

What I am saying is what we need to do is we need to redefine what do we mean by our serious offender. OK? Perhaps we are wholesale letting the wrong people out. You let a guy out that got 18 months, he is a junky, he is supposed to be eligible for parole in 6 months, we accelerate by 3 and let him out in 3. He stays on the street for 2½ months, gets busted with a misdemeanor, give him another 18 months, he back on the street, get busted again in 4 days and back into jail again.

You know, we holler about what about the recidivism problem. I am saying you got people who had been tried and true in terms of their lifestyle who have undergone a certain metamorphosis and I am saying that at that point somebody has to take the responsibility, somebody has to be able to stand up and say, look, I will be responsible for him. I feel I have clearly demonstrated to certain people, the Joel Ringosteins, Judge Luke Moores, people who have gone out on a limb for me to say, man, I believe you have made a transition.

And you can see it when guys change, you can see.

Mr. DYMALLY. Thank you very much, Mr. Brown and Mr. Forbes, for coming in today.

Do you have any objection if we send a copy of your testimony immediately to the Department of Corrections?

Mr. FORBES. I would be flattered.

Mr. DYMALLY. Fine, very well.

Thank you very much.

Mr. FORBES. Thank you.

Mr. DYMALLY. The statements of Wilhelmina Rolark, Committee on the Judiciary of the Council of the District of Columbia, and David Clarke, chairman of the Council of the District of Columbia will be inserted in the record at this time.

[The prepared statements of Ms. Rolark and Mr. Clarke follow:]

PREPARED STATEMENT OF WILHELMINA J. ROLARK, CHAIRPERSON, COMMITTEE ON THE JUDICIARY, COUNCIL OF THE DISTRICT OF COLUMBIA

Mr. Chairman, members of the Committee, thank you for seeking my views on Prison Overcrowding and Alternative Sentencing in the District of Columbia. As Chairperson of the District's Committee on the Judiciary I have an intense interest in this matter and welcome the opportunity to speak to the Committee today.

The D.C. Department of Corrections operates a detention center commonly referred to as the D.C. Jail, and six institutions located in Lorton, Virginia, commonly referred to as the Lorton Reservation. Overcrowding in these facilities has reached serious proportions. The Jail is currently 900 over its capacity of 1,355, and has approximately 700 felons awaiting space at the Lorton Reservation. The daily intake at the Jail ranges from 35-60 new detainees.

The Department of Corrections expects that overcrowding will continue at a steady pace. In 1974, the incarcerated population in all facilities reached 2,950. By the end of 1980, it rose to 3,910. The average rate of growth over these years was 160 per year. Throughout fiscal year 1981, the population increased by 420, to a total of 4,228. During fiscal 1982, the population increased by more than 900 inmates, to exceed 5,100.

Currently, the Department of Corrections projects that absent specific action to control the prison population the incarceration population will be 5,900 by 1987. To contain this number in present facilities capacity (4,164) would be exceeded by almost 1,800. Further, although statistics are not available, the recently enacted Mandatory—Minimum sentencing law will certainly add to the population burden.

The Department of Corrections has taken action to increase its housing capacities at the several Lorton facilities. This was prompted, in part, by the *Campbell v. McGruder* decision handed down by the District of Columbia Circuit Court. That case concerns the conditions under which pre-trial detainees are confined by the Department of Corrections. Many of the issues were resolved by the building of the new detention facility in March 1976 and various administrative actions involving visiting, mental health care, law library services recreation, and disciplinary procedures. The one remaining issue before the District Court is that of crowded conditions.

The court ordered the Department to submit to it a plan titled "Plan to Release Overcrowding at the D.C. Detention Facility Plan." The "Plan" provides for a total of 687 new spaces to be provided the next 18 months on the Lorton Reservation. The expansion includes two new facilities, one of which is the Rehabilitation Center for Alcoholics, a physical plant being transferred from the Department of Human Services. In addition to court ordered improvements, the Department of Corrections has proposed a capital expansion program which includes increased bed space at the several Lorton facilities, security improvements, and roads and utilities improvements.

On May 14, 1983, the Committee on the Judiciary held a public hearing during which the Department of Corrections presented an overview of its organization. This was an opportunity for us to examine the Department and to acquire statistical, programmatic, and other important information. I personally visited the Lorton Reservation on March 31, 1983 and have scheduled a follow up visit for July 14, 1983.

The Council has actively sought ways to ameliorate overcrowding and its attendant problems. Councilmember David A. Clarke introduced "District of Columbia Sentencing Improvements Act of 1982", which was enacted into law on March 10, 1982 (D.C. Law 4-202). The purpose of this law, among other things, is to promote the use of restitution and community service as sentencing options and to allow the Board of Parole to grant work release.

The law will allow Superior Court Judges, in addition to any other sentence imposed, to require a convicted offender to undertake reasonable services to the community for a period not to exceed five years, and/or require a restitution or reparation. The court must taken into consideration a variety of factors—including the resources of the defendant, the defendant's ability to earn, his or her age, and other appropriate factors—before imposing either or both of these options.

Presently, there are several bills pending which affect this situation. On June 1, 1983 the Committee on the Judiciary held a public roundtable on Bill 5-116, "Prisoners Educational Credit Act of 1983." This Bill, introduced by Councilmember Nadine Winter, is designed to create a sentence reduction system for prisoners who complete educational programs approved by the Board of Parole, and to create incentives for incarcerated persons.

Councilmember John Ray has introduced Bill 5-16, "Parole Act of 1983," which requires that all prisoners become eligible for release on parole after having served 10 years of a sentence over 30 years, including life imprisonment. Councilmember John Wilson has introduced Bill 5-181, "Parole Revocation Reform Act of 1983." This Bill proposes to establish a Board of Indeterminate Sentence and Parole for the District of Columbia.

I have introduced a bill to amend D.C. Code section 23-110 for the purpose of expanding the time within which the court may reduce a sentence. Presently, the court has 120 days to reduce a sentence. My bill, if enacted, would increase that time to 1 year.

The Council has approved the Department of Corrections fiscal year 84 budget request of \$102,824,500 to fund an average of 2,090 positions. This represents an increase of 92 positions over fiscal year 83. These positions will include 90 additional

correctional officers and 2 additional training instructors. The Department expects to have these additional positions filled by October 1, 1983.

The Council has also approved the Department of Corrections fiscal year 84 budget request for capital improvements. These improvements include four projects totalling \$11,829,100. The projects are to expand facilities at maximum security, minimum security, and Youth Center One, and to fund the Training Academy.

#### CONCLUSION

Overcrowding in the District's prison facilities is known to be associated with prison violence, escapes, disciplinary problems, and employee stress. The human costs are incalculable and include costs, not just to inmates and staff, but to inmate families and the communities into which these men and women will be released.

Due to the human impact that overcrowding has, the courts have taken a serious interest in the issue. The D.C. Department of Corrections is already operating under at least five court orders which seek to avoid overcrowding directly, by placing a square footage standard or total population cap on facilities, or to avoid mixing classes of prisoners.

Under the direction of Mr. James Palmer, the Department of Correction is stepping up its effort to relieve the problems of providing space for its rising population, meeting court orders, and averting future litigation over conditions of confinement. The Department continues to reassess options and housing configurations to keep pace with increased populations projections.

Certainly, as Chair of the Committee on the Judiciary, I am committed to finding a viable, expeditious means of addressing the problem of prison overcrowding.

#### STATEMENT OF DAVID A. CLARKE, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA

Mr. Chairman and Members of the Subcommittee, I would like to thank you for the opportunity to provide testimony on the issues of prison overcrowding and alternative sentencing in the District of Columbia. As Chairman of the Council of the District of Columbia and as the former chairperson of the Council's Committee on the Judiciary, I have been greatly concerned about the problems caused by overcrowding in our prison facilities.

There is no denying that the District is experiencing a serious problem in terms of prison overcrowding. Bureau of Justice statistics show that for the period between December 31, 1981 and December 31, 1982, the inmate population at D.C. Jail and Lorton rose from 3,479 to 4,152. This increase amounted to a 19.3 percent growth in our prison population in one year. Unfortunately, while this increase is staggering, it is not at all uncommon. With respect to increases in prison population, the District of Columbia is no different than most states in the Nation. In fact, for the year ending December 31, 1982, statistics indicate that only three states (Kentucky, West Virginia and Michigan) experienced a slight decrease in prison population. It should be noted, however, that experts have called into question the data provided by two of those states. Thus, in terms of increases in prison population, the District of Columbia is in conformity with what appears to be a national trend.

One aspect of prison population statistics that the District of Columbia has the dubious distinction of leading the Nation in is the number of sentenced prisoners per 100,000 population. For every 100,000 persons in our population, we imprison 880. This rate is the highest known rate of any state in the Nation and may be the highest rate in the world.

While it is clear that prison overcrowding poses a serious problem, the causes of the problem are not at all clear. Similar to the problem of crime, numerous factors have been cited as contributing to the basic problem. These factors range from increases in police and court efficiency to increases in length of sentences. Some have cited the public's attitudes and desires for more severe punishment of criminals as a major reason for the increase in prison populations. Whatever the causes, the thing that is clear is that prison overcrowding bears a substantial price tag. Over the past five years, the Department of Corrections' budget has more than doubled. In fiscal year 1984, \$102,127,200 was requested for the Department of Corrections alone. This represented 5.4 percent of the District's total budget, making it the fourth largest agency budget in the city.

Millions of dollars have already been expended in an effort to increase prison capacity. The Central Detention Facility (D.C. Jail) opened in 1976 at a capital cost of approximately \$32,000,000. Later two new modulars were added at a capital cost of \$12,000,000. Occoquan I has been converted for prison use and has provided space



for approximately 425-450 residents. In addition, plans are underway to convert Occoquan II for prison use. It is my understanding that this facility will be ready for partial occupation by November 1983 and upon completion will house another 400-500 residents. While the District of Columbia is moving expeditiously to provide as many new spaces as possible, it must be recognized that the problem of prison overcrowding cannot be simply addressed by continually increasing prison space. At some point, fiscal restraints will make this option less viable. If we continue in the direction of expanding our correctional facilities or constructing new facilities, we must be willing to accept that other services in other areas will have to be drastically cut in order to shift the needed funds to the Department of Corrections, or that taxes will have to be increased.

As such, we must look to other alternatives and other steps must be taken. In this regard, plans to transfer residents from the D.C. Jail to certain facilities at Lorton are being undertaken. This transfer should help alleviate some of the overcrowding at the Jail. Steps are also being taken to accelerate the release of parolees by providing assistance in securing employment for those whose grant of parole is subject to a condition that employment and residency be established and verified prior to release. In addition, processes are being developed to facilitate bond review hearings. In terms of legislation, the Council and the Mayor are exploring the feasibility of enacting legislation similar to that adopted by Michigan. This legislation would permit the Mayor to declare a state of emergency whenever the prison population exceeds the prisons' capacity for 30 days. The declaration of the emergency would trigger a 90-day rollback in the minimum sentences of certain inmates. The Council is also considering legislation that would increase the time period within which judges of the Superior Court may consider motions for reduction of sentence. The time period would be increased from 120 days to one year.

It must be emphasized, however, that the above plans are designed to address the problems caused by having too many people in the prison system at the same time. These actions are, for the most part, short term. If we are to be successful in addressing this problem, we must take a comprehensive approach that attempts to develop long range solutions as well. Included in this, is the necessity to develop systems which concentrate on preventing certain persons from entering the prison system in the first place. In this regard, the Council has studied various aspects of sentencing and in particular, sentencing alternatives.

In 1982, the Council passed and the Mayor signed the District of Columbia Sentencing Improvements Act of 1982 (D.C. Law 4-202). Among other improvements, this law allows the court to impose community service and restitution as independent sentences, apart from the imposition of probation. The law also reinstated split sentencing as a viable sentencing option in Superior Court. In addition, the law permits the Board of Parole to authorize work release for misdemeanants eligible for parole. Because this law just became effective on March 10, 1983, it is too soon to analyze the beneficial impact that this legislation will have on prison overcrowding.

In this comprehensive approach, we must also take into account the effect that other criminal law legislation will have on prison overcrowding. We have learned all too often that a response to one problem may often lead to greater problems. For instance, the price that we were forced to pay for strengthening our bail laws is being felt now in terms of exorbitant increases in persons detained at D.C. Jail while awaiting trial.

As I previously noted, the problem of prison overcrowding is very much like the overall problem of crime. There is no single cause of the problem and as a result, there is no one answer or miracle cure. While it is tempting to search for the "quick-fix", I believe the answers must be the result of a comprehensive analytical approach that is developed through a cooperative effort on the part of the Council, the Executive Branch, the Courts, and the Federal authorities. I am pleased to join in this effort.

**Mr. DYMALLY.** The meeting is adjourned.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

**END**